



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	MA2024/00006 PPSHCC-295
PROPOSAL	<p>This section 4.55(2) application proposes to modify and extend the hours of operation of the ground floor sports bar and gaming lounge, known as "Lyrique Bar", subject to DA2019/01150.</p> <p>The premises is currently approved to operate with the following hours:</p> <ul style="list-style-type: none"> Monday to Saturday: 10.00am – 12.00 midnight Sunday: 10.00am – 10.00pm <p>This modification seeks approval to extend the hours of operation for the "Lyrique Bar" to:</p> <ul style="list-style-type: none"> Monday to Saturday: 10.00am – 2.00am Sunday: 10.00am – 12.00midnight <p>Condition 1 is proposed to be modified to reflect the proposed change in hours of operation to include the updated Social Impact Assessment (SIA) and Noise Impact Assessment.</p>
ADDRESS	185 Hunter Street, Newcastle
APPLICANT	URBIS PTY LTD
OWNER	EAST END STAGE 1 PTY LTD
MOD LODGEMENT DATE	24 January 2024
ORIGINAL DA DETERMINATION DATE	16 April 2020
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	<p>Section 275 of the <i>Environmental Planning and Assessment Regulation 2021</i> states that a council must not determine an application to modify a development consent under the Act, Section 4.55(2), on behalf of a regional planning panel, if the application is of a kind specified in the <i>Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development</i></p>

	<p><i>Consents</i> published on the NSW Planning Portal on 30 June 2020.</p> <p>A council is not to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application meets the criteria relating to contentious development.</p> <p>Contentious development is defined as development that is the subject of 10 or more unique submissions by way of objection. A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. This modification application is considered "contentious development" due to receiving 10 or more unique submission by way of objection.</p>
CIV	Nil
CLAUSE 4.6 REQUESTS	Not applicable
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP).</p> <p>Twenty-eight (28) unique submissions were received.</p>
KEY ISSUES	<ul style="list-style-type: none"> • Amenity of surrounding residents • Acoustic impacts • Social impacts • Safety and security • Public safety and community well-being
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Attachment A - Draft Conditions of Consent • Attachment B - Approved Floor Plan • Attachment C - Acoustic Report • Attachment D - Independent Social Impact Assessment (SIA) • Attachment E - Plan of Management (POM)
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not applicable
RECOMMENDATION	<p>Approval, subject to conditions of consent in addition to a 12-month trial period for the hours of operation:</p> <ul style="list-style-type: none"> • Monday to Saturday: 12:00 midnight – 2.00am; and • Sunday: 10.00pm – 12.00 midnight
DRAFT CONDITIONS TO APPLICANT	The draft conditions will be sent to the applicant after the report has been submitted to the Panel.
SCHEDULED MEETING DATE	5 November 2024
PREPARED BY	William Toose, Principal Development Officer (Planning)
DATE OF REPORT	5 November 2024

EXECUTIVE SUMMARY

This section 4.55(2) application proposes to modify and extend the hours of operation of the ground floor sports bar and gaming lounge, known as "Lyrique Bar", which was approved under DA2019/01150.

The "Lyrique Bar" is currently approved to operate between following hours:

- Monday to Saturday: 10.00am – 12.00 midnight; and
- Sunday: 10.00am – 10.00pm

This modification application seeks approval to extend the hours of operation for the "Lyrique Bar" to:

- Monday to Saturday: 10.00am – 2.00am; and
- Sunday: 10.00am – 12.00 midnight

Accordingly, Condition 1 is proposed to be modified to reflect the proposed change in hours of operation and to include the updated Social Impact Assessment (SIA) and Noise Impact Assessment which the applicant submitted with the MA.

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and seeks consent for amendments to a consent granted under DA2019/01150 approved by the Panel on 16 April 2020.

Section 275 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regs) states that a council must not determine an application to modify a development consent under Section 4.55(2) of the Act, on behalf of a regional planning panel, if the application is of a kind specified in the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents (Instrument of Delegation) published on the NSW Planning Portal on 30 June 2020.

A council is not to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application meets the criteria relating to contentious development. Contentious development is defined as being development that is the subject of 10 or more unique submissions by way of objection. A unique submission means a submission which is in substance unique, distinctive or unlike any other submission.

Under the Instrument of Delegation, the modification application is considered "contentious development" due to receiving 10 or more unique submission by way of objection. The application was placed on public exhibition from 15 February to 29 February 2004 and 28 unique submissions received objecting to the proposal. The issues raised in the public submissions are considered further in this report.

The modification application includes the relevant information required by Clause 100 of the EP&A Regs. There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the EP&A Act.

A Panel briefing was held on 18 June 2024 where several issues were discussed, including the need for further clarification and information in relation to several matters:

- i) What are the approved hours of the existing Liquor Licence?
- ii) How does the proposal align with the "*After Dark Strategy*" in the East End Precinct?
- iii) What is the social benefit of the extended hours of operation, particularly gambling?
- iv) What other Liquor and Gaming venues within the area also operate past 12:00 midnight?
- v) How has the amenity of neighbours been considered and how is this proposed to be managed?
- vi) Potential crime and safety issues due to the premises having its only access from Lyrique Lane.
- vii) Additional information to be provided as part of the Social Impact Assessment.

The development has been assessed against the matters for consideration that apply to the land to which the development application relates as outlined in the EP&A Act. The proposed modification is considered to satisfy the substantially the same development test required by Section 4.55 of the EP&A Act.

