



## 2011 RESIDENTS ASSOCIATION INC.

ABN 78 862 101 665  
PO Box 183 Potts Point NSW 1335  
**Phone** 0448 406 610

### **Contacts**

[blumensacha@yahoo.com.au](mailto:blumensacha@yahoo.com.au)

### **Committee**

Sacha Blumen, Annette Nevin, Carole Ferrier, Suzanne O'Connor,  
Michael Gormly, Malcolm Duncan, Robyn Greaves

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4th October 2007

The Chief Executive Officer,  
Att: City Plan Development Unit,  
City of Sydney,  
PO Box 1591 .  
Sydney NSW 2001

**ATTN: Nicholas Knezevic**

**BY E-MAIL:** [nknezevic@cityofsydney.nsw.gov.au](mailto:nknezevic@cityofsydney.nsw.gov.au)

Dear Mr Knezevic,

**RE: Submission - Draft Late Night Trading Premises Development Control Plan**

On behalf of the 2011 Residents Association Inc. (2011RA) I would like to submit this submission on the abovementioned Draft Development Control Plan (DDCP).

We would firstly like to note that the introduction of any new policy has to be carefully considered as its introduction may have unanticipated and unwanted consequences. Given this, it is important to monitor the impact of all new policies (including the final Late Night Trading Premises DCP) in order to be aware of the consequences of their implementation.

In any policy dealing with trialling extended late night trading hours, the concerns of all stakeholders must be considered and we are pleased that the DDCP seeks to do this, including taking into account the impacts of potential extended trading hours on local amenity. In general, we think that any costs (externalities) imposed by an individual's activities or business activity should be born by the individual or business concerned. The difficult matter is to work out the externalities and policies such as the DDCP are systemic attempts to deal with this problem.

In using policy to attempt to minimise externalities, one can inadvertently introduce many costs (e.g. on businesses), and it's important to be aware of the desire to reduce not only the externalities but also any costs imposed in attempting to reduce the externalities.

Given this broad outline, we have looked at the DDCP and have a number of suggestions that we feel would improve the draft policy. As a residents' association, we are particularly interested in local amenity, but are also aware of the need to not impose onerous costs on business, and present our suggestions in this light.

1. It is necessary for Council to be able to have an ability to adequately respond to premises that have had a trial period approved, but are not abiding by the conditions of approval of their trial period. 2011RA is aware that one suggestion is that there be a "three-strikes" policy, i.e. that on the third time the premises does not abide by the conditions of approval, they are closed down for an appropriate period, say one or two days. This is a potential incentive to encourage premises to abide by their conditions of approval.

An alternative possibility is that Council have the ability to terminate a trial period before its conclusion if warranted. The DDCP does not appear to state that Council has the ability to terminate a trial period of extended business hours for Category A and Category B businesses before the conclusion of the trial period (see section 2.6.1). It is important that Council have the ability to terminate a trial period before the conclusion of the trial period (whether one year or five years as provided for in the DDCP) if the performance of the business operator has been unsatisfactory (e.g. as stated in 2.6.1e). It may be poor public policy for the Council to be unable to terminate a trial period for extended trading hours should it need to.

This could be achieved by inserting the following sentence as 2.6.1 e1.

"Council may terminate a trial period at any time if Council determines that the trial period has been unsuccessful (e.g. non-compliance with a Plan of Management of other determining factors such as substantiated complaints regarding unacceptable amenity impacts, anti-social or criminal behaviour linked to the operation of the premises). The premises operator shall have the chance to respond to any proposed termination of a trial period."

2. In section 2.5 (Matters for Consideration), we feel that the DDCP would be strengthened by the addition of another "primary issue": the previous and existing ability of a business operator to ensure the success of previous or existing measures referred to in 2.5i. This could be achieved by adding the following phrase to 2.5i:  
  
"The previous and/or existing ability of the business operator, or business operators in the same premises, to ensure the success of similar measures."  
The application of a provision such as this would, of course, have to be done judiciously.
3. Similarly to point 2 above, another "primary issue" for 2.5 could be the extent to which the business has complied with measures in 2.5i in previous trial periods of extended business hours. This could be achieved by the addition of a relevant point in section 2.5.
4. In section 2.6 (Trial periods for extended trading hours), in relation to the first paragraph, we feel that it is important that Council have the ability to draw upon as many reliable sources of information in making an assessment about the ongoing management performance of a premises and its impact on

neighbourhood amenity. Accordingly, we suggest that a paragraph along the following lines be added after the first paragraph:

“Council may make such investigations as it thinks fit in making its assessments, including, and not limited to, receiving advice from individuals, organisations and the NSW Police Service.”

5. Section 2.6.1c is confusing. Does it mean that a Category A premises may be permitted, on each day of its operation, an additional two hours of operation, if a previous trial period is considered by Council to have been satisfactory? Section 2.6.1d is similarly confusing.
6. Sections 2.6.1c and 2.6.1d. What are the justifications for the extended trading periods of two hours and three hours? Are these effectively arbitrarily chosen durations? Extended periods of two or three hours may be quite significant on local amenity, especially at night and particularly for Category A premises (an additional two trading hours). We suggest that Category A premises be permitted no more than one additional trading hour per day instead of two (if the latter is the intention of 2.6.1c).
7. Section 2.6.1f: the trial period of five years for Category B premises is too long, especially considering that the lifespan of many businesses is less than five years. We are unclear as to the justification for a five year trial period for Category B premises. If Council is of the opinion that trial periods for extended trading hours for Category B premises should be longer than for Category A premises, two or three years is more reasonable than five years.
8. Whenever a trial period of extended trading hours has been approved, Council should actively monitor the business to ascertain whether the relevant Plans of Management are being implemented. In our opinion, there is insufficient effort by the City of Sydney to ensure that the conditions of approval of Development Applications by some late-night trading premises in Kings Cross are being complied with. A statement should be made in the DDCP about Council actively monitoring the implementation of Plans of Management.

In a related vein, 2011RA requests the City of Sydney to employ Compliance Officers in the Kings Cross area from 10pm to 5am on Friday and Saturday nights, to ensure that late-night trading premises are complying with all conditions imposed by Council.

If you have any queries regarding this please do not hesitate to contact me.

Regards

Dr Sacha Blumen  
President  
2011 Residents Association Inc.  
Tel: 0448 406 610  
E-mail: [blumensacha@yahoo.com.au](mailto:blumensacha@yahoo.com.au)