

**TWEED SHIRE COUNCIL
MEETING TASK SHEET**

User Instructions

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Action Item - COUNCIL MEETING Thursday, 21 November 2013

Action is required for Item **27.** as per the Council Resolution outlined below.

TITLE: [PR-CM] Development Application D90/0436.07 for an amendment to Development Consent D90/0436 for the Erection of a Tavern and Nine Shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville

**Cr K Milne
Cr G Bagnall**

RESOLVED that Council determines Development Application D90/0436.07 for an amendment to Development Consent D90/0436 for the Erection of a Tavern and Nine Shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville be refused for the following reasons in regard to s79C of the Environmental Assessment and Planning Act Section 1:

- (b) The likely negative impacts from the development on the amenity of neighbourhood environment due to existing and ongoing concerns about noise disturbance and anti social behaviour.
- (c) The unsuitability of this proposal due to the close proximity of residential properties.
- (e) The proposal is not in accordance with the public interest as it presents unacceptable impacts on the social amenity of the area and is not in accordance with the orderly economic development of the locality.

The Motion was **Carried**

**FOR VOTE - Cr C Byrne, Cr M Armstrong, Cr K Milne, Cr G Bagnall, Cr B Longland
AGAINST VOTE - Cr P Youngblutt, Cr W Polglase**

TITLE: [PR-CM] Development Application D90/0436.07 for an amendment to Development Consent D90/0436 for the Erection of a Tavern and Nine Shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville

SUBMITTED BY: Development Assessment

FILE REFERENCE: PF3975/145 Pt8



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.1	Ensure actions taken and decisions reached are based on the principles of sustainability
1.1.1	Establish sustainability as a basis of shire planning and Council's own business operations

SUMMARY OF REPORT:

Updated Information

Council at its meeting of 17 October 2013 resolved as follows:

"RESOLVED that Development Application D90/0436.07 for an amendment to Development Consent D90/0436 for the erection of a tavern and nine shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville be deferred to a Workshop."

A Councillors Workshop was held on 29 October 2013 to further discuss this application.

The report is now submitted to Council for its further determination.

Previous Report

Council is in receipt of a S96(1A) modification application to extend the trading hours of the Pottsville Tavern. The existing hours for the Tavern are 10.00am to 10.00pm seven days a week. The applicant has requested the hours to be modified to:

- Sunday to Thursday – 10.00am to 10.00pm;
- Friday & Saturday – 10.00am to 12.00 Midnight;

Variation of the above hours are permitted for a maximum of six (6) times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council within the 12 month period.

Council have previously approved these hours of operation subject to appropriate 'Plan of Management' measures to mitigate impacts on the surrounding area for a 12 month trial period. This trial period has not been carried out as the tavern operator has as yet to gain a variation to the liquor licence to trade beyond 10pm.

The applicant has proposed permanent ameliorative measures in order to allow these hours of operation on a permanent basis.

Council staff do not support the permanent extension of hours proposed by the applicant. However, an extension of hours to midnight for Friday and Saturday nights is considered acceptable, subject to appropriate conditions and mitigation measures, including the

provision of a reviewable condition of consent which would be reviewed after 12 months or upon receipt of a valid complaint, after the extended trading hours commence.

The proposal was advertised for a period of 14 days, during which time seven submissions and one petition (27 signatories) opposed to the proposal were received. One late submission has also been received. These are detailed later in this report.

RECOMMENDATION:

That Development Application D90/0436.07 for an amendment to Development Consent D90/0436 for the erection of a tavern and nine shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville be approved and the consent be amended as follows:

1. **Condition No. 10A is to be deleted and replaced with Condition No. 10B which reads as follows:**

10B. Hours of operation:

Sunday to Thursday – 10.00am to 10.00pm

Friday and Saturday – 10.00am to 10pm

Variation of the above hours are permitted for a maximum of six times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council.

Notwithstanding this condition, please see condition No 29 regarding the reviewable condition.

2. **Condition No. 20 is to be deleted and replaced with Condition No. 20A which reads as follows:**

20A. The Tavern shall operate in accordance with the Environmental Noise Impact Report prepared by CRG Acoustical Consultants dated 23 July 2013. All mitigation works shall be completed prior to commencement of extended trading hours.

