

**ITEM 10. SECTION 96 APPLICATION: 81 MACLEAY STREET POTTS POINT -  
WOOLWORTHS**

**FILE NO:** D/2003/1275/D

**SUMMARY**

**Date of Submission:** 12 March 2010

**Applicant:** Woolworths Limited

**Developer:** Woolworths Limited

**Proposal Summary:** Section 96 (2) modification application seeking to modify the 2004 approved supermarket and liquor store consent to allow permanent hours of operation between 10.00pm and 12.00 midnight.

The supermarket and liquor store has approved base hours of operation between 7.00am and 10.00pm, Monday to Sunday and has completed previous trial periods for extended trading between 10.00pm and 12.00 midnight. The site is located within the sub-basement level of the building and is accessed from Macleay Street.

The Late Night Trading Premises DCP 2007 allows extended hours on a trial basis and therefore operation without a trial period is not supported. During the recent trial period there were no substantiated complaints on Council's record and the NSW Police have advised that they have no record of adverse incidents occurring at the premises. It is considered that the operator has generally demonstrated good management and the extended hours of operation are supported on a further trial basis in accordance with the DCP.

The application has been called to Committee by three or more Councillors.

**Summary Recommendation:** The application is recommended for approval, subject to a condition that the hours of operation between 10.00pm and 12.00 midnight be approved for a 2 year trial period.

- Development Controls:**
- (i) South Sydney Local Environmental Plan 1998
  - (ii) South Sydney Development Control Plan 1997  
– Urban Design
  - (iii) City of Sydney Notification of Planning and  
Development Applications Development Control  
Plan 2005
  - (iv) City of Sydney Late Night Trading Premises  
Development Control Plan 2007

- Attachments:**
- A - Current Conditions of Consent
  - B - Existing Floor Plan

## RECOMMENDATION

It is resolved that the development consent for D/2003/1275 be modified as shown in ***bold italics*** and ~~***strikethrough***~~ by:

- (A) the modification of Condition 2. as follows:

### HOURS OF OPERATION

2. The hours of operation are regulated as follows:

- (a) The hours of operation of the premises (both the supermarket and liquor store) shall be restricted to 7:00am to 10:00pm Monday to Sunday.
- (b) Notwithstanding (a) above, the premises (both the supermarket and liquor store) may operate between 10:00pm and 12:00 midnight Monday to Sunday for a trial period of ~~1 year~~ ***2 years*** from the date of commencement of these extended hours. ~~The operator shall inform Council in writing of the date upon which these extended hours commenced and of any interruption to the continual operation of these hours this S96(2) modification~~ ***the Notice of Determination for Section 96 application (Amendment D).***
- (c) A further application may be lodged to continue the trading hours outlined in (b) above before the end of the trial period for Council's consideration. Such consideration will be based on, inter alia, the performance of the operator in relation to compliance with development consent conditions and any complaints received.

