

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

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| DATE OF DETERMINATION | 13 November 2024 |
| DATE OF PANEL DECISION | 13 November 2024 |
| DATE OF PANEL MEETING | 5 November 2024 |
| PANEL MEMBERS | Roberta Ryan (Chair), Tony McNamara, Stephen O'Connor, John Mackenzie |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | Alison McCabe – declared a potential of a perceived conflict of interest because SJB Architects have been engaged for the East End development. |

Public meeting held by teleconference on 5 November 2024, opened at 2:30pm and closed at 3.15pm.

MATTER DETERMINED

PPSHCC-295 – Newcastle – MA2024/00006 - 169 -185 Hunter Street, Newcastle 2300 - Sec 4.55 (2)
Modification Application to modify and extend hours of operation of the ground floor sports bar and gaming lounge known as “Lyrique Bar” (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel considered the modification application at a public meeting on the 5th November 2024 and heard from those submitters who wished to address the Panel.

Modification Application

The Panel determined to approve the modification application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the modification application for the reasons outlined in the council assessment report and the following reasons:

1. The Panel considers that the concerns raised by the community have been adequately addressed in the assessment report.
2. The approval is subject to a 12-month trial period.
3. Key issues are addressed in the conditions of consent.
4. The assessment was supported by an independent peer review of the applicant’s social impact assessment which concluded that the negative social impacts would be minimal.

The decision was unanimous.

CONDITIONS

The modification application was approved subject to the conditions in schedule 2 which include the following:





- The need for a specific Plan of Management for the Lyrique bar to be approved by Council
- Security guard to be on site
- Phone number to call for complaints to venue management

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Whether the development is substantially the same
- Venue management
- Compatibility with surrounding residential uses
- Extension of hours post-midnight
- Existing impacts with the current operation of the venue
- Negative social impacts
- Increased noise impacts and disturbance
- Accuracy of the acoustic report
- Public safety impacts
- Impacts on land values

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel notes that in addressing these issues the Council engaged an independent peer review of the social impact assessment to provide advice on impacts associated with alcohol, gaming, nighttime economy and amenity within the local community. Overall, the independent review concluded that the negative social impacts of the extended trading hours would be minimal.

| PANEL MEMBERS | |
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|  Roberta Ryan (Acting Chair) |  Tony McNamara |
|  John Mackenzie |  Stephen O'Connor |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSHCC-295 – Newcastle – MA2024/00006 |
| 2 | PROPOSED DEVELOPMENT | <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. 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> |
| 3 | STREET ADDRESS | 185 Hunter Street, Newcastle 2300 |
| 4 | APPLICANT/OWNER | Urbis Pty Ltd East End Stage 1 Pty Ltd |
| 5 | TYPE OF REGIONAL DEVELOPMENT | Section 4.55(2) Modification Application |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Newcastle Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Newcastle Development Control Plan 2012 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>. Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development |
| 7 | MATERIAL CONSIDERED BY THE PANEL | <ul style="list-style-type: none"> Council assessment report: 5 November 2024 and Supplementary Report 11 November 2024 Written submissions during public exhibition: 28 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Carol Geran, Andrew Dunn Council assessment officer – William Toose, Amy Ryan On behalf of the applicant – Luke Barbeler, Naomi Ryan, Sarah Geroge, George Wei, Warwick Bowyer Total number of unique submissions received by way of objection: 28 |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> Briefing: 18 June 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Roberta Ryan (Acting Chair), Tony McNamara, Stephen O'Connor, John Mackenzie <u>Council assessment staff</u>: William Toose, Amy Ryan <u>Department</u>: Leanne Harris, Holly McCann |

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| | | <ul style="list-style-type: none">• Site inspection:<ul style="list-style-type: none">• Roberta Ryan: 26th October 2024• Stephen O'Connor: 19 August 2024.• Tony McNamara: 20 October 2024• John Mackenzie: 1 November 2024• Final briefing to discuss council's recommendation: 19 August 2024<ul style="list-style-type: none">○ <u>Panel members</u>: Roberta Ryan (Acting Chair), Tony McNamara, Stephen O'Connor, John Mackenzie○ <u>Council assessment staff</u>: William Toose, Amy Ryan○ <u>Department</u>: Leanne Harris |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the council supplementary assessment report |

SCHEDULE 2

A. Amended conditions:

APPROVED DOCUMENTATION

1. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

| <i>Plan No. / Supporting Document</i> | <i>Reference / Version</i> | <i>Prepared by</i> | <i>Dated</i> |
|--|-----------------------------------|---|-------------------------------|
| <i>Lyrique Bar Plan of Management</i> | | <i>Urbis (on behalf of Iris Capital Pty Ltd)</i> | <i>November 2024</i> |
| <i>Social Impact Assessment</i> | - | <i>Sarah George Consulting</i> | <i>12 July 2024</i> |
| <i>Noise Assessment</i> | | <i>Acoustic Logic</i> | <i>31 January 2024</i> |