3. **The following new Conditions are to be added:**

27. An updated Plan of Management shall be submitted and approved to the satisfaction of the General Manager or delegate within three months of the date of this consent.

28. Notification shall be provided within seven days of the commencement of extended hours of trading accompanied by a compliance audit report against the operational conditions of the consent inclusive of the plan of management.

29. Reviewable Condition

This consent is subject to a reviewable condition under Section 80A of the Environmental Planning and Assessment Amendment Act. The reviewable condition relates to a condition that permits extended hours of operation. The purpose of this condition is to enable Council to monitor potential impacts associated with extended hours of operation at this site on the surrounding area and, if appropriate, to revert the development consent to its previously approved hours of operation.

Extended trading is permitted on Friday and Saturday until 12 Midnight subject to this condition being reviewed by Council after 12 months or upon receipt of a complaint that Council deems to be reasonable from the date the extended trading hours commence.

Council is to provide not less than 14 days written notice to the operator of the development that a review is to be carried out under this condition. Where requested by Council, the proponent is to submit a compliance audit against the operational conditions of the development consent, including the plan of management and noise audit report. Council may notify such other persons as it thinks fit of the review, and must take into account any submissions received within 14 days after notice is given.

Please note see Condition No 10B.

REPORT:

Applicant: Pottsville Tavern
Owner: Premium Custody Services Pty Ltd
Location: Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville
Zoning: 3(b) General Business
Cost: Not Applicable

Background:

Council records indicate that consent was granted for the construction of a tavern and nine shops on 21 January 1991. The approved hours of operation for the tavern were restricted to 10.00am to 10.00pm.

Amended consents were issued on 14 February 1991, 24 May 1991 and 25 January 1994. These did not modify the approved trading hours for the tavern. A Hotel Liquor Licence was issued in November 1999. The licence limits the tavern's trading hours to 10.00am - 10.00pm (as per the abovementioned approval), subject to conditions.

An application to modify the hours of operation of the original consent was lodged in July 2001. The proposed hours of operation were:

- Mon – Sat 8.00am to 11.00pm;
- Sunday 10.00am to 10.00pm; and
- Christmas Day/ Good Friday 12 noon to 10.00pm.

The modification to extend the approved trading hours was considered to result in an increase in adverse impacts on the surrounding residents and was subsequently refused by Council on 19 December 2001.

An additional Section 96 application was lodged (D90/0436.04) in December 2005. The proposed trading hours were:

- Mon – Thurs and Sun 10.00am to 10.00pm; and
- Fri, Sat and public holidays 10.00am to 12 midnight.

The proposed trading hours were for an initial 12 month time frame from the date of the approved amended consent. The modification to increase the trading hours was refused on 19 April 2007, as a result of potential for increased community disturbances by noise and activities of patrons leaving the premises.

The applicant then lodged a Class One Appeal with the Land and Environment Court in June 2007. Council resolved to engage solicitors to act on Council's behalf and defend the appeal. The applicant discontinued the appeal in July 2007.

A further Section 96 application was received (D90/0436.05) in December 2009 with respect to extending the hours of operation of the Pottsville Tavern. Under this application, Council amended the consent to allow the following hours of operation for a *maximum period of 12 months from the date of this amended consent* (20 May 2010):

Sunday to Thursday – 10.00am to 10.00pm

Friday and Saturday – 10.00am to 12.00 Midnight

Variation of the above hours are permitted for a maximum of six (6) times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council within the 12 month period.

Following the lapse of the 12 month period the hours of operation shall be restricted to 10.00am to 10.00pm.

Any further application for the variation of hours of operation outside of 10.00am to 10.00pm shall be prepared by a suitably qualified person and accompanied by a noise impact assessment in accordance with AS 1055 Acoustics – Description and measurement of environmental noise, the Noise Guide for Local Government June 2004 and any other relevant and accepted guideline.

Additional conditions of consent were also amended in order to provide mitigation measures for any potential noise impacts arising from the amended hours of operation. It is noted that this 12 month trial period was not completed, with NSW Police advising that NSW Office of Liquor, Gaming and Racing (OLGR) denied an application to trade in line with the operating hours approved under D90/0436.05.

