

EUROBODALLA SHIRE COUNCIL

PUBLIC FORUM

All members of the community who have registered have been advised that they have a **maximum of five minutes** to put their case.

Ordinary Meeting of Council on 10 November 2015

Name	Subject/Comments
Agenda Items – 10.00am	
Peter Hickman	QON15/003 Sea Level Rise Policy and Planning Framework
Bernard Wonder	PSR15/051 Tern Inn - modification to operating hours
Nicholas Walton	PSR15/051 Tern Inn - modification to operating hours
Andrew Lyristakis	PSR15/051 Tern Inn - modification to operating hours

Councillors

In effect you are the Board of Directors of a \$100M dollar organisation. Your organisation is meant to serve your shareholders who are the residents and property owners of this local government area.

As Directors/Councillors;

You establish vision, mission and values;

- Determine the company's vision and mission to guide and set the pace for its current operations and future development.
- Determine the values to be promoted throughout the company.
- Determine and review company goals.
- Determine company policies

You review strategy or develop vision, mission and values statements.

- Set strategy and structure
- Review and evaluate present and future opportunities, threats and risks in the external environment and current and future strengths, weaknesses and risks relating to the company.
- Determine strategic options, select those to be pursued, and decide the means to implement and support them.
- Determine the business strategies and plans that underpin the corporate strategy.
- Ensure that the company's organisational structure and capability are appropriate for implementing the chosen strategies.

I don't agree that these requirements are being met by accepting the answers to the questions posed by Councillor Pollock to cite "cherry – picked" examples, rather than reasoned argument based on good data. The terminology used in secondary school debating is "Arguing from the particular to the general". The logic being followed is "All Oranges are coloured orange, this fruit is orange therefore it is an orange." When, in fact, it might be a pumpkin. Simply the examples of real estate values being cited in the answers would have been affected by the sale of just 2 properties on Bay Road at Long Beach, which indeed, happened.

A recent written reply to a query regarding Sea Level Rise to a resident of Surfside contained an example of a measured SLR of 3.2mm in a year, as measured at Port Kembla! No mention was made of the fact that this was an isolated measurement; in the middle of a 1:100 storm, at the peak of a La Nina with ships passing by in the immediate area. This is why Shoalhaven picked the logical and long term recording at Fort Denison which shows a long term increase in sea level of 0.9mm per year.

Put simply the answers to the four questions are;

1. The consultants do not own property in Eurobodalla and therefore, as they say, are not concerned about property values.
2. The policy does not identify the future Capital Works Budget required to address Council's assets affected by SLR. However this does not mean there is not a need for future Capital Works to replace bridges, roads, open space and pipes affected by SLR.

3. All the other Aged Care Facilities are affected by the policy, lots of them. All future required Aged Care Facilities are subject to the policy.
4. The data has selected 5 suburbs across the whole of Shoalhaven and Eurobodalla for only month to month comparisons. When obtaining a valuation for your property, you generally get at least a couple of opinions. The graph presented in November 2014 was for the whole of the LGA's over a 10 year period.

Councillors, I have 5 minutes and in that time I cannot detail any further how poor I feel the answers supplied to Councillor Pollock are. However, I believe that what is shown is a culture that does not serve the community by supplying good hard data and policy.

You, as the Board of Directors should be asking, do I agree that this is a satisfactory situation and: how did the present state come about?

I have asked the Mayor what sort of framework was employed to ensure the Blackadder report was implemented and progress monitored and it appears that no such reporting, implementation planning and reporting was ever put in place. This is not good management practice. This is the reason why our Forum is frustrated. Many of our members have worked in high performing organisations. Please consider the relevance of following recent Wiley cartoons.



General Manager
Eurobodalla Shire Council
PO Box 99
Moruya NSW 2537

271 Hector McWilliam Dr
Tuross Head
NSW 2537

Attention : Carol Hodges

Dear Sir

Modification Application 7313/02 –Amended Trading Hours, The Tern Inn, Tuross Head

I am writing in response to Council's letter of 29 October inviting submissions to inform Council's discussion of Modification Application 7313/02 to be discussed on 10 November.

My partner and I have given overall support to this application, particularly the extended operating hours during the daylight saving period and on Friday and Saturday nights outside daylight saving, trading until midnight for 10 days per year and the opportunity to clean up and prepare food outside trading hours. However, we opposed the proposal to trade until 2am on New Year's Day on the basis that, by itself, it will do little to assist the viability of the Tern Inn business but will generate significant noise in a residential area consisting mainly of elderly retirees who retire well before midnight (including on New Year's Eve).

