

**ORDINARY MEETING** 

**SUPPLEMENTARY ITEMS** 

**22 FEBRUARY 2005** 

## LEICHHARDT MUNICIPAL COUNCIL

## **ORDINARY MEETING OF COUNCIL**

NOTICE IS HEREBY GIVEN OF THE FOLLOWING **SUPPLEMENTARY ITEMS** FOR THE **ORDINARY MEETING** OF THE LEICHHARDT MUNICIPAL COUNCIL TO BE HELD IN THE COUNCIL CHAMBERS, LEICHHARDT TOWN HALL, 107 NORTON STREET, LEICHHARDT, ON **TUESDAY**, **22 FEBRUARY 2005**.

Peter Head	
<b>GENERAL</b>	<b>MANAGER</b>

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# LEICHHARDT MUNICIPAL COUNCIL

# **REPORT**

**DIVISION:** ENVIRONMENTAL AND COMMUNITY MANAGEMENT

SUBJECT: ITEM 27A CALLAN PARK TASKFORCE

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#### **DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

Financial Implications: Costs associated with undertaking a

Management/ Business Plan

Policy Implications: Need for the resolution of care, control and

management issues to protect the site

Strategic Plan Objective: Responsible Government

**Staffing Implications:** Additional resources may be required to

administer the preparation of

Management/Business Plan for the site.

Notifications: Taskforce representatives to be advised of

proposed meeting

Other Implications: Nil

#### 1. Purpose of Report

The purpose of this report is to:

- Inform Council of the progress of actions arising from the initial meeting of the Callan Park Taskforce.
- Advise of a request from the Friends of Callan Park for funding to undertake a public meeting concerning the site.
- Make recommendations concerning the commencement and funding of a plan of management/master planning exercise including a detailed management/business Plan analysis for the site.

#### 2. Recommendations

- 2.1 That a further meeting of the Callan Park Taskforce be convened in March/April 2005.
- 2.2 That the draft Trust Model be circulated to Taskforce members and that the Taskforce finalise and make recommendations to Council on how to progress the draft Trust Model.
- 2.3 That correspondence be forwarded to the Minister for Infrastructure Planning and Natural Resources and Director General of the Department of Infrastructure Planning and Natural Resources seeking funds to undertake a detailed site analysis that will include the following:
  - Preparation of asset condition assessments, immediate necessary upgrade costs, annual renewal and maintenance expenditure for all site infrastructure including buildings, sea walls, open space, roads, paths, stormwater systems, lighting, fencing, retaining walls, site remediation etc
  - Preparation of a management / business plan to determine the resourcing needs and costs of servicing the entire site together with current and potential future revenue sources.
  - A heritage and urban design analysis for all buildings and site improvements.
  - The preparation of a subsequent plan of management, master plan and draft statutory documents to reflect the above outcomes.
- 2.4 That Council allocate up to \$4,300 from its Callan Park budget for the Friends of Callan Park to undertake a public meeting at the Balmain Town Hall on 30 March 2005.
- 2.5 That the contents of any advertising/promotional material to be funded by Council pursuant to item 2.4 be authorised by the General Manager prior to its display/publication.

#### 3. Background

Council considered a report on the long term management of Callan Park at its Ordinary Council Meeting in October 2003 where it was resolved that:

- "1. Council seek an urgent meeting with senior officers of the Department of Infrastructure Planning and Natural Resources (DIPNR).
- 2 Council request the Department to consult Council in respect to the drafting of the Regulations.
- That the draft of any regulations be advertised for 28 days for public comment.
- 4 Should Council become the responsible body to prepare a DCP or Master plan for the site, then the State Government be requested to adequately fund this.
- Detailed budget and costing for the preparation of a comprehensive DCP/Masterplan for Callan Park be undertaken and reported back to Council.
- 6 Council write again to the Minister for Health appealing for a reconsideration of the decision to close Rozelle hospital in view of the shortage of beds and mental health services in NSW and the strong community support for the continuation of the psychiatric hospital at Callan Park."

The previous Mayor had met with Director NCOSS and Director General of the Department of Infrastructure and Natural Resources (DIPNR) in November 2003.

Letters were sent and followed up and meetings were not able to be arranged until July 2004 given the restructure of DIPNR.

Council in considering a notice of motion at its Ordinary Council Meeting in April 2004 further resolved as follows:

"That Council establish and resource a taskforce, chaired by the Mayor or her delegate, of Councillors, Friends of Callan Park, Precinct nominees and Callan Park Tenant nominees to:

- a) strongly pursue adequate government funding and community representation for the practical establishment of the Callan Park Trust.
- b) initiate the process of master planning for Callan Park in line with the Community Vision adopted by the previous Council.
- c) the first meeting of the Callan Park Taskforce to establish the detailed terms of reference for the Taskforce.

d) the Callan Park Taskforce to report back to Council on progress in October 2004.'

A further report was submitted to Council in August 2004 that provided:

- An update Council on discussions with various government authorities and
- identified the likely budget required for a master planning process.

At its August 2004 meeting Council resolved (281/04):

- 1. That an initial meeting of the Callan Park Taskforce be convened on Monday 6 September at 6.00pm.
- 2. That the initial Taskforce meeting:
  - a) establish proposed actions to progress the Callan Park Trust or other suitable options
  - b) establish proposed actions to identify and secure funding to progress the Leichhardt Community Callan Park Vision developed in consultation with the community and adopted by Council.
  - 3. That the initial Taskforce meeting and future meetings be open meetings.
- 4. Having established the proposed actions that Council:
  - a) convene a public meeting to outline the plan and gain community input
  - b) organise meetings with the local member, relevant state ministers, departments and community organisations to seek support to progress the plan.
- 5. That meanwhile Council ensure that any activities in the park meet the requirements of the Callan Park Act and that any Council controls that apply to Callan Park and may conflict with the Act be reviewed as a matter of urgency.
- 6. That the estimated cost of any of the actions arising from the plan be reported back to Council.
- 7. That costs associated with 2 & 4 be met from the funds carried over from the 2003/04 campaign budget for Callan Park.

Pursuant to item 1-3 of Council's resolution, the initial meeting of the Callan Park Taskforce was held on Monday 6 September 2004 at 6.00pm. A copy of the Minutes of the meeting are **Attachment 1** to this report.

The following report addresses the progress of actions arising from the Taskforce meeting.

## 4. Report

# 4.1 Care, Control and Management

The Taskforce resolved that a Trust with State Government funding was the most appropriate management structure for Callan Park. It was resolved that a draft Trust Model be prepared by the Friends of Callan Park (FOCP) in accordance with Regulation format and reflect the Community Vision document.

## 4.2 Draft Trust Model

The FOCP Callan Park have developed a draft Trust Model. Council officers have reviewed the draft Model against the unassented private-members bill Callan Park Trust 2001 Bill, introduced into the Legislative Council by Ms Lee Rhiannon MLC. Council officers have also prepared a revised draft Model on each of these draft statutes. This will be referred to the Taskforce.

The Taskforce resolved that the Draft Model to be circulated to Taskforce members for review prior to next Taskforce meeting and that the final Model be endorsed by Council and undergo public exhibition and a public meeting. Due to delays in obtaining the private members bill it has not been possible to prepare and circulate the revised draft Trust Model to Taskforce members. It is a recommendation of this report that the Draft Model be circulated to Taskforce members and considered at the next meeting of the Callan Park Taskforce for finalisation and recommendations to Council on how to progress the draft Trust Model.

4.3 Reviews of the legislative, financial and board structures of other comparable Trusts (i.e. Parramatta Park, Sydney Harbour, Centennial Park) to be undertaken by Council officers and reported to next Taskforce meeting

Council officers have undertaken reviews of the key aspects of other comparable Trusts. A summary of this review is **Attachment 2** to this report.

4.4 <u>Preliminary budget to be prepared by Council officers. Ongoing maintenance expenditure of existing tenants and restoration costs to be included</u>

A written request to the Central Sydney Area Health Service (CSAHS) was made requesting details of:

- The CSAHS budget for all maintenance and capital expenditure cost centres within the Rozelle Hospital (Callan Park) complex, and:
- Lessees, location, terms of lease and rental income for all government and private uses within the Callan Park site.

The CSAHS has provided a response to Council's request for information. This has been reviewed by Council's Manager, Financial Services who has advised that:

- The CSAHS has not provided capital budget/costs.
- The total revenue from the site has not been provided (although from the information provided it is apparent that there are peppercorn rentals of \$1 p.a. and 99 year leases in effect).
- Operational costs information is minimal with an indicated annual cost in the region of \$5.1 million.
- A risk analysis and business plan needs to be undertaken regarding the entire proposal before any financial evaluation would provide meaningful information.

# 4.5 <u>Annual maintenance estimates and preliminary upgrade costs for the grounds and open space</u>

To assist in Council's understanding of the costs of maintenance of the site, Council's Infrastructure and Service Delivery Division has prepared preliminary annual maintenance estimates and upgrade costs for infrastructure and open space components, as follows:

#### **Base Data**

Road Pavement Area - 55,000m<sup>2</sup> Kerb & Guttering - 7,000m Seawall - 700m Open Space - approximately 457,512m<sup>2</sup>

#### **Estimates for Annual Renewal & Maintenance**

Roads - \$275 k Seawalls - \$70 k Kerb & Guttering - \$85 k Stormwater - \$70 k Grassed Area - \$822 k Garden Area - \$228 k Trees - \$117 k

# Estimated Total Annual Renewal & Maintenance of Infrastructure (excluding buildings) = \$1.667 million per annum

It should also be noted that the above estimates do not include estimates of the cost of necessary repairs, protection and restoration works to buildings on the site. Council has previously requested this information and was advised as follows by The Minister for Health in September 2003:

"Mental Health Services will be relocating from Rozelle Hospital campus, over the next three years. After CSAHS has vacated the campus, the site will be transformed into a park...it would not be appropriate to release a list of restoration works for Rozelle Hospital."

Due to the state of disrepair of many of the buildings on the site, their age and heritage significance, the cost of repairs and restoration and long term maintenance are likely to be significant. The extent of these works needs to be determined as part of a Management/Business Plan for the site.

# 4.6 <u>Funding and major capital works expenditures of government agencies to be investigated as potential funding sources</u>

No investigations of potential funding sources have been undertaken at this stage as the costs of maintaining/restoring and operating the site need to be determined in the first instance.

# 4.7 <u>Any master planning to be deferred until care, control and management issues addressed</u>

As noted in the August 2004 Ordinary Council report, a master planning exercise consistent with the Community Vision for Callan Park adopted by the previous Council could be undertaken at an estimated minimum cost of \$140,000.

The Taskforce resolved that any master planning be deferred until care, control and management issues are addressed.

#### 4.8 Management Options

Should the State Government be unwilling or unable to establish a Trust for Callan Park, other management options for the site permissible under The Callan Park Act could include Leichhardt Council assuming care, control and management. This would be consistent with the intentions of the State Government based on recently reported statements<sup>1</sup> attributed to the Director-General of the DIPNR which quote her as stating:

"We've got redundant, lazy assets all over the state in education, health and housing." She said the Government should "unleash those assets" and, in a reference to Callan Park, appeared to say that the Government should move quickly to avoid community backlash.

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<sup>1</sup> The Sydney Morning Herald, 'City plan is still a work in progress'

Based on the budget and capital expenditure cost information provided by the CSAHS and annual maintenance estimates and preliminary upgrade costs prepared by Council officers it is clear that the site is currently a significant financial burden. In this respect, any consideration of Leichhardt Council in a care, control and management role would need to be prefaced on the condition that the NSW Government make good any shortfall for the life of the asset, as it currently does as owner of the site.

Notwithstanding the future management structure, it is fundamental that the cost of managing the land and current and future revenue sources/options be determined. Based on the limited information provided by the State Government in this regard, it is appropriate that a Management/Business Plan be prepared comprising:

- An economic assessment to determine the cost of managing the land and current and future revenue sources/options (within the confines of the Community Vision.
- A structural engineers assessment to establish the adequacy of existing buildings and structures (incl. seawall) and extending to preparation of asset condition assessments, immediate necessary upgrade costs, annual renewal and maintenance expenditure for all site infrastructure including buildings, sea walls, open space, roads, paths, stormwater systems, lighting, fencing, retaining walls, site remediation etc
- An urban and heritage design analysis.

It should be noted that these were the first 2 components of the master planning process reported to Council's August 2004 Ordinary Meeting and it is recommended that they comprise the initial steps in a broader plan of management process.

Based on the outcomes of these investigations, all stakeholders would more fully understand the costs associated with the future care, control and management of Callan Park. A full plan of management exercise could then be pursued in conjunction with the resolution of the management issues.

Whatever the future management agency/body for the site, it is appropriate that a financial risk analysis of the entire plan of management be undertaken. If Leichhardt Council was to be the agency, this must be undertaken prior to Council assenting to any care, control and management role.

It is therefore recommended as part of this report that Council seek funding from DIPNR to undertake a complete and detailed site inventory and analysis that will result in a Business/Management and future plan of management exercise. The \$140,000 initially estimated for the Masterplan exercise is likely to be more in the order of \$500,000 and any approach to the Minister should be on the basis of seeking an open tender for these tasks and a commitment from DIPNR to fully commit to that cost.

This should occur in conjunction with the resolution of the issues of the administration of the Park and the statutory framework (i.e. Act & Regulation/Trust).

The position of the Taskforce in terms of the need for a Trust is still supported, however, instead of deferring the production of a plan of management pending the formation of a Trust, it is now proposed that a Business Plan/Management Plan be prepared concurrently with the resolution of this issue, and a request for funding these investigations be made to DIPNR.

# 4.9 Resourcing/Budget

In the current financial year there is a total of \$29,000 as a carryover budget set aside for Callan Park. This is insufficient to undertake the stage 1 investigations concerning the management of Callan Park.

However, as noted above, investigations concerning the operational and infrastructure costs of the land and facilities are the responsibility of the State Government which is owner of the land.

Given, that information concerning the cost of managing the land and current and future revenue sources/options will be essential under any future management structure it is a recommendation of this report that Council request that the State Government fund a Management/Business Plan addressing the costs associated with the management of Callan Park. Given Council's position that the land be used in accordance with the Community Vision, it is appropriate that Council manage this process.

Appropriate uses of Council's budget allocation for Callan Park include programs and events that promote the need for the sites protection and restoration as outlined below.

#### 4.9.1 Friends of Callan Park (FOCP) Public Meeting

Correspondence has been received from the FOCP seeking some funding and assistance from Council to undertake a public meeting on 30 March 2005 concerning the removal of mental health care facilities from the site.

The FOCP have requested:

- That the Mayor or the Deputy Mayor speak at the meeting.
- That Council assist with the costs of the meeting for two (2) banners approx \$2,000 and two (2) smaller notices / banners at Callan Park and update the Council Callan Park signage there approx \$1,500.
- Assistance with promoting the meeting Council to print basic letterbox flyers and posters (\$300 for 5000 flyers).
- Provision of space promoting the meeting through Council's advertising in the Courier (Advert can appear in Council's regular column therefore no additional cost).
- Waiver of the Balmain Town Hall fees (Hire fee is \$500 per day).

Should Council agree to meet the full cost of the FOCP request, an amount up to \$4,300.will be required.

It is a recommendation of this report that Council allocate up to \$4,300 from its Callan Park budget for the Friends of Callan Park to undertake a public meeting at the Balmain Town Hall on 30 March 2005.

# 5. **Summary/Conclusions**

This report informs of actions arising from the initial meeting of the Callan Park Taskforce.

Given the uncertainty concerning the future management framework, the lack of detailed information on operational and infrastructure costs and Council's desire to prevent the site stagnating, it is recommended that Council pursue DIPNR to fully fund studies that will result in all interested parties being fully informed as to the ongoing opportunities, constraints, revenue and outgoings from the site. This information will be essential under any future management structure and will assist in the preparation of an overriding plan of management for the site.



# CALLAN PARK TASKFORCE

Monday 6 September 2004 6.00pm to 7.15pm Councillors Room

Chair: Councillor Alice Murphy (Mayor)

Attendees: Cllr Carolyn Allen, Cllr Michele McKenzie, Cllr Maire Sheehan, Cllr Vera-Ann Hannaford, Alison McCabe, Jeff Thompson, Marcus Rowan, Hall Greenland, Phillip Marsh, Clara Mason, Jean Lennane, Helen Martin, Cynthia Nadai, Roslyn Burge, Irina Dunn, Ian Scandrett, Christopher Legge-Wilkinson, Christine Myerscough, Professor Tom Arthur

# **Minutes of Meeting:**

- It was agreed that a Trust with State Government funding was the most appropriate management structure for Callan Park.
- Friends of Callan Park (FOCP) to prepare draft Trust Model.
- Draft Model to be prepared in accordance with Regulation format and reflect the Community Vision document.
- Draft Model to be circulated to Taskforce members for review prior to next Taskforce meeting.
- Final Model to be endorsed by Council and undergo public exhibition and a public meeting.
- To be finalised by February 2005 at latest to fit in with budgetary processes.
- Reviews of the legislative, financial and board structures of other comparable Trusts (i.e. Parramatta Park, Sydney Harbour, Centennial Park) to be undertaken by Council officers and reported to next Taskforce meeting.
- Preliminary budget to be prepared by Council officers. Ongoing maintenance expenditure of existing tenants and restoration costs to be included.
- Funding and major capital works expenditures of government agencies to be investigated as potential funding sources.
- Any master planning to be deferred until care, control and management issues addressed.
- FOCP to write to NSW Governor to seek support for Callan Park Trust.
- Next Taskforce meeting to take place in December 2004.

#### COMPARABLE TRUST FRAMEWORKS

#### 1.0 Introduction

The following discussion summarises the administrative frameworks of the:

- Parramatta Park Trust;
- Centennial Park and Moore Park Trust; and
- Sydney Harbour Federation Trust (Commonwealth).

In addition, the discussion also details the provisions of the current *Callan Park* (Special Provisions) Act 2002.

#### 2.0 Discussion

#### 2.1 Parramatta Park Trust

#### 2.1.1 Parramatta Park Trust Act 2001

The Parramatta Park Trust Act 2001 (Parramatta Park Trust Act) constitutes the Parramatta Park Trust as a statutory body representing the Crown, defines its functions, and vests certain lands at Parramatta in the Trust. The seven trustee board of the Trust is appointed by the Minister for Tourism and Sport and Recreation under the procedures imposed under section 5 of the Parramatta Park Trust Act 2001.

#### 2.1.2 Objectives of the Trust

The objectives of the Trust are described in section 6 as being:

- To maintain and improve the trust lands;
- To encourage the use and enjoyment of the trust lands by the public by promoting the recreational, historical, scientific, educational and cultural heritage value of those lands; and
- To ensure the conservation of the natural and cultural heritage values of the trust lands and the protection of the environment within those lands.

#### 2.1.3 Functions of the Trust

Section 7 of the Parramatta Park Trust Act allows the Trust, as controller and manager of Trust lands, to:

- Permit the use of the trust lands for activities of a recreational, historical, scientific, educational and cultural heritage nature;
- Permit the provision of food;
- Promote and provide exhibits, lectures, films, publications and other types of educational instruction relating to the trust lands;
- Procure specimens, services or materials and obtain scientific or other data from within or outside the State;
- Disseminate scientific, cultural and historical information to the public and

educational, scientific, cultural and historical institutions, whether within or outside the State:

- Maintain the property of the Trust;
- Charge and receive fees; and
- Enter into contracts and financial arrangements.

#### 2.1.4 Management of Trust land

Sections 9-11 prohibits the disposal or compulsory acquisition of principal trust lands, except by an Act of Parliament, outlines the conditions of acquisition of property outside the principal vestment and outlines the conditions of disposal property outside the principal vestment. Sections 12-14 govern the power of the Trust to grant leases, easements, and licences over the land, with the approval of the Minister, for a period of up to 10 years, and also includes the requirements of the Trust to advertise the criteria by which it assesses licence proposals and the number of licences and easements which apply to Trust lands.

# 2.1.5 Plans of Management

Under Part 5 of the Parramatta Park Trust Act, section 15 requires the preparation of a plan of management for the Trust. The plan of management must contain a detailed written scheme of the operations proposed to be undertaken in the trust lands for the approval of the Minister for Tourism and Sport and Recreation under section 16 (which may be amended under section 17).

#### 2.1.6 Administration of the Trust

Part 6 outlines the administration of the Trust, including the role of committees within the Trust, the ability of the Director to employ staff under Part 2 of the *Public Sector Employment Act 1990* to carry out the functions of the Trust, the role of the Director and provisions for the Trust to delegate its responsibilities to the Director, Committees or an officer of the Trust.

# 2.1.7 Miscellaneous provisions

The final part of the Parramatta Park Trust Act, Part 7 contains miscellaneous provisions relating to the operation of the Trust, including the:

- Revocation of the Parramatta Regional Park reservation under the National Parks and Wildlife Act 1974;
- Trust's relationship with the Parramatta Rail Link;
- Act's relationship with the *Parramatta Park (Old Government House) Act* 1967;
- Matters and proceedings for offences committed on Trust land;
- Procedures for compensation and recovery of costs to the Trust; and
- Enabling provisions for the Governor to make Regulations giving effect to the Act.

#### 2.1.8 Parramatta Park Trust Regulation 2002

Complimenting the provisions for the management of the Parramatta Part Trust under the Parramatta Park Trust Act, the *Parramatta Park Trust Regulation 2002* 

provides for the management, use and regulation of the trust lands, and the issue of penalty notices in relation to offences occurring on the trust lands, including:

- Entry restrictions;
- Parking restrictions;
- Provisions enabling the Trust to designate areas for certain activities;
- Provisions enabling the collection of fees for the use of Trust lands;
- Provisions enabling the Trust to restrict access to certain areas of trust lands;
- Restrictions on alcohol consumption;
- Restrictions on commercial and other activities on trust land;
- Restrictions on racing, signage, camping and occupation with the trust lands;
- Conditions attaching to permission to use/damage trust lands;
- Provisions for the disposal of waste;
- Restrictions on recreational facilities;
- Restrictions on activities involving horses and animals;
- Restrictions on the use of vehicles;
- Restrictions on personal conduct; and
- Restrictions on noise generating activities.

#### 2.2 Centennial Park and Moore Park Trust

#### 2.2.1 Centennial Park and Moore Park Trust Act 1983

The Centennial Park and Moore Park Trust Act 1983 (Centennial Park and Moore Park Trust Act) constitutes the Centennial Park and Moore Park Trust and define its functions; vests certain land and other property in the Trust; and repeals the former Centenary Celebration Act and the Centenary Park Sale Act 1904 which applied to the land.

Section 6 of the Act constitutes the Trust as a statutory body representing the Crown, subject to the control and direction of the Minister for Tourism and Sport and Recreation. The Trust consists of 7 trustees appointed by the Governor on the recommendation of the Minister, and 1 trustee (who is a member of the Community Consultative Committee (CCC)) appointed by the Governor on the recommendation of a majority of the members of the CCC.

The CCC established under section 7A of the Act is appointed by the Trust on the recommendation of the Director. The membership and procedure of the Committee is provided for by the regulations, which make provision for the number of members, their appointment, term of office and removal and the filling of vacancies. The CCC is required to meet at least once a quarter.

# 2.2.2 Objectives of the Centennial Park and Moore Park Trust

The objects of the Centennial Park and Moore Park Trust are (under section 8):

- To maintain and improve the Trust lands;
- To encourage the use and enjoyment of the Trust lands by the public by promoting and increasing the recreational, historical, scientific, educational, cultural and environmental value of those lands;
- To maintain the right of the public to the use of the Trust lands;
- To ensure the protection of the environment within the Trust lands; and

• Such other objects, consistent with the functions of the Trust in relation to the Trust lands, as the Trust considers appropriate.

#### 2.2.3 Functions of the Centennial Park and Moore Park Trust

Under section 9, the Centennial Park and Moore Park Trust shall have the control and management of all property vested in the Trust. In addition, the Trust may permit the use of the whole or any part of the Trust lands for activities of a recreational, historical, scientific, educational or cultural nature or permit the provision of food or other refreshments, carry out surveys, assemble collections and engage in scientific research, disseminate scientific information to the public and educational and scientific institutions, promote and provide exhibits, lectures, films, publications and other types of educational instruction relating to botany and ornamental horticulture, charge and receive fees enter into any contract or arrangement with any person for the purpose of promoting the objects of the Trust.

