



OBSERVATORY

Civic Association

60 Trill Road
Observatory
7925

9th February 2021

Email: chair@obs.org.za

To the Sub-Council Manager

SUBMISSION BY THE OBSERVATORY CIVIC ASSOCIATION REGARDING THE APPLICATION FOR EXTENSION OF LIQUOR TRADING HOURS FROM 02H00 TO 04H00 ON BEHALF OF RAYHAS INVESTMENTS (PTY) LTD TRADING AS STONES OBSERVATORY, 84 LOWER MAIN ROAD, OBSERVATORY

The documentation from the Sub-Council 16 regarding this application states that the current trading hours of this business are 11:00 until 02:00 the following day. This is incorrect.

This business first applied for an extension of their trading hours from 02h00 until 04h00 in 2017. This application was comprehensively opposed by many residents in Observatory. A petition from local neighbouring residents was submitted, as was an objection from the Observatory Neighbourhood Watch and the Observatory Improvement District. All these documents are on file and available for perusal by Sub-Council 16 members if required. Despite the objections of the community, this business was given permission to trade until 04h00.

This business applied for a renewal of the extension of their trading hours in 2018 and 2019, and once again, on appeal, the Sub-Council agreed to the extension.

The community of Observatory strongly objects to any business trading until 04h00 in a residential area. This has led the OCA to consult widely and adopt a liquor license policy in 2019 in terms of which we will not support any license application for trading beyond 2am. The reasons are as follows:

1. Observatory is a residential area with a very narrow and defined 'business entertainment zone' on Lower Main Road. Generally, as a community, we are delighted to have businesses operate in our neighbourhood, but we must insist that

business are able to operate in a way that reinforces, but not undermines the community's values.

2. As it is, with the current hours, residents are woken up by revelers making their way home, by people shouting in the street (sometimes even fighting in the street), vomiting and urinating in public areas. This is anti-social and undesirable behaviour in an area populated by families, working people and the elderly. These complaints have been documented in the past. That more evidence of such consequences are not available is simply due to the fact that residents have despaired that any complaints will be taken seriously given repeated latitude given by the authorities to the applicant's license application and the failure to act against the business that is the source of these problems.
3. There is no entitlement in law to a business to be permitted to trade to 4am, irrespective of whether permission has been previously given. Current municipal trading bylaw provisions make it clear that the "Maximum permitted trading hours" for a premises selling alcohol on site is 02h00 and that any extension beyond that maximum must take account of the "(a) outcome of community consultation; (b) impact on the environment; (c) any other relevant factor." Given that community consultations have consistently demonstrated substantial opposition, and that adverse impacts on the environment have been documented (violence, noise, disorderly behaviour), it is incumbent on the Sub-Council to reject this application.
4. We also draw attention to the fact that the by law notes that "any other relevant factor" shall be taken into account. We contend that the current COVID-19 epidemic represents a significant relevant factor that sub-council must consider. The epidemic is likely to be with us for the duration of the license validity. To the extent that late night drunkenness is likely to lead to practices that facilitate transmission of COVID-19 (drunken behaviour, out of public sight, is more likely to involve failure to ensure any social distancing or safety measures), sub-council must be mindful of the exhortations of our president that we should do everything we can to control transmission of the virus. Handing the applicants a license to trade to 04h00 completely undermines what we are being called upon to do.
5. We also argue that if one business is granted an extension to their trading hours, it sets a precedent for other businesses to apply to prevent an unfair business advantage.
6. The experience of the recent lockdowns in terms of the Disaster Management Regulations has made it patently obvious to South Africans that this country has an alcohol abuse problem. There is now very clear evidence demonstrating the extent to which abuse of alcohol fuels violence, trauma and reckless behaviour and places a burden on our health system and emergency services.

7. The temporary restrictions placed on the availability of alcohol under the Disaster Management regulations have shown that the average number of patients seen during the hard lockdown period (April - May 2020, alert levels 5 and 4) decreased by 53%. During the post-lockdown period (June 2020 - alert level 3), the number of patients who visited the unit increased and returned to almost those numbers seen during the prelockdown period. (Research by Pradeep Mavsaria based at Grootte Schuur Hospital and published in the South African Medical Journal. (Published online 14 December 2020).
8. The White Paper on Alcohol Harms Reduction for the Western Cape states that “at present trading hours and days vary across the province, with some trading times being excessive and leading to increased availability... reducing the availability of alcohol is a WHO “best buy” to reduce alcohol-related harms, because decreasing alcohol trading hours is among the most effective and cost-effective alcohol related harms prevention strategies ...The purpose of this policy is to provide for considered and uniform trading hours that avoid the unintended consequences of excessive trading hours contrary to a harms reduction approach. The proposal may provide for variation, such as different trading hours and days in residential areas versus in business nodes or for tourism purposes (e.g. wine farms). Exemptions will be included to allow for flexibility based on set criteria ...”
9. The White Paper therefore recognises there is a clear and well established benefit to restricting hours of trade in alcohol. The City must take account of available evidence and relevant policies when deciding on a liquor license application.
10. We draw sub-council’s attention to the recent decision of the Western Cape Liquor Licensing Appeal Tribunal in the license application of David Harris T/A Springbok Pub Observatory, Case No: 2019/566, in which the presiding officer noted that the Western Cape Liquor Tribunal had awarded the license on the basis that a limitation of trading hours would be a fair administrative practice that would reduce noise disturbance to the neighbours, in that case a restriction to close by 22h00. Notably, the presiding officer felt that even such measures were inadequate to avoid harms to residents and overturned the granting of the license. There can be no logical reasoning why permitting trading to 04h00 would not be prejudicial to nearby residents, given the behaviour of the establishment’s inebriated patrons, well documented in the past.

We do not believe there are any plausible criteria which justify an exceptional circumstance to permit one business to trade into the earlier hours of the morning. There should be no liquor trading beyond 02h00 in the neighbourhood.

The Observatory Civic Association and residents of Observatory therefore urge the Sub-Council 16 members to reject this application, and to employ the best legal minds available in the event of an appeal.

Yours sincerely

Carolyn Neville

OCA Sub-Committee, Liquor Licences, Noise, Drugs and Related Social Issues