

Newcastle Council's proposed *After Dark 2018 - 2022 strategy* – guiding the development of the city's night time economy (NTE)

Submission – Tony Brown

Newcastle Council ('council') is to be commended for its strategic approach of addressing the most pressing issue for inner city residents, that is, their family's safety and amenity. This priority was confirmed in council's last major 2015 survey confirmed on p13 of the strategy and is consistent with a more recent (2018) Hunter New England Health (HNEH) survey.

The strategy however, must be read in conjunction with council's disturbing submission to the concluded Horton Review (30 April 2018) that sought the effective dismantling of the life-saving package of Newcastle alcohol licensing provisions in favour of its own neo-liberal model of 'incentivising' individual licensed premises by increasing trading hours, reducing modest drink controls and actively promoting an increase in alcohol outlet density. These alcohol availability and supply liberalisation proposals are all contained in council's strategy.

Whilst council's untested proposal gained the immediate support of the local Branch of the Australian Hotels Association (AHA), it has been widely condemned for its likely contribution to increasing the existing high levels of alcohol fuelled violence by a bevy of our most trusted and respected public organisations and individuals including:-

- Senior local [police](#)
- [Hunter New England Health](#)
- Leading locally-based internationally recognised University and HMRI researchers
- Approximately 300-400 local and regional public and private [doctors](#) from a broad range of specialities including Emergency Medicine, Intensive Care, Trauma Surgeons, Addiction specialist, General Practitioners etc
- All emergency/front-line workers' organisations ([Lastdrinks Coalition](#)) including NSW Police Association, Nurses and Midwives Association, Australian Salaried Medical Officers etc.
- Many local residents/families who have experienced the severe dislocation and alcohol fuelled crime in Newcastle's CBD for over the last 18 years when extended late trading to 5am was introduced for the whole precinct.

The following are relevant extracts from the HNEH submission to the Horton review (emphasis added)

Should a reconsideration of the licensing conditions involve a weakening of the conditions, particularly of those relating to the availability of alcohol (trading hours and strength of alcoholic drinks available), local and international evidence clearly demonstrates that an **increase in the occurrence of alcohol-related violence can be expected to occur** (Babor et al 2010, Burton et al 2017, Fitterer et al 2015, Anderson 2009, Popova 2009). Such an impact is incompatible with the safety and amenity needs of a rapidly growing city residential population (p6)

...a weakening of, or exemption from the existing licensing conditions for specific licensees would not only put at risk the existing harm reduction benefits in Newcastle, but would make no contribution to, and contradict the need for additional/enhanced strategies to reduce the acknowledged remaining high levels of violence in Newcastle ... [T]he existing licensing conditions

should be considered to be the base conditions applicable to all licensed premises, and additional conditions applied according to the risk, harm and compliance characteristics of individual premises. Given the association between the excessive consumption of alcohol and the occurrence of alcohol-related violence, such additional conditions should have a focus on further reducing the availability of alcohol, such as **further restrictions on licensed premises trading hours** (Atkinson et al 2018). ([HNEH](#) p7)

Senior council representatives actions that appear to have deprived councillors of the opportunity to be directly briefed by the above organisations (with a 'vested interests' in ensuring the public's ongoing safety, health and welfare) on the likely harmful and costly impact of the **specifics** of the council/AHA preferred local alcohol de-regulatory model, negates the capacity of the council to assert with respect to its proposed alcohol regulation model and this proposed strategy, that it legitimately reflects the best interests of all the Newcastle community.

A fatal flaw in both council's/AHA alcohol deregulatory model and the afterdark strategy is its deliberate failure to provide a balanced and objective account of the true level of current alcohol related harms in Newcastle and surrounding suburbs. What the council and the AHA have failed to include in their respective misleading submissions (and it would appear that the Horton report may have neglected to give sufficient weight) is that despite the nation-leading sustained 72% reduction in reported weekend night non-domestic assaults in Newcastle's CBD since the introduction of the modest *Newcastle conditions* in March 2008, this was from a very high base (the highest level in NSW). The current Newcastle council cannot legitimately claim any credit at all for this commendable reduction in reported assaults. Newcastle's CBD assault rate is still around 10 times the NSW average and we remain a BOCSAR declared violence hotspot for the last decade.