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

76. The hours of operation hours of operation are regulated as follows:
- (a) The use of the outdoor terrace associated with the Rooftop Bar is to be closed and not used from 10:00pm to 7:00am, Monday to Sunday.
- (aa) The hours of operation for the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar") is approved to operate 10.00am – 12.00 midnight, Monday to Saturday and 10.00am – 10.00pm, Sunday.***
- (b) Notwithstanding (a) above, the use of the outdoor terrace may operate between 10:00pm and 12:00 midnight Monday to Saturday for a trial period of 12 months from the date of the commencement of the trial period. Council is to be informed in writing of the date of commencement of the trial hours.
- (bb) Notwithstanding (aa) above, the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar") may operate between 12:00 midnight and 2:00am, Monday to Saturday and 10:00pm and 12:00 midnight, Sunday for a trial period of 12 months from the date of the commencement of the trial period. Council is to be informed in writing of the date of commencement of the trial hours.***
- (c) The applicant may apply to Council (by way of further development application) prior to the expiration of the trial period, but not earlier than a 9-month period from the commencement of the trial, to make the extended hours outlined in Condition **76(bb)** above permanent. Any decision to make hours permanent will be based on the performance of the operator during the trial period and may include (but not limited to) factors such as:
- evidence to be furnished by the operator as to whether the trial has actually occurred;
 - Any justified complaints received and investigated by NSW Liquor and Gaming, NSW Police and/or Council;
 - Comments and advice received from the Newcastle Police Area Command and as a result of the new development application being referred to them;
 - The performance of the operator or during the trial period with respect to compliance with the plan of management.

(d) If the Applicant does not obtain development consent in respect of the Development on a permanent basis (after the trial period has concluded), the operational hours of the outdoor terrace revert to the hours approved under Condition 76(a).

(dd) If the Applicant does not obtain development consent in respect of the Development on a permanent basis (after the trial period has concluded), the operational hours of the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar") will revert to the hours approved under Condition 76(aa).

(ee) If an application to make the trial hours permanent is lodged within the 12-month trial period, the trial hours will continue to apply until such time as the application is finally determined.

B. Additional conditions:

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

10C. *The closing over of all louvers for the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar") is to be designed prior to the issue of a Construction Certificate in accordance with the Acoustic Assessment prepared by Acoustic Logic dated 31 January 2024. Written final certification confirming the treatment has been designed to meet the noise levels specified in accordance with the requirements of the above report is to be submitted to the principal certifier and Newcastle City Council.*

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

49A. *Prior to the issue of an Occupation Certificate an appropriately qualified consultant is to install and set out the ongoing operating requirements of a noise limiting device to meet the noise levels specified in the Acoustic Logic Noise Assessment, dated 31 January 2024 for the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar". Written final certification confirming all treatments have been implemented in accordance with the requirements of the above report is to be submitted to the principal certifier and Newcastle City Council.*

CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT OF EXTENDED HOURS OF LYRIQUE BAR

61C. *Prior to the commencement of the extended trade for the for the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar"), the acoustic measures, being the closing over of all louvers and installation a noise limiting device, are to be implemented in accordance with the recommendations set out in the report prepared by Acoustic Logic dated 31 January 2024.*

61D. *Written final certification confirming the acoustic measures above have been implemented in accordance with the requirements of the above report is to be submitted to Council prior to the commencement of extended operational hours of the for the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar") to this consent.*

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

68F. *The entry doors of the for the Ground Floor Sports Bar/Gaming Lounge (known as "Lyrique Bar") are to be closed between 10:00pm to 2:00am, except to allow for entry or exit of patrons or in the case of an emergency.*

80A. The Plan of Management for the Lyrique Bar, dated November 2024 is to be amended in accordance with the conditions of this consent and is to be submitted to and approved by Council, and is to include the following:

- a) All acoustic and management measures proposed to be implemented to minimise potential noise impacts from the premises, including the relevant recommendations of the Noise Assessment prepared by Acoustic Logic, dated 31 January 2024.**
- b) One (1) uniformed licensed security person is to be employed from 8:00pm until 30 minutes after closing of the Lyrique Bar, Thursday to Sunday.**
- c) Ensure the manner in which the business of the premises is conducted and/ or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations.**
 - c) Record in a Register, the full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s, complainant's details (if provided) and all actions undertaken by management/ staff to resolve such complaints.**
 - d) The final Plan of Management, as outlined as a condition of this consent, incorporating security management and responsible service of alcohol being implemented at all times and updated in response to complaints lodged through consultation with NSW Liquor and Gaming, NSW Police and / or Council.**
 - e) A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of Liquor and Gaming, Police, Council and / or any members of the public.**

Note: Any further amendments or proposed variation to the approved Plan of Management require approval from Council through the submission of a s.4.55 modification application.

81A. A telephone number must be displayed on a sign at the Lyrique Bar's entrance (Lyrique Lane) entrance for any person who wishes to make a complaint.