

RELEVANT INFORMATION FOR COUNCIL

FILE: D/2017/725 **DATE:** 16 February 2018
TO: Lord Mayor and Councillors
FROM: Graham Jahn, Director City Planning, Development and Transport
SUBJECT: Information Relevant To Item 9.11 - Development Application: 161
Castlereagh Street, Sydney - At Council - 19 February 2018

Alternative Recommendation

It is resolved that consent be granted to Development Application No. D/2017/725, subject to the conditions as detailed in Attachment A to the subject report to the Planning and Development Committee on 12 February 2018, amended as follows (with additions shown in ***bold, italics*** and deletions shown in ~~strikethrough~~):

(2) MAXIMUM CAPACITY OF PERSONS

- (a) The maximum number of patrons permitted in the premises at any one time is 680 persons being made up of (390 indoors and 290 outside).
- (b) The capacity for each area shall not exceed the following maximum numbers at any given time.
 - (i) Area 1 (western bar) 288 patrons;
 - (ii) Area 2 (outdoor seating area) 16 patrons;
 - (iii) Area 3 (outdoor seating area) 66 patrons;
 - (iv) Area 4 (eastern bar) 102 patrons;
 - (v) Area 5 (outdoor seating area) 52 patrons;
 - (vi) Area 6 (outdoor seating area) 12 patrons;
 - (vii) Area 7 and 8 (standing areas) 144 patrons
- (c) The manager/licensee is responsible for ensuring the number of persons in the premises does not exceed that specified above.
- (d) A sign in letters not less than 25mm in height must be fixed at the main entry point to the premises alongside the Licensee's name stating the maximum number of persons, as specified in the development consent, that are permitted in the building. Details of the sign are to be submitted to Council's Health and Building Unit for approval prior to issue of a Construction Certificate.

Note: Clause 98D of the *Environmental Planning and Assessment Regulation 2000* requires a sign specifying maximum number of persons permitted in the building to be displayed in a prominent position for the following types of premises:

- (i) entertainment venue,
- (ii) function centre,
- (iii) pub,
- (iv) registered club,
- (v) restaurant.

Note: Should approval be granted under a separate development application for attenuation measures to the Castlereagh Boutique Hotel at 169 Castlereagh Street, such as double glazing, consideration shall be given to the modification of Condition (2) and any other operational management condition under a separate application.

(4) HOURS OF OPERATION – OUTDOOR AREAS

The hours of operation of the outdoor areas are regulated as follows:

- (a) The hours of operation must be restricted to between 10.00am to 10.00pm Mondays to Sundays.
- (b) Notwithstanding (a) above, the outdoor area may operate between 7.00am and 10.00am Sundays, Mondays, Tuesdays and Wednesdays and 7.00am to 11.00pm Thursdays, Fridays and Saturdays for a period of 1 year from the date of the issue of the approved transfer of the Liquor License. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
- (c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

Note: Should approval be granted under a separate development application for attenuation measures to the Castlereagh Boutique Hotel at 169 Castlereagh Street, such as double glazing, consideration shall be given to the modification of Condition (4) and any other operational management condition under a separate application.

(6) OUTDOOR PATRON CAPACITY PLAN

The applicant shall submit an Outdoor Patron Capacity Plan for the management and control of the dissemination of the 290 external population at night. The Plan is to be agreed to by a Suitably Qualified Acoustic Consultant* (the Consultant).

The Plan shall include an assessment of the following measures to stagger the departure of the 290 'outdoor' patrons at closing time:

- (a) Details of how the external patron capacity (290 persons) will be managed to ensure compliance with the acoustic conditions, namely CONDITION 7 NOISE - ADDITIONAL REPORTING FOR OUTDOOR PATRONS, CONDITION 10 COMPLIANCE WITH THE ACOUSTIC REPORT;
- (b) A plan showing how the outdoor area is to be demarcated for patron capacity limits and management in accordance with CONDITION 2 MAXIMUM CAPACITY OF PERSONS;
- (c) A methodology statement detailing how all acoustic parameters are complied with. The methodology statement shall include the following measures:
 - (i) Staff to make an announcement to the effect that the outdoor area will be closed at 11.00pm on Thursday, Friday and Saturday nights and that patrons should leave the Hotel and the vicinity quickly and quietly to avoid potential disturbance to the surrounding area;
 - (ii) Last orders for drinks for 'outdoor' patrons to be 10.30pm on Thursday, Friday and Saturday nights, and
 - (iii) Details on how staff will monitor patron behaviour in, and in the vicinity of, the Hotel until all patrons have left taking all practical steps to ensure the quiet and orderly departure of patrons.
- (d) A requirements section which accurately details controls that must be implemented to effect compliance with this consent.

The Plan shall be submitted and approved by the Area Planning Manager prior to the issue of any Occupation Certificate.