#### 2.2.4 Disposal of certain land prohibited

Under section 10-12, the Trust shall not sell, mortgage, demise or otherwise dispose of any of the original land and restrict the Trust's ability to dispose of and make contracts over lands dedicated within the Trust.

# 2.2.5 Plans of Management

Under Part 2A of the Act, in accordance with directions given by the Minister, and within a time specified by the Minister, the Trust is to prepare and submit to the Minister for approval a proposed plan of management for the Trust lands.

#### 2.2.6 Administration

Part 3 outlines the administrative framework for the operation of the Trust. The Trust may employ a Director of Centennial Park and Moore Park, a secretary to the Trust, and such other persons as may be necessary to enable the Trust to exercise its functions, under the *Public Service Act 1979*.

The Director is responsible for the administration and management of the Trust lands and any services provided under the Act. The Trust may, also delegate to the Director, the secretary to the Trust, a trustee or an employee of the Trust any of its functions.

#### 2.2.7 Grant of leases, easements and licences

Section 20 provides for the Trust to grant leases, easements and licences for the location and management of utilities and services.

#### 2.2.8 Use of Trust lands for large events

The Trust must not authorise the use of lands for concerts or other events where it is anticipated more than 20,000 people will attend, unless the event is authorised by regulation relating specifically to that event.

## 2.2.9 Licence of land for public transport

Provision for the use of a portion of Moore Park for the use of public transport (both bus and light rail), including a conditional licence to the Minister for Transport, are also included in the Centennial Park and Moore Park Trust Act.

# 2.2.10 Annual report

An annual report must be established for the Trust and produced before Parliament between July and September each financial year.

## 2.2.11 Regulations

Provision for the making of regulations pertaining to the management of the Trust are also included in the Centennial Park and Moore Park Trust Act.

- Description of the liability of vehicle owner for certain offences;
- Penalty notices for certain offences; and
- Proceedings for offences.

# 2.2.12 Trustees and procedure of the Trust

#### **Under Schedule 1:**

- Certain persons are ineligible for appointment, including patients within the meaning of the *Mental Health Act 1958* or those who are bankrupt;
- The Minister may appointment a deputy in the case of illness or absence of any trustee;
- A trustee shall hold office for no longer than 4 years (however they may be reappointed);
- The Public Service Act 1979 does not apply to trustees;
- Trustees and committee members may be provided allowances as determined by the Minister;
- The Governor may at his discretion remove a trustee from office;
- Provisions for the vacation of office are established;
- A trustee shall be deemed to have vacated office if the trustee:
- Procedures for the Chairman:
- Procedures for meetings, minute taking and quorum;
- Procedures for the Director (as an ex officio member of each Trust committee)
- Procedures for the Common seal
- The common seal of the Trust shall be kept by the secretary to the Trust.

## 2.2.13 Use of Trust lands

#### Schedule 2 outlines:

- Procedures for entry to Trust lands and related offences;
- Procedures for use of the bus roadway and related offences;
- Procedures for parking and related offences;
- Provision for the approval of parts of Trust land for designated purposes such as organised sporting activities, ceremonies or other events;

- Provision for the fees for use of Trust lands;
- Provision for the Trust to close parts of Trust lands and buildings to the public;
- Provision for the establishment of alcohol-free zones:
- Restrictions on commercial and other activities on Trust lands;
- Restrictions on races on Trust lands:
- Restrictions on camping, erection of tents and other structures on Trust lands
- Restrictions on damage to Trust lands and related offences;
- Restrictions on the disposal of waste and related offences;
- Recreational activities on Trust lands and related offences;
- Restrictions on activities involving horses and animals and related offences:
- Restrictions on the use of vehicles and related offences (with certain provisions not applying to emergency vehicles)
- Restrictions on the use of cycles, pedal cars and rollerblades and related offences;
- Restrictions on personal conduct and related offences;
- Requirements for persons to leave Trust lands on request; and
- Restrictions on the generation of noise on Trust lands and related offences.

#### 2.2.14 Mardi Gras and Livid Arts Festival

Section 20A of the Act permits the Sydney Gay and Lesbian Mardi Gras Parade and Sydney Gay and Lesbian Mardi Gras Party for the year 2005, the Livid Arts Festival for the year 2005.

#### 2.2.15 Community Consultative Committee

Part 3 provides the framework for the Centennial Park and Moore Park Trust Community Consultative Committee. The Committee comprises 10 members, including the Director of the Trust and whomever the Director appoints, to communicate effectively with local residents, local community groups and other persons who use the Trust lands. A trustee is not eligible to be appointed as a member of the Committee. A member (other than the Director) holds office for a term of up to 2 years. Part 3 also includes provisions for deputies of members, removal from office, filling vacancies, election of the chairperson, chairperson's veto, quorum, meeting procedure and the taking of minutes.

#### 2.3 Sydney Harbour Trust

#### 2.3.1 Sydney Harbour Federation Trust Act 2001

The Commonwealth enacted the *Sydney Harbour Federation Trust Act 2001* to establish the Sydney Harbour Federation Trust with the intent to conserve and preserve land in the Sydney Harbour region for the benefit of present and future generations of Australians. The land was vacated by the Department of Defence and includes land at North Head, Middle Head, Georges Heights, Woolwich and Cockatoo Island. The Sydney Harbour Federation Trust is a transitional body managing the land and facilitating its return to NSW national parks and reserves system 'in good order'.

The Trust is a body corporate with perpetual succession with the objectives to:

• Ensure that management of Trust land contributes to enhancing the amenity

- of the Sydney Harbour region;
- Protect, conserve and interpret the environmental and heritage values of Trust land:
- Maximise public access to Trust land;
- Establish and manage suitable Trust land as a park on behalf of the Commonwealth as the national government;
- Co-operate with other Commonwealth bodies that have a connection with any Harbour land in managing that land;
- Co-operate with New South Wales, affected councils and the community in furthering the above objects.

#### 2.3.2 Functions of the Trust

The functions of the Trust are as follows:

- To hold Trust land on behalf of the Commonwealth;
- To undertake community consultation on the management and conservation of Trust land;
- To develop draft plans in respect of Trust land and any other Harbour land in furthering the objects, and performing other functions, of the Trust;
- To rehabilitate, remediate, develop, enhance and manage Trust land, by itself or in co-operation with other institutions or persons, in accordance with the plans;
- To make recommendations to the Minister on plans and the proposed transfer of any Trust land;
- To promote appreciation of Trust land, in particular its environmental and heritage values; and
- To provide services and funding to other Commonwealth bodies in furthering the objects, and performing other functions, of the Trust.

#### 2.3.3 Powers of the Trust

The Trust has the power to do all things necessary to exercise its functions. The Trust's powers include, but are not limited to:

- Negotiate with other Commonwealth bodies, NSW and affected councils;
- Acquire, hold and dispose of real and personal property;
- Enter into agreements with NSW and affected councils;
- Accept gifts, grants, bequests and devises made to it;
- Enter into contracts and agreements;
- Form, or participate in the formation of, companies;
- Enter into partnerships;
- Participate in joint ventures; and
- Raise money.

In addition, the Minister may give directions to the Trust in relation to the functions and the powers of the Trust.

#### 2.3.4 Constitution of the Trust

Under Part 3 of the Act, the Trust consists of the Chair and seven other members, as appointed by the Minister. Of the seven members, one of the members must, in the

Minister's opinion, represent the interests of indigenous people, another must be an elected member of an affected council. Less than half the members of the Trust must be public employees. The NSW Government must also be invited to recommend members to the Trust.

Trust members are appointed on a part-time basis for a period of not more than three years. In addition, provisions are also made for conflict of interest, remuneration and allowances of members (as determined by the Commonwealth Remuneration Tribunal), leave of absence, resignation, and termination of appointment of members.

#### 2.3.5 Trust land

Under Part 4, all right, title and interest that the Commonwealth holds in the land vests in the Trust without any conveyance, transfer or assignment, meaning the Trust holds the land for and on behalf of the Commonwealth. The Trust must not sell or otherwise transfer the freehold interest in any land identified in a plan as having significant environmental or heritage values unless the sale or transfer is to the Commonwealth, NSW or an affected council; and the instrument under which the sale or transfer occurs includes a condition that the land not be sold or otherwise transferred other than to the Commonwealth, NSW or an affected council.

#### 2.3.6 Trust Plans

Under Part 5 of the Act, the Trust is to prepare plans within two years of the gazettal of the Act commencing with respect to the management of each Trust land site. Each plan must accord with the objects of the Trust and the principles of ecologically sustainable development and contain:

- A history and description of the plan area, including an identification of current land uses of the area or parts of the area;
- An assessment of the environmental and heritage values of the area;
- An assessment of the interrelationship between the plan area and the surrounding region, including other public land in the Sydney Harbour region and other Trust land;
- Objectives for the conservation and management of the area;
- Policies in respect of the conservation and management of the area;
- An identification of proposed land uses in the area or parts of the area;
- An identification of the nature of possible future owners of the area or parts of the area;
- Guidelines, options (if necessary) and recommendations for the implementation of the plan;
- Detailed estimates of costs that may be incurred in respect of the area, including costs for remediation, rehabilitation and conservation of the area; and
- Anything else required by the regulations.

In addition, Part 5 includes procedures for public consultation on Trust proposals to prepare draft plans, public consultation on the draft plan, the requirement for the Commonwealth Minister to approve plans — including consultation with the NSW Minister of Infrastructure and Planning; notification of the approved plan, commencement and implementation of plans, amendment to plans, public availability of submissions on Plans and transitional arrangements (prior to the plan inception).

#### **Executive Director, staff and consultants**

Part 6 outlines the framework for the operation and appointment of the Executive Director, staff and consultants at the Trust

#### 2.3.7 Meetings of the Trust

Part 7 establishes the administrative framework for meetings of the Trust, including: provisions for the times and places of meetings, notice of meetings, presiding at meetings, quorum, voting at meetings, minutes of meetings, conduct of meetings, and resolutions without meetings.

## 2.3.8 Community advisory committees

The Trust must establish a community advisory committee in respect of each plan area. Each committee provides advice or recommendations to the Trust on matters relating to the community. Each committee consists of at least one representative of the local community and of affected councils as appointed by the Trust.

#### 2.3.9 Technical advisory committees

The Trust may establish technical advisory committees under section 58 to provide advice and recommendations on:

- Environmental and heritage matters relating to plan areas;
- Rehabilitation and decontamination of plan areas;
- Planning and management of plan areas; and
- Financial arrangements for plan areas.

#### 2.3.10 Finance

Part 9 outlines the appropriation, borrowing and the limitations on the spending of money on behalf of the Trust.

#### 2.3.11 Security, contracts and leases over Trust lands

Sections 63–64A govern the Trusts powers to grant securities, contracts and leases over Trust lands

#### 2.3.12 Liability to taxation

Section 65 removes the Trust from liability to taxation under Commonwealth and State law.

#### 2.3.13 Repeal of the Act

Section 66 allows that after the end of 10 years from the commencement of this Act, the Minister must, by notice published in the Gazette, specify a day on which this Act is to be repealed.

Sections 67 and 68 govern the procedures for the transfer of liabilities and assets of the Trust, prior to the repeal of the Act.

#### 2.3.14 Annual report

Section 9 of the *Commonwealth Authorities and Companies Act 1997* requires that an annual report on the Trust be prepared. Section 70 of the Act requires that the Report include a description of the condition of plan areas at the end of the period to which the report relates; and the text of all directions, and reasons for directions, given by the Minister to the Trust under section 9 during the period to which the report relates.

#### 2.3.15 Fees for documents

Under section 70A, the Trust is empowered to charge a reasonable fee for copies of draft plans and other documents made available by the Trust.

# 2.3.16 Exemption from certain State laws

Certain State laws do not applying relation to the Trust; the property (including Trust land) or transactions of the Trust or anything done by or on behalf of the Trust, relating to:

- town planning;
- the use of land;
- tenancy;
- powers and functions of local councils;
- standards applicable to the design, or manner of construction, of a building, structure or facility;
- approval of the construction, occupancy, use of or provision of services to, a building, structure or facility;
- alteration or demolition of a building, structure or facility;
- the protection of the environment or of the natural and cultural heritage;
- dangerous goods; and
- licensing in relation to carrying on a particular kind of business or undertaking or conducting a particular kind of operation.

#### 2.3.17 Delegation

Under section 72 the Trust may delegate to the Executive Director, an SES employee of the Department or a person employed under section 48 all or any of the functions and powers conferred on the Trust by the Act.

#### 2.3.18 Regulations

Section 73 empowers the Governor-General to make regulations prescribing matters which give effect to the Act.

#### 2.3.19 Schedules of Land

Schedules 1 and 2 list the items of land invested in the Trust.

# 2.4 Callan Park (Special Provisions) Act 2002

The Callan Park (Special Provisions) Act 2002 (the Special Provisions Act) is an Act to preserve the public ownership of Callan Park (described in the Act as the land at Rozelle comprised in Lot 1, DP 807747, including all structures); to protect its current features; and restrict its future use.

## 2.4.1 Objects of the Callan Park (Special Provisions) Act 2002

The objects of the Special Provisions Act are described in section 4 as being:

- (a) to ensure that the whole of Callan Park remains in public ownership and subject to public control, and
- (b) to ensure the preservation of the areas of open space at Callan Park that were in existence immediately before the commencement of this Act, and that extend to and include the foreshore of Iron Cove on the Parramatta River, and
- (c) to allow public access to that open space, including that foreshore, for public recreational purposes of both an active and a passive nature, and
- (d) to preserve the heritage significance of Callan Park, including its historic buildings, gardens and other landscape features, and
- (e) to impose appropriate controls on the future development of Callan Park.

#### 2.4.2 Restrictions on the lease and sale of Callan Park

Under section 5 of the Special Provisions Act, Callan Park is not to be sold or otherwise disposed of except as provided by the Act. Section 5(2) however allows the Governor, by proclamation, to vest Callan Park for an estate in a statutory body representing the Crown that is subject to the direction and control of the Minister for Infrastructure and Planning.

A lease of, or a licence allowing the use of a (part of) building within Callan Park, or any land within Callan Park, may be granted with the consent of the Minister for Infrastructure and Planning. The term of any such lease or licence, including the term of any further lease or licence that may be granted under an option for renewal of the lease or licence, must not exceed 10 years (unless a resolution has been passed by each House confirming the proposal for the term).

The management of Callan Park (or of any part) may be contracted out with the consent of the Minister for Infrastructure and Planning to Leichhardt Council or a trust prescribed by regulations made under the Special Provisions Act.

## 2.4.3 Restrictions on Development at Callan Park

The provisions of environmental planning instruments (EPIs) that apply to Callan Park are the provisions of those instruments that applied immediately before the commencement of the Special Provisions Act, in accordance with section 7(1).

Section 7(2) makes Leichhardt Council the consent authority for development applications relating to land within Callan Park, despite any other Act or any environmental planning instrument. Development may be carried out at Callan Park, with development consent, for the purpose of health facilities and educational or

community facilities, but development for the purpose of retirement villages is prohibited at Callan Park and *State Environmental Planning Policy No 5 – Housing for Older People or People with a Disability* does not apply to Callan Park.

Buildings must not be erected at Callan Park outside the footprints or building envelopes of the buildings that existed immediately before the commencement of this Act. However, this subsection does not prevent the erection of temporary structures. In addition, Consent must not be granted for any development at Callan Park if the development would result in less open space at Callan Park than existed immediately before the commencement of this Act, or an increase in the total floor area of all buildings that existed at Callan Park immediately before the commencement of the Special Provisions Act.

In determining a development application, the consent authority must take into consideration the objects of the Special Provisions Act in addition to the regular matters that are required to be taken into consideration.

# 2.4.4 Special Provision Regulations

The Special Provisions Act (section 10) allows the Governor to make regulations for any matter that the Act requires. Section 8 also provides for the regulations to establish and provide for the functions and procedures of a community consultation committee for Callan Park.

#### 3.0 Summary

The three Trusts and the Callan Park special provisions represent differing frameworks for the management or significant sites within Sydney.

The frameworks for the Parramatta Park Trust and the Centennial Park and Moore Park Trust are relatively similar, as perpetual bodies for the management and protection of their lands. Taking 'active conservation' approaches encouraging public use of lands and facilities, the NSW Trusts still retain the ability to restrict the extent of activities through a series of by-laws allied to provisions to charge fees for use and fines for misconduct).

The Commonwealth model differs from the State models in that it is an interim body for the management of the transition of harbour side land from defence uses to an augmentation of the NSW national parks network. In addition, the Federation Trust is given much more self determination and legal concessions (such as the waiver of the need to pay tax, compliance with planning controls, etc) than their NSW counterparts. Given these sweeping powers, it would be hard to imagine NSW Parliament endorsing a Trust approach for Callan Park similar to the Federation Trust model.

The existing provisions for the management of Callan Park differ again, in that they result in a rather static 'passive conservation' outcome for the land and buildings within the site, with little room for manoeuvre.

In terms of a Callan Park Trust model, the broad administrative framework of the Parramatta Park Trust and Centennial Park and Moore Park Trust models, modified to the Callan Park context, ensuring the maintenance of the role of Council in the long term decision making with respect to the site appear to be appropriate models.

# LEICHHARDT MUNICIPAL COUNCIL

# **REPORT**

**DIVISION:** ENVIRONMENTAL AND COMMUNITY MANAGEMENT

SUBJECT: ITEM 27B 55 NORTON STREET (UNIVERSALE HOTEL)

**LEICHHARDT** 

**AUTHOR:** HEATHER WARTON / ADELE COWIE

**FILE REF:** DA04/0731

**DATE:** 17 FEBRUARY 2005

**WORD PROCESSING REF:** 

# ORDINARY COUNCIL MEETING REPORT FOR 22 FEBRUARY 2005

# SUPPLEMENTARY REPORT



**File No** ➤ DA04/0731

**Development Application No** ➤ D/2004/731

**Property** > 55 Norton Street (Universale Hotel),

LEICHHARDT

Date of Receipt ➤ 9 December 2004

Value of Works ➤ Nil

Classification of Building ➤ Class 9A

**Applicant's Name** ➤ J Bowditch

**Applicant's Address** ➤ 101/55 Norton Street

**LEICHHARDT NSW 2040** 

Owner's Name > Peter Medich Properties Pty Ltd

Owner's Address > 103/55 Norton Street

**LEICHHARDT NSW 2040** 

Advertised ➤ 22 December 2005 to 19 January 2005

**Submissions** ➤ One (1) in opposition

Inspection Date ➤ 7 January 2005

Integrated Development ➤ No

**Brief Description of Proposal** > Extension of trading hours of hotel and use of

premises for public entertainment; seeking approval as a Place of Public Entertainment.

**Recommendation** > Approval

**Assessment Officer** ➤ Heather Warton/ Adele Cowie

#### 1. PURPOSE OF REPORT

The purpose of this report is to provide supplementary advice to Council in response to a resolution made at the Building and Development Committee meeting on 15 February 2005. This required clarification of the issue of the number of persons to be allowed in the premises as currently proposed, compared to the previous report to Council in December 2004. Additional assessment of the availability of public transport during the late opening hours was also sought.

#### 2. BACKGROUND

The background to the applications made in relation to the proposal to extend trading hours and provide entertainment at the premises is addressed in the previous reports the B&D Council on 15<sup>th</sup> February 2005 (Attachment A); the Ordinary Council meeting of 14<sup>th</sup> December 2004 (Attachment B) and the B&D Council meeting of 17 February 2004 (Attachment C).

#### 3. REPORT

The resolution made at the Building and Development Committee Meeting on 15 February 2005 essentially seeks clarification of what may be perceived as inconsistencies between the reports presented to Council on 17 February 2004 and 14 December 2004 (D/2003/541) and the report presented to Council on 15 February 2005 (subject application).

#### Permitted numbers of persons on premises

The report to Council 14<sup>th</sup> December 2004 was in relation to a previous development application (essentially the same as the current DA).

The report indicated that the entertainment area of the premises (ie the area to be licensed as a POPE), be limited to 200 persons. The balcony was excluded from the area to be used for entertainment.

No limitation was placed on the total number of people in the premises.

The applicant had applied for 350 persons, including the balcony area, to be used for entertainment.

That recommendation was made before the Hotel had commenced operation and as a result, Council did not have any tangible opportunity to evaluate the operation of the tavern. The report assessed that it was "not possible to conclude with a satisfactory degree of comfort that tavern management can deliver stated intentions". Consequently Council staff adopted a conservative approach to possible occupancy numbers.

In the interim, the Universale Hotel has commenced activities and as a result Council can evaluate the operation and management of the tavern. In terms of the evaluation of the operation and management of the hotel, it has been noted that to date Council has not received any complaint about the operation of the Hotel.

In addition, the plans submitted with the previous application were not very detailed in terms of the floor layout of the premises. With better plans and additional supporting documentation provided by the applicant, the Senior Assessment Officer was able to make a detailed assessment of the capacity of the floor areas and egress points to accommodate the intended numbers. It was concluded from this fresh assessment, that 200 people in the POPE area only was an unreasonable restriction and it would be better to make a limitation on the number of people in the premises in total. The applicant also requested this to allow easier management of the number of people in the premises.

This resulted in the recommendation to the B&D Council on 15<sup>th</sup> February 2005, that recommended that the total premises (not the area of the POPE only) be limited to 350 persons, via condition 7, being:

## 7 Maximum Number of Occupants in Premises

The maximum number of persons to be accommodated within the whole of the premises shall not exceed 350 persons including staff. The external balcony area is not considered as part of the place of public entertainment. Any increase in proposed maximum occupancy shall be the subject of a further Development Application to the Council. Reason: To ensure the development does not expand beyond that approved.

This meant that 350 in total could be accommodated in the premises at the one time, inclusive of the balcony. The balcony can still be used after 12 midnight, but for sitting only and not as part of the entertainment area. The doors between the balcony and the entertainment area will be closed and monitored, with the only access via the air/noise lock. It is noted that the doors to the balcony can remain open until 8 pm,

In the event that no one is on the balcony, the internal tavern space is able to accommodate the 350 allowable persons, with due regard for movement, fire safety and egress.

It was mentioned at the B&D meeting by the applicant that he has approval for occupancy in the premises of 500 people. This is correct as Condition 25 of the DA for the fitout of the premises in September 2003 indicated that

25. The maximum number of persons to be accommodated in the tavern including staff is not to exceed 500 persons.

This condition was imposed without the benefit of an assessment of the premises as a POPE. To be abundantly cautious and make it clear that the premises is limited to 350 persons, it is proposed to condition this DA to require the applicant to lodge a surrender of condition 25 of DA D/2003/575 (ie deletion) under section 80A(5) of the Act.

In summary, so that it is entirely clear, it is now proposed to reword **Condition 7** of the recommendation to read:

7A Maximum Number of Occupants in Premises

The maximum number of persons to be accommodated within the whole of the premises shall not exceed 350 persons including staff. Any increase in proposed maximum occupancy shall be the subject of a further Development Application to the Council.

- 7B The external balcony area is not to be used for the purposes of a place of public entertainment.
- 7C Prior to commencement of the entertainment use, the applicant is to surrender condition 25 of DA D/2003/575 (ie deletion) under section 80A(5) of the Act.

Reason: To ensure the development does not expand beyond that approved.

# **Public Transport Availability**

The second point of the resolution sought an assessment of the availability of public transport at the time when the Universale Hotel ceases trading. The following information has been sourced from the State Transit Authority's website:

- The Nightrider Bus Service N50 stops at Petersham Station, Trafalgar Street (Petersham) at 1:18 am and then on the hour.
- The Nightrider Bus Service N60 stops on Parramatta Road (near Railway Street (Petersham) Station at 1:56am and then on the hour.
- The 438 Bus Service last stops in Norton Street (at Parramatta Road and Marion Street) are at 12.43am and at 12.44am.
- The 436 Bus Service last stops in Norton Street (at Parramatta Road and Marion Street) are 12:28am and 12:29am.
- The 437 Bus Service last stops in Norton Street (at Parramatta Road and Marion Street) are 12:06am and 12:07am.