~~(amended 7 July 2004)~~

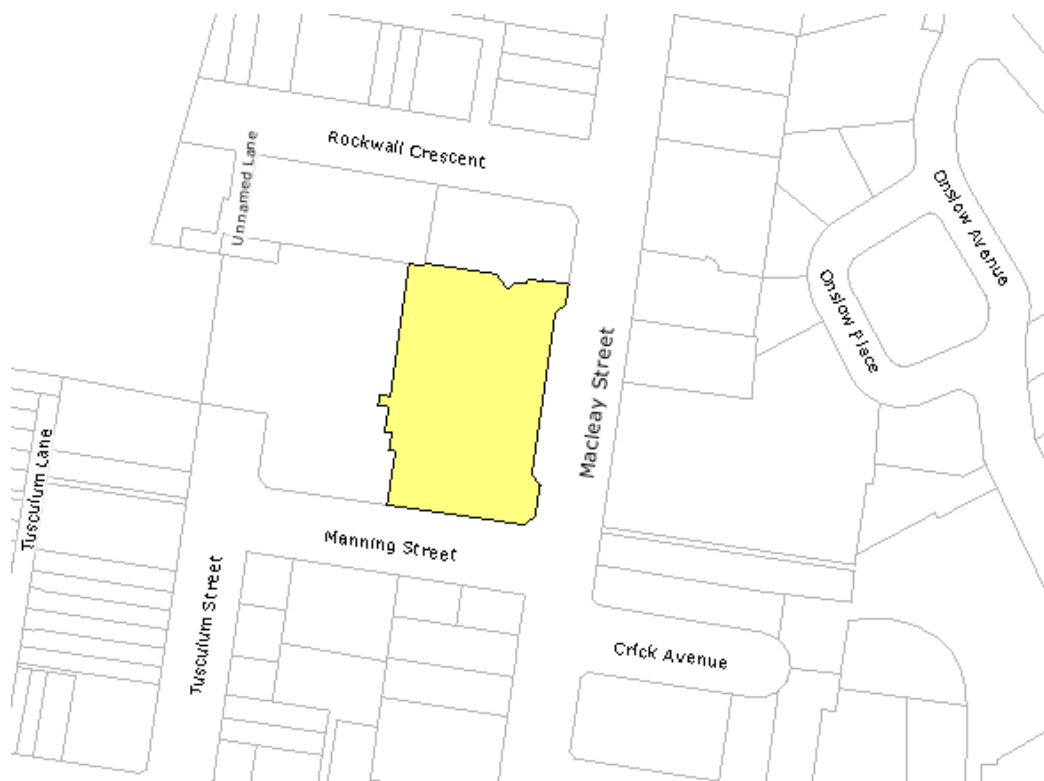
~~(amended 24 March 2009)~~

***(amended ... July 2010)***

## **BACKGROUND**

### **The Site and Surrounding Development**

1. The site is approximately 3,272sq.m and is located on the western side of Macleay Street. It has street frontages of 69.8m to Macleay Street on the eastern boundary, and a secondary street frontage of 41.3m to Manning Street on its southern boundary. The existing 18-storey building was formerly the Landmark Parkroyal Hotel and contains a mixed use building known as *Ikon* and containing residential and retail uses.
2. The Woolworths supermarket and liquor store, which is the subject of this application, is 2,172sq.m in area, with the trading floor comprising of 1,330sq.m, including 174sq.m for the liquor store. It is located at sub-basement level and accessed from Macleay Street and has use of the building loading dock from Rockwell Crescent.
3. The area is generally characterised by residential apartment buildings with retail outlets located at ground level along Macleay Street. The site is located approximately 300m north of the Kings Cross Liquor Freeze Precinct. Macleay Street is an alcohol free zone.
4. A site location Plan is provided below:



**Figure 1:** Location Plan

5. Photographs of the site and surrounding locality are provided below.



Figure 2: Site viewed from Macleay Street.



Figure 3: Macleay Street entrance – note liquor store location in background



Figure 4: View from Macleay Street footpath – note liquor store location in background



Figure 5: Internal view from supermarket checkout towards liquor store



**Figure 6:** Internal view (towards Macleay Street) showing relationship between liquor store entry and supermarket checkouts



**Figure 7:** View looking down Macleay Street from residential entrance to Woolworths entrance

**History of Development Applications Relevant to this Site**

6. The following development applications are considered relevant to the proposed development:

D/2001/1137

- (a) On 20 February 2002, consent was granted for a development application for refurbishment of a hotel building to provide 195 dwellings, 2,130sq.m of retail space, including a supermarket and 259 car parking spaces in the basement car park. Condition 3 required that a separate development application be lodged for the fitout and use of all retail tenancies, including the supermarket.