The key issues identified in the assessment of the modification application include acoustic impacts, amenity of surrounding residents, safety and social impacts. A thorough assessment of the proposed modification has been completed and it has been determined that the proposed modification can be supported, subject to the recommended Draft Schedule of Conditions, which includes a 12-month trial period for extended trading hours between 12:00 midnight - 2:00am, Monday to Saturday and 10:00pm - 12:00 midnight, Sundays.

1. THE SITE AND LOCALITY

1.1 The Site

The site is commonly known as the "QT Hotel" and consists of guest rooms, reception, ground floor restaurant, ground floor hotel bar, ground floor sports bar/gaming lounge and roof terrace bar. QT is the operator for the hotel building complex, apart from the ground floor sports bar/gaming lounge, known as "Lyrique Bar", which is the subject of this application.

The Lyrique Bar is located at the rear of the building, with access from Lyrique Lane. The "Lyrique Bar" has an approved patron capacity for 100 people and has 30 gaming machines.

The premises operates under a Liquor Licence (ref: LIQH440019028), which allows for consumption of alcohol on premises and the right to keep gaming machines. The license allows trading from 10:00am to 4:00am daily. Although operating under the same liquor license as the QT Hotel (a hotel liquor license), the Lyrique Bar operates independently.

The approved hours of operation for the premises are consistent with the current licence, being:

- Monday to Saturday: 10.00am – 12.00 midnight
- Sunday: 10.00am – 10.00pm

There is a single public entry and exit to the venue directly accessible from Lyrique Lane, which connects to a centralised public courtyard with numerous retail tenants, including Woolworths.

1.2 The Locality

The site forms part of Stage 1 of the development known as the East End Development. Buildings located along on the northern side of Hunter Street Mall include, 200-212 Hunter Street, known as "Silk House", which is a six-storey building comprising ground floor retail and five levels of residential apartments above, and 220 Hunter Street, known as the "Former Commonwealth Bank", which is a four-storey building comprising ground floor retail / commercial and three levels of residential apartments above.

Buildings to the east of the subject site include the "Washington House" building which is a 10-storey residential apartment building located adjacent to the site. "Fabric House" is also located to the east and is an 11-storey building with ground floor retail and 10 levels of residential apartments above.

South of the site and located opposite the premises is the building known as "Perkins & King", a 11-storey building with ground floor retail and 10 levels of residential apartments above.

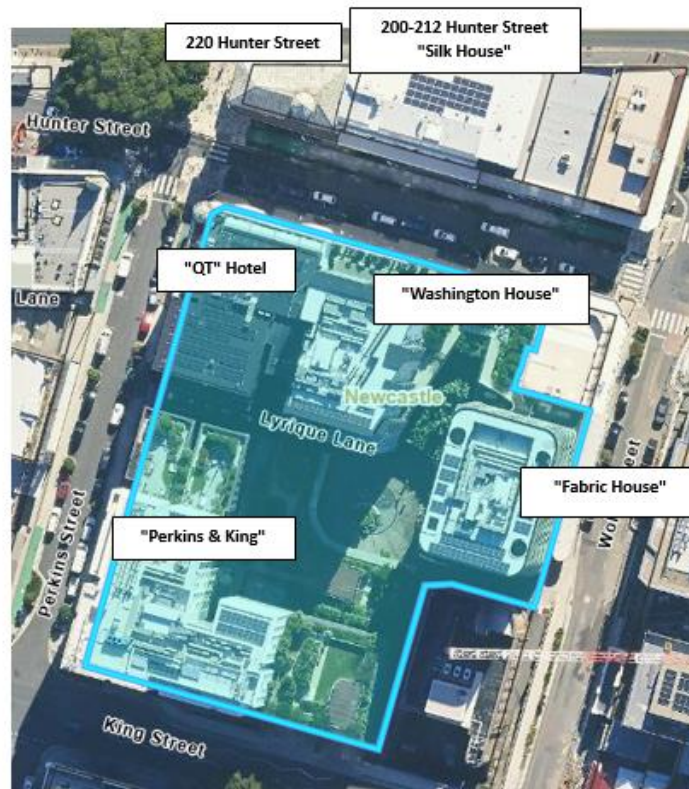


Figure 1: Aerial image of site and surrounding development

1. THE PROPOSAL AND BACKGROUND

1.3 The Proposed Modification - MA2024/00006

The Section 4.55(2) modification application MA2024/00006 (the MA) was lodged on 24 January 2024. The applicant seeks to modify DA2019/01150 and extend the hours of operation of the ground floor sports bar and gaming lounge, known as "Lyrique Bar" (QT Hotel).

The "Lyrique Bar" is currently approved to operate between the following hours:

- Monday to Saturday: 10.00am – 12.00 midnight
- Sunday: 10.00am – 10.00pm

The application seeks approval to extend the hours of operation for the "Lyrique Bar" Sports to:

- Monday to Saturday: 10.00am – 2.00am (the following day); and
- Sunday: 10.00am – 12.00 midnight

Accordingly, Condition 1 is proposed to be modified to reflect the proposed change in hours of operation and to include the updated Social Impact Assessment (SIA) and Noise Impact Assessment which the applicant submitted with the MA.

Background

On 16 April 2020, development consent DA2019/01150 was granted by the HCCRPP for tourist and visitor accommodation. This application was for the adaptive reuse of the heritage listed former David Jones building which is located on the site.

The QT Hotel opened in early 2022 and has a ground floor sports bar and gaming lounge, known as "Lyrique Bar", which is the subject of this modification.

A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings) with the application:

Table 1: Chronology of the Modification Application

Date	Event
24 January 2024	Modification application lodged
15 February - 29 February 2024	Exhibition of the application
18 June 2024	Panel Briefing
26 June 2024	Request for Applicant to address key issues discussed at Panel briefing.
17 July 2024	Response from Applicant received

2. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

2.1 Section 4.55(2) of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Panel subject to and in accordance with the regulations, modify the consent if several matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act.