It is considered that the existing public transport services, particularly the Nightrider bus services, provide opportunities for patrons of the hotel to travel home or to other destinations.

It should also be noted that travel to other destinations by Taxi is available and the earlier closure of this establishment, would not clash with the 3.00am taxi driver change-over and later closing times of other hotels in the immediate vicinity, during which patrons would compete for taxi services.

The car park in Norton Plaza closes at 1 am.

#### 4. SUMMARY/CONCLUSION

The explanation above clarifies the issues of the proposed restriction on patron numbers, and availability of public transport access.

Amended conditions 7 are recommended to reinforce the references to permitted numbers, and restriction as to use of the balcony. Condition 2 has also been changed to indicate that the trial period commences from whichever component of either the entertainment or the extended hours, starts first.

It is noted that the application for the amended trading hours and the POPE is subject to a trial period of six months (proposed by the applicant). The applicant may be able to demonstrate that the premises can operate until 1 am permanently to the satisfaction of Council, the community and the local police. A further application will be needed to be made after the trial period in this regard.

Accordingly it is recommended that the development application be approved for extended trading hours, for use of the premises and as entertainment and that the Place of Public Entertainment Licence be issued.

#### 5. RECOMMENDATION

A That Council as the consent authority pursuant to s80 of the Environmental Planning & Assessment Act 1979 and pursuant to s68 of the Local Government Act 1993 grant consent to Development Application No: D/2005/4/731 for an extension of trading hours and use as a place of public entertainment and grant consent for a Place of Public Entertainment Licence at the "Universale" Hotel at 55 Norton Street, Leichhardt subject to the following conditions:

#### **General Conditions**

# 1 Approved plans

The development shall be implemented in accordance with the details set out in the plans prepared by SJB Interiors and numbered Job No. 8846 Drawing No. WD0201 Revision C4 dated 25 August 2004, the Statement of Environmental Effects and appendices, prepared by design Collaborative Pty Limited dated December 2004 and on the application form and on any supporting information received with the application except as amended by the conditions specified hereunder.

2 Limited consent of extended hours of operation and use of the premises as a POPE

To enable Council to review the performance of the approved development and operation of the POPE, this Development Consent and s68 approval for a POPE is issued for a limited period of six months from the date upon which the consent and POPE issue is first exercised, whichever is the first date.

An application to modify the consent and the POPE to extend the trial period (or to make the consent permanent). Should such an application be lodged, it must be lodged at least one month prior to the end of the trial period. Council will permit the extended hours and the place of public entertainment to continue until the modification application is determined.

Reason: To enable Council to review the performance of the operator in relation to compliance with development consent conditions, and any complaints received, and any views expressed by the Police.

# **Conditions that are ongoing requirements of Development Consent**

- 3 The hours of operation are regulated as follows:
  - Monday to Wednesday: 8.00am to 12.00am (midnight)
  - Thursday to Saturday: 8.00am to 1.00am (the following day)
  - Sunday and public holidays: 10.00am to 10.00pm (excluding Christmas Day, Boxing Day and Good Friday)
- 4 Provision of musical entertainment and the like in the hotel on any day (except Christmas Day, Boxing Day and Good Friday) between 12.00pm (noon) and closing time subject to the following restrictions:
  - (a) No music or like entertainment being physically provided on the balcony after 8.00pm on any day;
  - (b) On any night when the hotel is to trade after midnight, the bi-fold doors between the bar and the balcony being closed (and kept closed) and all access between those two spaces being by way of the sound lock near the Norton Street entrance of the hotel.
- The Place of Public Entertainment shall be wholly contained upon the first floor, and shall be bounded by the dining area, kitchen, entrance, sanitary compartments and is exclusive of these aforementioned areas. The external balcony area located upon the first floor is <u>not</u> to be used for the purpose of providing entertainment.
- The operation of the place of public entertainment is for the purposes of DJ and light entertainment only, which includes musical groups of no more than three instruments or three musicians, or technical entertainment on the first floor level of the tavern only. There shall be no cabaret entertainment on the premises, including no live bands "rock bands", "event bands", "heavy metal bands" or the like. All entertainment shall take place within the confines of the building and no entertainment will be permitted on the external first floor balcony.
- 7A Maximum Number of Occupants in Premises

The maximum number of persons to be accommodated within the whole of the premises shall not exceed 350 persons including staff. Any increase in proposed maximum occupancy shall be the subject of a further Development Application to the Council.

- 7B The external balcony area is not to be used for the purposes of a place of public entertainment.
- Prior to commencement of the entertainment use, the applicant is to surrender condition 25 of DA D/2003/575 (ie deletion) under section 80A(5) of the Act.
  - Reason: To ensure the development does not expand beyond that approved.
- Patrons shall not be permitted to leave the premises with bottles, cans or glasses.
- 9 All loading and unloading in connection with the use of the premises is to be carried out wholly within the site from the car park loading dock. No loading or unloading shall take place via the front stairs of the building off Norton Street.
  - Reason: To protect the amenity of the area.
- 10 Essential Fire Safety Measures

The applicant is to submit to Council or the accredited certifier a Fire Safety Schedule specifying:

- (a) The essential services that are currently installed in the building;
- (b) The essential services that are to be installed in the building in connection with the proposed structural alteration or change of use must be submitted;
- (c) The fire safety measures that are currently installed in the building;
- (d) The fire safety measures that are proposed to be installed in the building;
- (e) The minimum standard of performance for each fire safety measure included in the schedule.

The list must describe the extent, capability and the basis of design of each such service.

#### 11 Acoustic

- (a) The operation of the subject premises shall comply with the noise emission requirements set down by the New South Wales Environment Protection Authority and standard criteria issued by the Liquor Administration Board.
- (b) Operation and use of the premises shall not give rise to: "offensive noise" as defined in the Protection of the Environment Operations Act, or "disturb the quite and good order of the neighbourhood: as required by the Liquor Administration Board.
- (c) Noise emission from mechanical plant shall be free of tonal or intermittent characteristics and it is not permitted to give rise to a measured level more than five dB(A) above the background, or as required by the EPA, when assessed at any residential boundary during the period of 7am to 10pm and shall not give rise to a sound level contribution exceeding the ambient background level during the period 10pm to 7am. Any attenuation measures required to be fitted to the air conditioning ducts or mechanical plants shall be installed and certified by the installed and tested for compliance for the intended noise reduction by the acoustic engineer prior to issue of the occupation certificate for the use of the premises as a place of public entertainment.
- (d) The L10 noise level emitted from the premises, when assessed at any residential boundary, shall not exceed the L90 ambient background level in any Octave Band Centre frequency (31.5Hz to 8 kHz inclusive) by more than 5dB(A) between the period 7am to midnight;
  - L10 may be taken as the average maximum deflection on a sound level meter.
- (e) The premises are to be constructed and shall operate at all times in accordance with the acoustic report submitted with the development application. Certification shall be submitted form the acoustic engineer that the recommendations of the report have been carried out for the construction of the glazed doors and sound locks to the western elevation. The doors shall be a double glazed door system having a sound rating performance of not less than Rw41.
- (f) Within 40 days of the completion of works and the subject area becoming operational, a report from a recognised acoustic consultant is to be submitted to Council confirming noise emission levels from mechanical plant in operation of the subject premises and the operational activities of the premises complies with the specific criteria noted above.
- To ensure compliance with the above performance criteria and the measures set out in the acoustic report:
  - (a) The doors and windows to the western façade shall be a double door system having a sound rating performance of not less than Rw41.

These doors shall be closed before the entertainment begins and shall be kept closed at all times the entertainment is underway.

- (b) Music performances are to take place only in the first floor area in the bar area .No entertainment is to be carried out on the first floor balcony;
- (c) The windows and doors to the external balcony on the first floor are to be closed during all musical performances;
- (d) A noise limiter is to be fitted to the sound system and controlled from behind the bar in accordance with the recommendations of an acoustic engineer who shall set the noise level and frequencies emitted from the entertainment to comply with the noise levels required to be adhered to. The noise limiter shall be operational prior to the occupation certificate being issued. Testing of equipment shall be allowed to establish the operation of the noise limiter prior to the occupation certificate being issued however all acoustic equipment shall be installed and certified.

Reason: To ensure the protection of the amenity of occupants of the subject site and surrounding properties.

- The maximum internal level of noise in the form of amplified music from within the premises at any point adjacent to the main bar area must not exceed an L10 of 95dB(A).
- 14 Security Management

Other than as required to comply with the conditions of this consent, the operation of the tavern shall be carried out in accordance with those measures identified in Annexure "2" to the Statement of Environmental Effects, identified as "Draft Plan of Management" prepared by Design Collaborative. In the event of any inconsistency between the measures of the Management Plan and the other conditions of this consent, the conditions of this consent take precedence.

#### Conditions to be satisfied prior to issue of occupation certificate

15 Certification shall be submitted from the installer of the glazed doors and windows that the sound attenuation requirements of the acoustic report have been complied with and will achieve a sound rating performance of Rw41 prior to issue of occupation certificate.

# 16 Interim/Final Fire Safety Certificate

Prior an Interim/Occupation Certificate being issued by the Principal Certifying Authority, and Leichhardt Council the owner of the building shall furnish to the Principal Certifying Authority a final/interim Fire Safety Certificate with respect to each essential fire safety measure specified in the current Fire Safety Schedule for the building to which the Certificate relates.

The Certificate shall state:

- (a) That each essential fire safety measure has been assessed by a properly qualified person.
- (b) That each essential fire safety measure was found, when it was assessed, to be capable of performing to a standard not less than that required by the current Fire Safety Schedule for the building to which the certificate is issued.

Reason: To ensure the safety of persons in the event of a fire.

- A report from the acoustic engineer shall be submit within 40 days of the premises being used as a place of public entertainment that the sound level requirements have been met as specified in the conditions above and set by the Liquor Administration Board.
- 18. The bench seating adjacent to the front balustrade of the balcony are to be removed or repositioned so that the effective height of the balustrade is 1200mm. Alternatively the balustrade is to be altered so that it has a height of 1200mm above the bench seating.

Reason: To ensure the requirements of the Building Code of Australia are satisfied and adequate safety of persons is provided.

#### **Prescribed Conditions**

# 19 Compliance with Building Code of Australia

- 19.1 All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the *Building Code of Australia* (as in force on the date the application for the relevant construction certificate or complying development certificate was made).
- 19.2 This clause does not apply to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4).
- 19.3 This clause does not apply to the erection of a temporary building.

**Note:** The intent of this condition is to emphasise that apart from the choice of full Building Code of Australia compliance, the applicant has the right to lodge an objection to the consent authority (and the NSW Fire Brigade in relation to a Category 3 Fire Safety Provision) that compliance with the BCA is inappropriate, unreasonable or unnecessary in the particular circumstance.

Any subsequent concurrence (conditional or otherwise) by the Consent Authority to the objection must be with, and consistent to, the express consent of the Director General of the Department of Local Government (and the NSW Fire Brigade having regard to a Category 3 Fire Safety provision).

# **Advisory - Important information for the applicant**

1 Appointment of a principal certifying authority

No works in connection with this development consent are to be commenced until the applicant:

- a) has had detailed plans and specifications endorsed with a construction certificate:
- b) has appointed a Principal Certifying Authority, and;
- c) has notified the Council of the appointment;

The applicant may appoint the Council or an accredited certifier as the principal certifying authority for the development.

If the principal certifying authority is not the Council, then the person so nominated must provide an acceptance of the nomination in writing to the Council. If the principal certifying authority is the Council, the nomination will be subject to the payment of a fee for the service to cover the cost of undertaking building work and/or civil engineering inspections.

2 Copy of Development Consent to be kept on site

For the duration of any work on site, the builder must maintain a copy of the specification, stamped approved plans, copy of Development Consent and Construction Certificate on site.

Adele Cowie **Acting Manager Assessments** 

**Heather Warton** 

**Acting Director – Environmental and Community Management** 

# BUILDING & DEVELOPMENT COUNCIL MEETING REPORT FOR 15 FEBRUARY 2005

# ATTACHMENT A



**File No** ➤ DA04/0731

**Development Application No** ➤ D/2004/731

**Property** > 55 Norton Street (Universale Hotel),

**LEICHHARDT** 

Date of Receipt ➤ 9 December 2004

Value of Works ➤ Nil

Classification of Building ➤ Class 9A

**Applicant's Name** ➤ J Bowditch

**Applicant's Address** ➤ 101/55 Norton Street

**LEICHHARDT NSW 2040** 

Owner's Name > Peter Medich Properties Pty Ltd

Owner's Address > 103/55 Norton Street

**LEICHHARDT NSW 2040** 

Advertised > 22 December 2005 to 19 January 2005

**Submissions** ➤ One (1) in opposition

Inspection Date ➤ 7 January 2005

Date on Councillors List ➤ 9 February 2005

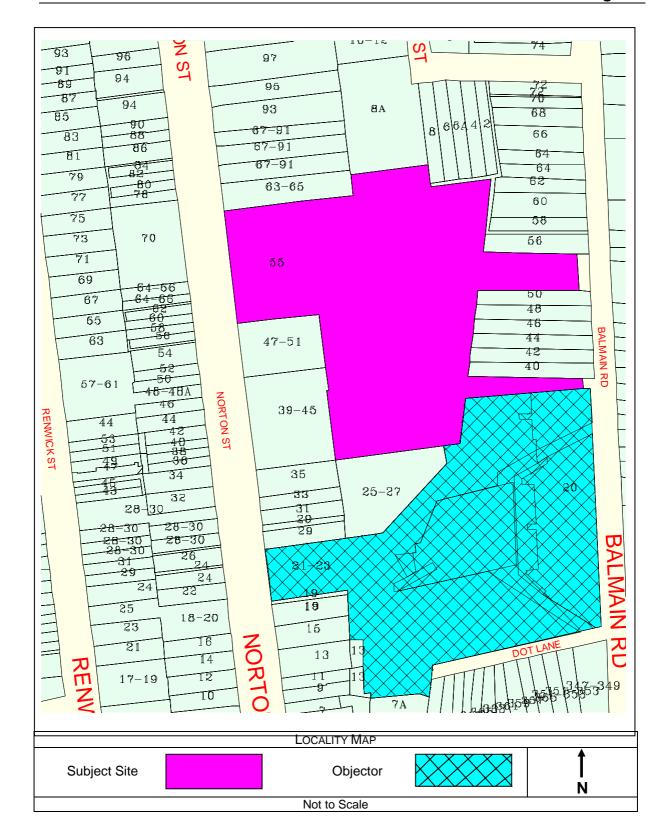
Integrated Development > No

**Brief Description of Proposal** > Extension of trading hours of hotel and place

of public entertainment

**Recommendation** > Approval

Assessment Officer > SJ Parisotto



## 1. PROPOSAL

The applicant seeks consent to operate the approved tavern with a Place of Public Entertainment licence, and extend approved trading hours to be 8.00am to 12:00 midnight Monday to Wednesday (no change), 8.00am to 1.00am the following day Thursday to Saturday (currently 8.00am to 12.00am midnight), 10.00am to 10.00pm Sundays and public holidays excluding Christmas Day and Good Friday (no change).

The proposal also involves us of the premises as a place of public entertainment.

### 2. SITE & LOCALITY DESCRIPTION

Norton Plaza is located on the eastern side of Norton Street, Leichhardt, south of Marion Street between Norton Street and Balmain Road in the Leichhardt town centre.

The site presently accommodates a shopping centre complex containing a supermarket, mixed shops, car parking, and first floor offices. The "Universale" Hotel occupies part of the first floor was approved as a tavern under the terms of the original consent for Norton Plaza

The locality consists of mixed shops, restaurants, community uses and a nearby primary school, with residential development being along Balmain Road to the east of the subject site and those forming of the Italian Forum.

## 3. PROPERTY HISTORY – SITE AND ADJOINING SITES

Construction of Norton Plaza was originally approved by Council on 18 September 1997 (DA 419/96). Building approval was granted on 31 July 1998 (BA 97/1163). Since the development was approved, a small number of modifications to the original consent have been assessed by Council, in relation to issues such as use of the car park, hours of operation of the car park, and hours of operation of the supermarket loading dock.

It terms of the "Universale" the following development approvals have been issued for the tavern.

DA/BA	Description:	Decision
D/2003/575	Fitout for tavern	Approved 29/9/2003
D/2003/344	Infill of void and extension of approved tavern	Approved 19/11/2003
CC/2003/316	Internal fitout for tavern	Approved 3/10/2003
D/2004/541	Extension of trading hours	Withdrawn

The applicant originally sought consent (viz. d/2004/541) to operate the approved tavern with a Place of Public Entertainment licence, and extend approved trading hours to be 8.00am to 12.00am midnight Monday to Wednesday, 8.00am to 3.00am the following day Thursday to Saturday, 10.00am to 10.00pm Sundays and public holidays excluding Christmas Day, Boxing Day and Good Friday.

#### 4. ASSESSMENT

Section 79C of the Environmental Planning & Assessment Act 1979, requires the following matters to be assessed in respect of all development applications.

# 4.1 The Provisions of any EPI, DCP or Prescribed matter

## 4.1.1 Leichhardt Local Environmental Plan 2000

# (i) <u>Permissibility</u>

The site is within the Business zone and a *hotel* development involving a carwash is listed in clause 21(3) as being development allowed only with development consent. Therefore the proposal is permissible development.

The site is not with a Conservation area, however the site is located within the vicinity of an Item of Environmental Heritage, being Leichhardt Primary School, and the Town Hall building, and the former tram waiting building on the corner of Marion Street, and Norton Street.

## (ii) Development Standards

## Clause 23 – Floor Space Ratio

#### "(1) Commercial Floor space control

- (a) Consent must not be granted to the carrying out of nonresidential development on land within any zone if it will result in the floor space ratio of a building on the land exceeding 1:1.
- (b) Consent may be granted to the carrying out of mixed residential and other development on land within the Business Zone which results in a floor space ratio of a building on the land up to 1.5:1, but only if all Floor space at the ground floor or street level is used for non-residential purposes (except for any floor space used for service and access purposes required for the residential component of the building in the floors above).
- (c) Residential development on land within the Business Zone is only allowed in accordance with paragraph (b)".

The proposal does not result in any increase in floor space of the existing building. As such, the proposal raises no issues that are contrary to the provisions of clause 23(1)(a) of LEP 2000.

# (iii) Specific Controls

# <u>Development in the Vicinity of a Heritage item - clause 16(7)</u>

"Consent must not be granted for development on land in the vicinity of a heritage item, unless the consent authority has made an assessment of the effect the carrying out of that development will have on the heritage significance of the heritage item and its setting as well as on any significant views to and from the heritage item."

Although the site is within proximity of several heritage items, as identified previously in this report, the limited nature of works proposed means that there will be no impact on the integrity of those items.

# (iv) Objectives

Clause 7(3) requires the consent authority to take into consideration the objectives relevant to the proposal. The relevant objectives are:

## General Objectives – clause 13

- (1) The general objective for ecologically sustainable development is to encourage the incorporation of the principles of ecologically sustainable development in the design and management of the built and natural environment to:
  - (a) provide for the preservation of natural resources to ensure their availability for the benefit of future generations, and
  - (b) minimise negative impacts of urban development on the natural, social, physical and historical environment, and
  - (c) maintain and enhance the quality of life, both now and for the future.

The proposal does not raise any inconsistency with Clause 13(1) of LEP 2000.

- (2) The general objective for the built and natural environment and amenity is to encourage the design of buildings, structures and spaces which are compatible with the character, form and scale of the area to:
  - (a) protect and enhance the area's natural features, character and appearance, and
  - (b) protect, conserve and enhance the area's heritage, and
  - (c) provide an environment meeting the principles of good urban design, and
  - (d) maintain amenity and contribute to a sense of place and community, and
  - (e) provide an environment which is visually stimulating, while being easy to manage and maintain, and
  - (f) provide adequate access and linkages to public open space, and
  - (g) accommodate the existing and future needs of the locality concerned, and

(h) protect and conserve ecologically sensitive land, particularly that which is visually exposed to the waters of Sydney Harbour and the Parramatta River and of natural or aesthetic significance at the water's edge.

The proposed development does not involve any new building works and therefore is deemed to be consistent with Clause 13(2) of LEP 2000.

- (3) The general objective for transport and access is to encourage the integration of the residential and non-residential land uses, with public and private transport and improved access to:
  - (a) reduce the need for car travel and subsequent pressure on the existing road networks, and
  - (b) maximise utilisation of existing and future public transport facilities, and
  - (c) maximise the opportunity for pedestrian and cycle links, and
  - (d) identify and ameliorate adverse impacts of all transport modes on the environment, and
  - (e) improve road safety for all users, particularly pedestrians and cyclists.

With regard to Clause 13(3), which relates specifically to transport and access the following considerations:

- The proposed development neither reduces nor increase the need for car travel and subsequently will not result in any further pressure on the existing road networks.
- The proposal maintains the maximum utilisation of existing and future public transport facilities.
- The proposal maintains the maximum the opportunity for pedestrian and cycle links.
- The proposal does not result any adverse impacts of transport modes on the environment.
- The proposal does not diminish road safety for pedestrians and cyclists and other modes of transport.

The proposal has been considered with the general objectives set down in Clause 13 of LEP 2000 and it is considered that the development does not raise any issue that would be inconsistent with that clause.

# Employment - clause 20

The objectives of the Plan in relation to employment are as follows:

- (a) to incorporate the principles of ecologically sustainable development into the design of development by optimising the energy efficiency of buildings and sites, and providing effective landscaping to improve air and water quality and to increase biodiversity, and
- (b) to ensure the sustainable growth of Leichhardt's economy by retaining existing employment uses and fostering a range of new industrial and business uses, to meet the needs of the community, and

- (c) to ensure new buildings are compatible with existing street and allotment patterns, the orientation of existing buildings and the pattern of open space. new buildings should complement the style of surrounding buildings, works and landscaped areas, and
- (d) to ensure that buildings to be used for employment are appropriately located and designed to minimise the generation of noise, traffic, car parking, waste, pollution and other adverse impacts, to maintain the amenity of surrounding land uses, and avoid harm to the environment, and
- (e) to reinforce and enhance the role, function and identity of established business centres by encouraging appropriate development and to ensure that surrounding development does not detract from the function of these centres, and
- (f) to integrate residential and business development in business centres, and
- (g) to ensure the continuation of commercial port uses and railway uses, and
- (h) to allow a range of water-based commercial and recreational facilities in waterfront areas in order to retain the visual diversity and maritime character of the area, and
- to ensure non-residential development in residential zones does not detract from the function of the established business centres or adversely impact on amenity.

The proposal is does not raise any inconsistency with the provisions of Clause 20(a) and (c) as no new building works are proposed, requiring specific attention to the design and ecological sustainability of the building.

Norton Street is focal point of commercial and retail activity in Leichhardt, and that the use of the premises as a hotel and place of public entertainment will contribute to the sustainable economic growth, without unfair competition or advantage over similar (other hotel establishments) or comparable (licensed restaurants) uses. In this regard the proposal is consistent with Clause 20(b) and (e) of LEP 2000.

As detailed previously and later in the report it is considered that the proposal (extension of trading hours and use as a place of public entertainment) will not result in an unreasonable impact on the amenity of surrounding land uses in terms of traffic generation and pollution and therefore satisfies Clause 20(d).

The hours sought are consistent with the hours of operation issued by the Land and Environment Court with respect to the operation of the Leichhardt Hotel, located at 95 Norton Street (No. 10956 of 1999) on 24 September 2002. The amended hours are consistent with the cessation of bus services along Norton Street and with the hours of closing of the local parking stations. In this regard, the proposal integrates with the existing commercial and residential development and is consistent with Clause 20(f).

The provisions of Clause 20(g), (h) and (i) are not of relevance to the proposal.

<u>SEPP 55 - Acid Sulphate Soils and Leichhardt Development Control Plan 42 – Land Contamination</u>

## SEPP No. 55

Clause 7 of State Environmental Planning Policy No.55 – Remediation of Land requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

No additional soil disturbance is proposed.