In short, the proposal fails any reasonable cost-benefit test as it won't secure the future of the business even if trading is busy on the night, while at the same time it can be expected to be disruptive to neighbours as a result of the party atmosphere (fuelled by many hours of serving alcohol) and departing vehicles sometime after 2am. We are concerned about the damage this proposal will do to relations between the business owners and nearby residents, all for the minimal gains generated by a single night's trading to 2am.

In a spirit of compromise and support for the owners, we would like to suggest they modify their proposal to finish trading at 12:30am. This would enable guests to see in the New Year but still leave the premises at a reasonable (albeit still very late) hour. This would go some way towards addressing our concerns while still facilitating trade on the evening of concern.

One of us will be available to speak to our submission on 10 November.

Yours Sincerely



Bernard Wonder and Rhonda Treadwell

9 November 2015

APPLICATION FOR MODIFICATION TO A DEVELOPMENT CONSENT

TERN INN RESTAURANT

INFORMATION SUPPLIED TO THE COUNCIL ON 10 NOVEMBER 2015

Thank you for allowing me to provide information in support of the Application for Modification to the operating hours of the Tern Inn.

Background

The premises are being operated as a licensed restaurant/café in a residential area. The current operating hours are set out in the Development Consent and specify that the operating hours are from 10.00 a.m. to 10.00 p.m. every day.

The primary reason for the application is that this small business is unable to attract customers that may wish to have a function or to continue their dining experience after 10.00 p.m. Similarly, the Restaurant cannot offer breakfast, because it cannot open until 10.00 a.m. The impact of these limited operating hours is most relevant during the warmer months from November to March, when customers take advantage of day-light saving.

The financial viability of the business and its economic and tourist value to Tuross and the Eurobodalla have been impacted by the current operating hours. The viability of this small business is in jeopardy because of the limited operating hours; on two occasions in recent years, this small business has been closed for extended periods (in part) because they have not been able to operate earlier or later to attract sufficient customers.

Complaints have been received from a person that is not an immediate neighbour (the complainant) about noise from people leaving the Restaurant both before the closing time and after the closing time. Unless the issues surrounding the current operating hours are resolved and the small business is enabled to operate, for at least a part of the year, from 8.00 a.m. until 11.00 p.m. it is highly likely it will cease to operate.

In order to comply with the closing time of 10.00 p.m., the Tern Inn advises customers wishing to have a meal or function at the Restaurant that they must leave the premises by 10.00 p.m. It has been our experience that a significant number of people do not patronise the Restaurant because of the closing time. People mention that these times are restrictive and that it does not suit their needs – basically, the Tern Inn is a suitable venue, but cannot provide a reasonable time frame in which to have the function or meal.

Previous owners of the business applied to Council on a number of occasions seeking to have the closing hours extended until 11.00 p.m. I think it is fair to say that the original owners of the business made a mistake when they initially applied for the development consent and they sincerely regretted not requesting a closing time later than 10.00 p.m. Extending the closing hours would have meant that they would have been able to service a greater number of customers (two sittings), improve the viability of the business, and increase the opportunities for employment within Tuross Head.

Objections and Concerns

Council planning staff provided us with information about the objections and concerns about our original application. The summary of objections and concerns provided to the Tern Inn from Council are:

Summary of objections:

- Objections to closing at 11.00pm
- Objections to 2am closing on New Year's Eve
- Objection to opening at 8am
- Objection to the number of functions per year

Objections were raised because of concerns relating to:

- Inadequate parking on site
- Unreasonable noise from patrons vacating the premise
- Unreasonable noise from deck area and within premise when bi-fold doors are open
- Concerns with safety of children unattended outside the premise
- Exhaust noise and cooking odours

Change to original application

Please note that the Tern Inn is requesting a change to the original application for extending the operating hours based on:

1. What we know about the objections to the original application;
2. Discussions with Council;
3. The provisions of EPA and OLGR legislation that impact on operating the Tern Inn; and
4. *The Tern Inn's proposed management actions to address the objections and concerns.*

The changes we request to the operating hours of the Tern Inn are:

1. Normal Operating Hours – from 8 am until 11 pm on a Friday and Saturday night throughout the year or on any day preceding a public holiday and 8 am until 10 pm on any other day;
2. New Year's Eve - from 8.00 am until 12.30 am on New Year's Day,
3. Functions – from 8.00 am until midnight for a maximum of ten days per year provided at least one weeks' notice is given to the residents living near the Restaurant; and
4. Clean-up operations and food preparation can occur prior to opening and closing provided no customers are on the premises.