Where this document contradicts the existing Plan of Management approved under CONDITION (11) – PLAN OF MANAGEMENT, this document prevails.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

Note: Should approval be granted under a separate development application for attenuation measures to the Castlereagh Boutique Hotel at 169 Castlereagh Street, such as double glazing, consideration shall be given to the modification of Condition (6) and any other operational management condition under a separate application.

Background

At the meeting of the Planning and Development Committee on 12 February 2018, the following issues were discussed:

- Acoustic impacts upon the north elevation of the Castlereagh Boutique Hotel (CB Hotel) and whether the applicant would resolve this issue by carrying out attenuation measures such as double glazing; and

- The relevance of the 'agent of change principle' in terms of the applicant providing solutions to manage noise impact to the CB Hotel.

It was also noted that the applicant's town planning consultant disagreed with the patron capacity (external areas) and management conditions that were proposed in the recommendation.

This memo provides a response to the matters raised.

The applicant and the CB Hotel to meet to discuss noise attenuation measures

The CB Hotel raised concern about the noise generated by patrons from the proposed bar and the negative impact this may have upon their hotel accommodation guests. The Planning and Development Committee suggested that the applicant and the CB Hotel may wish to meet and see if any agreements can be reached to providing double glazed windows along the north elevation of the hotel.

City staff have contacted the applicant's town planning consultant and the CB Hotel to encourage them to meet to discuss options to address the acoustic issues raised by the hotel at the Committee meeting with a view of reaching an outcome in relation to noise attenuation measures. Information has also been requested about the cost associated with implementing such measures.

The applicant's planning consultant confirmed that his client is open to discussing an upgrade of the CB Hotel subject to Council agreeing to modifying the recommended operational conditions so that there would be no restrictions on how many patrons could be outside at any one time, together with deleting the requirement to close the outdoor bar areas by 11.00pm Thursday, Friday and Saturdays. In other words, attenuation works would be carried out by the applicant only on the provision that the licensed premises be allowed to have up to 700 patrons outside up to 12.00 midnight 7 days a week.

The applicant stated that, if Council is not agreeable to a review of the operational conditions, then they would agree to the conditions as recommended in the report, but they would not be discussing acoustic treatment with the CB Hotel.

Council Officers have advised the applicant's town planning consultant that no changes will be recommended to the operational conditions or patron capacity conditions for the reasons outlined below.

The proponent disagrees with the patron capacity conditions (external areas) and management conditions.

At the meeting the proponent verbally disagreed with the patron capacity conditions for the external areas and the management conditions. On Tuesday, 13 February 2018, the proponent confirmed that the draft recommended conditions are acceptable, however, this is on the basis of not entering into negotiations with the CB Hotel to upgrade the glazing to the Hotel.

This position is considered reasonable, as the City can only encourage negotiations between both parties and cannot legally impose a condition requiring works to land not part of the development application. It should be noted that the CB Hotel is a heritage item and attenuation to the windows would require a separate Development Application accompanied by the appropriate documentation, including an updated Conservation Management Plan (CMP).

Furthermore, the acoustic report (revision 3), confirms that the proposal complies with Council's acoustic criteria for visitors staying at the CB Hotel, ie, no increase in noise above background inside hotel rooms.

Council's acoustic specialist supports the proposal, subject to the acoustic, management and patron capacity conditions remaining on any consent granted.

The 'agent of change' principle

The 'agent of change' principle that requires new development (the 'agent of change') to consider existing land uses was raised during the discussion at Committee. Under this system, new entertainment venues would be required to ensure existing noise sensitive uses are not impacted from noise.

The 'agent of change' principle is proposed in the 'planning for culture and the night time economy' discussion paper. The discussion paper has not yet been endorsed or incorporated into any of the City's planning controls and, as such, the City cannot impose a condition on the consent applying this principle.

To impose a condition requiring double glazing on a third party property, which is not the subject of the Development Application, would be considered unreasonable and unenforceable if challenged in the Land and Environment Court. Further, as noted above, the CB Hotel is a heritage item and therefore any works to that property must be the subject of a separate, appropriately assessed, development application.

Despite this, it is noted that the current recommendation includes a requirement for the new development to manage noise impacts on the CB Hotel. A condition is recommended requiring the submission and approval of an outdoor patron capacity plan detailing how the external population would be managed and controlled in compliance with the acoustic report.

Should approval be granted under a separate development application for attenuation measures to the CB Hotel, such as double glazing, consideration shall be given to the modification of **Conditions (2), (4) and (6)** and any other operational management conditions under a separate Section 96 modification application. The additional notations are highlighted at the end of each condition in ***bold and italics***.

Prepared by: Anne-Marie Young, Senior Planner

TRIM Document Number: 2018/064213

Attachment

Approved



**Graham Jahn AM, Director City Planning,
Development and Transport**