In accordance with SEPP 55 and DCP No.42 Council is able to conclude that no further assessment of contamination is necessary.

# Acid Sulphate Soils

In terms of Acid Sulphate Soils, the subject site is within a Class 5 area as identified on the Acid Sulphate Soils Maps. Works on land within a Class 5 area are only of risk to Acid Sulphate soils where works occur and the proposed works are likely to lower the watertable below 1m AHD The proposal involves no excavation for footings.

Therefore Council is satisfied that the site is suitable for the use.

#### 4.1.2 Leichhardt Development Control Plan 2000 (Non-Residential Development)

The following controls of the Leichhardt DCP 2000 are relevant in the consideration of the proposal:

#### Part A2.0 – Urban Framework

Leichhardt's streets and suburbs have distinctive character generated by a rich mix of street patterns, building types and architectural style. The Urban Framework Plans are aimed to draw together key urban and environmental elements that contribute to overall character.

It is considered that the proposed development is consistent with Part A2.0 of Leichhardt DCP2000 and will not affect the strategic objectives of the Urban framework Plans.

## Part A8.0 – Carparking Standards and Controls

The underlying principle of Part A8.0 of DCP2000 is to ensure that safe and sufficient parking for all modes of transport is provided to meet anticipated demands.

The proposal does not involve any increase in floor space or change of use that would generate additional parking requirements.

Overall the parking provided is consider adequate and satisfies the principles of DCP2000.

Part A9.0 - Advertising and Signage

No additional signage is proposed.

Part A10.2.5 – Suburb Profiles (Leichhardt Commercial)

The character of Leichhardt is heavily influenced by the street pattern (predominantly north/south extending from Parramatta Road) and built form. The wide carriageways and regular street pattern combined with the topography and a predominance of single storey detached housing gives Leichhardt a more open character than that of Glebe or Annandale. The suburb is made up of several distinctive residential neighbourhoods and the Leichhardt Commercial Neighbourhood.

The desired future character of the area is to provide low impact nonresidential uses that do not generate large volumes of traffic, provides loading and parking demands on site, and does not adversely affect the heritage significance of the conservation area.

# Part C Non-residential Development

# C3.1 Noise and Operational Control

The purpose of this Part is to minimise the impact of noise and vibration by the proposed operations and ensure that the quality of life by residents and people engaged in business and community pursuits is not hampered by excessively noisy activities.

The use is unlikely to exceed noise levels set down in the NSW EPA Environmental Noise Control Manual, and therefore, subject to the recommended conditions, the provisions of this part can be satisfied.

### C3.2 Air Pollution

The purpose of this Part is to minimise air pollution caused by new development. The proposed development is unlikely to result in any adverse impact from air pollution.

## C3.3 Water Pollution

The purpose of this Part is to minimise water pollution caused by new development. The proposed development is unlikely to result in any adverse impact from water pollution.

#### C3.4 Working Hours

The key principle of this Part is to "ensure the operations of the proposed development will not cause nuisance to residents by way of working hours". In particular this part is aimed at identifying potential interface conflict between

residential and business uses, specifically if the business use that may have a detrimental impact on the amenity of neighbouring residents.

The original hours approved in 2003 are:-

- Monday to Friday: 8 am to 12 midnight
- Saturday: 8 am to 10 pm
- Sunday and public holidays: 10am to 10 pm (excluding Christmas Day, Boxing Day and Good Friday)

The revised hours that were refused in February 2004 were:

- Monday to Wednesday: 8 am to 12 midnight
- Thursday to Sunday: 8 am to 3 am the following day
- Sunday and public holidays: 10 am to 10 pm (excluding Christmas Day, Boxing Day and Good Friday)

The proposed hours are:

- Monday to Wednesday: 8 am to 12 midnight
- Thursday to Saturday: 8 am to 1 am the following day
- Sunday and public holidays: 10 am to 10 pm (excluding Christmas Day, and Good Friday)

The proposed amended hours are consistent with the Leichhardt Hotel, which operates under hours permitted by the Land and Environment Court. The hours are lesser than those of the Royal Hotel, Nortons Hotel and Taverners Hill hotel, all of which are located within close proximity to the subject site and therefore considered reasonable.

### 4.1.3 Local Government Act 1993

The subject application seeks approval for a Place of Public Entertainment (POPE) License under s68 of the Local Government Act. The Environmental Planning and Assessment Act, 1979 pursuant to Section 78A allows for a development consent and POPE approval to be considered as part of the one application. The following provides an assessment of the relevant matters under the Local Government Act 1993 relevant to a Place of Public Entertainment, and concurrently addresses the same issues in terms of the Environmental Planning & Assessment Act 1979, assessment in terms of the environmental impact of entertainment in conjunction with the hotel use.

#### (i) Approvals required

Section 68 of the Local Government Act 1993 (LGA) defines what activities generally requires approval of the Council. A person may carry out an activity specified in the Approvals Table of Section 68 only with the prior approval of Council. The applicant seeks approval of activities as listed under Section 68 as follows:

The entertainment area shall be limited to the area noted as bar on the plans and not include the dining area, gaming area, kitchen, toilets. The applicant has applied for 350 persons which given the combination of floor area, seating plan is considered acceptable.

public entertainment appears to be limited to DJ and the seating should be maintained otherwise there is a tendency for the area to be used as a nightclub rather than bar, tavern sitting area.

The external balcony should not be used for entertainment or as part of the place of public entertainment and controls should be put in place to limit the use of this area for sitting only with the doors to the remainder of the tavern area being closed after 12 midnight and the doors to be part of the duty of security staff to ensure that they are kept closed after midnight.

# Part A Structures or Places of Public Entertainment

The use of a building or temporary structure as a Place of Public Entertainment or permit its use as a Place of Public Entertainment is listed under Part A of Clause 68 of the Local Government Act 1993.

The subject application seeks consent for a Place of Public Entertainment License that applies to approximately 445 m² which includes the bar area (233m²) the gaming area (73m²) and the balcony (139m²) of the building, in the first floor area of the tavern so as provide an ease of management (by not having to monitor movements between the balcony and the games room to and from the main bar area.

Approvals in respect of matters in Part A are regulated by Part 2 of the Local Government (Approvals) Regulation 1999. Clause 7.2 of the Regulation requires as follows:-

- Cl 7.2(1) Matters to be taken into consideration by Council in determining whether to approve the use of a building or temporary structure as a place of public entertainment
- a) Whether any consent required under the Environmental Planning and Assessment Act 1979 for the use of the building or structure for the purpose has been given

This Development application for entertainment is being dealt with concurrently with the activity application which if approved will give consent for the tavern to be used as a place of public entertainment. Issues such as security management, acoustics attenuation and recommendations for the acoustic engineers report will be dealt with elsewhere in the report. Approval has been granted for the use of this part of the premises as a tavern as part of the original application for the Plaza. The use has commenced. A construction certificate has been issued for the fit-out of the tavern area and works are complete. The entertainment use, subject to the conditions and limitations on area is satisfactory from a planning point of view.

b) whether the use of the building or structure for the purpose contravenes provision of that Act or of any environmental planning instrument within the meaning of that Act, in so far as the Act or instrument applies to the land

This report recommends approval for the use of the premises as proposed and having regard to the relevant environmental planning instruments as detailed in Section 4 of this report. Subject to consent being granted, the proposal will not contravene the provisions of the Act.

- CI.7.2(2) If the application relates to an existing building or temporary structure, the council must not approve the use of the building or structure as a place of public entertainment unless the council, having regard to the circumstances of the case, is of the opinion that the building or structure, with such alterations as it may require:
- (a) will be structurally sound and capable of withstanding the loadings likely to arise from the use, and

The original construction of the Plaza included the intention to use the first floor area as a tavern. The fire rating of floor and ceilings and walls has been dealt within the fit-out construction certificate issued late last year. The front terrace is also to be used as part of the tavern but will not be included in the area for entertainment nor for the Place of Public Entertainment. The conditions of the construction certificate require the upgrading of the balustrading to the terrace to comply with the requirements of the BCA.

Given that the works for the fit-out were inspected and certified by a structural engineer during the course of the construction and the existing building has been certified as structurally adequate, the building is considered to be structurally sound and capable of withstanding the loadings likely to arise from the use.

(b) will contain reasonable provision for the safety of persons proposed to be accommodated in the building or structure, in the event of fire, particularly in relation to egress, and

The building is considered to provide satisfactory safety for persons proposed to be accommodated in the building in the event of fire, particularly in relation to egress.

- ensuring all exit doors from the entertainment area are unobstructed; and
- limiting the number of patrons in this area to 350 persons.
- (c) will contain reasonable provision for the prevention or suppression of fire and the prevention of the spread of fire.

Subject to compliance with conditions imposed with respect to previous development consents and the conditioned construction certificate, the proposal is considered to provide adequate provision for the prevention and suppression of fire and prevention of the spread of fire.

4.1.4 <u>Disability Discrimination Act and DCP No. 32 (Design for Equity of Access)</u>

The general purpose of Development Control Plan No. 32 (Design Equity for Access) is to provide a framework to ensure equity of access to proposed new buildings.

The new works will not alter existing access and facilities for disabled persons nor reduce the equity of access.

# 4.3 The likely environmental, social or economic impacts of the development

Whilst the hours sought are consistent with those of other near-by hotels, it would be preferable for the tavern to operate under the amended hours, for at least six months followed by a further grant of another six months if the initial period is well-operated, in order that an evaluation can be made of the tavern management's ability to operate a well-run licensed facility in this locale. After 12 months, subject to good management, the premises could seek by way of a further application, to make the hours permanent.

The entertainment use in the hotel and the approval as a POPE is satisfactory subject to the balcony area not being used for entertainment due to noise impacts, nor to be used at all after 12 midnight.

Anecdotal evidence suggests that the character of Norton Street has changed significantly over the last few years. The Licensing Unit of the Leichhardt Local Area Command Police has lodged a submission regarding this application. That submission notes that since 2002 there have been 189 reported incidents upon licensed premises in Norton Street which have necessitated Police attendance. There have also been 79 alcohol related offences in the street itself.

The Glebe Licensing Police have advised that the amended hours are acceptable and would not support extended trading to midnight on Sundays.

## 4.4 The suitability of the site for the development.

The site is zoned Business and is similar in size to other site in the vicinity which accommodate restaurants and hotels. Provided that any adverse effects on adjoining properties are minimised, this site may be suitable to accommodate the proposed early morning trading hours however this has not yet been satisfactorily demonstrated.

# 4.5 Any submissions to the development.

In accordance with the Leichhardt Development Control Plan No.36 the application was advertised and notified to adjacent properties by letter dated 22 December 2004. There was one (1) submission received in respect of the earlier application.

## In Opposition

J Solomon PO BOX 393 WOOLLAHRA NSW 1350

(Resident of Italian Forum)

# The following points of concern were raised:

# 1 Impact on the amenity of residents in the vicinity of the hotel.

Concerns have been raised by a resident of the Italian Forum that the extension of trading hours will impact upon the amenity of their property, particularly from patrons leaving the premises and not dispersing from the locale until much later after the proposed closing time; and that other commercial enterprises would be encourages to seek similar trading hours.

<u>Comment:</u> Council in considering the application has observed the practice of the Land and Environment Court by imposing suitable operational management conditions on the tavern.

Other hotels within the vicinity of the "Universale" have similar trading hours and this has not led to other commercial enterprises (such as restaurants that complement hotel trading) to seek extended trading.

# 4.6 The public interest.

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environmental are avoided. Due to the fact that the tavern has not yet taken up its consent it is not possible for Council or the community to conclude that the public interest is served by the application. It is suggested that a trial period be entered into with regard to the operation of the premises.

#### 5. REFERRALS

## 5.1 Internal

# <u>Building</u>

Council's Building Surveyor's have examined and assessed the application with regard to the place of public entertainment licence and the requirements of the Building Code of Australia. In summary they advise that:

- The proposed number of persons covered by the place of public entertainment licence is reasonable based on existing floor area, seating arrangement and movement throughout the building.
- That the aggregate widths of the exits are sufficient to accommodate 350 persons.
- That the bench along the front balustrade is to be relocated so that the effective height of the balustrade is 1200mm.

## 5.2 External

The application was referred to the Leichhardt Local Area Command Licensing Police. They have advised that the amended hours are acceptable.

#### 6. SUMMARY & CONCLUSION

This application has been assessed under the heads of consideration of section 79C of the Environmental Planning & Assessment Act, 1979 and all relevant instruments and policies.

Under the circumstances it is considered appropriate at this time to allow the application for the amended trading hours subject to a trial period. The applicant may be able to demonstrate good faith to the satisfaction of Council, the community and the local police, but this should be premised upon empirical observation of the actual operation of the premises over an appropriate time frame.

#### 7. RECOMMENDATION

That Council as the consent authority pursuant to s80 of the Environmental Planning & Assessment Act 1979 grant consent to Development Application No: D/2005/4/731 for an extension of trading hours and use as a place of public entertainment at the "Universale" Hotel at 55 Norton Street, Leichhardt subject to the following conditions:

#### **General Conditions**

# 1 Approved plans

The development shall be implemented in accordance with the details set out in the plans prepared by SJB Interiors and numbered Job No. 8846 Drawing No. WD0201 Revision C4 dated 25 August 2004, the Statement of Environmental Effects and appendices, prepared by design Collaborative Pty Limited dated December 2004 and on the application form and on any supporting information received with the application except as amended by the conditions specified hereunder.

# 2 Limited consent

To enable Council to review the performance of the approved development over a specified period of time this Development Consent is issued for a limited period of six months from the date upon which the consent is first exercised.

An application may be made under Section 96 of the Environmental Planning and Assessment Act to modify the consent to extend the trial period (or to make the consent permanent). Should such an application be lodged, it must be lodged at least one month prior to the end of the trial period. Council will permit the extended hours and the place of public entertainment to continue until the modification application is determined.

Reason: To enable Council to review the performance of the operator in relation to compliance with development consent conditions, and any complaints received, and any views expressed by the Police.

# Conditions that are ongoing requirements of Development Consent

- The hours of operation are regulated as follows:
  - Monday to Wednesday: 8.00am to 12.00am (midnight)
  - Thursday to Saturday: 8.00am to 1.00am (the following day)
  - Sunday and public holidays: 10.00am to 10.00pm (excluding Christmas Day, Boxing Day and Good Friday)
- 4 Provision of musical entertainment and the like in the hotel on any day (except Christmas Day, Boxing Day and Good Friday) between 12.00pm (noon) and closing time subject to the following restrictions:
  - (a) No music or like entertainment being physically provided on the balcony after 8.00pm on any day;
  - (b) On any night when the hotel is to trade after midnight, the bi-fold doors between the bar and the balcony being closed (and kept closed) and all access between those two spaces being by way of the sound lock near the Norton Street entrance of the hotel.
- The Place of Public Entertainment shall be wholly contained upon the first floor, and shall be bounded by the dining area, kitchen, entrance, sanitary compartments and is exclusive of these aforementioned areas. The external balcony area located upon the first floor is <u>not</u> to be used for the purpose of providing entertainment.
- The operation of the place of public entertainment is for the purposes of DJ and light entertainment only, which includes musical groups of no more than three instruments or three musicians, or technical entertainment on the first floor level of the tavern only. There shall be no cabaret entertainment on the premises, including no live bands "rock bands", "event bands", "heavy metal bands" or the like. All entertainment shall take place within the confines of the building and no entertainment will be permitted on the external first floor balcony.
- 7 Maximum Number of Occupants in Premises

The maximum number of persons to be accommodated within the whole of the premises shall not exceed 350 persons including staff. The external balcony area is not considered as part of the place of public entertainment. Any increase in proposed maximum occupancy shall be the subject of a further Development Application to the Council.

A copy of the POPE licence shall be displayed indicating maximum number of patrons permitted in the area.

Reason: To ensure the development does not expand beyond that approved.

- Patrons shall not be permitted to leave the premises with bottles, cans or glasses.
- 9 All loading and unloading in connection with the use of the premises is to be carried out wholly within the site from the car park loading dock. No loading or unloading shall take place via the front stairs of the building off Norton Street.

Reason: To protect the amenity of the area.

# 10 Essential Fire Safety Measures

The applicant is to submit to Council or the accredited certifier a Fire Safety Schedule specifying:

- (a) The essential services that are currently installed in the building;
- (b) The essential services that are to be installed in the building in connection with the proposed structural alteration or change of use must be submitted;
- (c) The fire safety measures that are currently installed in the building;
- (d) The fire safety measures that are proposed to be installed in the building;
- (e) The minimum standard of performance for each fire safety measure included in the schedule.

The list must describe the extent, capability and the basis of design of each such service.

#### 11 Acoustic

- (a) The operation of the subject premises shall comply with the noise emission requirements set down by the New South Wales Environment Protection Authority and standard criteria issued by the Liquor Administration Board.
- (b) Operation and use of the premises shall not give rise to: "offensive noise" as defined in the Protection of the Environment Operations Act, or "disturb the quite and good order of the neighbourhood: as required by the Liquor Administration Board.
- (c) Noise emission from mechanical plant shall be free of tonal or intermittent characteristics and it is not permitted to give rise to a measured level more than five dB(A) above the background, or as required by the EPA, when assessed at any residential boundary during the period of 7am to 10pm and shall not give rise to a sound level contribution exceeding the ambient background level during the period 10pm to 7am. Any attenuation measures required to be fitted to the air conditioning ducts or mechanical plants shall be installed and certified by the installed and tested for compliance for the intended noise reduction by the acoustic engineer prior to issue of the occupation certificate for the use of the premises as a place of public entertainment.
- (d) The L10 noise level emitted from the premises, when assessed at any residential boundary, shall not exceed the L90 ambient background level in any Octave Band Centre frequency (31.5Hz to 8 kHz inclusive) by more than 5dB(A) between the period 7am to midnight;

L10 may be taken as the average maximum deflection on a sound level meter.

- (e) The premises are to be constructed and shall operate at all times in accordance with the acoustic report submitted with the development application. Certification shall be submitted form the acoustic engineer that the recommendations of the report have been carried out for the construction of the glazed doors and sound locks to the western elevation. The doors shall be a double glazed door system having a sound rating performance of not less than Rw41.
- (f) Within 40 days of the completion of works and the subject area becoming operational, a report from a recognised acoustic consultant is to be submitted to Council confirming noise emission levels from mechanical plant in operation of the subject premises and the operational activities of the premises complies with the specific criteria noted above.
- 12 To ensure compliance with the above performance criteria and the measures set out in the acoustic report:
  - (a) The doors and windows to the western façade shall be a double door system having a sound rating performance of not less than Rw41. These doors shall be closed before the entertainment begins and shall be kept closed at all times the entertainment is underway.
  - (b) Music performances are to take place only in the first floor area in the bar area .No entertainment is to be carried out on the first floor balcony;
  - (c) The windows and doors to the external balcony on the first floor are to be closed during all musical performances;
  - (d) A noise limiter is to be fitted to the sound system and controlled from behind the bar in accordance with the recommendations of an acoustic engineer who shall set the noise level and frequencies emitted from the entertainment to comply with the noise levels required to be adhered to. The noise limiter shall be operational prior to the occupation certificate being issued. Testing of equipment shall be allowed to establish the operation of the noise limiter prior to the occupation certificate being issued however all acoustic equipment shall be installed and certified.

Reason: To ensure the protection of the amenity of occupants of the subject site and surrounding properties.

- The maximum internal level of noise in the form of amplified music from within the premises at any point adjacent to the main bar area must not exceed an L10 of 95dB(A).
- 14 Security Management

Other than as required to comply with the conditions of this consent, the operation of the tavern shall be carried out in accordance with those measures identified in Annexure "2" to the Statement of Environmental Effects, identified as "Draft Plan of Management" prepared by Design Collaborative. In the event of any inconsistency between the measures of the Management Plan and the other conditions of this consent, the conditions of this consent take precedence.

# Conditions to be satisfied prior to issue of occupation certificate

- 15 Certification shall be submitted from the installer of the glazed doors and windows that the sound attenuation requirements of the acoustic report have been complied with and will achieve a sound rating performance of Rw41 prior to issue of occupation certificate.
- 16 Interim/Final Fire Safety Certificate

Prior an Interim/Occupation Certificate being issued by the Principal Certifying Authority, and Leichhardt Council the owner of the building shall furnish to the Principal Certifying Authority a final/interim Fire Safety Certificate with respect to each essential fire safety measure specified in the current Fire Safety Schedule for the building to which the Certificate relates.

The Certificate shall state:

- (a) That each essential fire safety measure has been assessed by a properly qualified person.
- (b) That each essential fire safety measure was found, when it was assessed, to be capable of performing to a standard not less than that required by the current Fire Safety Schedule for the building to which the certificate is issued.

Reason: To ensure the safety of persons in the event of a fire.

- A report from the acoustic engineer shall be submit within 40 days of the premises being used as a place of public entertainment that the sound level requirements have been met as specified in the conditions above and set by the Liquor Administration Board.
- 18. The bench seating adjacent to the front balustrade of the balcony are to be removed or repositioned so that the effective height of the balustrade is 1200mm. Alternatively the balustrade is to be altered so that it has a height of 1200mm above the bench seating.

Reason: To ensure the requirements of the Building Code of Australia are satisfied and adequate safety of persons is provided.

## **Prescribed Conditions**

19 Compliance with Building Code of Australia

- 19.1 All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the *Building Code of Australia* (as in force on the date the application for the relevant construction certificate or complying development certificate was made).
- 19.2 This clause does not apply to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4).
- 19.3 This clause does not apply to the erection of a temporary building.

**Note:** The intent of this condition is to emphasise that apart from the choice of full Building Code of Australia compliance, the applicant has the right to lodge an objection to the consent authority (and the NSW Fire Brigade in relation to a Category 3 Fire Safety Provision) that compliance with the BCA is inappropriate, unreasonable or unnecessary in the particular circumstance.

Any subsequent concurrence (conditional or otherwise) by the Consent Authority to the objection must be with, and consistent to, the express consent of the Director General of the Department of Local Government (and the NSW Fire Brigade having regard to a Category 3 Fire Safety provision).

# Advisory - Important information for the applicant

1 Appointment of a principal certifying authority

No works in connection with this development consent are to be commenced until the applicant:

- a) has had detailed plans and specifications endorsed with a construction certificate;
- b) has appointed a Principal Certifying Authority, and;
- c) has notified the Council of the appointment;

The applicant may appoint the Council or an accredited certifier as the principal certifying authority for the development.

If the principal certifying authority is not the Council, then the person so nominated must provide an acceptance of the nomination in writing to the Council. If the principal certifying authority is the Council, the nomination will be subject to the payment of a fee for the service to cover the cost of undertaking building work and/or civil engineering inspections.

2 Copy of Development Consent to be kept on site

For the duration of any work on site, the builder must maintain a copy of the specification, stamped approved plans, copy of Development Consent and Construction Certificate on site.

