24 March 2017

The General Manager  
City of Sydney  
Town Hall House  
Level 2. 456 Kent Street  
SYDNEY NSW 2000

Attention: Nicola Reeve

Dear Nicola,

SECTION 96 (2) MODIFICATION: D/2016/1067 - WESTFIELD SYDNEY, 188 PITTS STREET, SYDNEY

1. INTRODUCTION

This letter has been prepared to accompany a section 96 (2) application lodged on behalf of Scentre Group to modify Development Consent D/2016/1067 relating to the fit out and use of tenancies 7002, 7003 and 7004 within Level 7 of Westfield Sydney and the adjacent outdoor terrace area for a licensed hotel/restaurant. It provides a description of the proposed modifications and considerations of matters of relevance under section 96 (2) and section 79C of the Environmental Planning and Assessment Act 1979 (the EP&A Act).

Specially, this application seeks to amend Condition 3 relating to hours of operation for external areas, remove Condition 4 in relation to hours of sale and consumption of alcohol, amend Condition 6 as a tenancy specific management plan has been prepared to address this condition, amend Condition 7 so as to not impose a restriction on the number of indoor patrons, amend Condition 9 in relation to security and queuing and remove Condition 12 relating to outdoor music restrictions.

In support of the application, please find attached:

- A completed Section 96 Application Form and Owners Consent.
- A cheque for the amount of $2,173.68 made payable to City of Sydney.
- A tenancy specific Plan of Management (POM) and the Plan of Management for the Westfield Sydney retail podium dated 23 August 2016 (which was a requirement of late night trading for restaurants as part of the Westfield blanket fitout DA (2009/1953/A)) located in Appendix A.
- An Acoustic Report prepared by Acoustic Logic located in Appendix B.

SEE - S96 Westfield Sydney_Final_RJ
- Design Concept Scheme located in Appendix C.
- Portfolio of the Operator located in Appendix D.
- A digital file containing the application.

The proposal has been assessed against the relevant provisions of the EP&A Act and will have minimal environmental impact. The modifications will not alter the use, bulk, scale or appearance of the approved licensed hotel/restaurant and is substantially the same as the approved development under D/2016/1067.

2. **THE SITE AND SURROUNDS**

The site is located at 188 Pitt Street, Sydney and is legally described as Lot 1 DP 1182754, as illustrated in Figure 1. The site contains the Westfield Sydney retail and commercial complex including a seven-storey retail podium and three commercial office towers. The approved licensed hotel/restaurant is located on Level 7 within tenancies 7002, 7003 and 7004 and the adjacent outdoor terrace area.

The site includes the former “commercial building façade” at 162 Pitt Street, a local heritage item pursuant to Sydney Local Environmental Plan 2012 (SLEP 2012)

The site has street frontages to Castlereagh Street, Market Street and Pitt Street Mall.

The site is surrounded by contemporary retail and commercial office buildings. The nearest sensitive noise receivers are the Swissotel (Levels 8-25, with hotel rooms being located on levels 10-25) and the Tower Apartments (Levels 26-36) above, which are located at 68 Market Street, approximately 60m to the south west and on the opposite side of Pitt Street Mall. The Tower Apartments and the Swissotel hotel sit above Sydney Central Plaza (SCP), including Myer. The apartments at the top 10 levels of the building have balconies with operable doors.

There are no other known sensitive noise receivers within close proximity to the approved hotel/restaurant.

The area is serviced by good public transport (train stations at St James, Town Hall and Martin Place train stations, regular bus services and taxis).

2.1. **PEDESTRIAN ROUTES AND ENTRY AND EXIT POINTS**

Pedestrian routes to Westfield Sydney include the primary Pitt Street Mall pedestrianised mall, major roads of Castlereagh Street and Market Street, and mid-block connections that run through the centre and connect with other neighbouring properties and their mid-block connections.