The matters include the following:

Subsection 4.55(2)(a) – substantially the same development

- (a) ***It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and***

An assessment of the qualitative and quantitative elements of the development approved and proposed to be modified has been undertaken, and found the development being modified is essentially or materially the same as the development for which consent was originally granted in April 2020.

The proposal does not alter the existing conditions to such a degree that it is not substantially the same development.

- (b) ***It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and***

No public authority or approval bodies were required to be consulted.

- (c) ***it has notified the application in accordance with—***
(i) ***the regulations, if the regulations so require, or***
(ii) ***a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and***

Notification was undertaken in accordance with CN's Community Participation Plan (CPP), and Division 2 of Part 5 of the EP&A Regs. The modification application was publicly notified for a period of 14 days between 15 February to 29 February 2024. In response, 28 submissions were received.

- (d) ***it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).***

The issues raised in the 28 submissions received during the notification period are considered and addressed in Section 4 of this report.

- (e) ***In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).***

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and

Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The Planning Panel granted consent to the original development in a notice of determination dated 16 April 2020. The reasons outlined in the Statement of Reasons for this decision, included the following:

"In supporting the application, the Panel generally agreed with the environmental assessment and balance of considerations within the Council assessment report, noting it was prepared by external planning consultants who were involved in assessment of the original concept approval and other related assessments. The Panel also considered consistency with the determined concept approval, as modified".

The Panel was of the opinion that the proposal:

- *"Public safety has been considered, taking into account the consultation by Council with the Licensed Premises Reference Group (LPRG) and the operational plan of management, and appropriate conditions have been incorporated including operations to occur as per an approved operational plan of management (updated to incorporate consent conditions and unable to be altered without the consent of Council and NSW Police) that manages a range of matters including public safety to the extent that a planning consent can. Ongoing management of the facility, including gaming, will be subject to additional requirements under other legislation".*
- *"Includes an appropriate use as an adaptive reuse of the heritage buildings and may enhance appreciation by a wider audience. It is permitted within the zone, contributes to zone and precinct objectives and will further enhance economic revitalisation of the East End precinct. It will strengthen the vitality of the area as a boutique retail, entertainment and residential destination and diversify the precinct as a destination for activities including dining, entertainment, nightlife and events, contributing to increased vitality, whilst promoting tourism and employment in proximity to public*

transport linkages and other city centre amenities and activities".

The proposed modification is generally consistent with Panel's Statement of Reasons, dated 16 April 2020.

2.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3) which are of relevance to the application. These matters are considered in the assessment detailed below.

2.2.1 Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the EP&A Regulation 2021 are considered below.

(a) Environmental planning instruments (s4.15(1)(a)(i))

Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Newcastle Local Environmental Plan 2012* (NLEP 2012). The requirements of relevance in the NLEP 2012 are discussed in the table below:

Clause 2.3 - Zone objectives and Land Use Table

The site is located within the MU1 Mixed Use zone pursuant to Clause 2.2 of the LEP. Given the nature of the proposed modification being an extension to the hours of operation (past midnight) to an existing licenced premises, many of zone objectives have limited relevance to the proposal, with the exception of the third objective being;

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The site is located within the Newcastle City Centre where CN's strategic planning documents support and encourage the operation of venues as part of the nighttime economy.

The proposal includes on-going management and additional acoustic mitigation measures that will minimise amenity impact to nearby residences to a level considered to be satisfactory for a City Centre location. Therefore, the proposal is consistent with the third objective of this clause.

Clause 6.5 - Public Safety - Licensed Premises

Clause 6.5 requires the consideration of public safety before granting consent to the use of land as a licensed premises. The modification application relates to extended hours of operation for an existing licensed premises, not the establishment of a new licensed premises, which seeks consent to extend the existing operation to times at which it currently does not operate (i.e. post-midnight).

The applicant has provided a Plan of Management (POM) and Social Impact Assessment (SIA) which details the potential impact on public safety and recommends management measures. In addition, CN engaged a social planning expert, Dr Judith Stubbs, to peer review the applicant's SIA and provide an independent assessment of the likely social impacts of the proposal (refer to **Attachment D**). The report identifies and assesses four potential areas of social impact; impacts associated with alcohol, impacts associated with gaming, impacts on the nighttime economy and amenity impacts in the locality.

The independent SIA found that the negative social impacts of the extended trading post midnight are expected to be minimal and potential amenity impacts are capable of being effectively addressed by management measures and suitable conditions of consent.

The proposal has been referred to the NSW Police who raised no objection to the proposed extension of hours.

Based upon the information provided and the relatively small size of the premises, the proposal for the licensed premises to operate post-midnight, is unlikely to be detrimental to public safety and or lead to significant adverse impacts on the locality.

The proposed modification would not be detrimental to public safety, subject to compliance with the recommended conditions of consent. Therefore, it is considered that the proposal is consistent with this clause.

Part 7 - Additional Local Provisions - Newcastle City Centre

The site is located within the Newcastle City Centre. There are several requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre and activity during the day and throughout the evening, facilitating design excellence and protecting the natural and cultural heritage of Newcastle.

The proposed modification remains consistent with the objectives of Part 7 of the NLEP 2012 noting there are no design clauses specific to the subject site or proposal.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are no proposed instruments of relevance to the proposed modification application.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The following Development Control Plan is relevant to this application:

Newcastle Development Control Plan 2012

The Newcastle Development Control Plan 2023 (DCP 2023) was formally adopted by City of Newcastle on the 1 March 2024.