"Given the opportunity for a review it might even be a **case for reducing trade, given the evidence that's out there**. We might even suggest it might need to come back further," Superintendent Galton said... He will meet next week with Mr Horton and argue that any relaxation of existing conditions is a "**massive risk**" for the city as it undergoes a revitalisation, in part because of the consequences of nearly a decade of liquor controls. (Newcastle Herald Joanne McCarthy 22 November 2017 – emphasis added). [NSW government subsequently refused to reveal police Horton submission – questioned by the NSW Information and Privacy Commissioner]

NSWHealth alcohol related harm statistics also inconveniently suggest Newcastle still has a significant problem with the dangerous oversupply and availability of alcohol. The failure of the council to include the above alcohol harm indicators in its submission and this strategy fundamentally challenges the thoroughness, balance and reliability of the same.

This continuing level of harm, a level more than twice the reduction achieved by the introduction of the licensing conditions, results in a significant ongoing negative impact on the health of Newcastle residents and visitors, to the safety and amenity of Newcastle, to the delivery of public services such as health services, and to the local economy. ([HNEH](#) submission Horton p4)

...In this context, reconsideration of the existing licensing conditions is warranted in terms of identifying additional licensing conditions and/or enhancements to the existing conditions such that the remaining high levels of alcohol-related violence are further reduced. Such additional conditions and enhancements should have a priority focus on **reducing the availability of and consumption of alcohol** given excess consumption of alcohol is the primary driver of the occurrence of alcohol-related harms ([HNEH](#) p6) (emphasis added)

Another key factor undermining the probity and legitimacy of the *afterdark* strategy is that council appears to have failed to explicitly declare in both its alcohol deregulation model submitted to the Horton review and this strategy, its **pecuniary interest** in owning 2 pubs including the late trading Queens Wharf Brewery from which it derives both a rental and revenue share income stream. This could provide a partial explanation why residents from Stockton and Newcastle's excessive noise complaints and DA breaches against the Brewery were ignored by the council until finally *Liquor & Gaming NSW* made inquiries.

Likewise, council cannot legitimately assert that it conducted effective **community consultation** when **none** of the complex details of its proposed deregulatory model were shared with community/government agency stakeholders till after it was endorsed by elected councillors and [submitted](#) to the Horton review. This apparent failure to disclose and the other above mentioned factors would undermine Horton's inexplicable deference towards council's submission notwithstanding its unprecedented strong opposition by both senior police and public health officials on solid independent evidence-based grounds.

The recently [reported](#) nearly fatal head injuries of a young man in the Newcastle CBD from a one-punch assault must be a big reminder to all councillors we are just one punch away from a tragic likely preventable alcohol fuelled death.

Other obvious problems with the council's proposed afterdark strategy

1. Council has not included a definition of "live music"

A farcical situation exists in Sydney where the definition of 'live music' has been broadened to include DJs playing pre-recorded music. This has become a sop to the powerful alcohol industry and a vacuous excuse just to make more profits from the sale of alcohol. Another weak and suitably vague [criteria](#) includes 'Venue has a market orientation **towards** live performances, the arts and cultural events and endeavours'. This could conceivably embrace 'adult entertainment'.

Any "live music" conditions must be precisely that – **not pre-recorded**. There is no justification in Newcastle to provide an additional 30min trading for live music when it has already undergone a **welcomed** renaissance under the existing conditions. Nothing prevents venues now from commencing the music 30m earlier or seek a DA variation to remain open 30 min longer without altering the existing license and DA conditions for the time of cessation of the sale of alcohol.

It is also essential for council to decouple the false notion that the provision of alcohol later into the night must be a prerequisite for the provision and enjoyment of live music. There is no evidence supporting the same or that the quality of the music is directly related to levels of intoxication. The cost of engaging musical performers should in the first instance be borne by the venue owners through cover charges etc not, through promoting and facilitating the over consumption of alcohol.

2. 'Agent of change' principle

Whilst the above principle is included in Victorian law, it is not clear whether this above 'principle' has yet been recognised by NSW law.

Council cannot cherry-pick which legal notion best suits its and the local AHA's profit driven opportunities. The NSW Liquor Authority considers 'order of occupancy' when addressing 'undue disturbance to the peace and good order of the neighbourhood' complaints.

Council's reliance on the agent principle is problematic.

The first element of risk management is 'eliminating the risk'. 'Mitigating' the risk is low in the order of risk management. Clear mutually agreed and reasonable noise limits, testing/sampling methodologies and associated times must be consistently established through the Newcastle CBD.

Residents and their families make up the single largest group of financial investors in the CBD. Their safety and amenity must be afforded primacy unlike that proposed in the afterdark strategy. They also of course live, sleep, work, vote, learn and play in the CBD for a greater proportion of their time than any other stakeholders.