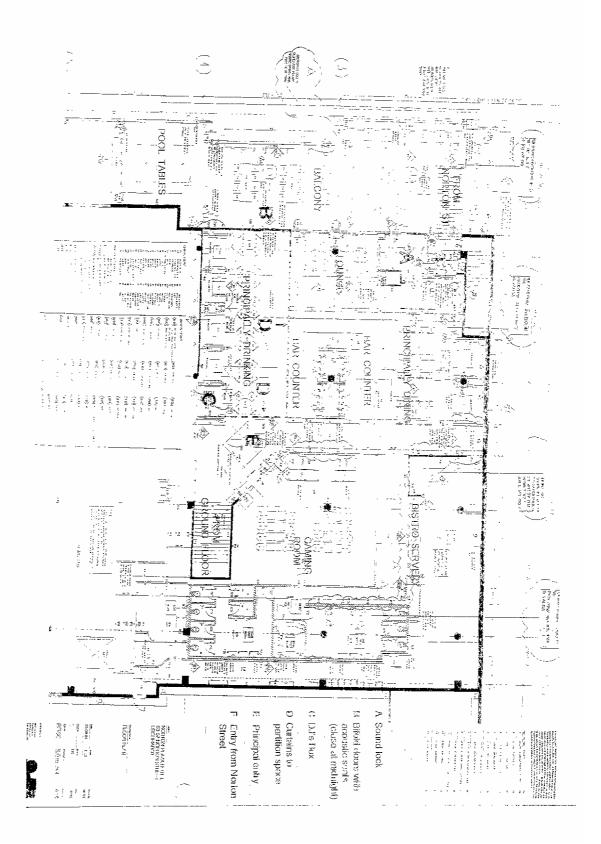
Heather Warton

A/Director Environmental and Community

Management

Adele Cowie

A/Manager Assessments



# ORDINARY COUNCIL MEETING REPORT FOR 14 DECEMBER 2004

## ATTACHMENT B



File No ➤ DA030541

**Development Application No** > D/2003/541 and A/2003/10

Property > 55 Norton Street Leichhardt

Date of Receipt ➤ 27 August 2003

Value of Works ➤ Nil

Classification of Building > Class 6

**Applicant's Name** ➤ Jason Bowditch

C/- suite 112, Level 6, 330 Wattle Street

Ultimo 2007 (for D/2003/541)

**Applicant's Name** ➤ Peter Medich Properties P/L

Suite 103, 55 Norton Street, Leichhardt 2048

(for A/2003/10)

Owner's Name > Peter Medich Properties P/L

Owner's Address > As above

**Advertised** ➤ 17/11/2004 to 1/12/2004 (amended proposal)

**Submissions** > 2 objections received for amended proposal

Inspection Date > December 3, 2003 and 24 November 2004

Integrated Development > NO

**Brief Description of Proposal** > Operate approved tavern with entertainment and

obtain a Place of Public Entertainment licence, extend approved trading hours to be 8.00am to Midnight Monday to Wednesday, 8.00am to 1.00am the following day Thursday to Saturday, 10.00am to 10.00pm Sundays and public holidays excluding Christmas Day, Boxing Day and Good

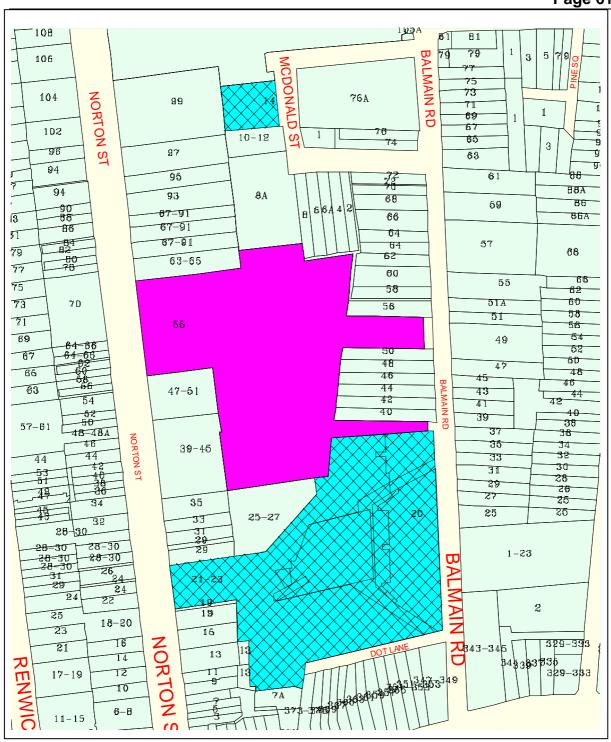
Friday.

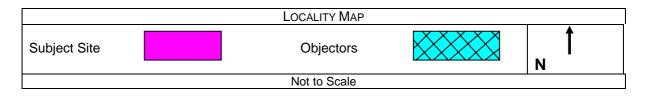
**Recommendation** > Delegate to the Executive Manager to pursue

carriage of the Appeal

**Assessment Officer** ➤ Adele Cowie

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## 1. PROPOSAL

The applicant originally sought consent to operate the approved tavern with a Place of Public Entertainment licence, and extend approved trading hours to be 8.00am to Midnight Monday to Wednesday, 8.00am to 3.00am the following day Thursday to Saturday, 10.00am to 10.00pm Sundays and public holidays excluding Christmas Day, Boxing Day and Good Friday.

Subsequently, by letter dated 28 January 2004 the applicant withdrew that portion of the application requesting extended hours, but asked that the POPE application for the approved trading hours be assessed.

By fax on 17 February 2004, on the night of the meeting, the applicant sought to re-instate both Applications and Council considered both applications.

Council refused both Applications at the meeting on 17 February 2004.

The applicant lodged on 31 August 2004, an Appeal with the Land and Environment Court against the refusal of both Applications.

In an attempt to settle the Appeal, the applicant has since amended the application. Instead of seeking to trade until 3.00am on Friday, Saturday and Sunday mornings, the application now proposes 1.00am. Furthermore, instead of seeking 417 persons by way of a POPE approval the application now seeks 350 persons.

The amended proposal has been advertised from 17 November to 1 December 2004. Two submissions have been received.

Recently, Council has become aware of the Court's decisions in Hemmes v Sydney City Council. In this matter, the Court held that once a DA had been withdrawn, the applicant could not re-instate the application and have it determined. Further that once withdrawn there was no right of Appeal. The finding turns on the provisions of the Regulations and does not necessarily apply to the Local Government Act Application for a POPE licence.

This question of law has now been raised by Council in the current Appeal and the Council is awaiting the applicant's decision as to whether they wish to argue the matter or lodge a fresh DA. Given this uncertainty, it is important that Council express its view on the matter prior to any determination by the Court.

Further in accordance with usual practice, is recommended that the Executive Officer be delegate the carriage of the Appeal. Draft conditions observing the various recommendations throughout this report would be tendered to the Court.

# 2. SITE & LOCALITY DESCRIPTION

The site is located on the eastern side of Norton Street, and forms part of the upper level of the premises known as Norton Plaza.

The site presently accommodates a shopping centre complex containing a supermarket, mixed shops, carparking, and first floor offices. Part of the first floor was approved as a tavern under the terms of the original consent, but has not yet become operational. Because the original consent included numerous aspects which have since been enacted, that original approval for a tavern is still valid.

The locality consists of mixed shops, restaurants, community uses and a nearby primary school.

Adjoining properties accommodate shops, restaurants and cinemas.

#### 3. PROPERTY HISTORY – SITE AND ADJOINING SITES

The complex was approved in 1997, inclusive of a tavern at the first floor. Specifically, the following development approvals have been issued for the tavern.

DA/BA	Description:	Decision
D/2003/575	Fitout for tavern	Approved 29/9/2003
D/2003/344	Infill of void and extension of approved tavern	Approved 19/11/2003
CC/2003/316	Internal fitout for tavern	Approved 3/10/2003

The tavern operation has approved hours of:

Monday to Friday: 8.00am to 12 midnight

Saturday 8.00am to 10pm

Sunday 10am to 10pm

Public Holidays 10.00am to 10pm excluding Christmas Day, Boxing Day

and Good Friday

## 4. ASSESSMENT

Section 79C of the Environmental Planning & Assessment Act 1979, requires the following matters to be assessed in respect of all development applications.

## 4.1 The Provisions of any EPI, DCP or Prescribed matter

## 4.1.1 <u>Leichhardt Local Environmental Plan 2000</u>

#### (i) Permissibility

## **Permissibility**

The site is within the Business zone, and is not located within a Conservation Area. A "hotel" is a use that is permissible with consent, under clause 21(3).

The site is located within the vicinity of an Item of Environmental Heritage, being Leichhardt Primary School, and the Town Hall building, and the former tram waiting building on the corner of Marion Street, and Norton Street.

# (ii) Development Standards

There are no relevant development standards.

# (iii) Specific Controls

# Development in the Vicinity of a Heritage item - clause 16(7)

"Consent must not be granted for development on land in the vicinity of a heritage item, unless the consent authority has made an assessment of the effect the carrying out of that development will have on the heritage significance of the heritage item and its setting as well as on any significant views to and from the heritage item."

<u>Comment</u>: Although the site is within proximity of several heritage items, as identified previously in this report, there are no external works proposed meaning that there will be no impact on the integrity of those items.

# (iv) Objectives

Clause 7(3) requires the consent authority to take into consideration the objectives relevant to the proposal. The relevant objectives are:

## General Objectives – clause 13

- (1) The general objective for ecologically sustainable development is to encourage the incorporation of the principles of ecologically sustainable development in the design and management of the built and natural environment to:
  - (a) provide for the preservation of natural resources to ensure their availability for the benefit of future generations, and
  - (b) minimise negative impacts of urban development on the natural, social, physical and historical environment, and
  - (c) maintain and enhance the quality of life, both now and for the future.
- (2) The general objective for the built and natural environment and amenity is to encourage the design of buildings, structures and spaces which are compatible with the character, form and scale of the area to:
  - (a) protect and enhance the area's natural features, character and appearance, and
  - (b) maintain amenity and contribute to a sense of place and community, and
  - (c) provide an environment which is visually stimulating, while being easy to manage and maintain, and

- (d) provide adequate access and linkages to public open space, and
- (e) accommodate the existing and future needs of the locality concerned, and
- (f) protect and conserve environmentally sensitive land, particularly that which is visually exposed to the waters of Sydney Harbour and the Parramatta River and of natural or aesthetic significance at the water's edge.
- (3) The general objective for transport and access is to encourage the integration of the residential and non-residential land uses and improved access to:
  - (a) reduce the need for car travel and subsequent pressure on the existing road networks, and
  - (b) maximise utilisation of existing and future public transport facilities, and
  - (c) maximise the opportunity for pedestrian and cycle links, and
  - (d) identify and ameliorate adverse impacts of all transport modes on the environment, and
  - (e) improve road safety for all users, particularly pedestrians and cyclists.
- (4) The general objective for heritage is to encourage the protection, conservation and enhancement of all heritage, including cultural, historic, aesthetic, social, natural, scientific, archaeological and architectural heritage, within the area to:
  - (a) enhance the character and identity of the suburbs and localities of the local government area of Leichhardt, and
  - (b) prevent undesirable and incremental change which reduces the heritage significance of heritage Items and of a locality.

The hours sought are consistent with the hours of operation issued by the Land and Environment Court with respect to the operation of the Leichhardt Hotel, located at 95 Norton Street (No. 10956 of 1999) on 24 September 2002. The amended hours are consistent with the cessation of bus services along Norton Street and with the hours of closing of the local parking stations.

## Employment – clause 20

The objectives of the Plan in relation to employment are as follows:

- (a) to incorporate the principles of ecologically sustainable development into the design of development by optimising the energy efficiency of buildings and sites, and providing effective landscaping to improve air and water quality and to increase biodiversity, and
- (b) to ensure the sustainable growth of Leichhardt's economy by retaining existing employment uses and fostering a range of new industrial and business uses, to meet the needs of the community, and
- (c) to ensure new buildings are compatible with existing street and allotment patterns, the orientation of existing buildings and the pattern

- of open space. new buildings should complement the style of surrounding buildings, works and landscaped areas, and
- (d) to ensure that buildings to be used for employment are appropriately located and designed to minimise the generation of noise, traffic, car parking, waste, pollution and other adverse impacts, to maintain the amenity of surrounding land uses, and avoid harm to the environment, and
- (e) to reinforce and enhance the role, function and identity of established business centres by encouraging appropriate development and to ensure that surrounding development does not detract from the function of these centres, and
- (f) to integrate residential and business development in business centres, and
- (g) to ensure the continuation of commercial port uses and railway uses, and
- (h) to allow a range of water-based commercial and recreational facilities in waterfront areas in order to retain the visual diversity and maritime character of the area, and
- (i) to ensure non-residential development in residential zones does not detract from the function of the established business centres or adversely impact on amenity.

Anecdotal evidence suggests that the character of Norton Street has changed significantly over the last few years. The Licensing Unit of the Leichhardt Local Area Command Police has lodged a submission regarding this application. That submission notes that since 2002 there have been 189 reported incidents upon licensed premises in Norton Street which have necessitated Police attendance. There have also been 79 alcohol related offences in the street itself.

The Glebe Licensing Police have advised that the amended hours are acceptable. They note that the issue of the permitted numbers of persons in the premises is one for Council to address.

# <u>SEPP 55 - Acid Sulphate Soils and Leichhardt Development Control Plan 42 – Land Contamination</u>

# SEPP No. 55

Clause 7 of State Environmental Planning Policy No.55 – Remediation of Land requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

No additional soil disturbance is proposed.

In accordance with SEPP 55 and DCP No.42 Council is able to conclude that no further assessment of contamination is necessary.

# Acid Sulphate Soils

In terms of Acid Sulphate Soils, the subject site is within a Class 5 area as identified on the Acid Sulphate Soils Maps. Works on land within a Class 5 area are only of risk to Acid Sulphate soils where works occur and the proposed works are likely to lower the watertable below 1m AHD The proposal involves no excavation for footings.

Therefore Council is satisfied that the site is suitable for the use.

# Local Government Act 1993

The subject application seeks approval for a Place of Public Entertainment (POPE) License under s68 of the Local Government Act. The Environmental Planning and Assessment Act, 1979 pursuant to Section 78A allows for a development consent and POPE approval to be considered as part of the one application. The following provides an assessment of the relevant matters under the Local Government Act 1993 relevant to a Place of Public Entertainment, and concurrently addresses the same issues in terms of the Environmental Planning & Assessment Act 1979, assessment in terms of the environmental impact of entertainment in conjunction with the hotel use.

# (i) Approvals required

Section 68 of the Local Government Act 1993 (LGA) defines what activities generally requires approval of the Council. A person may carry out an activity specified in the Approvals Table of Section 68 only with the prior approval of Council. The applicant seeks approval of activities as listed under Section 68 as follows:

The entertainment area shall be limited to the area noted as bar on the plans and not include the dining area, gaming area, kitchen ,toilets and the external balcony. The applicant has applied for 350 persons which is considered excessive and includes areas such as the external balcony where it will be difficult to control noise from patrons . The seating area as shown on the seating plan indicates approximately 120 seating with additional persons being accommodated around the bar area. The public entertainment appears to be limited to DJ and the seating should be maintained otherwise there is a tendency for the area to be used as a nightclub rather than bar, tavern sitting area.

Council's assessment concludes that the entertainment area and hence the POPE should be limited to 200 persons.

The external balcony should not be used for entertainment or as part of the place of public entertainment and controls should be put in place to limit the use of this area for sitting only with the doors to the remainder of the tavern area being closed after 12 midnight and the doors to be part of the duty of security staff to ensure that they are kept closed after midnight.

# Part A Structures or Places of Public Entertainment

The subject application seeks consent for a Place of Public Entertainment License that applies to approximately 200 m <sup>2</sup> of the building, in the first floor area of the tavern. The place of public entertainment shall exclude the gaming room Toilets, kitchen and dining area and shall exclude the external balcony. The maximum number of persons to be accommodated in the area marked up on the plan as bar area with associated seating will be limited to the place of public entertainment.

The use of a building or temporary structure as a Place of Public Entertainment or permit its use as a Place of Public Entertainment is listed under Part A of Clause 68 of the Local Government Act 1993.

Approvals in respect of matters in Part A are regulated by Part 2 of the Local Government (Approvals) Regulation 1999. Clause 7.2 of the Regulation requires as follows:-

- Cl 7.2(1) Matters to be taken into consideration by Council in determining whether to approve the use of a building or temporary structure as a place of public entertainment
- a) Whether any consent required under the Environmental Planning and Assessment Act 1979 for the use of the building or structure for the purpose has been given

This Development application for entertainment is being dealt with concurrently with the activity application which if approved will give consent for the tavern to be used as a place of public entertainment. Issues such as security management, acoustics attenuation and recommendations for the acoustic engineers report will be dealt with elsewhere in the report. Approval has been granted for the use of this part of the premises as a tavern as part of the original application for the Plaza. The use has commenced. A construction certificate has been issued for the fitout of the tavern area and works are complete. The entertainment use, subject to the conditions and limitations on area is satisfactory from a planning point of view.

b) whether the use of the building or structure for the purpose contravenes provision of that Act or of any environmental planning instrument within the meaning of that Act, in so far as the Act or instrument applies to the land

This report recommends approval for the use of the premises as proposed and having regard to the relevant environmental planning instruments as detailed in Section 4 of this report. Subject to consent being granted, the proposal will not contravene the provisions of the Act.

Cl.7.2(2) If the application relates to an existing building or temporary structure, the council must not approve the use of the building or structure as a place of public entertainment unless the council, having regard to the circumstances of the case, is of the opinion that the building or structure, with such alterations as it may require:

(a) will be structurally sound and capable of withstanding the loadings likely to arise from the use, and

The original construction of the Plaza included the intention to use the first floor area as a tavern. The fire rating of floor and ceilings and walls has been dealt within the fitout construction certificate issued earlier this year. The front terrace is also to be used as part of the tavern but will not be included in the area for entertainment nor for the Place of Public Entertainment. The conditions of the construction certificate require the upgrading of the balustrading to the terrace to comply with the requirements of the BCA.

Given that the works for the fitout were inspected and certified by a structural engineer during the course of the construction and the existing building has been certified as structurally adequate, the building is considered to be structurally sound and capable of withstanding the loadings likely to arise from the use.

(b) will contain reasonable provision for the safety of persons proposed to be accommodated in the building or structure, in the event of fire, particularly in relation to egress, and

The building is considered to provide satisfactory safety for persons proposed to be accommodated in the building in the event of fire, particularly in relation to egress.

- ensuring all exit doors from the entertainment area are unobstructed; and
- limiting the number of patrons in this area to 200 persons.
- (c) will contain reasonable provision for the prevention or suppression of fire and the prevention of the spread of fire.

Subject to compliance with conditions imposed with respect to previous development consents and the conditioned construction certificate, the proposal is considered to provide adequate provision for the prevention and suppression of fire and prevention of the spread of fire.

The external balcony should not be used as a place of public entertainment and controls should be put in place to limit the use of this area for sitting only.

## Leichhardt Development Control Plan 2000 (Non-Residential Development)

The following controls of the Leichhardt DCP 2000 are relevant in the consideration of the proposal:

#### General Information

Part A9.0 – Advertising and Signage

No additional signage is proposed.

# **Suburb Profiles**

Leichhardt Commercial Neighbourhood – See comments regarding the character and economic welfare of the commercial area, earlier in this report.

# DCP 2000 - Non-residential Development

## Hours of operation:

# **Approved Hours**

The original hours approved in 2003 are:-

Monday to Friday: 8 am to 12 midnight

Saturday: 8 am to 10 pm

Sunday and public holidays: 10am to 10 pm

(excluding Christmas Day, Boxing Day and Good Friday)

# Refused Hours

The revised hours that were refused: February 2004 were:

Monday to Wednesday: 8 am to 12 midnight

Thursday to Sunday: 8 am to 3 am the following day

Sunday and public holidays: 10 am to 10 pm

(excluding Christmas Day, Boxing Day and Good Friday)

## **Amended Hours Now Proposed**

Monday to Wednesday: 8 am to 12 midnight

Thursday to Sunday: 8 am to 1 am the following day

Sunday and public holidays: 10 am to 10 pm

(excluding Christmas Day, Boxing Day and Good Friday)

The proposed amended hours are consistent with the Leichhardt Hotel, which operates under hours permitted by the Land and Environment Court. The hours are lesser than those of the Royal Hotel, Nortons Hotel and Taverners Hill hotel, all of which are located within close proximity to the subject site.

# Disability Discrimination Act and DCP No. 32 (Design for Equity of Access)

Disabled access and facilities have already been required as part of the previous consents.

# 4.3 The likely environmental, social or economic impacts of the development

Whilst the hours sought are consistent with those of other near-by hotels, it remains the fact that the tavern is not yet operating even under the terms of its current consent. It would be preferable for the tavern to operate under the amended hours, for at least six months followed by a further grant of another six months if the initial period is well-operated, in order that an evaluation can be made of the tavern management's ability to operate a well-run licensed

facility in this locale. After 12 months, subject to good management, the premises could seek by way of a further application, to make the hours permanent.

The entertainment use in the hotel and the approval as a POPE is satisfactory subject to a reduction in the number of patrons and not along the balcony area to be used for entertainment due to noise impacts, nor to be used at all after 12 midnight.

# 4.4 The suitability of the site for the development.

The site is zoned Business and is similar in size to other site in the vicinity which accommodate restaurants and hotels. Provided that any adverse effects on adjoining properties are minimised, this site may be suitable to accommodate the proposed early morning trading hours however this has not yet been satisfactorily demonstrated.

# 4.5 Any submissions to the development.

In accordance with the Leichhardt Development Control Plan No.36 the application was advertised and notified to adjacent properties by letter dated 17/11/2004. There were originally seven submissions received in respect of the earlier application.

Council also received a petition opposing the application, containing 76 signatures. The greater majority of these (66 signatures) are from Leichhardt addresses.

## **Submissions Received In Response To The Amended Proposal.**

In Opposition	In Opposition
J W Jenkins II Duomo Shop 36/23 Norton Street LEICHHARDT. NSW 2040	S M Pritchard 7 Kimberley Drive BOWRAL NSW 2576 (owner of 5/14 McDonald St, Leichhardt)

These submissions raised the same issues as previously, i.e noise, behaviour, drunkenness, anti-social behaviour, too many entertainment licences premises in Leichhardt.

<u>Comment:</u> Noise and anti-social behaviour is a matter which can be addressed by suitable conditions e.g security management plan, restrictions on out door use.

Submissions received in the original application.

In Opposition	In Opposition
G. Brown	A. and L. Scucchi
2/39-45 Norton St	5/39-45 Norton Street
Leichhardt 2040	Leichhardt 2040

I. and V. Barry PO Box 267 Leichhardt 2040 A. Cosentino\* 4/39-45 Norton Street Leichhardt \* head petitioner

Mrs R. Maida 2/39-45 Norton Street Leichhardt 2040 Rev. T. Foster All Souls Anglican Church 126 Norton Street Leichhardt 2040

Mr J. Dabassis Shop 8, 39-45 Norton Street Leichhardt 2040

# The following points of concern were raised:

Additional trading hours are unnecessary as there are other venues in the area which have late night trading, and will lead to further anti-social behavioural problems e.g noise, litter, vandalism, crime, parking problems, litter.

<u>Comment:</u> Noted. Council could observe the practice of the Land and Environment Court by imposing suitable operational management conditions on the tavern.

2. The hotel has not traded since the original consent was granted many years ago – has this approval therefore lapsed, thus necessitating a new development application?

<u>Comment:</u> The tavern was approved as part of the generic approval of the Norton Plaza complex, which included restaurants, shops, supermarket and car parking. This approval was physically commenced within the five year period allowed for by the legislation, and therefore the tavern does not need to seek additional or further development consent for the hotel use.

## 4.6 The public interest.

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environmental are avoided. Due to the fact that the tavern has not yet taken up its consent it is not possible for Council or the community to conclude that the public interest is served by the application. It is suggested that a trial period be entered into with regard to the operation of the premises.

## 5. REFERRALS

#### 5.1 Internal

Building

## **Environmental Planning & Assessment Regulation 2000**

## Building Code of Australia Upgrade - Clauses 93 and 94

The building will comply with all current requirements of the BCA and all essential services will be certified prior to occupation of the building.

#### 5.2 External

The application was referred to the Leichhardt Local Area Command Licensing Police. They have advised that the amended hours are acceptable.

#### 6. SUMMARY & CONCLUSION

This application has been assessed under the heads of consideration of section 79C of the Environmental Planning & Assessment Act, 1979 and all relevant instruments and policies.

Under the circumstances it is considered appropriate at this time to allow the application for the amended trading hours subject to a trial period. The applicant may be able to demonstrate good faith to the satisfaction of Council, the community and the local police, but this should be premised upon empirical observation of the actual operation of the premises over an appropriate time frame.

#### 7. RECOMMENDATION

- A. That Council has no objection to the amended application subject to conditions.
- B. That Council delegate carriage of the Appeal to the Executive Officer.