On 22 November 2011, Council received an application to remove the 12 month trial period element of this condition, however Council received correspondence indicating that approval from the Casino, Liquor & Gaming Control was not obtained in relation to an extension of hours of operation on the liquor licence and as such the 12 month trial period had not taken place. This application was subsequently withdrawn as Council officers advised the applicant that the extended hours of operation would not be supported without a suitable trial period being undertaken.

PROPOSED DEVELOPMENT:

Tweed Shire Council has received an application under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* proposing to modify the approved trading hours of the Pottsville Tavern at 28-40 Overall Drive, Pottsville (Lot 171 DP 629328).

This application seeks to permanently implement the operating times outlined under the D90/0436.05 approval, with the exception of the 12 month limited period outlined in condition No.10A. It is proposed to provide ameliorative measures, including noise barriers adjacent to existing outdoor areas of the Tavern, which the applicant states will ensure there will not be adverse impacts on surrounding residents. The proposal is supported by an Environmental Noise Impact Report, which includes recommended noise mitigation measures.

As such, revised condition 10A would outline the following hours of operation:

Sunday to Thursday – 10.00am to 10.00pm

Friday and Saturday – 10.00am to 12.00 Midnight

Variation of the above hours are permitted for a maximum of six (6) times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council.

The application was advertised for a period of 14 days from Wednesday 10 April 2013 to Wednesday 24 April 2013. During this time, seven submissions and one petition (27 signatories) opposed to the proposal were received. The application was also forwarded to the NSW Police for comment.

Councils Environmental Health Unit have reviewed the subject application and advised that the request to vary hours of operation is not supported as proposed as it has been insufficiently demonstrated that a trial period was conducted and therefore the impact on the surrounding community can not be adequately assessed. It is recommended that a reviewable condition of consent be applied to an approval to ensure the operators can adequately demonstrate that by adopting noise mitigation measures and satisfactory operational practices, impacts can be managed. Should this not occur the extended hours of operation would not be permitted to continue.

Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The proposed amendments are considered to meet the provisions of Clause 4.

Clause 5 - Ecologically Sustainable Development (ESD)

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The proposed amendments are not considered to significantly impact upon the ESD principles of this development. It is considered that the proposal will therefore be in accordance with Clause 5 of the LEP.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

As noted above, the proposed modifications are considered to result in a development which is consistent with the primary objective of the 3(b) zone, subject to conditions of consent.

Other relevant clauses of the TLEP have been considered elsewhere in this report.

Council's Development Assessment Unit is satisfied that the proposed development would not have an unacceptable cumulative impact on the locality or the community as a whole, subject to appropriate mitigation measures being acted upon and the inclusion of a reviewable condition of consent with respect to the hours of operation. As such, the proposal is considered to meet the provisions of Clause 8 of the LEP.

Clause 11 - Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 3(b) General Business under the provisions of the LEP. The primary objective of the zone is to:

- *to provide business centres in which the community's shopping, business, welfare and social needs can be met; and*

- *to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*

A tavern is defined as a Hotel, which is permissible with consent under the provisions of the Tweed LEP 2000. The proposed modifications are considered to be consistent with the objectives of the zone, subject to conditions of consent.

If all applicable mitigation measures included in the Environmental Noise Impact Report are acted upon and relevant conditions of consent are imposed, the proposal is considered to result in a development which is consistent with the objectives of the zone.

Placing a reviewable condition on the consent is considered to be a reasonable method of allowing Council to determine if the proposal will impact upon surrounding residents over a period of time.

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Hours of Operation

The applicant has noted the following:

"This application is being prepared at the request of new owners and subsequent to the carrying out of a new acoustic assessment that attempts to address the matters previously raised by Council and the impacts that the Hotel operation has on adjoining residences.

This application seeks to permanently implement the operating times with the exception of the 12 month limited period outlined in condition No.10A. In this regard, this application also seeks approval for permanent ameliorative measures that render a limited time period or trial period, unnecessary. These ameliorative measures, as recommended in the attached Acoustic report, will ensure that the increase in operating hours will only occur in the knowledge that doing so will not create any adverse impacts upon surrounding residents. We note that the ameliorative measures proposed do not seek to implement 3m high barriers on the boundary of the subject land, rather, it seeks to place them on areas immediately surrounding the existing outdoor areas, therefore again limiting impacts on adjoining residences."