Council's credibility is diminished by its selective picking of independent principles to guide its strategy. Two well-known legal and planning principles are the '**precautionary principle**' and the independent social/environmental assessment of the '**cumulative impact**' of potentially harmful alcohol outlets and other operations that may be potentially damaging to the environment. The application of these two legal principles recognised in NSW law would result in a afterdark strategy and proposed council/AHA alcohol deregulatory model substantial different to the current and much similar to the preferred position of our leading and most trusted senior health officials and the police.

Council's removal of any proper **cumulative** social impact assessment of the significant increase in the total number and [concentration of alcohol outlets](#) in the CBD, provides the perfect mechanism as part of its neo-liberal 'individualisation' approach to remove the local alcohol industry from any joint responsibility, accountability and censure for the overall (holistic) precinct-wide capacity to prevent alcohol related harms and related disturbances. This includes smaller outlets being 'feeder' premises (as already identified by police) for higher risk venues and their capacity to strictly comply with RSA obligations in an environment of high levels of competition exerting a strong downward pressure on compliance standards.

Another problem with the 'agent' principle is it cannot adequately apportion accountability, responsibility and cost for the reality of 'mixed situations'. Such situations occur where for example, some new families move into a long established residential complex subject to excessive noise from venues and the alternative where for example, a large licensed premise as an order of occupancy predating newer surrounding residential complexes—but may add an additional bar or sublet a space for new live music that is intolerable for surrounding residents.

Council's double standards and apparent bias towards industry profit driven interests extend to justifying a harmful extension in the availability of alcohol to meet the drinking needs of shift workers, but fails to recognise the sleep requirements for shift workers and their young families who reside in the CBD.

Council's use of the 'agent of change' principle is extremely problematic. It is heavily weighted in favour of the alcohol industry 'Agent of Change distributes risk and cost fairly, while providing a level of protection for valuable live music and performance space' (p9). Where are the reciprocal

protections for residents and families' quiet and good order who are already locate in or may invest their life savings in relocating to Newcastle's attractive and diverse CBD?

3. Noise mitigation controls – it's just not the noise

Reasonable, simple and easily understood enforceable noise limits should apply to all residents regardless of location. Ten pm appears a reasonable time period (for most days of the year) after which time residents should not be disturbed in their bedrooms and living rooms (with windows closed) from external noise emanating from licensed venues or their patrons on the way to or after leaving a venue.

Council's strong alcohol industry bias is again revealed by its deliberately minimalist portrayal of typical alcohol fuelled manifestations of undue disturbances regularly experienced by many inner city residents and their families. Much of this is a result of failed Responsible Service of Alcohol (RSA) practices.

Council concentrates on costly doubling glazing as a panacea to noise complaints. Extremely loud, violent and offensive noise is intolerable regardless of the location, surrounding noise reduction measures and exacerbating weather effects. Where council's example of double glazing and other venue specific mitigation measures fails, is it ignores the typical pattern of highly intoxicated patrons migrating between venues via residential/mixed zones where there may not be a concentration of licensed premises. Council also ignores the return of an increased likelihood of anti-social behaviour and vandalism directly linked to their and the AHA's desirous increase in late trading hours. Who will clean up the additional vomit, blood, excrement, urine, rubbish and broken shop windows associated with an increasingly 'vibrant' NTE? Who will pay and reimburse inner city residents and shop owners for the costs and loss of amenity/property values? The licensed venues? Newcastle council and all ratepayers?

4. Failure of inclusiveness

What steps is council undertaking to ensure informed inner city residents views are directly represented on its consultative forums involving its proposed strategy and deregulation model? Why does council only surround itself by stakeholders who share its same commercial driven aspirations and media/photo opportunities?

Part 8.1 Collaborative Partnership-based Approach of the strategy claims 'A key aspect of Council's approach to managing Newcastle after dark is a multi-agency, multisector approach demonstrating the importance of collaboration between all levels of government and with non-government agencies, business and the wider community'.

This above section is misleading. The new council's track record with senior police and health officials and some of its own staff advisors has been much more problematic with respect to sensible alcohol management controls. It appears that council's leadership may have been captured by the local alcohol industry.

This submission above has identified polar opposite positions between council and police/health regarding the future of the Newcastle Conditions and the necessity of adopting a **precautionary**

approach given the true magnitude of existing alcohol related harms in the CBD and Hamilton. This lack of collaboration also extends to the elected council apparently overturning the unanimous recommendations of the police/health and its own planning officers not to grant an extension in late trading hours for the Star Hotel. It is also understood council may have allowed the hotel to continue to trade later notwithstanding a trial period had expired.

