



Additional Items

Agenda: *Development Control Committee*

Date: *Monday 2 March 2015*

Time: *8.00 pm*

Session: *Two*

Item: *D14 to D16*

Development Control Committee

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the objector speaks first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Recommendation only to the Full Council or to the Strategic and Corporate Committee (“R” Items)

- Specified developments, as may be determined and listed by the Council by resolution taken from time to time.
- Matters which involve broad strategic or policy initiatives within responsibilities of Committee.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters not within the specified functions of the Committee.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

Delegated Authority (“D” Items)

To determine all development applications and related applications, which are not required to be determined by the Council under Council’s adopted procedures for the call up of applications **except:**

- a) Applications for review of a determination under section 82A of the *Environmental Planning and Assessment Act 1979* (“*the Act*”) where the DCC determined the original application.
- b) Development applications for development on community land which may not be delegated for determination under section 47E of the LG Act.

Committee Membership: 7 Councillors

Quorum: The quorum for a committee meeting is 4 Councillors.

Additional Meeting Agenda

Session Two - Commencing at 8.00pm

Item	Subject	Pages
D14	DA59/1996 part 3 – 535-537 Glenmore Road, Edgecliff – Section 96 Application – Proposed modification of Condition No. 2 of consent for operations of brothel by deleting the 18 month trial period & modifying the hours of use from current 10am-5am Mon-Sun to proposed 10am-6am Mon-Sun (increase of 1 hour per day) – 20/8/2014 *See Recommendation Page 949 *Note Confidential Report Circulated Under Separate Cover	947-965
D15	DA119/2003 part 3 – 533 Glenmore Road, Edgecliff – Section 96 Application – Proposed modification of Condition No. 2 of consent for operations of brothel by deleting the 18 month trial period & modifying the hours of use from current 10am-5am Mon-Sun to proposed 10am-6am Mon-Sun (increase of 1 hour per day) – 20/8/2014 *See Recommendation Page 968 *Note Confidential Report Circulated Under Separate Cover	966-984
D16	DA347/2014 – 102-106 Oxford Street, Paddington (Unicorn Hotel) – Use of the existing courtyard for outdoor dining area up until 10pm with a capacity for 42 patrons, also proposed is fixed timber bench seating to the north & western walls, new timber battens to the existing boundary walls & new awnings to the courtyard – 26/8/2014 *See Recommendation Page 986 *Note Confidential Report Circulated Under Separate Cover	985-1128

LAND AND ENVIRONMENT COURT UPDATE REPORT

ITEM No.	D14
FILE No.	DA 59/1996/3
ADDRESS	535-537 Glenmore Road EDGECLIFF
SITE AREA	118.3m ²
ZONING	Special Business 3(b)
TYPE OF CONSENT	Local development
EXISTING CONSENT	Change of use to brothel. Upgrade of work rooms
DATE OF CONSENT	14/03/1997
CONSENT AUTHORITY	Woollahra Municipal Council
PROPOSED MODIFICATION	Modify Condition 2 of consent for operation of brothel by deleting the 18 month trial period & modifying the hours of use from current 10AM-5AM Mon-Sun to proposed 10AM-6AM Mon-Sun (increase of 1 hour per day)
DATE S96 LODGED	20/08/2014
APPLICANT	Edgecliff Enterprises Pty Ltd
OWNER	Edgecliff Enterprises Pty Ltd
TEAM LEADER	Mr G Fotis

1. PREAMBLE

On 13 October 2014, Council's Development Control Committee resolved to go against the staff recommendation, which recommended the modification of **Condition No 2** by deleting the 18 month trial period and restricting the hours of use to 5am. (see below)

Condition No. 2 is modified to read as follows:

2. *Hours of use*

The hours of use are limited to the following:

- a) *Monday to Sunday 10am to 5am.*

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

*Note: Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.
Standard Condition: 11*

A copy of the staff planning report is attached as **Annexure 1**.