Adele Cowie **Team Coordinator** 

**Heather Warton** 

**Manager Assessments** 

## BUILDING AND DEVELOPMENT COUNCIL MEETING REPORT FOR 17 FEBRUARY 2004

## ATTACHMENT C



File No ➤ DA030541

**Development Application No** ➤ D/2003/541 and A/2003/10

Property > 55 Norton Street Leichhardt

Date of Receipt ➤ 27 August 2003

Value of Works ➤ Nil

Classification of Building > Class 6

**Applicant's Name** ➤ Jason Bowditch

C/- suite 112, Level 6, 330 Wattle Street Ultimo

2007 (for D/2003/541)

**Applicant's Name** ➤ Peter Medich Properties P/L, Suite 103

55 Norton Street, Leichhardt 2048

(for A/2003/10)

Owner's Name ➤ Peter Medich Properties P/L

Owner's Address > As above

**Advertised** > 26/11/2003 to 10/12/2003

Submissions ➤ Seven in opposition & petition

Inspection Date ➤ December 3, 2003

Date on Councillors List ➤ December 8, 2003

Integrated Development > NO

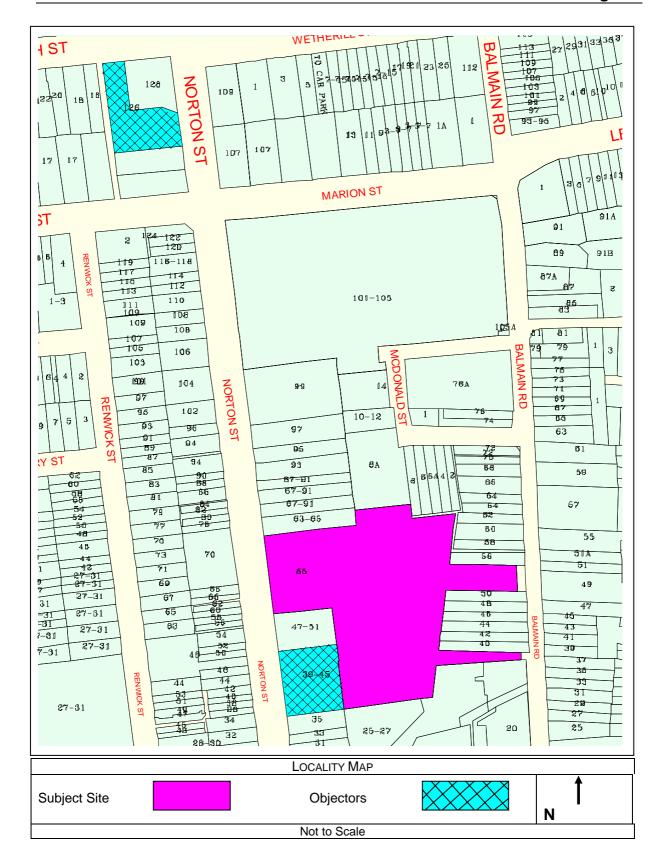
**Brief Description of Proposal** > Operate approved tavern with Place of Public

Entertainment, and extend approved trading hours to be 8.00am to Midnight Monday to Wednesday, 8.00am to 3.00am the following day Thursday to Saturday, 10.00am to 10.00pm Sundays and public holidays excluding Christmas Day, Boxing

Day and Good Friday.

**Recommendation** > Refusal

**Assessment Officer** ➤ Adele Cowie



#### 1. PROPOSAL

The applicant seeks consent to operate the approved tavern with a Place of Public Entertainment licence (not yet approved), and extend approved trading hours to be 8.00am to Midnight Monday to Wednesday, 8.00am to 3.00am the following day Thursday to Saturday, 10.00am to 10.00pm Sundays and public holidays excluding Christmas Day, Boxing Day and Good Friday.

Amended application: It is advised that by letter dated 28 January 2004 the applicant has withdrawn that portion of the application requesting extended hours, but has asked that the POPE application for the approved trading hours be assessed.

#### 2. SITE & LOCALITY DESCRIPTION

The site is located on the eastern side of Norton Street, and forms part of the upper level of the premises known as Norton Plaza.

The site presently accommodates a shopping centre complex containing a supermarket, mixed shops, carparking, and first floor offices. Part of the first floor was approved as a tavern under the terms of the original consent, but has not yet become operational. Because the original consent included numerous aspects which have since been enacted, that original approval for a tavern is still valid.

The locality consists of mixed shops, restaurants, community uses and a nearby primary school.

Adjoining properties accommodate shops, restaurants and cinemas.

#### 3. PROPERTY HISTORY – SITE AND ADJOINING SITES

The complex was approved in 1997, inclusive of a tavern at the first floor. Specifically, the following development approvals have been issued for the tavern.

DA/BA	Description:	Decision
D/2003/575	Fitout for tavern	Approved 29/9/2003
D/2003/344	Infill of void and extension of approved tavern	Approved 19/11/2003
CC/2003/316	Internal fitout for tavern	Approved 3/10/2003

The tavern operation has approved hours of:

Monday to Friday: 8.00am to 12 midnight Saturday 8.00am to 10pm Sunday 10am to 10pm

Public Holidays

10.00am to 10pm excluding Christmas Day, Boxing Day and Good Friday

## 4. ASSESSMENT

Section 79C of the Environmental Planning & Assessment Act 1979, requires the following matters to be assessed in respect of all development applications.

## 4.1 The Provisions of any EPI, DCP or Prescribed matter

## 4.1.1 Leichhardt Local Environmental Plan 2000

## (i) Permissibility

#### Permissibility

The site is within the Business zone, and is not located within a Conservation Area.

The site is located within the vicinity of an Item of Environmental Heritage, being Leichhardt Primary School, and the Town Hall building, and the former tram waiting building on the corner of Marion Street, and Norton Street.

The proposal is for works to a commercial building and this is listed in clause 21(3) as being development allowed only with development consent. Therefore the proposal is permissible development.

#### (ii) Development Standards

There are no relevant development standards.

#### (iii) Specific Controls

## <u>Development in the Vicinity of a Heritage item - clause 16(7)</u>

"Consent must not be granted for development on land in the vicinity of a heritage item, unless the consent authority has made an assessment of the effect the carrying out of that development will have on the heritage significance of the heritage item and its setting as well as on any significant views to and from the heritage item."

<u>Comment</u>: Although the site is within proximity of several heritage items, as identified previously in this report, there are no external works proposed meaning that there will be no impact on the integrity of those items.

## (iv) Objectives

Clause 7(3) requires the consent authority to take into consideration the objectives relevant to the proposal. The relevant objectives are:

## General Objectives - clause 13

- (1) The general objective for ecologically sustainable development is to encourage the incorporation of the principles of ecologically sustainable development in the design and management of the built and natural environment to:
  - (a) provide for the preservation of natural resources to ensure their availability for the benefit of future generations, and
  - (b) minimise negative impacts of urban development on the natural, social, physical and historical environment, and
  - (c) maintain and enhance the quality of life, both now and for the future.
- (2) The general objective for the built and natural environment and amenity is to encourage the design of buildings, structures and spaces which are compatible with the character, form and scale of the area to:
  - (a) protect and enhance the area's natural features, character and appearance, and
  - (b) maintain amenity and contribute to a sense of place and community, and
  - (c) provide an environment which is visually stimulating, while being easy to manage and maintain, and
  - (d) provide adequate access and linkages to public open space, and
  - (e) accommodate the existing and future needs of the locality concerned, and
  - (f) protect and conserve environmentally sensitive land, particularly that which is visually exposed to the waters of Sydney Harbour and the Parramatta River and of natural or aesthetic significance at the water's edge.
- (3) The general objective for transport and access is to encourage the integration of the residential and non-residential land uses and improved access to:
  - (a) reduce the need for car travel and subsequent pressure on the existing road networks, and
  - (b) maximise utilisation of existing and future public transport facilities, and
  - (c) maximise the opportunity for pedestrian and cycle links, and
  - (d) identify and ameliorate adverse impacts of all transport modes on the environment, and
  - (e) improve road safety for all users, particularly pedestrians and cyclists.
- (4) The general objective for heritage is to encourage the protection, conservation and enhancement of all heritage, including cultural, historic, aesthetic, social, natural, scientific, archaeological and architectural heritage, within the area to:
  - (a) enhance the character and identity of the suburbs and localities of the local government area of Leichhardt, and

(b) prevent undesirable and incremental change which reduces the heritage significance of heritage Items and of a locality.

The hours sought are consistent with the hours of operation issued by the Land and Environment Court with respect to the operation of the Leichhardt Hotel, located at 95 Norton Street (No. 10956 of 1999) on 24 September 2002. It is noted however that 3.00am trading is not consistent with the utilisation of public transport along Norton Street. Enquiries with the Leichhardt Bus Depot (courtesy of the Licensing Unit of the Leichhardt Local Area Command Police) reveal that the last bus via Norton Street to the west is at 1.29am on Friday and Saturday night, one and a half hours prior to the close of business sought. Consequently, some doubt remains with regard to the effective movement of patrons from the area, after this time. This issue has not been satisfactorily addressed by the applicant's submission.

Council also notes that none of the privately operated public parking stations along Norton Street operate after 1.00am.

## <u>Urban Design - clause 14</u>

Before granting an application for consent for development within any zone, the consent authority shall consider whether:

- (a) the proposed development has been designed to be compatible with and protect the topography and setting, and
- (b) the proposed development reinforces and enhances the streetscape character of the locality, and
- (c) the proposed development is compatible with the scale and design of neighbouring development, and
- (d) if the proposed development is for the purpose of a building, the building has been designed with adequate provision for the intended occupants, and those in the vicinity of the site of the proposed building, in terms of amenity, and
- (e) the proposed development is ecologically sustainable in terms of: (i) conserving natural resources, and
  - (ii) optimising the use of the natural features of the site, and
  - (iii) optimising the energy efficiency of the site and any buildings on the site, and
- (f) if the proposed development is for the purpose of a building, the building will be provided with adequate landscaping and open space to enhance the quality and appearance of the building while accommodating the needs of its users and maintaining residential amenity, and
- (g) the proposed development establishes and enhances the public domain in terms of the amount, location, design, use and management of public spaces in and around buildings, and
- (h) the proposed development has been designed so as to preserve predominant view lines and vistas enjoyed from parks, reserves, roadways, footpaths and other areas of the public domain, and
- (i) the proposed development encourages complementary land uses, and
- (j) if the proposed development is for the purpose of a building, the building has adequate utility services and drainage facilities, and

- (k) the proposed development maximises opportunities to utilise public transport services and pedestrian and bicycle links, and
- (I) the proposed development satisfies the need for the provision and management of on-site parking.

Nothing in the proposal is inconsistent with the above objectives.

## Employment - clause 20

The objectives of the Plan in relation to employment are as follows:

- (a) to incorporate the principles of ecologically sustainable development into the design of development by optimising the energy efficiency of buildings and sites, and providing effective landscaping to improve air and water quality and to increase biodiversity, and
- (b) to ensure the sustainable growth of Leichhardt's economy by retaining existing employment uses and fostering a range of new industrial and business uses, to meet the needs of the community, and
- (c) to ensure new buildings are compatible with existing street and allotment patterns, the orientation of existing buildings and the pattern of open space. new buildings should complement the style of surrounding buildings, works and landscaped areas, and
- (d) to ensure that buildings to be used for employment are appropriately located and designed to minimise the generation of noise, traffic, car parking, waste, pollution and other adverse impacts, to maintain the amenity of surrounding land uses, and avoid harm to the environment, and
- (e) to reinforce and enhance the role, function and identity of established business centres by encouraging appropriate development and to ensure that surrounding development does not detract from the function of these centres, and
- (f) to integrate residential and business development in business centres, and
- (g) to ensure the continuation of commercial port uses and railway uses, and
- (h) to allow a range of water-based commercial and recreational facilities in waterfront areas in order to retain the visual diversity and maritime character of the area, and
- to ensure non-residential development in residential zones does not detract from the function of the established business centres or adversely impact on amenity.

Anecdotal evidence suggests that the character of Norton Street has changed significantly over the last few years. The Licensing Unit of the Leichhardt Local Area Command Police has lodged a submission regarding this application. That submission notes that since 2002 there have been 189 reported incidents upon licensed premises in Norton Street which have necessitated Police attendance. There have also been 79 alcohol related offences in the street itself.

The Police submission specifically notes that there have been 3 stabbings, a malicious wounding with glass, and a shooting along the street in the last eight months. All of these were reported extensively in the local, and greater

metropolitan press. These figures suggest that whereas once Norton Street was oriented towards family and couples dining out, and had a strong Italian character in that regard, that this may no longer true. Concern is raised that as a reputation for violent behaviour permeates the public consciousness due to reported instances in the media, that the character and consequently economic welfare of the area, will suffer. At this stage, because the tavern has not yet even begun to operate under its current approval, no evidence has been presented to Council to establish that there would be no further erosion of the character of the street.

## Amendment 11 to Leichhardt Local Environmental Plan 2000

Amendment 11 to LEP 2000 has been placed on public exhibition from 11 September 2003 to 8 October 2003 and it applies to all land within the current Leichhardt local government area.

The aims of the draft plan include the rationalisation of the objectives of Leichhardt Local Environmental Plan 2000, in particular Clauses 13(2), (3) and (4), Clause 14 (omitted), Clauses 15, 17 (which clarifies the application of density controls), 20, 24 and 27. Of relevance to this application is Clauses 13, 15 and 17 and it is considered that the proposed development is consistent with the aims of the draft local environmental plan.

Other changes to the plan include amendments to Clause 19(5) relating to building conversion and adaptation, amendments to Clause 23(6)(b), changes to the definition of the landscaped area, which is of relevance to this application. However the change to the definitions does not affect and landscape area calculations previously cited.

Finally the draft local environmental plan proposes changes to Schedule 2 - Heritage Items including minor corrections, the addition of new items and the removal of other items and the rezoning of certain parcels of land. The proposed site is neither affected by changes to Schedule 2 or the rezoning of land.

# <u>SEPP 55 - Acid Sulphate Soils and Leichhardt Development Control Plan 42 – Land Contamination</u>

#### <u>SEPP No. 55</u>

Clause 7 of State Environmental Planning Policy No.55 – Remediation of Land requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

No additional soil disturbance is proposed.

In accordance with SEPP 55 and DCP No.42 Council is able to conclude that no further assessment of contamination is necessary.

## Acid Sulphate Soils

In terms of Acid Sulphate Soils, the subject site is within a Class 5 area as identified on the Acid Sulphate Soils Maps. Works on land within a Class 5 area are only of risk to Acid Sulphate soils where works occur and the proposed works are likely to lower the watertable below 1m AHD The proposal involves no excavation for footings.

Therefore Council is satisfied that the site is suitable for the use.

#### Local Government Act 1993

The subject application seeks approval for a Place of Public Entertainment (POPE) License under s68 of the Local Government Act. The Environmental Planning and Assessment Act, 1979 pursuant to Section 78A allows for a development consent and POPE approval to be considered as part of the one (1) application. The following provides an assessment of the relevant matters under the Local Government Act 1993 relevant to a Place of Public Entertainment at 55 Norton Street Leichhardt.

## (i) Approvals required

Section 68 of the Local Government Act 1993 (LGA) defines what activities generally requires approval of the Council. A person may carry out an activity specified in the Approvals Table of Section 68 only with the prior approval of Council. The applicant seeks approval of activities as listed under Section 68 as follows:

### Part A Structures or Places of Public Entertainment

The subject application seeks consent for a Place of Public Entertainment License that applies to approximately 200 m <sup>2</sup> of the building, in the first floor area of the tavern. The place of public entertainment would be conditioned by Council to exclude the gaming room, toilets, kitchen and dining area and exclude the external balcony. The maximum number of persons to be accommodated in the area marked up on the plan as bar area with associated seating could be limited to the place of public entertainment.

The use of a building or temporary structure as a Place of Public Entertainment or permit its use as a Place of Public Entertainment is listed under Part A of Clause 68 of the Local Government Act 1993.

Approvals in respect of matters in Part A are regulated by Part 2 of the Local Government Regulation 1999.

7.2 <u>Matters to be taken into consideration by Council in determining whether to approve the use of a building or temporary structure as a place of public entertainment</u>

a) Whether any consent required under the Environmental Planning and Assessment Act 1979 for the use of the building or structure for the purpose has been given

This Development application is being dealt with concurrently with the activity application which if approved will give consent for the tavern to be used as a place of public entertainment. Issues such as security management, acoustics attenuation and recommendations for the acoustic engineers report will be dealt with elsewhere in the report. Approval has been granted for the use of this part of the premises as a tavern as part of the original application for the Plaza. The use has not yet commenced. A construction certificate has been issued for the fitout of the tavern area and is expected to start works in early 2004.

- b) whether the use of the building or structure for the purpose contravenes provision of that Act or of any environmental planning instrument within the meaning of that Act, in so far as the Act or instrument applies to the land
- (2) If the application relates to an existing building or temporary structure, the council must not approve the use of the building or structure as a place of public entertainment unless the council, having regard to the circumstances of the case, is of the opinion that the building or structure, with such alterations as it may require:
  - (a) will be structurally sound and capable of withstanding the loadings likely to arise from the use, and

The original construction of the Plaza included the intention to use the first floor area as a tavern . The fire rating of floor and ceilings and walls has been dealt within the fitout construction certificate issued in 2003. The front terrace is also to be used as part of the tavern but will not be included in the area for the place of public entertainment. The conditions of the construction certificate require the upgrading of the balustrading to the terrace to comply with the requirements of the BCA.

Given that the works for the fitout will be carried out in early 2004 and are to be inspected and certified by a structural engineer during the course of the construction and the existing building has been certified as structural adequate, the building is considered to be structurally sound and capable of withstanding the loadings likely to arise from the use.

(b) will contain reasonable provision for the safety of persons proposed to be accommodated in the building or structure, in the event of fire, particularly in relation to egress, and

Subject to the compliance with conditions as recommended as part of the construction certificate for the fitout including the installation of essential services and the spread of fire index and flammability index of materials to be used within the premises, the building is considered to provide satisfactory safety for persons proposed to be accommodated in the building in the event of fire, particularly in relation to egress.

- ensuring all exit doors from the entertainment area are unobstructed; and
- limiting the number of patrons in this area to 200 persons.
  - (c) will contain reasonable provision for the prevention or suppression of fire and the prevention of the spread of fire.

Subject to compliance with conditions imposed with respect to previous development consents and the conditioned construction certificate, the proposal is considered to provide adequate provision for the prevention and suppression of fire and prevention of the spread of fire.

#### POPE assessment under Local Government Act 1993

The POPE area could be limited to the area noted as "bar" on the plans and not include the dining area, gaming area, kitchen ,toilets and the external balcony. The applicant has applied for 417 persons which is considered excessive and includes areas such as the external balcony where it will be difficult to control noise from patrons . The seating area as shown on the seating plan indicates approximately 120 seating with additional persons being accommodated around the bar area, having a total estimated capacity of approximately 200 persons. The public entertainment appears to be limited to DJ and small music groups described in the Statement of Environmental Effects as "trios" and the seating should be maintained otherwise there is a tendency for the area to be used as a nightclub rather than bar, tavern/sitting area.

The external balcony should not be used as a place of public entertainment and controls should be put in place to limit the use of this area for sitting only.

It is noted however that similar restrictions were imposed upon the operation of the Leichhardt Hotel at 95 Norton Street. These restrictions have not been observed by the operators of that establishment, and there have been as a consequence, complaints to Council from the public, and also incidences of violence.

## Environmental Planning and Assessment Act, 1979

b) Whether the use of the building or structure for the purpose contravenes provision of that Act or of any environmental planning instrument applies to the land

The compliance of the tavern with the Act and environmental planning instruments has been satisfied.

- (2) If the application relates to an existing building or temporary structure, the council must not approve the use of the building or structure as a place of public entertainment unless the council, having regard to the circumstances of the case, is of the opinion that the building or structure, with such alterations as it may require:
  - (a) will be structurally sound and capable of withstanding the loadings likely to arise from the use, and

The tavern is contained on the upper floor of the building.

(b) will contain reasonable provision for the safety of persons proposed to be accommodated in the building or structure, in the event of fire, particularly in relation to egress, and

Subject to the compliance of the development with the Building Code of Australia and previous development consent.

#### Leichhardt Development Control Plan 2000 (Non-Residential Development)

The following controls of the Leichhardt DCP 2000 are relevant in the consideration of the proposal:

#### General Information

Part A9.0 – Advertising and Signage

No additional signage is proposed.

#### Suburb Profiles

Leichhardt Commercial Neighbourhood – See comments regarding the character and economic welfare of the commercial area, earlier in this report.

## <u>DCP 2000 – Non-residential Development</u>

#### Hours of operation:

The hours of operation are proposed to be as follows:

8.00am to Midnight Monday to Wednesday, 8.00am to 3.00am the following day Thursday to Saturday, 10.00am to 10.00pm Sundays and public holidays excluding Christmas Day, Boxing Day and Good Friday.

These hours are consistent with the Leichhardt Hotel, which operates under hours permitted by the Land and Environment Court. The hours are lesser than those of the Royal Hotel, Nortons Hotel and Taverners Hill hotel, all of which are located within close proximity to the subject site, however for the reasons listed below, it is not considered appropriate at this point in time to allow trading until 3.00am.

## Disability Discrimination Act and DCP No. 32 (Design for Equity of Access)

Disabled access and facilities have already been required as part of the previous consents.

# 4.3 The likely environmental, social or economic impacts of the development

Whilst the hours sought are consistent with those of other near-by hotels, it remains the fact that the tavern is not yet operating even under the terms of its current consent. Although the application has been accompanied by a Plan of Security Management, Council and the community have not yet been given an opportunity to evaluate the operation of the tavern. In the absence of any current operation, it is not possible to conclude with a satisfactory degree of comfort that the tavern management can deliver their stated intentions. It would be preferable for the tavern to operate under its current terms of approval, for at least six months, in order that an evaluation can be made of the tavern management's ability to operate a well-run licensed facility in this locale. In this regard it would be remiss not to note that the social impacts of late hours trading of other hotels in the vicinity are at present under a cloud, having been linked over the past few months with a series of violent incidents and assaults.

## 4.4 The suitability of the site for the development.

The site is zoned Business and is similar in size to other site in the vicinity which accommodate restaurants and hotels. Provided that any adverse effects on adjoining properties are minimised, this site may be suitable to accommodate the proposed early morning trading hours however this has not yet been satisfactorily demonstrated.

## 4.5 Any submissions to the development.

In accordance with the Leichhardt Development Control Plan No.36 the application was advertised and notified to adjacent properties by letter dated 24/11/2003. There were seven submissions received in respect of this application.

Council has also received a petition opposing the application, containing 76 signatures. The greater majority of these (66 signatures) are from Leichhardt addresses.

In Opposition	In Opposition
G. Brown 2/39-45 Norton St Leichhardt 2040	A. and L. Scucchi 5/39-45 Norton Street Leichhardt 2040
I. and V. Barry PO Box 267 Leichhardt 2040	A. Cosentino* 4/39-45 Norton Street Leichhardt * head petitioner
Mrs R. Maida 2/39-45 Norton Street Leichhardt 2040	Rev. T. Foster All Souls Anglican Church 126 Norton Street Leichhardt 2040

Mr J. Dabassis Shop 8, 39-45 Norton Street Leichhardt 2040

## The following points of concern were raised:

Additional trading hours are unnecessary as there are other venues in the area which have late night trading, and will lead to further anti-social behavioural problems e.g noise, litter, vandalism, crime, parking problems, litter.

<u>Comment:</u> Noted. Council could observe the practice of the Land and Environment Court by imposing suitable operational management conditions on the tavern. With regard to parking, carparking was provided for the tavern as part of the initial consent. It is noted however that the carpark does not currently operate beyond 1.00am. This means that persons parking in the basement but intending to remain until 3.00am will likely be under some incentive to park elsewhere, or move their vehicle just prior to the carpark closing. Alternatively the basement carpark may seek additional hours of operation.

2. The hotel has not traded since the original consent was granted many years ago – has this approval therefore lapsed, thus necessitating a new development application?

<u>Comment:</u> The tavern (not actually a hotel) was approved as part of the generic approval of the Norton Plaza complex, which included restaurants, shops, supermarket and car parking. This approval was physically commenced within the five year period allowed for by the legislation, and therefore the tavern does not need to seek additional or further development consent.