Comment:

As a result of Council officer concerns with respect to the impact of the proposed operating hours on the surrounding area, the applicant's proposal to permanently implement the operating hours without a trial period is not supported. Councils Environmental Health Unit has provided the following advice in this regard:

"However proposed noise mitigation works include the construction of permanent barriers surrounding the external areas that may be cost prohibitive should a further 12 month restriction be placed upon the consent. To off-set the concerns raised by the surrounding community a reviewable could be imposed to ensure the operators can adequately demonstrate that by adopting noise mitigation measures and satisfactory operational practices impacts can be managed and should this not occur the extended hours of operation would not be permitted to continue."

Under the Environmental Planning and Assessment Amendment Act provisions for reviewable conditions were introduced within Section 80A with the criteria specified within subsections (10B) to (10E). This outlines the following:

(10B) Review of extended hours of operation and number of persons permitted

A development consent that is granted subject to a reviewable condition may be granted subject to a further condition that the consent authority may review that condition at any time or at intervals specified by the consent and that the reviewable condition may be changed on any such review.

(10C) The regulations may make provision for or with respect to the kinds of development that may be subject to a further condition referred to in subsection (10B), the matters that must be included in such a condition and the procedures for a review under such a condition.

(10D) A decision by a consent authority to change a reviewable condition on a review is taken to be a determination of a development consent for the purposes of this Act.

Note. *A review application or an appeal against a determination of a development consent may be made under this Division or Division 8.*

*(10E) For the purposes of subsections (10B)–(10D), a **reviewable condition** means any of the following:*

- (a) a condition that permits extended hours of operation (in addition to other specified hours of operation),*
- (b) a condition that increases the maximum number of persons permitted in a building (in addition to the maximum number otherwise permitted).*

The subject application has also been forwarded to NSW Police for comment, who have advised that the venue management had made application to the NSW Office of Liquor, Gaming and Racing to change the trading hours of the venue to be able to trade in line with the operating hours approved under D90/0436.05. The application was denied, and therefore a trial of the above hours could not have been undertaken. NSW Police could therefore not comment on the venue's affect on the community during the trial period. The Police had not opposed the variation however conditions had been sought, which have been taken into account in the amended conditions of this consent.

Councils Environmental Health Units recommendations are considered to represent a reasonable outcome with respect to the proposed amendment as it allows the tavern to operate extended opening hours and it also protects the surrounding community from possible negative impacts associated with same by maintaining the potential to revert the hours of operation through a reviewable condition of consent.

Noise Impact

The most recent Environmental Noise Impact Report (prepared by CRG Consultants, dated 23 July 2013) submitted as part of this application recommends that the following acoustic treatments and management principles be incorporated at the tavern to allow operation until midnight:

- The "Plan of Management" be updated to include the requirements of this acoustic report (refer to the previous "Plan of Management" in Appendix B) and be maintained for the Tavern.
- Recommended 3.0m high acoustic barriers around the perimeters of the outdoor areas of the tavern.
- The southern 1.8m high acoustic fence along the common boundary with the residential dwellings along Windsor Court should be upgraded (if required) and maintained as a 1.8m high acoustic barrier which is free of gaps and holes.
- The carpark gates along the western boundary (fronting Royal Drive) be closed at 10pm.

- No alcohol is to be consumed in the carpark area.
- Maintain a Neighbourhood Complaints Register.
- Amplified music and live entertainment be allowed inside the building up to midnight provided external windows and doors are kept closed. A maximum level of 91 dB(A) measured at 3m from any speaker would allow for a solo or duo act under moderate amplification.
- A sound limiter device be installed for amplified music and live entertainment to the levels presented below. The levels are measured at 3m from any speaker. All musical equipment should be connected to the sound limiter device.