5. Noise and Land Use Conflicts (p9 strategy)

The above section of the strategy asserts that 'The premiere city nightlife precincts will have different approved uses including **later trading venues and increased noise levels**, whether from live entertainment or generally heightened levels of social activity. One benefit of clustering is a 'containment' effect of these potential land-use conflicts. However, **ultimately there needs to be acceptance on behalf of city centre residents that city life involves a degree of noise and activity**'. (emphasis added)

The unfortunate passage pre-empts the outcome of council's alleged consultation process. It detracts from its credibility and impartiality.

Inner city residents have already experienced **under the existing package** of life and cost saving (Newcastle) conditions a more than 100% increase in CBD licensed premises mainly licensed restaurants and smaller bars. There has been no demonstrable increase in complaints with the exception being council's owned (but not operated) Brewery – where residents' complaints about the excessive, offensive and intrusive [noise](#) disturbances to the council were ignored.

No prima facie case has been established for the above increase in trading hours and noise. In fact, the best available independent [evidence](#) suggests consideration should be given to the contemplation of a further modes reduction in late trading hours. Strong evidence also exists about the dangers of clustering and increased alcohol outlet density.

6. Council as a regulator

Page 15 of the proposed strategy refers to council's regulator role.

The inner city and Stockton community have already experienced council's unwillingness to enforce its own statutory public interest controls on one popular large late trading hotel it has a pecuniary interest in. How can it be trusted to set and effectively enforce much more complex rules of its own making on many more proposed licensed venues in the CBD – particularly if some of those same venues are represented on consultative committees where the council is also represented?

In a very disturbing development, a local resident who made a lawful noise complaint against licensed premise had his personal phone number leaked to a patron who subsequently voiced his objections directly to the resident for lodging a complaint. For many years local residents have been threatened and intimidated for raising legitimate complaints against licensed premises. With a likelihood of many more complaints arising from council's deliberate strategy to encourage more noise and longer into the night, council has offered no guarantees that such complaints will be ever reasonably addressed (given its strong pro-industry bias) and residents' safety and privacy protected. There also remains the problem of intoxicated patrons once they leave the premise. How

does the disaffected resident identify which premise failed its legal RSA obligations and allowed the patrons to be loaded up and cause the undue noise and behaviour disturbance?

It is understood that key area of council were not fully consulted in the development of this problematic alcohol NTE strategy. What will be the additional burden on ratepayers for council to administer and enforce this radical untested neo-liberal departure from existing life-saving measures? The NSW government in June 2016 under pressure from the powerful alcohol industry scrapped all 10 local liquor licensing inspector positions with no consultation with police or local community. Police resources are already stretched to the limit. Does council intend to fill this dangerous void of effective enforcement (Hamilton now has an assault level worse than the CBD) or is it part of their shared alcohol industry agenda to encourage industry self-regulation in Newcastle – just like putting Dracula in charge of the blood bank? Has the council not learnt anything from the Hobbesian time before the introduction of the modest package of Newcastle conditions in 2008 when the AHA effectively ruled and life on our inner city streets late on weekend nights was ‘nasty, brutish and short’?

Council’s proposed strategy is [inconsistent](#) with Sustainable Development Goal (SDG) [3.5](#).

These are some critical outstanding questions that need to be openly answered by the Mayor. This must happen before council properly determines the future of this proposed strategy and its model for alcohol industry deregulation. It has to be achieved through a revitalised process of collaboration with the town’s most respected and trusted independent experts and current and impending inner city residents (investors) and their families who will bear the disproportionate and unfair brunt of the likely increase of alcohol related harms and intolerable alcohol fuelled disturbances.

Conclusion

For the sake of the safety and amenity of existing Newcastle inner city families, the expected additional 3,000 or so anticipated in the near future and, our reputation for already transforming our place into a relatively safer and inviting city, please reconsider the council’s approach to our night time economy and the related effective management and regulation of the availability, supply and [promotion](#) of alcohol.

My submission to the Horton review that includes a critique of council’s submission is available on the Liquor & Gaming NSW [website](#). Would you please incorporate the same into this submission.

In the spirit of openness and transparency we encourage council to immediately make available on-line, all submissions and related representations it receives for this proposed strategy.

We also request a **public voice** on this important matter that also includes an open **public briefing** from the police, HNEH and independent University of Newcastle researchers involved in alcohol harm prevention.

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Newcastle

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