Council's Development Control Committee resolved to approve the s96 application seeking modification to **Condition No 2**, however restricted the closing time to 4am and recommended **Condition 2(a) - Extended hours of operation – Reviewable Condition** and **Condition 2(b) - Review of extended hours of operation**

The matter was referred to full Council in accordance with Council's meeting procedures and policy due to a substantive change to the Committee's recommendation to the Officer's recommendation. On 27 November 2014, full Council resolved to approve the s96 application with the following conditions:

Condition No. 2 is modified to read as follows:

2. Hours of use

The hours of use are limited to the following:

- b) *Monday to Sunday 10am to 4am.*

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: *Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.*
Standard Condition: 11

2(a) Extended hours of operation – Reviewable Condition

Reviewable Condition

The hours of operation are extended as follows:

- i) *from (10am to 4am Monday to Sunday) as contained in **Condition No 2** to (10am to 5am Monday to Sunday).*

*This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended operating hours will be reviewed in accordance with **Condition 2(b)**.*

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: *Council's consideration of the extended hours of operation will take into account:*

- i) *compliance of the premises in terms of security and its general management;*
- ii) *the number and nature of substantiated complaints regarding the operation of the premises;*
- iii) *compliance with the conditions of this consent; and*
- iv) *any other matters considered relevant to the environmental evaluation of the premises.*

Standard Condition: 14

2(b) Review of extended hours of operation

*Council will review the extended operating hours as referred to in **Condition 2.(a)** generally as follows:*

- a) One (1) year following the issue of any occupation certificate applicable to this application (if works are proposed) or the date of development consent (if no works are proposed)*
- b) Two (2) years following the first review*
- c) Each five (5) years thereafter*

The review will be undertaken in accordance with the Regulations, cl.124D. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: *As a result of a review a reviewable condition may be changed.*

Note: *The review will be presented to the Council Committee that determined the application and all stakeholders will be notified of the meeting*
Standard Condition: 15

On 23 December 2014, the Applicant commenced Class 1 proceedings in the Land and Environment Court of New South Wales (“the Court”) seeking:

- 1. That the appeal be upheld.*
- 2. That condition 2 of development consent No. DA59/1996 be modified to read as follows:*

The hours of use are limited to the following:

- (a) Monday to Sunday 10am to 6am.*

- 3. That condition 2A and 2B of development consent DA 59/1996 be deleted.*

2. BASIS OF REPORT

On 13 February 2015, the proceedings came before the Court for a directions hearing. The Court set the matter down for a s34 conciliation conference on 01 April 2015.

In accordance with Council’s procedures and policy, legal advice was sought in relation to the appeal, due to the substantive change of the full Council’s determination of the matter from the Senior Assessment Officer’s recommendation.

Advice has been obtained and as a result, the following recommendation is provided.

3. RECOMMENDATION

- A. THAT in respect of the appeal to the Land and Environment Court of New South Wales against Council 's conditions to Development Application No. 59/1996/3 for modify Condition 2 of consent for operation of brothel by deleting the 18 month trial period & modifying the hours of use from current 10AM-5AM Mon-Sun to proposed 10AM-6AM Mon-Sun (increase of 1 hour per day) on land at 533 - 537 Glenmore Road, Edgecliff, the Committee resolve to enter into closed session with the press and public excluded to consider the confidential report on this matter in accordance with the provisions of Section 10A(2)(g) of the Local Government Act 1993.
- B. THAT in accordance with Council 's policy of confidentiality, the confidential report remain confidential for a period of six (6) months or until the conclusion of the appeal, whichever occurs first.