Amplified entertainment inside building with windows and doors closed	SPL Hz Octave Band Centre Frequencies dB(A)									
	31.5	63	125	250	500	1000	2000	4000	8000	AP
Predicted allowable noise source level until midnight (measured at 3m)	50	59	69	76	85	88	79	80	74	91

- Speakers for amplified music or live entertainment should be directed towards the north (i.e. towards the Bottle shop drive-through) away from the nearest dwellings to the south.
- The south-western and north-western car spaces should be designated staff spaces to minimise the number of car movement events from these spaces.
- Appropriate signage should be erected at the main entry/exit doors asking patrons to be considerate of surrounding neighbours.
- Staff of the tavern should be diligent in maintaining acceptable activities and noise levels at the outdoor areas of the tavern.
- Provide a security person in the carpark after 10pm to maintain acceptable activities in the carpark (i.e. noise boisterous activity or drinking or congregating of patrons).
- New mechanical equipment (if required) be designed and installed to comply with applicable noise criterion. If new mechanical plant is required it should be positioned as far from the nearest offsite dwellings as possible (i.e. the north-eastern corner of the building).

Comment:

Council's Environmental Health Unit has reviewed the Environmental Noise Impact Report prepared by CRG Acoustical Consultants dated 23 July 2013 and advised that the report appears to have been prepared in accordance with the NSW Industrial Noise Policy and has addressed outstanding concerns. In this regard, the proposed mitigation measures contained within the report are considered to be generally acceptable, however a trial period is to be undertaken through a reviewable condition of consent which would allow monitoring of the site for a minimum of a 12 month timeframe to determine noise impacts.

CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Substantially the Same Development

The proposed modification is essentially the same development as originally approved, with the proposed amendments relate to the hours of operation and are not considered likely to result in any significant changes to the originally approved development.

Likely Environmental Impact

The proposed amendments to the approved development are not likely to result in any significant impact upon the surrounding area, as noted in the section 79c assessment above. The proposed amendments are therefore not considered to result in any significant environmental impact, subject to appropriate conditions of consent.

Consideration of Submissions

The application was an exhibition for 14 days. During this time, seven written submissions were received and one petition with 27 signatories. One late submission was also received with respect to the proposal. The issues raised have been summarised below:

Issue Raised	Council Officer Assessment
When the Tavern previously applied for an extension to hours of operation there were many conditions with respect to noise amelioration measures. None of these have been undertaken.	From advice provided to Council by NSW Police it is considered that the amended hours of operation approved under a previous S96 application were not enabled as the tavern failed to obtain a licence from Office of Liquor Gaming and Racing (OLGR) to operate these times. As such, the amelioration measures would not have been required to be implemented.
Anti-social behaviour and noise from bands would be worse with exacerbated by extended hours of operation.	The issue of anti-social behaviour is a matter for NSW Police. This matter is a social issue, rather than planning consideration under the provisions of the Environmental Planning and Assessment Act. In any event amelioration measures have been provided by the applicant with respect to noise from bands. The proposal does not warrant refusal on this issue.
The proposal will result in decreased property values.	This matter is not considered to constitute a planning consideration under the provisions of the Environmental Planning and Assessment Act and the proposal does not warrant refusal on this issue.
Lack of permanent local Police support in Pottsville means that there is a lack of protection to neighbouring properties from anti-social behaviour.	The lack of Police numbers in the Pottsville locality is not a matter of consideration under the provisions of the Environmental Planning and Assessment Act. The proposal does not warrant refusal on this issue.
Pottsville does not require extended hours for the consumption of alcohol as there are sufficient liquor retailers in the village. This leads to litter in the streets.	The subject site is appropriately zoned for the existing development on site. Liquor licences deal with the sale of alcohol and are policed by the Office of Liquor Gaming and Racing (OLGR). Littering associated with the proposal is a behavioural issue and not a planning consideration under the provisions of the Environmental Planning and Assessment Act.
The proposed acoustic treatment is not considered sufficient and the ability of the acoustic barrier to operate adequately is questioned.	The application has been reviewed by Councils Environmental Health Unit with respect to this matter, with it being assessed that the submitted Environmental Noise Impact Report is acceptable to relevant industry standards, subject to appropriate conditions of consent.
Tavern was approved as a small family tavern, as a quiet place for people to	The tavern is defined as a 'hotel' under the Tweed LEP 2000. The behaviour of patrons is a