At a meeting between Council (Anna Jones and Gary Bruce) and the Tern Inn on Thursday 17th of September 2015 at 2.45 pm, we noted that three main concerns were raised:

1. Noise from the building deck;
2. Noise from the street; and
3. Parking.

Importantly, the original *Application for a Modification to a Development Consent* did not seek to extend the *operating hours* from 10.00 p.m. until 11.00 p.m. for the entire year, but only during the tourist periods and on Friday and Saturday nights throughout the year. It is at these times of the year that the amenity of the town is already different because of the influx of people and traffic. Council suggested that if the change in *operating hours* was to be extended it should be for the entire year and not certain periods of the year – which was a point of disagreement with the Council planning staff.

Complaints and identifying the source of the noise

The Complainant has stated that the noise from the Restaurant, in particular in the street outside the Restaurant, is excessive. Council records will show that he has made allegations that the Restaurant has been operating as late as 12 midnight and after 11 p.m. on other occasions. We believe that we are in a position to disprove the allegations made by the Complainant and can point to instances where rowdy groups of people (8-10) have been seen walking home from the direction of the Tuross Head Country Club after 11 p.m. These people are very noisy and have been seen walking up the middle of Trafalgar Road – this occurred most recently on Saturday 21 February, 2015. In addition, parties have occurred in close proximity to the Tern Inn as recently as the 26th of September, 2015, where eleven cars were parked in Trafalgar Road, including four vehicles in the Tern Inn car park while it was closed to the public. We have invited the Complainant to participate in Mediation conducted by the Community Justice Centre, however he has declined to participate.

Importantly, the Complainant contacted the Restaurant by telephone at 9.45 p.m. on Friday 6 March, 2015 (within the current operating hours) and complained about the noise from five people talking and laughing in the car park at the front of the Restaurant. At the time the Complainant telephoned there were two remaining customers inside the Restaurant, and it was explained to him that we could not hear the customers outside the Restaurant; and that it was not yet 10.00 p.m. However, he believed that the noise was excessive. We invited him to come over to see me the following day, which he agreed to do, however he has not come to speak to me about the issues.

No other neighbours have complained to the Restaurant about the noise since we have had ownership.

Proactive steps to control and manage the noise

Since purchasing the premises approximately five years ago, we have taken proactive steps to reduce the noise emanating from the Restaurant by:

- Advising all customers that the Restaurant is located in a residential area and that there is a need to keep the noise to a minimum;
- Removing all of the external (roof top) refrigeration units and replacing them with internal refrigeration – this has meant that the constant starting and running of compressors throughout the day and night has ceased, which has significantly reduced the overall noise emanating from the building;

- Carpeting the dining area with a heavy duty commercial carpet that has also significantly reduced the noise emanating from the building;
- Replacing the large hard wired speakers used for background music with small discrete low wattage speakers that can be faced away from the doors and windows; and
- Installing cement sheeting on four lower sections of the deck area facing Trafalgar Road to assist with noise reduction from the building.

Noise control outside the building

I understand from the Complainant that the noise complaints relate mainly to noise from outside the building when customers are leaving. More specifically, the noise can be identified as noise made by people talking, laughing and closing car doors.

Our strategy has been to include a message in the menu for all customers, and to ask people not to make any noise as they leave the building. This message causes some considerable discussion inside the Restaurant as it is often seen as an unreasonable closing time for a restaurant in comparison to other Restaurants in a residential area.

The Environment Protection Authority (NSW) has produced guidelines for mitigating all manner of noises except the street noises that originate from people talking, laughing and closing car doors. This has lead us to the conclusion that we have been, and will continue to do our best to ameliorate the noise from people outside the building; this includes asking for their co-operation in keeping the noise to a minimum and placing information inside our menus about the noise issue.

Acoustic Testing

Council did agree for a trial period of closing at 11.00 p.m. during which previous owners were required to have acoustic testing completed. An area of dispute with Council is the validity of the acoustic testing which was done by previous owners. Council has indicated that the acoustic testing was unsatisfactory, namely that the background noise testing was not done during the proposed period of the extended operating hours. Council have indicate that they will not support any extended trading hours unless further acoustic testing is carried out.