#### 4.6 The public interest.

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environmental are avoided. Due to the fact that the tavern has not yet taken up its consent it is not possible for Council or the community to conclude that the public interest is served by the application. It may be that the additional hours sought up until 3.00am can be accommodated without unacceptable compromise or detriment to public interest, however this should be premised on the ipso facto operation of the hotel, rather than assumptions and written statements of intention.

#### 5. REFERRALS

#### 5.1 Internal

<u>Building</u>

**Environmental Planning & Assessment Regulation 2000** 

Building Code of Australia Upgrade - Clauses 93 and 94

The building has not been fitted out as yet and when constructed will comply with all current requirements of the BCA and all essential services will be certified prior to occupation of the building.

#### 5.2 External

The application was referred to the Leichhardt Local Area Command Licensing Police. A submission has been received from the Licensing Unit strenously objecting to the proposal. The report notes that the incidents of violence both in licensed premises and on the street are significant and have required police attendance on 268 occasions since 2002. The submission notes that there are 4 hotels and one night club within 500m of the site, all of which have extended trading hours. Three of these hotels have section 104 proceedings against them before the Liquor Administration Board for "disturbing the quiet and good order of the neighbourhood."

The submission also notes that that there is no public transport from Norton Street after 12.30am Mondays to Thursdays, and after 1.29am Fridays and Saturdays. Furthermore, in the early hours of the morning taxi services across Sydney are already stretched.

The Police are also concerned with regard to the access and egress from the property. Apart from the stair connection directly to Norton Street, which is steep, the only other point of egress is via the closed plaza itself, suggesting that security may find themselves having to divide attention between these two points, at the expense of good management.

The report concludes with the following

"The serious offences mentioned above are directly attributed to licensed premises and have attracted negative media attention. It is apparent to police that these serious acts, coupled with the constant antisocial behaviour in Norton Street, will almost definitely deter members of the community from visiting this municipality. In conclusion Police strongly object to the granting of this development application on the above grounds and would trust that council sees fit to deal with the application accordingly."

#### 6. SUMMARY & CONCLUSION

This application has been assessed under the heads of consideration of section 79C of the Environmental Planning & Assessment Act, 1979 and all relevant instruments and policies.

The tavern is not yet operational. Consequently, there has been no demonstration by the proprietor that the tavern will or can conduct its business in a socially responsible manner.

Nor can Council draw comfort from the operations of other licensed premises in the vicinity. It is demonstrable that even with the imposition of stringent conditions relating to operation, noise management and security, other nearby licensed premises have failed to deliver an acceptable outcome.

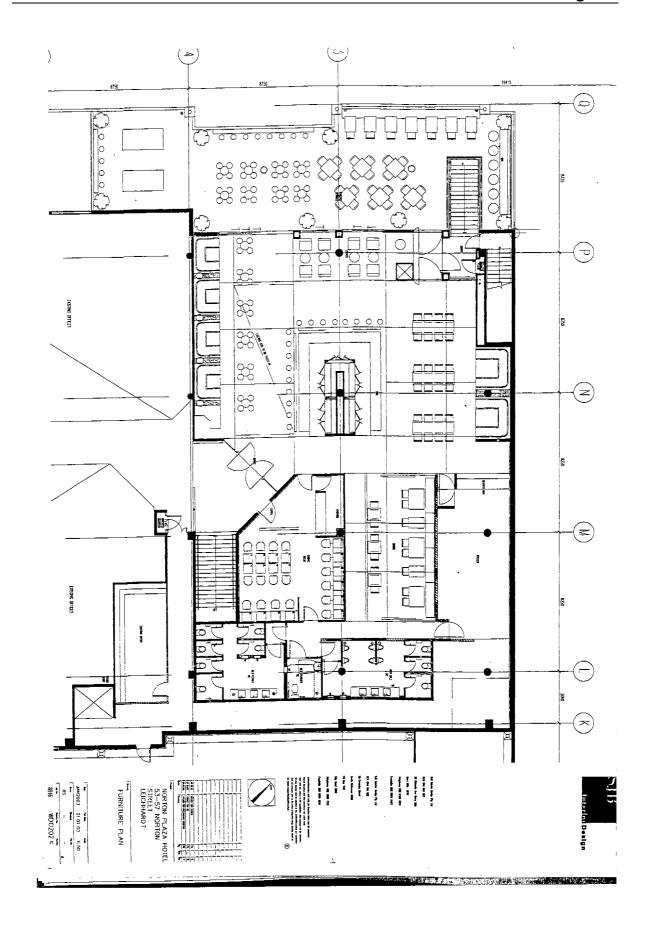
The consequences of such failure are an increase in violence and other crime, and a growing reputation that will deter the broader community from visiting Norton Street. This is not the character that Council's LEP seeks to encourage.

Under the circumstances it is considered inappropriate at this time to allow the application. The applicant may be able to demonstrate good faith to the satisfaction of Council, the community and the local police, but this should be premised upon empirical observation of the actual operation of the premises over an appropriate time frame.

The application is therefore recommended for refusal.

#### 7. RECOMMENDATION

- That Council as the consent authority pursuant to s80 of the Environmental Planning & Assessment Act 1979 refuse Development Application No: D/2003/541 and Activity Application A/2003/10 for extension of operating hours, and issue of Place of Public Entertainment licence for approved tavern at 55 Norton Street Leichhardt on the following grounds:
- 1. The application has failed to demonstrate that the proposal would respond adequately to the objectives identified under clause 20 (e) Employment, of LEP 2000, and has not demonstrated that its operation would *enhance the role, function and identity* of the Norton Street precinct.
- The application has not demonstrated that it is consistent with the statement of desired future character under DCP 2000 for the Leichhardt Commercial Neighbourhood.
- 3. The economic, social and environmental impacts of the proposal are considered to be unacceptable having regard to recent impacts in this locale consequent to extended trading hours for licensed premises.
- 4. It is not considered in the public interest to approve the application.
- 5. The application has failed to adequately demonstrate how the extended trading hours sought can be accommodated in a manner which does not result in unacceptable traffic, parking and pedestrian conflicts, particularly having regard to the absence of public transportation services in the early hours of the morning.



## LEICHHARDT MUNICIPAL COUNCIL

## **REPORT**

**DIVISION:** INFRASTRUCTURE AND SERVICE DELIVERY

SUBJECT: ITEM 33A FLOODPLAIN MANAGEMENT

**AUTHOR:** DAVID PATON, TEAM LEADER DRAINAGE &

**DEVELOPMENT** 

**FILE REF:** F97/01600

**DATE:** 17 FEBRUARY 2005

**WORD PROCESSING REF:** G:\BP\Agendas\2005 agendas\Supplementary

220205.doc

## **DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

Financial Implications: Future State and Federal financial assistance will

be available to Council for progress through the Floodplain Management Process and Council will need to allocate funding on an annual basis

**Policy Implications:** A policy on development of flood prone properties

is proposed, to be implemented through the

preparation of a draft DCP

**Strategic Plan Objective:** 4.2 Built Environment – Land Use

4.3 Built Environment - Infrastructure,

Maintenance and Provision

**Staffing Implications:** Staff will be required to administer the flood study

and prepare controls and draft DCP

**Notifications:** Nil at this stage

Other Implications: In the long term, a draft DCP will have implications

on development potential and development

controls of some sites in the LGA

## 1. Purpose of Report

To advise Council of the need to prepare a draft DCP for floodplain management and to outline the proposed process and to gain support for Council to proceed to prepare draft planning controls.

## 2. Recommendations

- 1. That Council prepare controls to form the basis of a draft DCP for floodplain management.
- 2. That the draft DCP be referred to the Planning Committee.
- 3. That legal advice be obtained for the inclusion of an advisory notation on all Section 149 certificates, advising of the need to check for potential flood affectation.

#### 3. Background

Leichhardt Council has three major creek systems, being White's Creek, Johnston's Creek and Hawthorne Canal, that pass through or form part of its boundaries with neighbouring Council areas. These systems are in the most part owned and managed by Sydney Water with the catchment areas extending outside the LGA.

Sydney Water undertook major flood studies on Whites Creek (1990,1991) and Johnston's Creek (1996) and identified that around 250 properties within the Leichhardt LGA are prone to flooding during the 1 in 100 year flood event. Preliminary assessment by Council staff has identified that more than 50 properties in the vicinity of Hawthorne Canal may be similarly affected.

In addition to the properties identified by the Sydney Water studies, many others are considered likely to be flood prone as a result of their close proximity to Council's existing stormwater drainage lines and overland flow paths.

While Council has mapped the location of its entire drainage system, the number of properties in close proximity to the local stormwater drainage lines and overland flow paths has not been identified at this stage. These properties need to be identified and mapped.

It is worth noting that, while a property may be described as flood affected, this does not in itself describe the extent or level of risk involved. The flooding could have the potential to occur right through the dwelling/building or alternatively could run only through the back yard or a carport.

Many owners are aware that their properties are susceptible to flooding, but there will be some that are unaware as it has been a number of years since a major storm event occurred in this area.

Some new property owners have been alerted of the flooding risk during the development application process when Council has required that a flood study be prepared in support of an application. The flood study is required to ensure that a potentially affected development is adequately protected from future flooding events.

Council currently has no system for alerting new or unaware property owners or potential land purchasers of properties that are affected by flooding, other than through the development application or Pre DA process.

Section 733 of the Local Government Act 1993 (Appendix A) is a reminder of Council's duty of care obligations pertaining to the management of flood affected areas. Statutory protection from liability is only obtained if its provisions are followed. It sets out the manner in which Council can avoid liability in relation to its management of these areas through effective communication and response.

Principally statutory protection is achieved by Councils following the guidelines set out in the NSW Government's Floodplain Management Manual, which was most recently revised in 2001. The 2001 version of the Manual saw the State Government expand the focus of its Floodplain Management Program from principally the larger river systems to include the smaller but equally hazardous creeks and local drainage systems through the Sydney region.

The Floodplain Management Program, together with the Commonwealth's Natural Disaster Risk Management Studies Program, provides financial contributions to Councils throughout NSW for preparation of Flood Studies and Flood Risk Management Plans and eventually for mitigation works. Currently around half of the 60 Sydney Councils are at varying stages of participation in the Programs with the numbers steadily increasing.

Council was offered funding for the Leichhardt Flood Study under these programs on 24 September 2004. The funding for the study was offered on the basis of the following initial contributions:

	Funding	Contributions			
	Ratio	Council	State	Federal	Total
Leichhardt Flood Study	1:1:1	\$10,000	\$10,000	\$10,000	\$30,000

The Leichhardt Flood Study will provide a more detailed analysis of flood affectation on the three major creek systems, together with many of the other local stormwater drainage systems and overland flow paths. It will allow Council to establish flood and risk levels on all affected properties and develop emergency response strategies within the Leichhardt LGA.

This will greatly assist small and large scale developers of flood-affected properties by providing them with detailed information on their individual properties. This will not remove the need for developers to provide flood studies as they will still need to make sure the development is designed to respond to any potential flooding. It will however reduce the cost of flood studies by providing a significant portion of the information required.

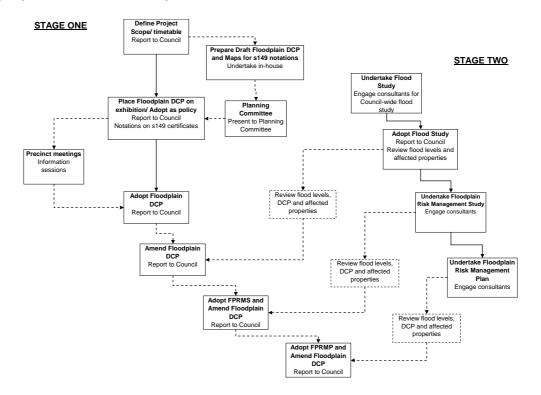
For individual landowners, they will be better informed of the potential risks to their personal safety and the precautions that they should take. For the community as a whole, the cost of injury, loss of life and property damage resulting from significant flooding can be minimised.

The recent Tsunami is a solitary reminder that the timing of extreme weather events or natural disasters cannot necessarily be predicted. The best defence is in sensible planning and provision of suitable emergency response measures.

## 4. Report

## 4.1 Floodplain Management Process

The Leichhardt Flood Study is the first stage of the Floodplain Risk Management Process as defined in the NSW Government's Floodplain Management Manual 2001. The flood study will be followed by a Floodplain Risk Management Study (FPRMS) and Floodplain Risk Management Plan (FPRMP). Below is a flow chart of the process and how it links to the preparation of a Development Control Plan.



As Council steps through this process, the State and Federal Governments will provide funding annually on a 1:1:1 basis, subject to Council following the guidelines set out in the Manual. Once the Floodplain Risk Management Plan has been adopted, Council will be eligible to apply for funding for mitigation works on the same basis.

Following is a broad estimate of the likely cost of the project to Council and a timetable for completion.

	Timeframe	Cost to	<b>Total Cost</b>
		Council	
Flood Study	Commence Early 2005	\$25,000	\$75,000
Digital Terrain	Commence 2005	\$50,000	\$150,000
Model (DTM)			
(* optional survey)			
Flood Risk	Commence 2006	\$25,000	\$75,000
Management			
Study			
Flood Risk	Commence 2007	\$20,000	\$60,000
Management Plan	(Complete 2008)		

<sup>\*</sup> Note that the decision on whether a DTM is required will be addressed through the Flood Study phase of the project and is dependent upon both Council and DIPNR support.

The Floodplain Management Manual outlines an extensive consultative process which must be adhered to through the entire program. This will include resident surveys, information sessions, and consultation with relevant stakeholders, including Sydney Water, SES and possibly representatives from adjoining Councils.

To facilitate this, a floodplain risk management committee will be formed, possibly as a sub committee of an existing committee as a forum for discussion of technical, social, economic, ecological and cultural issues arising during the preparation of the Flood Risk Management Plan.

## 4.2 Implications on flood affected properties

The Floodplain Risk Management Plan will identify strategies to minimise the impact of flooding on current and future property owners. The likely outcomes of the Plan may include:

- Identification of all affected properties, including extent of affectation
- Restrictions/ constraints on development of affected properties, implemented through a Development Control Plan
- Education of residents to ensure flood awareness and preparedness, such that they can:
  - Retreat or evacuate to safety
  - Minimise property damage
- Improve emergency response management, through involvement of the SES, provision of warning signs, etc
- Identify mitigation works to reduce flooding impacts.

Works identified under the Plan will be eligible for 1:1:1 funding through the State and Federal government floodplain management programs.

#### 4.3 Section 149 notations

Legal advice will be obtained for the inclusion of an advisory notation on Section 149 certificates for all properties. The notation would alert new or unaware property owners or potential land purchasers of properties, that checks should be undertaken to establish whether the property is potentially affected by flooding,.

This notation would form an interim measure for alerting potential property purchasers prior to the future adoption of a Development Control Plan.

## 5. **Summary**

Leichhardt Council has a number of properties that are susceptible to flooding. Currently Council has no formal way of alerting current or future owners that a property is flood prone or what restrictions may be placed on its redevelopment.

Council has clear obligations under the Environmental Planning and Assessment Act to ensure that Development Applications are assessed having regard for flooding and to ensure that future owners are alerted when this may lead to restrictions on development. A Development Control Plan for flood prone properties will be prepared, together with notations placed on the Section 149 Certificates.

Council has obtained financial assistance from the State Government to commence a Flood Study for the Leichhardt LGA under its Floodplain Management Program. This will be followed by a Floodplain Risk Management Study and Plan and will form the basis for regular reviews of the DCP.

The Floodplain Risk Management Plan will also formulate a strategy for floodplain management through the Leichhardt LGA, including emergency response, education and flood mitigation works. Council will then be eligible to compete for financial assistance from the State and Federal governments for implementation of these strategies and works.

The following steps will be undertaken throughout the floodplain management process:

- Seek legal advice for the inclusion of a notation on Section 149 certificates alerting new or potential land purchasers of potential flood affectation
- 2. Prepare controls to form the basis of a draft DCP for the management of flood prone land
- 3. Council adopt draft DCP and exhibits it. At this stage it will be able to be used as a guide document. Adoption of the draft DCP will include review of the notations provided on Section 149 certificates on affected properties

- 4. Concurrently engage specialist consultants to prepare flood study. Likely timeframe for study is 12 months, including extensive community consultation.
- 5. Form Floodplain Risk Management Committee (possibly linked to an existing committee)
- 6. Engage specialist consultants to prepare Floodplain Risk Management Study and Plan.
- 7. Implementation of Plan and any proposed flood mitigation works

Ongoing: Review DCP and properties affected by Section 149 notifications as further information becomes available.

#### **APPENDIX A**

#### 733Exemption from liability—flood liable land and land in coastal zone

- (1) A council does not incur any liability in respect of:
  - (a) any advice furnished in good faith by the council relating to the likelihood of any land being flooded or the nature or extent of any such flooding, or
  - (b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.
- (2) A council does not incur any liability in respect of:
  - (a) any advice furnished in good faith by the council relating to the likelihood of any land in the coastal zone being affected by a coastline hazard (as described in a manual referred to in subsection (5) (b)) or the nature or extent of any such hazard, or
  - (b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being so affected.
- (3) Without limiting subsections (1) and (2), those subsections apply to:
  - (a) the preparation or making of an environmental planning instrument or development control plan, or the granting or refusal of consent to a development application, or the determination of an application for a complying development certificate, under the <a href="mailto:Environmental Planning and Assessment Act 1979">Environmental Planning and Assessment Act 1979</a>, and
  - (b) (Repealed)
  - (c) the imposition of any condition in relation to an application referred to in paragraph (a), and
  - (d) advice furnished in a certificate under section 149 of the *Environmental Planning and Assessment Act 1979*, and
  - (e) the carrying out of flood mitigation works, and
  - (f) the carrying out of coastal management works, and
  - (g) any other thing done or omitted to be done in the exercise of a council's functions under this or any other Act.
- (4) Without limiting any other circumstances in which a council may have acted in good faith, a council is, unless the contrary is proved, taken to have acted in good faith for the purposes of this section if the advice was furnished, or the thing was done or omitted to be done, substantially in accordance with the principles contained in the relevant manual most recently notified under subsection (5) at that time.
- (5) For the purposes of this section, the Minister for Planning may, from time to time, give notification in the Gazette of the publication of:
  - (a) a manual relating to the management of flood liable land, or
  - (b) a manual relating to the management of the coastline.

The notification must specify where and when copies of the manual may be inspected.

- (6) A copy of the manual must be available for public inspection, free of charge, at the office of the council during ordinary office hours.
- (7) This section applies to and in respect of:

- (a) the Crown, a statutory body representing the Crown and a public or local authority constituted by or under any Act, and
- (b) a councillor or employee of a council or any such body or authority, and
- (c) a public servant, and
- (d) a person acting under the direction of a council or of the Crown or any such body or authority,

in the same way as it applies to and in respect of a council.

(8) In this section, *coastal zone* has the same meaning as in the *Coastal Protection Act 1979*, and includes land previously in the coastal zone under that Act.

## LEICHHARDT MUNICIPAL COUNCIL

## **REPORT**

**DIVISION:** CORPORATE & INFORMATION SERVICES

SUBJECT: ITEM 37A BUDGET REVIEW - QUARTER 2 2004/05

**AUTHOR:** ROCHELLE MULDER, MANAGEMENT ACCOUNTANT

DAVID MURRAY, FINANCE MANAGER

**FILE REF:** F04/00279

**DATE:** 16 August 2007

**WORD PROCESSING REF:** G:\BP\Agendas\2005 agendas\Supplementary

220205.doc

## **DIRECTOR'S SUMMARY – ORGANISATIONAL IMPLICATIONS**

**Financial Implications:** This review presents a favourable 2<sup>nd</sup> quarter

budget variation of \$180,406 to restore a small

budget surplus.

Policy Implications: Presents Council's progress towards achieving

the priorities identified in the Management Plan

and performance against key indicators.

**Strategic Plan Objective:** Effective Management – maximise the return to

the community, manage Council's physical, financial and human resources to provide efficient services in an honest and responsible manner.

Staffing Implications: Nil

Notifications: Nil

Other Implications: Nil

#### 1.0 PURPOSE OF REPORT

Council adopted the 2004/05 estimates of income and expenditure on 22 June 2004. A system of budgetary control has been established to monitor the actual income received and expenditure incurred each month, and to compare these against the adopted estimates. Council officers conduct monthly budget reviews and report any required changes to the adopted estimates quarterly to Council. Accordingly, this report presents the budget review for the second quarter of the year ending 30 June 2005.

#### 2.0 RECOMMENDATION

That Council adopt decreased net expenditure of \$417,262 and decreased net revenue of \$236,856 and the revised budget surplus for 2004/05 of \$2,841 as detailed in this report.

#### 3.0 BACKGROUND

Council adopted a balanced budget for the 2004/05 financial year on 22 June 2004.

	Adopted Budget 2004/05	
		\$ Millions
Operating		
	Expenditure	42.25
	Revenue	(50.21)
	Total Operating	(7.96)
Capital		
	Expenditure	19.16
	Revenue	(2.81)
	Total Capital	16.35
Other Moveme	nts in Fundina	
Transfer from S		(5.98)
Loan Financing		,
	New Loan	0.00
	Loan Capital Repayments	2.64
	Net reduction in loan	2.62
Transfer to Res	erves	(5.05)
Total Net Budg	jet (change in working funds)	0.00

Subsequently, in the 1<sup>st</sup> Quarter of 2004/05, detrimental budget changes were reported to Council resulting in a budget deficit of \$177,565.

Council resolved to review its budget in order to restore a balanced position.

#### 4.0 REPORT

## 4.1 Quarter 2 Budget Variations

Council's budget has been reviewed for the second quarter to 31 December 2004. The review has identified a favourable change to the adopted budget of \$180,406 as follows:

BUDGET VARIATIONS – QUARTER 2 2004/2005				
Item		Description	\$	Favourable / Unfavourable
1	Decreased revenue	<ul> <li>Planning Certificates</li> </ul>	(15,000)	Unfavourable
2.1	Decreased revenue	<ul> <li>Grant "Roads to Recovery"</li> </ul>	(194,993)	Unfavourable
2.2	Decreased expenditure	<ul> <li>Roads to Recovery Program</li> </ul>	194,993	Favourable
3	Decreased expenditure	<ul> <li>Merchant Charges</li> </ul>	30,000	Favourable
4	Increased revenue	<ul> <li>Investment Income</li> </ul>	100,000	Favourable
5	Increased revenue	<ul> <li>Leichhardt Town Hall Hire</li> </ul>	20,000	Favourable
6	Decreased revenue	<ul> <li>Library Rent</li> </ul>	(50,000)	Unfavourable
7	Decreased revenue	<ul> <li>Assessment Fees</li> </ul>	(60,000)	Unfavourable
7.1	Decreased revenue	<ul> <li>Assessment Fees</li> </ul>	(76,300)	Unfavourable
8	Increased expenditure	<ul> <li>Community Bus Labour</li> </ul>	(20,000)	Unfavourable
9	Increased revenue	<ul> <li>Recoverable Works Program</li> </ul>	85,000	Favourable
10	Reduced revenue	<ul> <li>Street Furniture Advertising</li> </ul>	(129,563)	Unfavourable
10.1	Increased expenditure	<ul> <li>Street Furniture Maintenance</li> </ul>	(57,731)	Unfavourable
10.2	Increased revenue	<ul> <li>Street Furniture Revenue</li> </ul>	159,000	Favourable
11	Decreased expenditure	<ul><li>Labour</li></ul>	240,000	Favourable
12	Decreased revenue	<ul> <li>Parking Fines</li> </ul>	(250,000)	Unfavourable
12.1	Decreased expenditure	<ul> <li>Fine Processing</li> </ul>	140,000	Favourable
13	Increased revenue	<ul> <li>Parking Meters</li> </ul>	100,000	Favourable
13.1	Decreased expenditure	<ul> <li>Parking Meters</li> </ul>	50,000	Favourable
14	Increased expenditure	<ul> <li>Business Promotion</li> </ul>	(60,000)	Unfavourable
15	Increased revenue	<ul> <li>Ordinance Fines</li> </ul>	50,000	Favourable
16	Increased expenditure	<ul><li>– Major Issues (Telstra)</li></ul>	(20,000)	Unfavourable
17	Decreased expenditure	<ul><li>Style Manual</li></ul>	10,000	Favourable
18	Increased expenditure	<ul> <li>Legal Costs (Section 611 appeal by Telstra)</li> </ul>	(30,000)	Unfavourable
19	Decreased expenditure	– Insurance	100,000	Favourable
20	Increased expenditure	<ul> <li>Recruitment Advertising</li> </ul>	(150,000)	Unfavourable
21	Increased expenditure	<ul><li>Event Funding</li></ul>	(10,000)	Unfavourable
22	Increased revenue	– Printing	25,000	Favourable
Total 2 <sup>nd</sup> Quarter Change		180,406	Favourable	
	Ist Quarter Budget chang	ges	(177,565)	Unfavourable
	Revised 2004/05 Budget		2,841	Favourable

## Item 1 – Planning Certificates Decreased revenue \$ 15,000

The number of Section 149 Planning Certificates is less than originally forecast (\$200,000).