Issue Raised	Council Officer Assessment
rest, have a meal and go home safely.	social issue which is not a planning consideration under the Environmental Planning and Assessment Act but rather an operational management/ NSW Police issue. Where this relates to a Plan of Management, the applicant is required to submit to Council for approval. Conditions have been attached to the consent in this regard.
Security should be undertaken by a reputable security firm.	The identity of the security officers is not a planning consideration under the Environmental Planning and Assessment Act.
The proponent of a mixed residential/commercial development approved to the north of the site objects to the proposed hours of operation on the basis that increased trading hours would be detrimental to their properties development due to anti-social behaviour.	The subject site is zoned appropriately for the subject tavern development and the hours of operation are considered acceptable through a reviewable condition to determine if amelioration measures negate impacts on surrounding properties. The behaviour of patrons is a social issue which is not a planning consideration under the Environmental Planning and Assessment Act but rather an operational management/ Police issue. Where this relates to a Plan of Management, the applicant is required to submit to Council for approval. Conditions have been attached to the consent in this regard.
When the original DA was approved and Liquor Licensing Court issued a licence, trading hours were determined in order to preserve the tranquillity of the area.	Liquor licences usually reflect the approved trading hours imposed on the development consent. An assessment of the trading hours has been undertaken with the potential impacts to residents taken into account. In this regard it is considered appropriate that a reviewable condition be provided which allows a trial period of extended hours of operation to determine any impacts on the surrounding area. If any extension of trading hours is approved, the liquor licence can be amended as a result. NSW Police and OLGR are responsible for the enforcement of licensing conditions. The proposal does not warrant refusal on this issue.
Anti-social behaviour (including littering, vandalism, cars/motorbikes with loud mufflers) and drink-driving are issues associated with the development at present will be exacerbated by additional hours of operation.	The issue of anti-social behaviour and drink driving is a matter for NSW Police. This is a social issue, rather than planning consideration under the provisions of the Environmental Planning and Assessment Act. The proposal does not warrant refusal on this issue.
The applicants argument for extended opening hours with respect to zoning objectives, community's social needs etc is not supported.	The subject tavern is considered to be located on an appropriately zoned site for such a development and the hours of operation take into account surrounding properties. In this regard, the applicant has submitted an 'Environmental Noise Impact Report' which contains amelioration measures with respect to impacts on surrounding properties. It is recommended that these

Issue Raised	Council Officer Assessment
	measures be implemented and a reviewable condition be attached to the consent in order to determine actual impacts arising from extended hours of operation.
The submission states that some of the mitigation measures are inconsistent with the Liquor licence provisions, in particular with respect to the playing of live music. It is also noted that mitigation measures outlined in a 2009 Plan of Management have ' <i>escaped full-hearted implementation</i> '.	The Liquor licence is assessed independently from the Development Application and the tavern would be required to comply with the provisions of same. The measures outlined in the Environmental Noise Impact Report are considered to mitigate noise impact in the event of music being played. The approval of an amended consent does not allow the playing of music on the site, but rather provide mitigation measures were it to be approved through the Liquor license. With respect to the 2009 Plan of Management, these measures were to be undertaken in order to allow extended hours of operation at that time. Council have been advised by NSW Police that Liquor license approval was not obtained for the extended operating hours at this time and as such it is reasonable to assume that the amended consent which required these management measures was effectively not acted upon.
Amenity of surrounding properties must be protected.	Mitigation measures and a trial period, by way of a reviewable condition, have been proposed in order to protect the amenity of the surrounding properties. The proposed amendment is considered to be acceptable in this regard.
The licence (assume this is liquor licence) restricted trading hours.	The applicant would be required to amend the liquor licence to amend trading hours in this regard. This is not a matter for Office of Liquor Gaming and Racing (OLGR) to consider and is not a planning matter.
The proposed change in hours of operation is not minor and it is requested that Council reject this application in the interests of the community.	The subject application has been reviewed by Councils Environmental Health Unit and it is advised that subject to the implementation of amelioration measures and a reviewable condition with respect to the hours of operation, the proposal was considered to be acceptable.