Mrs L Holbert
SENIOR ASSESSMENT OFFICER

Mr. G Fotis
TEAM LEADER

ANNEXURES

1. S96 Application Assessment Report [dated 13 October 2014]

LAND AND ENVIRONMENT COURT UPDATE REPORT

ITEM No.	D15
FILE No.	DA 119/2003/3
ADDRESS	533 Glenmore Road EDGECLIFF
SITE AREA	118.3m ²
ZONING	Special Business 3(b)
TYPE OF CONSENT	Local development
EXISTING CONSENT	Change of use to brothel. Upgrade of work rooms
DATE OF CONSENT	15/04/2003
CONSENT AUTHORITY	Woollahra Municipal Council
PROPOSED MODIFICATION	Modify Condition 2 of consent for operation of brothel by deleting the 18 month trial period & modifying the hours of use from current 10AM-5AM Mon-Sun to proposed 10AM-6AM Mon-Sun (increase of 1 hour per day)
DATE S96 LODGED	01/08/2014
APPLICANT	Edgecliff Enterprises Pty Ltd
OWNER	Edgecliff Enterprises Pty Ltd
AUTHOR	Mr A Gilderdale
TEAM LEADER	Mr G Fotis

1. PREAMBLE

On 13 October 2014, Council's Development Control Committee resolved to go against the staff recommendation, which recommended the modification of **Condition No 2** by deleting the 18 month trial period and restricting the hours of use to 5am. (see below)

Condition No. 2 is modified to read as follows:

2. *Hours of use*

The hours of use are limited to the following:

- a) *Monday to Sunday 10am to 5am.*

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

Standard Condition: 11

A copy of the staff planning report is attached as **Annexure 1**.

Council's Development Control Committee resolved to approve the s96 application seeking modification to **Condition No 2**, however restricted the closing time to 4am and recommended **Condition 2(a) - Extended hours of operation – Reviewable Condition** and **Condition 2(b) - Review of extended hours of operation**

The matter was referred to full Council in accordance with Council's meeting procedures and policy due to a substantive change to the Committee's recommendation to the Officer's recommendation. On 27 November 2014, full Council resolved to approve the s96 application with the following conditions:

Condition No. 2 is modified to read as follows:

2. Hours of use

The hours of use are limited to the following:

- b) *Monday to Sunday 10am to 4am.*

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: *Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.*
Standard Condition: 11

2(a) Extended hours of operation – Reviewable Condition

Reviewable Condition

The hours of operation are extended as follows:

- i) *from (10am to 4am Monday to Sunday) as contained in **Condition No 2** to (10am to 5am Monday to Sunday).*

*This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended operating hours will be reviewed in accordance with **Condition 2(b)**.*

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: *Council's consideration of the extended hours of operation will take into account:*

- i) *compliance of the premises in terms of security and its general management;*
- ii) *the number and nature of substantiated complaints regarding the operation of the premises;*
- iii) *compliance with the conditions of this consent; and*
- iv) *any other matters considered relevant to the environmental evaluation of the premises.*

Standard Condition: 14

2(b) Review of extended hours of operation

*Council will review the extended operating hours as referred to in **Condition 2.(a)** generally as follows:*

- a) *One (1) year following the issue of any occupation certificate applicable to this application (if works are proposed) or the date of development consent (if no works are proposed)*
- b) *Two (2) years following the first review*
- c) *Each five (5) years thereafter*

The review will be undertaken in accordance with the Regulations, cl.124D. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: As a result of a review a reviewable condition may be changed.

Note: The review will be presented to the Council Committee that determined the application and all stakeholders will be notified of the meeting

Standard Condition: 15

On 23 December 2014, the Applicant commenced Class 1 proceedings in the Land and Environment Court of New South Wales (“the Court”) seeking:

1. *That the appeal be upheld.*
2. *That condition 2 of development consent No. DA59/1996 be modified to read as follows:*

The hours of use are limited to the following:

(a) Monday to Sunday 10am to 6am.

3. *That condition 2A and 2B of development consent DA 59/1996 be deleted.*

2. BASIS OF REPORT

On 13 February 2015, the proceedings came before the Court for a directions hearing. The Court set the matter down for a s34 conciliation conference on 01 April 2015.

In accordance with Council’s procedures and policy, legal advice was sought in relation to the appeal, due to the substantive change of the full Council’s determination of the matter from the Senior Assessment Officer’s recommendation.

Advice has been obtained and as a result, the following recommendation is provided.