Notwithstanding the adoption of the NDCP 2023, the subject modification application was lodged on the 24 January 2024 and is subject to the provisions of the former Newcastle Development Control Plan 2012 (NDCP 2012) in accordance with the nominated savings and transitional provisions of the NDCP 2023.

It is noted that the amendments to the EP&A Act 1979 provisions in the *Environmental Planning and Assessment Bill 2012* expressly require a consent authority to give less weight to development control plan requirements, than the provisions of an environmental planning instrument (i.e. an LEP). Notwithstanding, the NDCP 2012 provisions are important in ensuring that any new development is compatible with the surrounding natural and built environment.

The main planning requirements of relevance in the NDCP 2012 are discussed in detail below.

Section 4.04 Safety and security

A Plan of Management (POM) has been provided which addresses safety and crime impacts, alcohol management, hours of operation, patron movement, capacity numbers, security measures, and parking. The POM specifies security measures, including roles and responsibilities of security guards, queuing and parting management, general security procedures and operation of CCTV. The POM also states that the operator shall consider the amenity of neighbours and take reasonable measures to ensure the conduct of the business does not impact adversely on the surrounding areas of Perkins and King Streets and Victoria Lane. The existing crime prevention methods will continue to be applied to the premises.

Pedestrian access to and from the premises is from Lyrique Lane and currently includes lighting at the entrance and exit points. As noted in the POM, licensed security personnel will remain on the premises during hours of operation and for at least 30mins after closing time.

In response to concerns raised by CN during the assessment process, the applicant was requested to consider a staged shutdown of the premises and investigate an alternate pedestrian access and exit between 12:00 midnight and 2:00am to mitigate noise impacts for residents near Lyrique Lane. An alternate pedestrian access to and from the premises cannot be provided, as the premises has a single public entry / exit directly accessible from Lyrique Lane. Furthermore, a staged shutdown of the premises is unable to be implemented as the premises consists of a single undivided room.

Accordingly, the approved public entry and exit point, in addition to the submitted documentation is considered acceptable to allow for the on-going reasonable management of the premises after midnight. The applicant's submitted documentation has satisfactorily demonstrated how potential impacts will be mitigated. On balance the potential negative impacts are not considered significant to warrant refusal of the application.

The application has considered public safety and the application of CPTED principles has been considered in the subject application. The proposal is acceptable having regard to this section of the DCP.

Section 4.05 Social Impact

In response to several issues raised by CN, the Applicant submitted an amended Social Impact Assessment.

CN engaged a social planning expert, Dr Judith Stubbs, to peer review the applicant's SIA and provide an independent assessment of the likely social impacts of the proposal (refer to Attachment D). The independent assessment identified and assessed four potential areas of social impact; impacts associated with alcohol, impacts associated with gaming, impacts on the nighttime economy and amenity impacts in the locality.

The subject site is in a medium-density hotspot zone for domestic related assault and several other crime incidents such as robbery, theft, and malicious damage. The applicant's SIA (as amended) provides updated and additional crime data, potential social impacts of this in relation to the criteria "community and public safety" and associated mitigation measures.

The amended SIA states:

"Based on available research, the crimes more considered to be related to or influenced by licensed premises density include assault, non-domestic related assault and malicious damage to property. There is no evidence to suggest that the proposed extended trading hours will influence rates of theft, break and enter offences, robbery, sexual assault or other crimes in the suburb of Newcastle or in the broader LGA";

The amended SIA also states:

"The proposed extension of operating hours will not result in any changes to access, community services and the community structure. Public safety concerns will be mitigated through appropriate CCTV monitoring systems set up on site (as further detailed in the Plan of Management) with the SIA reaffirming that the proposed extension of trading hours is not likely to result in any additional impacts in respect to community and public safety. The SIA also affirms that cultural values, interaction between the development and community, the needs of social groups, recreation, risk perception, health and amenity are all unlikely to be impacted by the minor extension of trading hours as proposed in this modification. Ultimately the assessment supports the extension of operating hours, facilitated and administered through key mitigation measures and operational processes outlined within the revised Plan of Management for the Lyrique Bar";

It is also identified that:

"The proposed development is unlikely to result in any change to the existing situation in terms of health and amenity".

There are three licensed venues within 400m of the subject site offering extended trading and gaming:

- "Crown & Anchor" (approximately 50m) operating until 3:00am Monday to Saturday, and Sunday to 12:00 midnight;
- the "Lucky Hotel" (240m) operating until 2:00am on Saturday; and
- "Queens Wharf Brewery" Hotel (300m) operating until 2:00am Friday and Saturday.

The independent review of the SIA recognised that extended hours post-midnight may lead to negative alcohol related impacts, however these impacts are expected to be minimal, due to premises' low patronage and its location. Furthermore, there may be amenity impacts such as noise from patrons entering and leaving the venue and smoking within the laneway. However, these issues are capable of being effectively addressed by management measures and suitable conditions of consent.

Having regard to the three other licensed venues within 400m of the subject site offering extended trading, additional extended trading is unlikely to lead to significant adverse impacts associated with alcohol-related harm, such as violence, property damage, or health issues.

In terms of social impacts associated with gaming machines, it is acknowledged that Section 209(3)(b) of the *Gaming Machines Act 2001* restricts the degree to which such gaming related matters can be considered in the assessment of a development application. Specifically, this section

of the Act provides that a consent authority cannot 'refuse to grant any such development consent to a hotel or club for any reason that relates to the installation, keeping or operation of approved gaming machines in a hotel...'.

Similar to the above findings for alcohol related impacts, potential adverse impacts associated with extended gaming hours will be relatively minor, given the small size and low level of patronage of the "Lyrique Bar". The proposal is unlikely to increase the risk of problem gambling for the local community.