The recommended extension of hours through a reviewable condition of consent is considered to be a reasonable compromise to the applicant's proposal and the issues raised by the submissions above. The extension of hours of operation is reliant upon the applicant applying the recommendations of the Environmental Noise Impact Report, as well as all additional conditions of consent.

In terms of a negative impact on the community, surrounding residents are encouraged to use the proposed incident report at the Tavern, or lodge any valid complaints with Council or the Police. Without complaints being lodged, issues of non-compliance go unnoticed by the relevant authorities and cannot be substantiated at a later date.

Public interest

The proposed modifications to Development Consent D90/0436 are considered to be acceptable in terms of public interest. The amended conditions of consent will give the applicant an opportunity to demonstrate that they are capable of running the Tavern at the extended hours, with minimal impact on the local area, whilst the public will also have an opportunity to log any complaints with respect to the extended operating hours, should they occur. The proposed modifications are not considered to result in a significant negative impact upon the surrounding residential area, subject to the continual application amelioration measures as outlined in the Environmental Noise Impact Report and other recommended conditions of consent.

Recommendation

The request to vary Condition 10A as outlined by the applicant is not supported as proposed as it has been insufficiently demonstrated that a trial period was conducted and therefore the impact on the surrounding community has not been adequately assessed.

However proposed noise mitigation works include the construction of permanent barriers surrounding the external areas that may be cost prohibitive should a further 12 month restriction be placed upon the consent. To off-set the concerns raised by the surrounding community a reviewable condition could be imposed to ensure the operators can adequately demonstrate that by adopting noise mitigation measures and satisfactory operational practices impacts can be managed and should this not occur the extended hours of operation would not be permitted to continue. Therefore the following alternative amendments and conditions are recommended:

1. Condition No. 10A is to be deleted and replaced with Condition No. 10B which reads as follows:
 - 10B. Hours of operation:
 - Sunday to Thursday – 10.00am to 10.00pm
 - Friday and Saturday – 10.00am to 10pm
 Variation of the above hours are permitted for a maximum of six times per year with the written approval of the General Manager, or delegate, of Tweed Shire Council.

Notwithstanding this condition, please see condition No 29 regarding the reviewable condition.
2. Condition No. 20 is to be deleted and replaced with Condition No. 20A which reads as follows:
 - 20A. The Tavern shall operate in accordance with the Environmental Noise Impact Report prepared by CRG Acoustical Consultants dated 23 July 2013. All mitigation works shall be completed prior to commencement of extended trading hours.
3. The following new Conditions are to be added:
 27. An updated Plan of Management shall be submitted and approved to the satisfaction of the General Manager or delegate within three months of the date of this consent.
 28. Notification shall be provided within seven days of the commencement of extended hours of trading accompanied by a compliance audit report against the operational conditions of the consent inclusive of the plan of management.
 29. Reviewable Condition

This consent is subject to a reviewable condition under Section 80A of the Environmental Planning and Assessment Amendment Act. The reviewable

condition relates to a condition that permits extended hours of operation. The purpose of this condition is to enable Council to monitor potential impacts associated with extended hours of operation at this site on the surrounding area and, if appropriate, to revert the development consent to its previously approved hours of operation.

Extended trading is permitted on Friday and Saturday until 12 Midnight subject to this condition being reviewed by Council after 12 months or upon receipt of a complaint that Council deems to be reasonable from the date the extended trading hours commence.

Council is to provide not less than 14 days written notice to the operator of the development that a review is to be carried out under this condition. Where requested by Council, the proponent is to submit a compliance audit against the operational conditions of the development consent, including the plan of management and noise audit report. Council may notify such other persons as it thinks fit of the review, and must take into account any submissions received within 14 days after notice is given.

Please note see Condition No 10B.

OPTIONS:

1. Approve the amendment of the development consent as outlined above; or
2. Refuse the application for stated reasons.

CONCLUSION:

The assessment has had regard for the issues raised by the public submissions, the applicant's Environmental Noise Impact Report, as well as advice from NSW Police and Councils Environmental Health unit. As a result, the proposed modification to the trading hours of the Tavern is considered to be acceptable, subject to the changes recommended by Council staff, including the provision of a reviewable condition. As such, it is considered that the proposal warrants approval, subject to the recommended amendments to Development Consent D90/0436.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.