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PCU037218

14 August 2012

Ref: 120006 13L(i)

The Director General
Department of Planning and Infrastructure
GPO Box 39
Sydney NSW 2001

Attention: Mr C Wilson
Executive Director, Major Projects Assessment

Dear Sir,

Re: SHFA MOD 083-05-08(1)
100 George Street, The Rocks
Applicant: La Mella Pizzeria Pty Ltd



We act on behalf of La Mella Pizzeria Pty Ltd. MOD 083-05-08(1) was determined on 15 December, 2008. Condition A4 of that consent reads:

A4 Hours of Operation

The hours of operation for the licensed pub, restaurant, bars and place of public entertainment on level 2 (indoor areas only), level 3 and level 4, are regulated as follows:

- (a) (i) *Monday to Saturday (and Sunday where the following day is a public holiday) 10.00 am to 1.00 am (the next day); and*
- (ii) *Sunday – 10.00 am to 12 midnight.*
- (b) *Notwithstanding a(I above, the indoor areas of the premises may operate between 1.00 am and 3.00 am, Monday to Saturday inclusive for a trial period of 1 year.*
- (c) *Notwithstanding (a)(i) above, the level 2 outdoor terrace may operate between 1.00 am and 2.30 am Monday to Saturday inclusive for a trial period of 1 year.*
- (d) *The trial periods specific in (b) and (c) above commence from the date of any occupation certificate issued under this consent.*

(e) A modification application may be lodged to continue the trading hours outlined in (b) and (c) above before the end of the trial period. The consideration of a proposed continuation/extension of the hours permitted by the trial will be base don, among other things, the performance of the operator in relation to the compliance with the development consent conditions, any substantiated complaints received and any views expressed by the NSW Police Force.

The applicant completed the refurbishment of 100 George Street, The Rocks, and gained an occupation certificate on 5 October, 2011. The trial periods granted by Condition A4(b) and (c) will expire on 4 October, 2012.

The purpose of the Section 96(1A) application which accompanies this letter is to seek an extension of those trial periods for a further two years, ie, terminating on 4 October, 2014, unless otherwise varied.

This letter is intended to serve as a Statement of Environmental Effects for the Section 96 application.

Not only does Condition A4(e) invite (or instruct) the applicant to lodge a Section 96 application for the extension of the trial period but the development, when modified as sought by the application, will remain the same development as that approved. Thus the extension of the trial period can be dealt with by way of a Section 96 application.

The development which resulted from MOD 083-05-08(1) is – to use the terminology of the Standard Instrument - a “pub”, known as Bar 100. The applicant has invested some \$12 million in converting the former Mission to Seamen building into one of Sydney’s more popular entertainment hotels on Friday and Saturday nights. Bar 100 offers fine dining, live entertainment, exclusive cocktail lounges and dancing as well as hosting corporate and like functions. The entertainment provided by the applicant consists mainly of disc jockeys. However, patrons who hire one or other of its relatively small rooms for private functions may provide their own entertainment. Bar 100 has 30 people on its payroll.

Bar 100 had traded the full extent of the hours it is permitted to trade by MOD 083-05-08(1) but, on five nights of the week, the numbers of patrons it attracts have generally been well below its specified capacity. However, on Friday and Saturday nights, the numbers present can approach its specified maximum capacity of 673 with queues forming as would-be patrons wait to enter.

While no reason was given in MOD 083-05-08(1) for the imposition of the trial periods, presumably, it was to “*protect the amenity of the local environment, residents and adjoining landowners*”, one of “*the reasons for the imposition of the above conditions*” listed at the end of the determination.

At the outset, there are no residents living close to Bar 100. Those that live at a distance are largely shielded from Bar 100 by surrounding non-residential buildings such as the cruise ship terminal (on the east), commercial buildings (on the north and south) and the Holiday Inn Hotel (to the west across George Street). (The last is one of those types of buildings which may or may not warrant classification as “*residential*” as it provides accommodation for guests that, in the parlance of the Standard Instrument, constitutes

"hotel accommodation". Whether or not its guests are residents is debatable. However, its management acts as if its guests were residents.)

Regardless of that, an enquiry at the Council of the City of Sydney revealed that it has received one complaint about noise, alleged, emanating from Bar 100. That complaint was made on Sunday, 1 July 2012, at 8.16pm. There is nothing in the material provided by the Council to indicate whether or not the complaint was substantiated or if any follow-up action was taken. There is no entry in the Bar's Incident Register of any complaint having been made to it or of any visit by Council's officers investigating a noise complaint on that evening.

The licensee maintains an Incident Register, as required by the Office of Liquor Gaming and Racing. An inspection of that Register shows that Police officers have attended the Bar, in the eleven months it has been trading, on four occasions to deal with "incidents", each of which involved a patron refusing to leave the premises or an intending patron being refused entry to the premises and becoming aggressive. On each occasion, the officers were in attendance within a few minutes of being called. As is the case with any well-run hotel, there are a considerable number of other entries dealing with patrons being asked to leave the premises for a variety of reasons including approaching intoxication, improper behaviour and the like, or with would-be patrons being denied entry where no violence was involved.

The Rocks Police Station is located about 50 metres south of Bar 100 and officers from that Station visit it regularly for both official and private reasons. The applicant has been assured that the Police are satisfied that the Bar is being conducted appropriately and have no objection to it continuing to trade the hours that it has traded since opening. For example, the applicant and the licensee are working with the Police to improve public safety in the vicinity of the Bar by expanding the area under CCTV surveillance. (See attached letter from The Rocks Local Area Command dated 10 July, 2012.)

The licensee reports that he is only aware of one instance when a nearby business – a restaurant in the International Overseas Terminal – raised a noise issue: it requested that the noise level generated by a live band playing on the open terrace facing the Terminal on a Sunday afternoon be reduced. (That was done.)

The Bar is licensed under a hotel licence (No. LIQH440010073) issued under the Liquor Act 2007 on 15 January 2011. It is conducted in accordance with the conditions imposed on that licence.

In terms of the apparent reasons for the imposition of the trial period, it would appear that Bar 100 has not caused any unreasonable disturbance of amenity, particularly, given it is located in an area where there are a number of other licensed premises which trade similar hours in an "entertainment area" for the City, if not for NSW.

The applicant, in seeking the extension of the trial periods for a further two years, is following the precedent established by the Council of the City of Sydney under its *Late Night Trading Premises Development Control Plan* which – it should be noted – does not apply to the area under the Sydney Cove Redevelopment Authority Scheme, the relevant environmental planning instrument covering 100 George Street.

The Section 96 application which accompanies this letter is being submitted almost two months before the expiration of the trial periods so that it may be determined before that event occurs.

If it is not determined before 4 October 2012, the applicant would be significantly and adversely affected as the economic viability of the business rests largely on the Bar being able to trade between 1.00 am and 3.00 am, particularly, on Fridays and Saturdays. Not being able to trade the additional two hours on six nights of the work would not only result in a direct loss of income but would also damage the business by eroding the expectation the applicant has established of it providing a safe, sophisticated late-night venue among its large and growing clientele.

In order to avoid those adverse consequences, if the application is not determined before 4 October 2012, the applicant seeks an undertaking that it will not be breached for failing to comply with Condition A4 if it continues to trade the hours that it presently does until such time as the application is determined.

We trust this application will meet with your approval. Should there be any further information which you require please contact the writer.

Yours faithfully

DESIGN COLLABORATIVE PTY LTD



G W Smith

Director

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