The independent SIA concludes:

"The benefits of the extended trading hours for this premises are likely to be relatively minor in terms of the contribution to the nighttime economy, although there will be some benefit to the small number of patrons who are likely to attend the premises after midnight, including those with an interest in sport and recreational gambling.

There are unlikely to be significant negative impacts arising from extended trading hours in terms of an increase in alcohol related harm, including alcohol related violence, malicious damage and alcohol related health impacts; as the venue is of small format, low profile and is not a significant attractor, as well as the observed level and nature of patronage in the evening".

There may be some amenity impacts related to noise from patrons leaving late at night, passive smoking and noise from gaming machines; however these impacts are considered capable of being managed in accordance with the acoustic report, POM and conditions of consent, including:

- Closure of entry doors after 10:00 pm, except for access and egress;*
- Installation of a noise limiter;*
- Installation of acoustic louvres;*
- Provide for a permanent security guard at the entrance to the Lyrique Bar from 10:00pm, until to 30 minutes after closing to ensure that patrons leave in a quiet and timely manner and do not smoke in the immediate vicinity of the premises;*
- That a complaints procedure be included in the plan of management and be publicised to residents of the locality;*
- That the complaints register be kept, including responses to complaints and remedial action, and made available to Police and Council on request"*

Overall, the independent SIA review found that the negative social impacts of the proposal for extended trading post-midnight are expected to be minimal and the potential amenity impacts are capable of being effectively addressed by management measures and suitable conditions of consent.

The proposal is recommended for approval subject to conditions of consent. A key recommendation is for a 12-month trial period, which will enable CN to evaluate 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.

The proposal includes on-going management measures and additional acoustic measures that currently do not exist at the premises, that will assist in mitigating amenity impacts to nearby residences to a level considered to be satisfactory for a City Centre location. The proposal is acceptable having regard to this section of the DCP.

d) Relevant Planning Policies

Consistency with Newcastle After Dark Strategy (2018)

The Newcastle After Dark Strategy (After Dark) was adopted on 27 November 2018 and sets the strategic intent for the development of a safe and vibrant night-time economy for Newcastle through outlining key priorities and actions. After Dark identifies six priority areas including strategic alcohol management, night-time economic development, night-time design, cultural participation and activation, regulation, planning and licensing.

After Dark also identifies CN's key areas of concern and threats to the night-time economy including noise, land use conflicts, and alcohol related violence. It also identifies different night-time precincts and major town centres. The proposal is located within one of the seven significant precincts, being the East End. In respect to the East End, After Dark outlines that more small bars are welcomed, and the precinct is characterised by twilight through to night-time economy (i.e. 5:00pm to 1:00am), rather than the late-night economy (i.e. 12:00 midnight to 4:00am).

Reference is made in the Applicant's submitted Social Impact Assessment to the proposed extension of hours aligning with the After Dark priority for night-time economic development. The application refers to *"The Lyrique Bar is licensed venue offering hospitality services promoting night-time economy. Gaming is incidental to the hospitality offer of the licensed venue"*.

The applicant submits the following statement in support of the proposal:

"The proposed modification will deliver positive social and economic impacts. The extension of hours aligns with the Newcastle After Dark Strategy's (2018) Priority for Night-time economic development. The strategy identifies the significant role of Newcastle's night-time economy at a regional and national scale, as well as significantly contributing to the city's revitalisation by supporting a diverse set of nightlife options in the nightlife precincts.

The proposed modification seeks to contribute to the night-time economic development of the East End Precinct. Similarly, the strategy highlights its support for existing businesses to maximise potential and value. The growth of such venues can effectively contribute to the regional economy, highlighting the importance of the modification to improve its hours of operation.

The Strategy notes that opportunities for the East End area for the development of more small bars, noting that the existing character of the area is associated with wine bars and small bars rather than traditional pubs. The Lyrique Bar, with capacity for 100 patrons, fits within the small bar category.

It is noted that the East End Precinct is typically characterised by a twilight through to night-time economy (up to 1am). The proposed Extension of Trade for the Lyrique Bar would provide a diversity of venues available to the community into the late-night hours, by one hour only).

The proposed extension is considered to align with the Vibrancy Guidelines and the Newcastle After Dark Strategy"

The site is located within Newcastle City Centre where CN's strategic planning documents support and encourage the operation of venues as part of the nighttime economy. The likely benefits of the extended trading hours for the premises are considered relatively minor in terms of its contribution to the nighttime economy. This is largely due to its size, patron capacity location and the specific nature of the premises.

Extended trading hours for the premises will contribute to the nighttime economy in a marginal sense, due to its size, patron capacity and specific nature of activities, however it is unlikely that the proposal would result in significant social impacts related to anti-social behaviour, alcohol harm or gambling. Therefore, the proposal is not considered, on balance, to result in a negative social outcome.

It is noted that the proposed extended hours of operation sought for the premises will allow for post-midnight activities at a venue in proximity to residential properties. The dispersal of patrons into the public domain has been considered in terms of likely impacts related to noise from patrons leaving late, passive smoking, and sounds from gaming machines. These potential impacts are capable and of being adequately addressed through conditions of consent. Conditions in relation to a comprehensive management plan, compliance with a Noise Impact Assessment and additional mitigation measures are included in the Draft Schedule of Conditions. The proposal includes ongoing management measures and additional acoustic measures that currently do not exist at the premises, that will assist in mitigating amenity impacts to nearby residences to a level considered to be satisfactory for a City Centre location.