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- (b) On 9 February 2004, consent was granted for a development application for use and fitout of shop 1 as a supermarket and liquor store. The approved hours of operation were 7.00am to 10.00pm, Monday to Sunday, with extended hours between 10.00pm to 12.00 midnight approved for a trial period of 1 year.
- (c) On 29 February 2004, a Section 96 application (Amendment A) was approved to delete reference to a liquor store and change the floor plans to reflect this change. The purpose of this amendment was to permit the supermarket to occupy that part of the premises designated as a liquor store until such time as the liquor licence (off-licence - retail) was granted by the Licensing Court of NSW.
- (d) About 24 June 2004, the supermarket commenced trading.
- (e) On 7 July 2004, a Section 96 application (Amendment B) was approved to include reference to the liquor store and to allow the supermarket to occupy the area designated as a liquor store until such time as the liquor licence (off-licence - retail) was granted and to allow the use and fitout of the intended liquor store immediately following the granting of the liquor licence.
- (f) On 24 March 2009, a Section 96 application (Amendment C) was approved to amend condition 2 to allow a second trial for another 1 year trial period of hours of operation between 10pm and 12 midnight of the supermarket and liquor store. At the time of the application the liquor store had not begun operating, and therefore a 1 year trial period was issued.
- (g) A copy of the current Conditions of Consent may be found at **Attachment A**.
- (h) On 7 May 2009, the liquor licence was granted. The liquor store commenced trading shortly thereafter.
- (i) On 12 March 2010, the current Section 96 application (Amendment D) was lodged.

D/2008/1941

- (j) On 12 December 2008, consent was granted for a development application to amend the layout of the supermarket and liquor store.

- (k) A copy of the existing store layout may be found at **Attachment B**.

## **PROPOSAL**

7. The Section 96 application proposes to modify the approved development of the supermarket and liquor store and seeks to allow permanent hours of operation between 10.00pm and 12.00 midnight, Monday to Sunday. When combined with the existing "base" hours, the supermarket and liquor store will trade from 7.00am to 12.00 midnight, daily.

## **IMPLICATIONS OF THE PROPOSAL**

### **THRESHOLD TEST**

8. The development, as proposed to be modified, is considered to be substantially the same as that originally approved.

## **MERITS ASSESSMENT**

### **Hours of Operation**

9. Proposed Modification: To amend Condition 2 to allow permanent hours of operation between 10.00pm and 12.00 midnight.

Applicant's Submission: It is the applicant's view that the store can operate to midnight each day without any significant detrimental impact upon the natural or built environment. They state that the operator demonstrated competency running the liquor outlet to midnight each day during the trial period, and that the liquor store is only open whilst the supermarket is in operation. Liquor is not consumed on the premises.

### Comments:

- (a) The Premises is located within a Local Centre area of the City of Sydney Late Night Trading Premises DCP 2007 and is a Category B (Low Impact) premises. The DCP permits indoor trading hours at a base of 8.00am to 11.00pm and extended hours until 12.00 midnight.
- (b) The DCP permits a trial period of 1 year for the first trial period and a trial period of 2 years for a second trial period.
- (c) The supermarket commenced trading on 24 June 2004, and the liquor store has operated since May 2009. The premise has base hours approved between 7.00am and 10.00pm. The premises have had two one-year trial periods for hours of operation between 10.00pm and 12.00 midnight - the first trial period was for the supermarket commencing in 2004 and the second trial period for both the supermarket and liquor store commencing in 2009 (completed in March 2010).
- (d) During this most recent trial period there were no substantiated complaints on Council's record against the premises. The NSW Police have advised that they have no record of adverse incidents occurring at the premises. Therefore it is considered that the operator has demonstrated good management.