We believe that the acoustic testing by the previous owners was done in good faith and recommended that the operating hours be extended.

At the request of Council, we have attended two meetings at the Council with Council staff and we have discussed the merits of having the acoustic testing carried out.

In summary, our position is that further acoustic testing would be a waste of time and money. We believe that an extension of one hour of operating on a Friday and Saturday night from 10 pm until 11 pm is reasonable in all of the circumstances. Similarly, we believe that at least some opportunities to have functions until 12 midnight in the Tern Inn should be provided for in the operating hours if adequate notice is given to the neighbours.

Why should Council approve of the application?

The EPA Neighbourhood Noise Guideline states that "The Office of Liquor, Racing and Gaming (OLGR) manages noise from licensed premises such as pubs and clubs (The Tern Inn is an OLGR licence premises). When the Office (OLGR) licenses these premises, it may place environmental noise conditions on the licence. These conditions typically include a requirement that the noise from pubs and clubs should not be heard inside any home between midnight and 7 am on any night." The Tern Inn has a liquor licence with a fee attached that entitles the Tern Inn to operate until midnight on every day of the week and until 2.00 a.m. on New Year's Day. Although, yet to be clarified or tested for the Tern Inn, the time period in a typical condition for a licensed premises is, according to the EPA Neighbourhood Noise Guideline imposed after mid-night. The OLGR has not imposed any environmental noise conditions on the Tern Inn Liquor License. Given that the Tern Inn is only requesting to extend it's operating hours by one hour for two days of the week and a limited number of functions for an additional two hours, which is less than provided by this guideline, we believe our *Application* is reasonable in the circumstances.

Similarly, the EPA guidelines provide for, "Time restrictions when noise should not be heard in a habitable room in a neighbours residence". This EPA guideline largely relates to people wishing to have a party in a residential area and has a bearing on the activities of the Tern Inn because we believe that a certain level of noise on a Friday and Saturday night until mid-night is perceived as reasonable. According to the guidelines musical instruments and electrically amplified sound equipment (e.g. radios, TVs, tape recorders, CD and DVD players, and home theatre systems) are not allowed before 8 am and after midnight on any Friday, Saturday or the day immediately before a public holiday; and before 8 am and after 10 pm on any other day. Again, given that the Tern Inn is only requesting to extend it's

operating hours by one hour for two days of the week and a limited number of functions for an additional two hours, which is less than provided by this guideline, we believe our *Application* is reasonable in the circumstances.

In addition to the EPA Neighbourhood Guidelines there are serious questions about equitable treatment of the Tern Inn in comparison to other restaurants in the Eurobodalla Shire. The other restaurants can operate until 12.00 mid-night in close proximity to residential areas. We understand from Council that the Tern Inn is the only licensed premises and restaurant in the entire Eurobodalla Shire that is restricted to a 10.00 pm closing time. Essentially, the Tern Inn is asking Council to treat the *Application* fairly and equitably with other similar establishments within the Eurobodalla Shire.

Council has been asked if any Council employees have ever made a determination that the noise emanating from the Tern Inn has been either intrusive or offensive. Our concern is that we do not know whether or not Council has taken any steps to verify the information being given the complainant. We believe Council should respond to any complaint by properly investigating the complaint at the time it occurs and that Council should be in a position to support or dismiss the particular complaint as potentially vexatious.

As far as the Tern Inn is concerned there needs to be a recognition by Council planning staff and the Environmental Health Officer (EHO) that the amenity of Tuross Head, by virtue of it being a major Eurobodalla tourist destination, is more akin to a suburb of Canberra during the shoulder and peak holiday periods; which is why we originally applied for extended trading hours during daylight savings. In reality, people visiting tourist town such as Tuross Head during the holiday periods have an expectation that businesses such as restaurants will be open until late to provide an important part of their holiday experience.

Council has indicated that it does not consider that our request to operate until 12.00 midnight to cater for functions on ten occasions per year would be supported. However, we believe that our *Application* is a compromise position that would allow the Tern Inn to cater for the needs of both tourists and locals.

Public Interest

1. Economic Value of the Tern Inn to Tuross Head & Eurobodalla

The economic contribution that the Restaurant makes to the small community of Tuross Head should not be under estimated. Understandably, Tuross Head as a small country town has very few employment opportunities. The Restaurant has employed up to two full time and five casual staff at any one time, and has trained in excess of fifteen local young people in the hospitality industry.