3. RECOMMENDATION

- A. THAT in respect of the appeal to the Land and Environment Court of New South Wales against Council 's conditions to Development Application No. 119/2003/3 for modify Condition 2 of consent for operation of brothel by deleting the 18 month trial period & modifying the hours of use from current 10AM-5AM Mon-Sun to proposed 10AM-6AM Mon-Sun (increase of 1 hour per day) on land at 533 Glenmore Road, Edgecliff, the Committee resolve to enter into closed session with the press and public excluded to consider the confidential report on this matter in accordance with the provisions of Section 10A(2)(g) of the Local Government Act 1993.
- B. THAT in accordance with Council 's policy of confidentiality, the confidential report remain confidential for a period of six (6) months or until the conclusion of the appeal, whichever occurs first.

Mrs L Holbert
SENIOR ASSESSMENT OFFICER

Mr. G Fotis
TEAM LEADER

ANNEXURES

1. S96 Application Assessment Report tabled to the DCC meeting of the 13th October 2014

LAND AND ENVIRONMENT COURT UPDATE REPORT

ITEM No.	D16
FILE No.	DA 347/2014/1
ADDRESS	102-106 Oxford Street PADDINGTON – Unicorn Hotel
SITE AREA	468m ²
ZONING	Neighbourhood Business 3(c)
TYPE OF CONSENT	Local development
PROPOSAL	Use of the existing courtyard for outdoor dining area up until 10PM with a capacity for 42 patrons; also proposed is fixed timber bench seating to the north & western walls, new timber battens to the existing boundary walls & new awnings to the courtyard
DATE LODGED	26/08/2014
DATE OF REFUSAL	15/12/2014
APPLICANT	Tricon Management Group Pty Ltd
OWNER	IFB Paddington Pty Ltd & IFM Paddington Pty Ltd
AUTHOR	Ms R Coull
TEAM LEADER	Mr G Fotis

1. PREAMBLE

On 8 December 2014, Council's Development Control Committee resolved to go against the staff recommendation for the approval of the development application and recommended the refusal of it to the full Council. A copy of the staff planning report is attached as **Annexure 2**. The matter was referred to full Council in accordance with Council's meeting procedures and policy due to the substantive change of the Development Control Committee's recommendation (refusal) from the Assessment Officer's recommendation (conditional approval).

On 15 December 2014, the full Council resolved to refuse the subject development application for the following reasons:

- Not in the public and community interest.
- The inability to enforce the number of patrons in the courtyard.
- Police recommending refusal of the application.
- Potential for noise impacts on locals due to proximity to residential premises.
- Concentrated exposure to cigarette smoking.

On 17 December 2014, the subject property owner commenced Class 1 proceedings in the Land and Environment Court appealing the refusal of the subject development application.

2. BASIS OF REPORT

On 21 January 2015, the Proceedings came before the Court for a directions hearing. The Court set the matter down for a s34 conference on 3 March 2015.

In accordance with Council's procedures and policy, legal advice was sought in relation to the appeal, due to the substantive change of the full Council's determination of the matter (refusal from the Assessment Officer's recommendation (conditional approval)).

Advice has been obtained and as a result, the following recommendation is provided.

3. RECOMMENDATION

- A. THAT in respect of the appeal to the Land and Environment Court against Council's refusal to modify development consent to Development Application No. 347/2014/1 for the use of the existing courtyard for outdoor dining area up until 10PM with a capacity for 42 patrons; also proposed is fixed timber bench seating to the north & western walls, new timber battens to the existing boundary walls & new awnings to the courtyard on land at 102-106 Oxford Street Paddington, the Committee resolve to enter into closed session with the press and public excluded to consider the confidential report on this matter in accordance with the provisions of Section 10A(2)(g) of the Local Government Act 1993.
- B. THAT in accordance with Council's policy of confidentiality, the confidential report remain confidential for a period of six (6) months or until the conclusion of the appeal, whichever occurs first.

Ms R Coull
ASSESSMENT OFFICER

Mr G Fotis
TEAM LEADER

ANNEXURES

1. Development Application Assessment Report (8 December 2014)

Political Donations – matters to be considered by Councillors at Meetings