Furthermore, a 12-month trial period is considered appropriate to enable Council to assess the ongoing management performance of a premise and its impacts on neighbourhood amenity. This trial period will allow CN the flexibility to review the conditions of the development consent and respond to such things as changes in management or character of the neighbourhood. At the completion of the trial period, a new application must be lodged to either renew the trial hours or to seek to make the trial trading hours permanent.

A renewal of the trading hours subject to the trial period, will only be permitted if Council is satisfied that the premises has demonstrated good management performance and compliance with a plan of management, following the completion of a satisfactory trial period.

Newcastle 2030 Community Strategic Plan (CSP)

The CSP is a shared community vision for how the city will look in the next 10 years. The CSP through consultation with the community and analysis of key economic, environmental, and societal trends to ensure appropriate planning and service delivery. This Plan is prepared with regard to the social justice principles of equity, access, participation and rights, and addresses social, environmental, economic and governance matters.

The proposal for an existing licensed premises (with gaming) to operate post-midnight is unlikely to result in adverse impacts in terms of noise, crime, public safety, social impact, and community well-being.

Local Strategic Planning Statement (LSPS)

The LSPS was adopted by CN in May 2020. The Statement is our 20-year land use vision and identifies how we will sustainably manage the growth and change of our city. The LSPS gives effect to the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036, implements priorities from our Community Strategic Plan, Newcastle 2040 and brings together land use planning actions in other adopted strategies.

The applicant outlines, that *key planning visions, outlined in the LSPS, allow for Newcastle to have a creative and innovative economy and a people orientated city:*

"Our night-time economy has grown and attracts people of all ages and backgrounds with a diverse range of venues and activities that support live music, arts and other entertainment as an integrated part of our city environment".

The proposal for an existing licensed premises to operate post-midnight is unlikely to be detrimental to public safety or result in undesirable effects on the local area and is generally consistent with the LSPS directions.

NSW Government Vibrancy Guidelines

The NSW Government have introduced a Bill to amend Schedule 8 of the EP&A Act to include provisions relating to Vibrancy Guidelines. This Bill encourages *"venues to operate in a way that achieves their full social, business and cultural potential as part of the night-time economy"*.

The extension of hours will enable the site to respond to patron demand, aligning with the hours of operation for the liquor licence. The proposal is considered to align with the Vibrancy Guidelines and deliver positive outcomes related to the NSW Government Vibrancy Guidelines.

(e) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(f) Provisions of Regulations (s4.15(1)(a)(iv))

The provisions of the 2021 EP&A Regulation have been considered and have been addressed in the assessment of the application.

2.2.2 Section 4.15(1)(b) - Likely Impacts of Development

Potential impacts related to the current proposal have been assessed in accordance to statutory requirements and in response to public submissions, including those matters raised during the Panel briefing.

The proposed extended hours of operation sought for premises will provide for post-midnight activities at a venue in proximity to residential properties. The dispersal of patrons into the public domain has been considered in terms of likely impacts related to noise, passive smoking, and sounds from gaming machines. However, given the size of the premises, potential impacts of the proposed extended hours are capable of being adequately addressed through conditions of consent.

The proposal includes on-going management measures and additional acoustic measures that currently do not exist at the premises, that will minimise amenity impacts to nearby residences to a level considered to be satisfactory for a City Centre location.

A thorough assessment of the proposal has been undertaken and it has been determined that the potential impacts are acceptable. The proposal is recommended for approval subject to conditions of consent. A key recommendation is for a 12-month trial period, which will enable CN to evaluate 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.

2.2.3 Section 4.15(1)(c) - Suitability of the site

It has been satisfactorily demonstrated that the site is suitable for proposed hours of operation in this location having regard to amenity of surrounding residents, patron noise, social impacts, safety and security, and community well-being.

The proposal is compatible with the existing and future character of the area and is located on a site suitably zoned for the intended use.

The site is located within the Newcastle City Centre where CN's strategic planning documents support and encourage the operation of venues as part of the nighttime economy.

2.2.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4.3 of this report.

2.2.5 Section 4.15(1)(e) - Public interest

A comprehensive and detailed assessment of the matters for consideration under Section 4.15(1) of the *EP&A Act*, the provisions of the relevant policies, the provisions of the Newcastle Local Environmental 2012 and Newcastle Development Control Plan 2012 has been made.

The site is located within Newcastle City Centre where CN's strategic planning documents support and encourage the operation of venues as part of the nighttime economy. However, it is unlikely that the proposal would result in significant social impacts related to anti-social behaviour, alcohol harm or gambling. Therefore, the proposal is not considered, on balance, to be a conclusively negative social outcome.

After a detailed consideration of the statutory requirements and the public submissions, including those matters raised during the Panel briefing, it has been determined that despite the objections received during the assessment process, the application is in the public interest.

Public submissions received during notification of the application have raised several issues, all of which have been genuinely considered and evaluated.

Given the key nature of the proposal, the key likely impacts relate to acoustic and disturbance to amenity of surrounding residents as discussed in further detail below.

Acoustic Assessment

CN has reviewed the Noise Assessment prepared by Acoustic Logic dated January 2024 and notes the report addresses internal noise concluding, that based on the assumption modelled with controls in place, the proposed development satisfies the assessment criteria.

The Noise Impact Assessment has followed the conventional process of determining the criteria for the potentially affected receivers, characterising source noise levels, modelling the propagation of these source levels, determining compliance, and specifying controls as necessary. The reports incorporate a series of assumptions in its noise modelling to simulate a likely use scenario.