The Restaurant is known for providing locally sourced produce, in particular locally caught and processed fish, locally produced vegetables, wine and other products which contributes to local employment and the economic wellbeing of the Eurobodalla.

2. Tourism value of the Tern Inn to Tuross Head & Eurobodalla

We agree with the statement made by the Eurobodalla Shire Council in their newsletter dated April-June 2015 that, 'Eurobodalla's economy relies on tourism'. Tourists visiting Tuross Head will generally try the local restaurants and take-away food outlets in preference to cooking their own meals. It has been our experience that many tourists are surprised to read our signs indicating that the Restaurant must close at 10.00 p.m. – this is because they believe it is inconsistent with the usual liquor licence closing time for a restaurant and unusual to close at that time regardless of whether or not it is in a residential area.

During the main tourism period, the warmer months, we believe that most tourists would have an expectation that they could socialize in a Restaurant much later than 10.00 p.m. The impression that closing at 10.00 p.m. gives to a visitor is that they need to rush their meal and leave, whereas dining in a Restaurant in a town that relies on tourism is much more than having something to eat.

Proposed management actions to assist in minimizing the noise.

1. Noise from the building deck

As a management action, we do not propose to allow customers to dine on any of the deck areas of the Tern Inn after 10.00 p.m. This can be achieved by only accepting early bookings for the deck area and advising customers of the requirement to leave the deck area by 10.00 p.m. – signs would be installed on the deck area advising customers that service on the deck area will cease at 10.00 p.m. The current advice to customers printed in the menus about noise would be expanded to include closure of the deck at 10.00 p.m. Customers that wish to remain in the restaurant after 10.00 p.m. would be asked to move into the main restaurant area and off the deck.

In order to reduce the overall noise from the main restaurant area between 10.00 p.m. and 11.00 p.m. (if the application is successful), we propose closing the bi-fold doors that lead onto the deck areas (facing both Trafalgar Road and Hector McWilliam Drive) and the two

restaurant windows (facing Hector McWilliam Drive). This management action will significantly reduce the noise emanating from the building.

We will consider installing air-conditioning inside the main restaurant area should this be necessary.

In summary we propose:

- (a) No customers are to be on the deck area of the Tern Inn after 10.00 p.m.; and
- (b) Signs are installed on the deck area advising customers that service on the deck will cease at 10.00 p.m.

2. Noise from the street

At the times of the year specified in the *Application* Tuross Head is catering for an influx of people. We would like Council to be aware that on occasions we have noted that there are rowdy groups of people walking around the streets of Tuross Head that are not customers of the Tern Inn. We have presumed they are customers of either the Tuross Head Country Club, Tuross Tavern or from one of the many parties attended by holiday makers.

Again, the Environment Protection Authority (NSW) has produced guidelines for mitigating all manner of noises except those noises that originate from people talking, laughing and closing car doors in the street. We have included in all of our menus advice to our customers that the restaurant is in a residential area and that noise outside the building should be kept to a minimum. In order to address the issue of talking and laughing in the street whilst customers are getting into their vehicles to go home we propose that customers are asked to leave the restaurant via the side exit door, onto the disabled person ramp, and are picked up at the side of the building, away from the front of the building. This should mean that people will have their customary final 'good bye conversation' near the rear of the building.

In summary we propose:

- (a) A sign is installed at the front door of the restaurant asking customers who wish to remain in the restaurant after 10.00 p.m. that they should vacate the premises via the side exit;
- (b) Signs are installed at the exits to the main restaurant area advising customers that the Tern Inn is in a residential area and that customers are requested to keep the noise to a minimum; and
- (c) Maintaining the message in the menus that advise customers that the Tern Inn is in a residential area and that customers should keep the noise outside the building to a minimum.

3. Parking

Until we submitted the *Application* we were unaware of any concerns about parking on the site or in the street. We have been operating the restaurant believing that the existing Council approved car parking was adequate for the number of customers.

We propose working with Council to investigate options for improving the car parking at the rear or side of the building, however this would take some time to resolve. We intend to collect information about how many people are travelling in each vehicle and co-relate that information to parking requirements. It may be possible to extend the cut and retaining wall car parking area at the rear of the building to include an additional two car parking spaces and an area beside the building to create a further additional parking space. Alternatively, it may be possible to offer transport to some customers to minimise parking on site.

In summary, I am willing to discuss any concerns and look for solutions in order to meet any Council requirements.

Nick Walton

10.11.2015