- (e) The applicant has submitted an Operational and Security Management Plan “Woolworths Potts Point” which includes the security and management responsibilities. CCTV operates within the supermarket and liquor store 24 hours a day, 7 days a week and a complaints logbook is kept on site. The Management Plan is considered to be acceptable.
- (f) There is an approved liquor store located directly north of the site at 77 Macleay Street, with hours of operation between 7.00am and 10.00pm Mondays to Saturdays, and between 8.00am and 8.00pm on Sundays; and a liquor store and delicatessen located at 91-93 Macleay Street approximately 100m south of the site with hours of operation between 9.00am and 12.00 midnight, Monday to Sunday.
- (g) It is noted that the DCP theoretically allows for the base hours for both the supermarket and liquor store to be increased to 11.00pm from the currently approved 10.00pm – this has not been sought.
- (h) The DCP also allows the extended hours for the supermarket, which has already been the subject of two sets of trial periods, to have a further five (5) year trial period. However, as both the supermarket and liquor store share a single entrance and are interconnected (refer existing store layout at **Attachment B** and photographs above), it is not considered appropriate to separate the two uses.
- (i) In this instance permanent hours of operation without an additional trial period are not supported as the DCP allows extended hours on a trial basis only. As only one 12 month trial period has been completed for the more sensitive liquor store use, it is recommended that approval to continue the same extended hours for both the supermarket and liquor store be granted for a two year trial period only. The trial period will allow the performance of the operator to be reviewed in two years.

### **Section 79C Assessment**

10. Unless otherwise discussed in this report, the previous assessments under Section 79C of the Environmental Planning and Assessment Act remain valid.

### **PUBLIC CONSULTATION**

#### **Section 79C(1)(d)**

#### **Advertising and notification**

11. Adjoining and nearby owners and occupiers of buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications Development Control Plan 2005.
12. Six (6) submissions were received. The grounds for objection are summarised as follows:

- (a) Anti-social behaviour and noise from patrons of the liquor store resulting from the extended hours, including a potential increase in people drinking on the street.

**Comment:** There have been no complaints on Council's record and the Kings Cross Police found no incidents arising from the premises on their file. Liquor is not permitted to be consumed on the site and Macleay Street is an alcohol free zone. The linkage between any instance of anti-social behaviour or on-street drinking as a result of sale of alcohol from the liquor store between 10.00pm and 12.00 midnight could not be substantiated.

- (b) The area is primarily residential and there are ample liquor stores servicing the area. There is no need for late night trading in a residential area.

**Comment:** As discussed above, the site is located within a Local Centre area within the Late Night Trading Premises DCP. This allows trading until 12.00 midnight subject to trial periods. The liquor store has completed a one-year trial period and it is considered that they have generally demonstrated good management. Therefore it is considered appropriate to allow a second trial period of two years. It is noted that there are other liquor stores located within the street however the concentration of liquor stores is not a planning consideration and it is considered that there is no adverse cumulative impact as a result of operations for two hours above the approved base hours.

- (c) Deliveries between 10.00pm and 12.00 midnight may cause additional noise.

**Comment:** An existing condition of consent restricts deliveries between the hours of 7.00am and 10.00pm, Monday to Sunday. The application does not propose to modify this condition.

## **EXTERNAL REFERRALS**

### **NSW Police**

13. NSW Police was notified of the proposed development. NSW Police has advised that they have no record of adverse incidents occurring at the premises and have no objection to the proposal.

## **INTERNAL REFERRALS**

14. The application was referred to Council's Safe City Unit.
15. No objection to the proposed development was raised.

## **RELEVANT LEGISLATION**

16. The Environmental Planning and Assessment Act 1979.

## **CONCLUSION**

17. The Section 96 application proposes to amend Condition 2 of D/2003/1275 so as to allow continuation of the hours of operation for the Woolworths supermarket and liquor store between 7.00am to 12.00 midnight, Monday to Sunday, without a further trial period.

18. The Late Night Trading Premises DCP 2007 allows extended hours on a trial basis and, therefore, operation without a trial period is not supported. It is considered that the operator has generally demonstrated good management and the extended hours of operation are supported on a further trial basis.
19. The application is recommended for approval, subject to a condition that the hours of operation between 10.00pm and 12.00 midnight be approved for a 2 year trial period.

**GRAHAM JAHN**

Director City Planning and Regulatory Services

(Matthew Girvan, Student Planner)