The Noise Assessment modelled internal amplified entertainment along with patron noise which was propagated to receivers directly above and adjacent to the premises against pre and post-midnight

Liquor and Gaming Noise Criteria. The Noise Assessment concludes that based on the modelled assumptions, amplified entertainment and patron noise will be mitigated through a series of attenuation measures resulting in compliance pre-midnight and inaudibility post-midnight for operations within the licensed premises. These include:

- Installation of acoustic louvers to the facade
- Closing the entrance door from 10:00pm to 2:00am, except to allow for the entry and exit of patrons or when there is an emergency.
- The installation of a noise control limiter at the premises.
- No music or amplified sounds other than emergency PA announcements are to be played in the outdoor area.

In addition to the above recommendations, the proposed extended trading will be subject to 12-month trial period. CN's consideration of a proposed continuation 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.

As discussed within relevant sections of this report, the proposal is not considered likely to result in significant noise impacts subject to reasonable on-going management of the premises and compliance with recommended conditions of development consent.

The proposed development includes on-going management measures that will minimise amenity impact to nearby residences to a level considered to be satisfactory for a City Centre location.

The development is in the public interest and will allow for the orderly and economic development of the site.

2.3 Part 5 of the 2021 EP&A Regulation

There are several matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 7** below.

Table 7: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y

Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.55(2) and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	Refer to key issues section (where required).	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority pursuant to Section 4.55(2) of the EP&A Act. (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Y
Notification and exhibition requirements (CI 105-112)	Refer to Section 4.3 of this report.	Y

The provisions of the EP&A Regulation 2021 have been considered and would normally be addressed by the imposition of suitable conditions of consent, however the application is being refused.

3. REFERRALS AND SUBMISSIONS

3.1 Agency Referrals and Concurrence

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the EP&A Act.

The application was referred to NSW Police who provided comments regarding the proposed modification application in the interest of public safety. The Police did not object to the granting of extended hours for the premises and no specific incidents or complaints directly relevant to the premises were cited.

As discussed within the relevant sections of this report, the proposal is not considered likely to result in significant impacts by way of noise, anti-social behaviour, safety and security subject to reasonable on-going management of the premises and compliance with recommended conditions of development consent.

In addition to these measures, the proposed hours of operation will be subject to 12-month trial period. CN's consideration of a proposed continuation of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to compliance with development consent conditions, any substantiated complaints received, and any views expressed by the Police.

3.2 Council Referrals

The modification application was referred to various CN officers for technical review as outlined **Table 3**.

Table 3: Consideration of CN Referrals

Officer	Comments
Environmental Health	CN's Senior Environmental Health Officer has provided detailed technical input throughout the assessment process, including review of the submitted Noise Impact Assessment as discussed within the report. Subject to the recommended conditions of consent the proposal is acceptable.
Social Impact Assessment - Independent Review	CN engaged a social planning expert, Dr Judith Stubbs, to review the SIA and provide an assessment on social impact. Subject to recommended conditions of consent, including a 12-month trial period the proposal is acceptable.

3.3 Notification and Community Consultation

The modification application was publicly notified in accordance with CN's CPP between 15 February and 29 February 2024. In response, 28 submissions were received objecting to the proposed modification application. The submissions raised a variety of issues including noise; reliability of noise impact assessment; impact to residential amenity; anti-social behaviour; incompatibility with the existing character of the area; and inconsistency with s4.55(1A) criteria.

A summary of the relevant issues and concerns raised in the submissions is provided in **Table 4** below. Detailed comments on the issues raised have been provided elsewhere in the report and have not necessarily been repeated below.

Table 4: Consideration of Submissions

Issues raised in public submissions	Comment
Substantially the same development <i>Objections have raised concerns that the proposed modification application is not considered to be substantially the same as the development for which consent was originally granted in April 2020.</i>	<p>An assessment of the qualitative and quantitative elements of the proposal has been undertaken and found the proposed modification is essentially, or materially the same as the development for which consent was originally granted in April 2020.</p> <p>This matter has been addressed in the relevant sections of this report.</p>
Venue Management <i>The objections note that the venue is not connected to the QT Hotel and is under separate ownership and operational management.</i>	<p>The premises operates under the same liquor license and Plan of Management as the QT Hotel, however the "Lyrique Bar" is owned and operated independently.</p>

	This matter has been addressed in the relevant sections of this report.
Compatibility with surrounding residential uses <i>The objections have raised concerns over a decrease in residential amenity and subsequent quality of life and the compatibility of a late-night bar / gaming lounge in the East End.</i>	<p>The Newcastle City Centre includes commercial, retail and residential uses and the proposed development has included appropriate mitigation measures having regard to its surrounding context.</p> <p>The proposal includes on-going management measures that will minimise amenity impact to nearby residences to a level considered to be satisfactory for a City Centre location.</p> <p>These matters have been addressed in the relevant sections of this report.</p>
Hours of operation <i>Objections have raised concern in relation to the proposed extension of hours post-midnight.</i>	<p>The operation of the venue post-midnight has been assessed in accordance with the acoustic assessment and is considered unlikely to create adverse impacts upon the locality, subject to the reasonable on-going management of the premises and compliance with recommended conditions of development consent.</p> <p>These matters have been addressed in the relevant sections of this report.</p>
Existing impacts <i>Objections have raised concerns regarding existing issues associated with the current operation of the venue, including noise from gaming machines, noise from patrons within the laneway and passive smoking.</i>	<p>The proposal includes on-going management measures that will minimise amenity impact to nearby residences to a level considered to be satisfactory for a City Centre location.</p>
Negative social impacts <i>Objections have raised issues in relation to negative impacts associated with alcohol related incidents, gambling; increased potential for crime, public safety and anti-social behaviour.</i>	<p>The proposal is of minimal social impact with respect to extended late-night gaming and alcohol consumption in this location.</p> <p>The proposal is unlikely to increase the risk of problem gambling for the local community.</p> <p>The independent review of the potential social impacts of the proposal suggested that the cumulative impacts caused by noise, anti-social behaviour and security risks can be effectively mitigated by the on-going management of the premises in accordance with the recommended conditions of consent</p>