Item 2 – Roads to Recovery	Decreased grant revenue	\$194,993
	Decreased expenditure	\$194,993

Council has received notification that the RTA Roads to Recovery Grant contribution for the 2004/05 year is \$30,007. This amount is \$194,993 less than originally

budgeted (\$225,000). The roads to Recovery Program runs over a 4 year period and Council received advance funding in prior years. Council has received it's final year 4 payment of \$30,007 in 2004/05.

## Item 3 – Merchant Charges Decreased expenditure \$ 30,000

Following a review of bank charges in July 2004 Council negotiated a reduced merchant service charge. This combined with a restructure of rates agency payment facilities has resulted in savings to the merchant service charges.

## Item 4 – Investment Income Increased revenue \$100,000

Favourable investment conditions and maintenance of high levels of reserve funding for investment has resulted in increased investment income.

## Item 5 – Leichhardt Town Hall Hire Increased revenue \$ 20,000

There has been an increased utilisation of Leichhardt Town Hall hire than provided for in the budget.

## Item 6 – Library Rent Decreased revenue \$ 50,000

The retail space at the Leichhardt Library is unlikely to be rented out in the 2004/05 year – (original budget \$50,000). This matter has previously been reported to Council and a further report will be presented in the near future.

## Item 7 – Assessment Fees Decreased revenue \$ 60,000

Budgeted revenue of \$440,000 will not be achieved due to a decrease in volume of large development applications together with an increase in application withdrawals.

#### Item 7.1 – Assessment Fees Decreased revenue \$ 76,300

In 2002/03 a development bond received by Council was recognised as income, rather than as a refundable bond. This has the effect of overstating revenue in that year. Council has received a request to refund the bond, which will result in an offsetting reduction in revenue in 2004/05.

## Item 8 – Community Bus Labour Increased expenditure \$ 20,000

There has been an increase in the number of hours that Council provides a driver for Council's community bus to meet the needs of the aged programs that are delivered.

## Item 9 – Recoverable Works Program

Increased revenue \$85,000

An improvement in the net return from Council's recoverable works (such as driveway and roads restoration) has been achieved compared to the original estimates.

Item 10 – Street Furniture	Reduced revenue	\$129,563
	Increased expenditure	\$ 57,731
	Increase revenue	\$159,000

Council resolution CW19/04 from the December Council meeting recognised a settlement of the street furniture contract with JC Decaux. The settlement included the write-off of prior year income (\$129,563), settlement of prior year expenses (\$57,731) together with the commencement of unbudgeted revenue stream for future years (\$159,000).

## Item 11 – Labour Decreased expenditure \$240,000

A review has been undertaken across all divisions to identify any labour savings that are available due to staff turnover and recruitment delays.

Item 12 – Parking Fines	Decreased revenue	\$250,000
_	Decreased expenditure	\$140,000

Council's parking fine revenue collections have not met budget targets due to a number of factors – including increased compliance with parking meters, staff turnover level in the compliance section and changed patrol procedure. The reduction in revenue has been partially offset by decreased expenditure for the period of \$140,000.

Item 13 – Parking Meters	Increased revenue	\$100,000
	Decreased expenditure	\$ 50,000

Revenue is in excess of budget due to increased compliance – as noted in Item 12 above, together with maintenance savings.

# Item 14 – Leichhardt & Balmain Business Promotion Increased expenditure \$ 60,000

Council resolved at the November meeting to allocate \$30,000 for each of the Leichhardt / Annandale and Balmain / Rozelle business centres.

#### Item 15 – Ordinance Fines Increased revenue \$ 50,000

Council's Ordinance Inspectors achieved increased revenue of \$50,000 as a result of increased activity particularly in the areas of footpath compliance and illegal use of roads.

**Item 16 – Major Issues (Telstra)**Increased expenditure \$20,000

Council resolved at the August Council meeting to allocate \$20,000 from its major projects budget for legal expenses regarding the proposed Telstra tower at 55 Norton Street.

## Item 17 – Style Manual

Decreased expenditure \$ 10,000

The proposed project for Style Manual will not be completed in 2004/05 year and can be reconsidered for the 2005/06 budget.

# Item 18 – Legal Costs (Section 611 appeal by Telstra) Increased expenditure \$ 30,000

In respect of the Telstra High Court challenge regarding Section 611 charges, Council has incurred additional expenses for Telstra's legal costs.

## Item 19 – Insurance Decreased expenditure \$100,000

Due to an easing of the insurance market, Council negotiated a more competitive public liability insurance premium in 2004/05 year.

## Item 20 – Recruitment Advertising Increased expenditure \$150,000

Council anticipated a reduction in advertising costs following the boundary change that has not materialised. The competitive nature of the job market and subsequent difficulty in filling key positions has resulted in higher than forecast costs due to the use of agencies and readvertising.

#### Item 21 – Event Funding Increased expenditure \$ 10,000

Council resolution C292/04 approved additional funding for the events program.

## Item 22 – Printing Income Increased revenue \$ 25,000

There has been an increase in usage of internal printing services which has resulted in increased revenue.

#### 5.0 SUMMARY

This budget review has identified a net favourable change to the budget of \$180,406. If maintained, this will result in a working funds budget surplus for 2004/05 of \$2,841.

## LEICHHARDT MUNICIPAL COUNCIL

# **REPORT**

**DIVISION:** CORPORATE AND INFORMATION SERVICES

SUBJECT: ITEM 43A PROPOSED ROAD CLOSURE - PART WHITES

**CREEK LANE ANNANDALE** 

**AUTHOR:** LYN GERATHY, MANAGER, PROPERTY & COMMERCIAL

**SERVICES** 

**FILE REF:** F03/00316

**DATE:** 8 FEBRUARY 2005

**WORD PROCESSING REF:** G:\BP\Agendas\2005 agendas\Supplementary

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## **DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

**Financial Implications:** Receipt of sale proceeds at amount to be valued.

Policy Implications: Nil

**Strategic Plan Objective:** 5.2 Effective Management

Staffing Implications: Nil

**Notifications:** The Applicant (the owner of 7 Clarke Street

Annandale.)

Other Implications: Nil

## 1. Purpose of Report

To advise Council of an application for closure and sale of part of a road and to recommend that Council apply to the Department of Lands for the road closure.

## 2. Recommendations

- 1. That Council apply to the Department of Lands for closure of that part of White's Creek Lane Annandale which has been fenced within 7 Clarke Street Annandale as indicated on the survey plan attached to the report.
- 2. That the closed part of the road be sold to the owner of 7 Clarke Street Annandale for market value in accordance with an independent valuation plus the costs of and in connection with the road closure and sale.
- 3. That authority be delegated to the General Manager to sign all applications, contracts for sale, transfers and other documents to give effect to the above resolutions.

## 3. Background

Part of Whites Creek Lane has been fenced in as part of 7 Clarke Street Annandale since at least 1974 and perhaps since before 1904.

The new owners of 7 Clarke Street Annandale have applied to Council for the closure of the road and transfer to them of the relevant part of the lane.

## 4. Report

Annexed are copies of:

- 1. a location plan. Note the width of the lane beside 7 Clarke Street, which is highlighted. The hand drawn dotted line indicates the existing fence and the area of road sought to be closed.
- 2. FP 927291 (Licensed Surveyor's Description) dated 1904.
- 3. survey plan by Frank Mason dated 1974 of 7 Clarke Street Annandale. On the survey, the relevant section of the lane is hatched.

The lane was set out in DP 1116 in 1883 and was declared to be public road in 1958 by notice published in the Gazette. Most of Whites Creek Lane is bitumen and used as a lane by the general public, but the subject section has been fenced within 7 Clarke Street for at least 30 years and so appears not to have been used as lane for many years if ever. The line markings on DP 927291 indicate that the subject section of the lane may have been fenced in and used as part of 7 Clarke Street since before 1904. The fence follows the line of the other side of the lane, so that physically, the lane appears the same width here as it does to the north.

The new owners of 7 Clarke Street have applied to Council for the relevant section for the public lane to be closed and transferred to them.

In view of the length of time the part of the lane has been fenced in, and having regard to the additional width of the formal road reserve in the affected area, it does not appear that closure would inconvenience adjacent property owners or the general public, however, traffic considerations are investigated fully as part of the road closure process. The approval of the RTA will also be sought as part of the road closure process. Service authorities have had preliminary notifications and have not objected to the proposed road closure. A formal notification will also occur as part of the road closure process. Surrounding property owners have been advised of the application and none have made any objections or other submissions at this stage. Any application for road closure is advertised by the Department of Lands and any objections will have to be satisfied. Road closure also requires development consent as a subdivision and this would also be notified in the usual way, and any objections considered.

It is recommended that Council apply for the formal closure of this part of the road and transfer it to the owners of 7 Clarke Street. In the usual way, the applicant/purchaser is to pay the costs of the road closure. Despite the area being enclosed within 7 Clarke Street for many years, as it would be a transfer of public land to private ownership, it is recommended that the closed part of the road be sold for market value. This would be determined by an independent valuer.

## 5. <u>Summary/Conclusions</u>

Council has received an application for the closure as public road of part of Whites Creek Lane Annandale. For the road closure to proceed, Council must successfully apply to the Department of Lands for the part of the road to be closed and must obtain development consent for the road closure as it is considered to be a subdivision. It is recommended that Council make the applications and proceed with the part road closure and sale to the adjacent owners.

## LEICHHARDT MUNICIPAL COUNCIL

# **REPORT**

**DIVISION:** CORPORATE AND INFORMATION SERVICES

SUBJECT: ITEM 43B INFORMATION CENTRE, LEICHHARDT

**MARKETPLACE - PROPOSED RELOCATION** 

**AUTHOR:** LYN GERATHY, MANAGER, PROPERTY AND

COMMERCIAL SERVICES

**FILE REF:** F03/00218

**DATE:** 11 FEBRUARY 2005

**WORD PROCESSING REF:** G:\BP\Agendas\2005 agendas\Supplementary

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## **DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

**Financial Implications:** Costs savings for painting and refurbishment of

MMCIC premises.

Policy Implications: Nil

Strategic Plan Objective: 1.1 Social & Support Services; 1.4 Cultural

Development; 1.5 Community Support; 5.1 Enhanced Image; 5.2 Effective Management; 5.4

Accessibility; 5.5 Economic Development.

Staffing Implications: Nil

Notifications:

Other Implications: Nil

## 1. Purpose of Report

To advise Council of the proposed relocation of its community information centre within Leichhardt Marketplace and to recommend that Council negotiate to achieve the best outcome.

## 2. Recommendations

- That Council agree to the relocation of its information centre within Leichhardt Marketplace, corner Flood and Marion Street Leichhardt, subject to terms and conditions acceptable to the General Manager.
- 2. Authority is delegated to the General Manager to negotiate and finalise the terms of any agreement for relocation and to execute all relevant documents on behalf of Council.

## 3. Background

In November 1993, Land & Environment Court proceedings relating to DA 286/89 for Leichhardt Marketplace, corner Flood and Marion Streets, Leichhardt, were settled by the making of consent court orders for development consent. The conditions of consent included:

"The owners and/or managers of the complex shall provide suitable accommodation for the establishment of an information / advocacy / referral service and / or migrant advisory service within the complex to the satisfaction of Council's Ethnic Affairs Advisory Committee and shall meet the following outgoings:

- I.Fitting out of the area set aside for the service to the value of \$5,015.00;
- II.Maintenance and cleaning costs of the accommodation;
- III. Electricity and telecommunications (excluding ISD and STD telephone communications) costs;
- IV.Contribution to staffing the services with 1 lump sum payment of \$10,000.00.

Such sums of payment and contribution to be applied exclusively for the purpose for which those sums are paid pursuant to the provisions of section 94 of the Environmental Planning and Assessment Act 1979."

The space was determined, being 29m<sup>2</sup> underneath a pedestrian ramp, with a door at right angles to the adjacent shop, and numbered shop 52A. Council established the Marketplace Migrant and Community Information Centre (MMCIC).

The shopping centre owners and Council entered into a form of lease, for 10 years with rolling 10 year options to renew, in similar terms to the retail leases for the complex but including reference to the Court Orders. As is usual for retail complexes, the lease gives the landlord a right to require the tenant

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(Council) to move to a different space in the centre if the landlord wants to "refurbish, redevelop or extend" the centre and the tenant's premises are required for that work. The lease requires that the landlord must endeavour to ensure that new premises have similar access and visibility but in any event must provide suitable accommodation as required by the court order. The lease requires the landlord to pay the reasonable costs of relocation, including fitting out the new premises to the same standard as the existing premises.

## 4. Report

The centre manager of Leichhardt Marketplace has advised that they are to construct disabled toilets and expand the parents' room in the shopping centre, and that this must be done in the area adjacent to the current toilets, which requires the space used for MMCIC being shop 52A, as well as shop 52.

Rather than serve a relocation notice as the centre owner is entitled to do under the lease, the centre manager approached Council to negotiate the move. Council officers also consider it better to negotiate the relocation.

Initially, the centre manager offered Council a space for a kiosk but this was rejected by Council officers. The centre manager subsequently suggested another location for a 30m² shop to be newly created. This has been inspected by Council's Property Manager, Administration Manager and Community Centres Co-ordinator and is considered satisfactory subject to conditions relating to fitout and the relocation itself. Annexed is a plan of the shopping centre with the current premises shop 52A and the area of the proposed new shop indicated. The following matters are relevant:

- 1. The current premises are in a corner, under the ramp, adjacent to minor shops and the toilets, with a door only to the common area of the centre, and are not very visible. The new premises are further down the centre adjacent to the centre management office, but are immediately adjacent to the relocated internal public steps and have a shop front as well as a door to the common parts of the centre. Council's property manager considers the accessibility and visibility of the new premises will be as good and probably superior to the current space.
- 2. If Council stayed in the current premises, it would be responsible for any necessary painting, re-carpeting and refurbishment. However, if the landlord requires relocation, the landlord must pay the costs. Under a relocation notice, the landlord is only required to pay to fitout the new premises to the same standard as the current premises, but Council officers have been negotiating for the landlord to fitout the premises to a better standard. As well as new carpet and paint, the kitchenette will be superior and the landlord is to pay for wall mounted leaflet display cases and new chairs.
- 3. As part of the relocation costs, the landlord is to pay for new signage, direction boards and advertising of the centre and its new location.

Council may also be influenced by the proposed work to the centre including disabled toilet facilities and parents' room, which are of public benefit, rather than increasing rental space.

The community users of the MMCIC space are aware of the proposal to relocate within the centre. Council's Community Centres Co-ordinator is in discussions with and will be co-ordinating the relocation by the different community groups. She will also be involved with the signage and advertising of the relocated MMCIC.

Council will have little choice but to relocate within the Centre if the centre owner exercises its rights under the lease. It is recommended that Council negotiate the relocation to obtain the maximum benefit. Any agreements reached, including the work the landlord is to do at its expense, would be documented in a written agreement, the terms of which will have to be satisfactory from Council's perspective. It is recommended that Council agree to a negotiated relocation, rather than a forced relocation, and delegate authority to the General Manager to finalise the terms of the agreement.

## 5. Summary/Conclusions

A negotiated relocation gives Council the opportunity to obtain a satisfactory outcome, and is therefore recommended.

## LEICHHARDT MUNICIPAL COUNCIL

# **REPORT**

**DIVISION:** CORPORATE AND INFORMATION SERVICES

SUBJECT: ITEM 43C LANE OFF MOORE STREET, LEICHHARDT

**AUTHOR:** LYN GERATHY, MANAGER, PROPERTY AND

**COMMERCIAL SERVICES** 

**FILE REF:** F03/00285

**DATE:** 11 FEBRUARY 2005

**WORD PROCESSING REF:** G:\BP\Agendas\2005 agendas\Supplementary

220205.doc

## **DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

Financial Implications: Possible future costs to Council to undertake work

to lane, if required.

**Policy Implications:** Control of roads in the municipality and meeting

the needs of the community.

**Strategic Plan Objective:** 5.1 Enhanced Image.

5.2 Effective Management.

Staffing Implications: Nil

Notifications: Owners of 217-229 Balmain Road, 30 Alfred, and

111 and 119 Moore Street, Leichhardt.

Other Implications: Nil

## 1. Purpose of Report

To advise Council of issues relating to a lane off Moore Street, Leichhardt and to recommend that Council dedicate it as a public road.

## 2. Recommendations

- That under section 16 of the Roads Act, 1993, after giving the required notice under section 17, Council publish a notice in the Government Gazette to dedicate as public road the lane which runs off Moore Street (between 111 and 119 Moore Street), Leichhardt.
- That authority is delegated to the General Manager to sign, on behalf of Council, the required notice under s.17 and the Gazette Notice under s.16 of the Roads Act, 1993 and all other documents necessary or desirable to implement the above resolution.
- That if at any time Council undertakes construction or paving of any kerbing or guttering or footway along the lane, Council will require a contribution from adjoining land owners under s. 217 of the Roads Act, 1993.

## 3. Background

When development applications were lodged by the owners of 219 and 221 Balmain Road Leichhardt, the issue of ownership of the rear lane arose.

Ownership of this lane, whether it is a private lane or a public road, has arisen as an issue at various times since at least 1932. Council has previously acted on occasions as if the lane were a public road but at other times has expressed the opinion that it is a private lane. The lane has not been dedicated as public road but as it was set out in a pre-1907 plan, it was considered that it may be a public road under common law. Legal opinion on this is divided but to investigate it further and obtain more specialised legal advice is likely to cost several thousand dollars, which may be unnecessary if Council decides to exercise its rights to declare the lane a public lane.

The matter was investigated to try to find a solution to the difficulties this situation presented. The Roads Act, 1993 sets out a procedure for a Council to declare old lanes such as this as public roads.

## 4. Report

Attached is a plan showing the lane, which runs off Moore Street between numbers 111 and 119, and runs behind 217 to 229 Balmain Road and to the rear of 30 Alfred Street Leichhardt. Most of the houses have garages opening onto the lane.

The Roads Act, 1993 allows a Council to declare by notice published in the Gazette that a lane in a pre-1907 plan is a public road. Prior to doing so, a notice to the "owner" has to be affixed to the lane to allow 28 days for objections. However, as the adjacent property owners think it is already a public lane and want it to be a public lane, no difficulties are expected. The procedure is simple and inexpensive.

It is considered appropriate to dedicate this lane as a public lane in view of the doubts as to whether or not it is already a public lane under common law, the existing garages opening to the lane, and the difficulties and costs facing adjacent property owners if the matter is not resolved by the lane being declared a public lane. For example, if the lane is not a public lane, the adjacent property owners cannot lodge development applications involving access from the lane without obtaining the written consent of the owners of the lane, but the owners of the lane are not known. The owners may be the heirs of the original subdivider, who would be difficult if not impossible to trace. Another possibility is that all the owners of properties backing onto the lane could join together and make an application that they jointly own the lane. or each owns part of the lane, with all having rights of way over it. This may be able to be done by a possessory title application to the titles office (LPI) but more likely would require court proceedings for a declaration, which would be a time consuming and expensive process. Another possibility is that one of the residents may commence court proceedings seeking a declaration that the lane is a public road, which also would be a time consuming and expensive matter. It is far from certain that any of those applications would be successful. It is clear that unless Council takes the easy and inexpensive step of declaring the lane as a public road, the adjacent property owners are faced with a very difficult task of sorting out ownership, protecting their access rights and lodging their development applications.

If Council does accept ownership, there may be some costs in the future. It is likely that some drainage work will have to be done on the lane. There is already a stormwater drain and Council has an easement in its favour, so a large part is already in place. However, it may be necessary to construct pipes and kerb and guttering to direct the water flow down the lane to the stormwater drain, and if that is done, it may be necessary to re-grade or bitumen the lane. Initial advice is that the work could cost in the order of \$70,000. Under section 217 of the Roads Act, Council can recover from the adjacent owners half the cost of kerbing and guttering the lane, which of necessity will include some of the drainage work, but Council will still have to pay for most of the work. However, the work may not have to be done immediately and Council could include it in a future budget.

Council officers are of the opinion that despite the possible costs of work, the circumstances taken together make this a case where Council should dedicate the lane as public road and take over responsibility for it.

## 5. <u>Summary/Conclusions</u>

There have long been arguments over the status and ownership of this lane. A resident, whose property backs onto the lane, requires the consent of the unidentified owner of the lane to lodgement of a development application, unless the lane is public road. Council officers are of the opinion that in consideration of all the circumstances of this case, Council should dedicate the lane as public road, which is a simple procedure under the Roads Act, 1993.

## LEICHHARDT MUNICIPAL COUNCIL

# **REPORT**

**DIVISION:** CORPORATE AND INFORMATION SERVICES

SUBJECT: ITEM 43D DRAINAGE RESERVE, PIPER LANE

**ANNANDALE - PROPOSED DEDICATION AS PUBLIC** 

**ROAD** 

**AUTHOR:** LYN GERATHY, MANAGER, PROPERTY AND

**COMMERCIAL SERVICES** 

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## **DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

Financial Implications: Nil

**Policy Implications:** Customer Service; Equity; Honesty & Integrity;

Consistency in Decision Making.

**Strategic Plan Objective:** 2.2 Parking; 2.3 Road Safety; 4.1 Housing

Development; 5.1 Enhanced Image; 5.2 Effective

Management; 5.3 Community Involvement.

Staffing Implications: Nil

**Notifications:** The owner of 164 Johnston Street Annandale

Other Implications: Nil

## 1. Purpose of Report

To advise Council of a problem which has arisen in Piper Lane Annandale and to recommend a solution.

## 2. Recommendations

- 1. That Council dedicate lot 1 DP 724317 as public road under section 10 of the Roads Act, 1993.
- 2. That authority is delegated to the General Manager to execute on behalf of Council all documents required to implement resolution 1.

## 3. Background

When the current owners of 164 Johnston Street Annandale lodged a development application which included a garage opening to what they thought was a rear lane, it was discovered that part of the lane was actually a lot in a DP and registered to the Estate of the late Mr M A Green (presumably the original subdivider.) The matter was investigated to try to find a solution to the issues this brought to light.

## 4. Report

Annexed to this report is a plan with the subject strip of land highlighted. It joins number 154-156 and runs behind 158 to 176 Johnston Street Annandale. Its legal description is lot 1 DP 724317.

Nearly every house from 154-156 to 176 has a garage opening onto the drainage reserve, other than 164 Johnston Street. Houses from 207 to 217 Annandale Street with garages opening to Piper Lane need to cross onto the drainage reserve to have enough room. While it looks like part of the lane and has been considered to be part of a public lane, it has not been dedicated as a public lane.

Investigation revealed that the strip of land is a drainage reserve and vested in Council. However, this is not enough to give enforceable access rights to the many houses with existing garages nor to satisfy the requirement for the current DA by the owners of 164 Johnston Street.

However, Section 10 of the Roads Act 1993 states that a Council may, by notice published in the Gazette, dedicate any land held by it as public road. The cost is about \$100 to publish the notice and have the dedication noted by LPI NSW.

It is recommended that Council dedicate the strip of land as road.

## 5. Summary/Conclusions

Lodgement of a development application brought to light an anomaly between the legal position and the practical treatment of a strip of land. The recommendation is to reconcile these by dedicating the land as public road.