	<p>and the Plan of Management. The submitted documentation demonstrates that the impacts on the residents in proximity will be minimal.</p> <p>These matters have been addressed in the relevant sections of this report.</p>
<p>Increased noise and disturbance to the amenity of residents</p> <p><i>Several Objections have raised concern over unreasonable impacts on residential receivers due to increased activity due to patrons arriving and leaving the venue.</i></p>	<p>There may be amenity impacts such as noise from patrons entering and leaving the venue, noise from gaming machines and smoking within the laneway.</p> <p>However, given the size and patronage of the venue, it is considered that these impacts could be adequately mitigated through appropriate provisions in a plan of management and operational conditions of consent.</p> <p>The proposal is considered unlikely to create significant impacts upon the locality, subject to the reasonable on-going management of the premises and compliance with recommended conditions of development consent.</p> <p>These matters have been addressed in the relevant sections of this report.</p>
<p>Acoustic assessment</p> <p><i>Objections have raised concern in relation to the Applicant's Acoustic Report.</i></p>	<p>The predicted results (compliant with NSW Liquor & Gaming and Sleep Disturbance criteria) were presented in the Acoustic Report account for noise transmission. This report has been reviewed by CN's Senior Environmental Health Officer and is considered acceptable, subject to several recommended measures being implemented.</p> <p>The acoustic assessment has demonstrated acoustic impacts are minor including the impact to sleep disturbance, with the addition of several measures to further assist with maintaining a reasonable acoustic environment both on site and for surrounding residential receivers.</p>
<p>Public safety</p> <p><i>Objections have raised several concerns in relation to alcohol related harm, gambling and community well-being.</i></p>	<p>The proposal is unlikely to result in significant adverse impacts associated with alcohol-related harm, such as violence, property damage, or increase the risk of problem gambling for the local community.</p>

	These matters have been addressed in the relevant sections of this report.
Detrimental impact on property value <i>Objectors raised concern regarding the proposed development decreasing the value of nearby residential properties.</i>	This is not a relevant matter for consideration in the assessment of the application Section 4.15 of the Environmental Planning and Assessment Act 1979.

Conclusion:

The issues and concerns raised in the community submissions do not warrant the refusal of the application in its present form or require any further amendments to the submitted documentation.

Issues raised in the submissions received by CN have been considered in the assessment, and, where appropriate, conditions of consent have been included in the recommended Draft Schedule of Conditions (**refer to Attachment A**).

The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

The likely impacts of the proposed development have been discussed throughout this report and the granting of consent to an extension to operating hours of the premises allowing for post-midnight trading is supported as the overall amenity impacts on the locality are considered capable of being managed in accordance with the acoustic report, PoM and conditions of consent, including:

- Closure of entry doors after 10 pm, except for access and egress, and in the event of an emergency;
- Installation of a noise limiter;
- Installation of acoustic louvres;
- Appropriate signage;
- Provision of a permanent security guard at the entrance to the Lyrique Bar from 10:00pm until 30 minutes after closing to ensure that patrons leave in a quiet and timely manner and do not smoke in the immediate vicinity of the premises;
- Inclusion of a complaints procedure in the plan of management, which is publicised to residents of the locality;
- That the complaints register be kept, including responses to complaints and remedial action, and made available to Police and CN on request.

A 12-month trial period is considered appropriate to enable CN to assess the ongoing management performance of the premises and its impacts on neighbourhood amenity. This trial period will allow CN the flexibility to review the conditions of the development consent and respond to such things as changes in management and the character of the neighbourhood. At the completion of the trial period,

a new application must be lodged to either renew existing trial hours or to seek to make the trading hours permanent.

A renewal of the trading hours subject to the trial period, will only be permitted if CN is satisfied that the premises has demonstrated good management performance and compliance with a plan of management, following the completion of a satisfactory trial period.

CN will consider whether the premises has demonstrated good management performance, based on several matters including but not limited to:

- i) the nature and extent of any substantiated non-compliances with development consent or liquor license conditions, particularly those relating to public safety and impacts on amenity
- ii) responses to substantiated complaints, including complaints recorded on the venues complaints register
- iii) Compliance with the Plan of Management
- iv) consideration of complaints to CN and the licensing authority under the Liquor Act 2007
- v) consideration of any submission made by Police

If CN determines that the trial period has been unsatisfactory, then trading hours will revert to the previously approved closing hours until 12:00 midnight, Monday to Saturday and 10:00pm on Sundays.

4. CONCLUSION

The s.4.55(2) modification application has been considered in accordance with the requirements of the EP&A Act and Regs as outlined in this report.

This s.4.55(2) modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation 2021 as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application is acceptable with regard to the following matters:

- i) the likely impacts on the amenity of surrounding land uses, including noise, and the ability to manage impacts
- ii) the likely social impacts associated with extended trading in terms of alcohol, gaming and the nighttime economy
- iii) a plan of management that demonstrates a commitment to good management of the operation of the business, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, as well as the public domain
- iv) measures to be used for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and surrounding the premises.

Following a thorough assessment of the relevant planning policies, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

5. RECOMMENDATION

It is recommended:

- That the Modification Application MA2024/00006 to extend the hours of operation for the "Lyrique Bar" at 185 Hunter Street, Newcastle be APPROVED pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by CN following the Panel's determination of this modification application.