Westfield Sydney has seven main entry and exit points which open to the surrounding streets and Pitt Street Mall, plus a number of adjoining buildings are connected through tunnels and air-bridges. The entry and exit points are controlled as follows:

- Except for emergency egress, the entries/exits at Pitt Street Mall that provide access to and from the food premises in the Centre are secured shut between 10.00 PM and 6.00 AM (next day), Mondays to Sundays.
• The entries/exits at Market Street and at the corner of Castlereagh Street and Market Street, and the ‘laneway’ entrance at Castlereagh Street (between the tenancies of Prada and Gucci) are secured closed between 12.00 midnight and 6.00 AM (next day).

• The only entries/exits used for accessing and exiting the Centre after 12.00 midnight are on Castlereagh Street at the northern boundary of the Centre. These entries/exits are adjacent to the retail tenancy Ermenegildo Zegna, and the lobby entry to the commercial towers of Westfield Sydney.

Figure 1 – Subject Site

Source: SIX MAPS

3. **THE OPERATOR**

The operator (Mantle Group) are experienced and highly regarded. They currently operate a number of venues throughout Brisbane, including The Pig ‘N’ Whistle at 123 Eagle Street, Brisbane (one of Brisbane’s leading venue chains), Milanos and “Jimmy’s on the Mall” on Queen Street Mall, Brisbane.

They have a reputation for fine food, quality service and proven good operation management with Brisbane City Council and the Brisbane City Licensing Association.

A Portfolio of the Operator is located at Appendix D.
4. **BACKGROUND**

On 23 September 2016, the City of Sydney approved D/2016/1067 for “the use and fit-out of tenancies 7002, 7003 and 7004, adjacent outdoor terrace and internal mall seating within Westfield Sydney as a licenced hotel/restaurant with capacity for 800 patrons, including alterations to the outdoor terrace including new retractable awnings and escalator enclosure” at 188 Pitt Sydney, Sydney (Level 7 of Westfield Sydney). The proposal sought trading hours of 7:00am - 2:00am (the following day), Monday to Sunday for internal areas and 7.00am – 10:00pm Mondays to Sunday for external areas.

5. **PRE-LODGEMENT CONSULTATION**

A pre-lodgement meeting was held with the City of Sydney Council Officers on 27 October 2016 in regards to a number of conditions of consent that impact the commerciality of establishing the approved licenced hotel/restaurant. Council acknowledged that the conditions of consent were at the conservative end of the spectrum, as a premises specific Plan of Management was not provided at the time of the assessment.

The Acoustic Report, a Premises Specific Plan of Management and details/credentials on the proposed Operator (Mantle Group) has been prepared in response to the preliminary advice of Council.

A further pre-lodgement meeting was held with the City of Sydney Council Officers on 21 March 2017 to discuss extending the hours of operation for the outdoor terrace until 12.00am Monday to Sunday without a trial period. Council advised that trading hours for external areas between 10pm and 12pm would only be supported on a trial basis in accordance with Section 3.15 of the Sydney Development Control Plan 2012 (SDCP 2012). A reduction in security ratios for formalised sit down areas would be considered as detailed in the Plan of Management.

A meeting with local NSW Police, the operator and Scentre Group was held on 31 January 2017. The outcome of this discussion is documented in **Table 1**.

Table 1 – NSW Police Comments 31 January 2017

<table>
<thead>
<tr>
<th>NSW Police Comments</th>
<th>Response</th>
<th>Refer To</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECURITY AND SAFETY</td>
<td>• Possibility of a host at points of access from Castlereagh Street.</td>
<td>Appendix A</td>
</tr>
<tr>
<td></td>
<td>• Security in lobby and roaming security in Westfield.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Empty glasses are to be removed from the outdoor area quickly to</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• The Plan of Management was amended so that the commercial lobby of 77 Castlereagh Street will be used as a point of egress only, and after 10pm only. This negates the need for a host and security in the lobby.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• A Premises Specific Plan of Management has been prepared by Mantle Group to address all operational and management procedures to be</td>
<td></td>
</tr>
<tr>
<td>NSW Police Comments</td>
<td>Response</td>
<td>Refer To</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>prevent glass being thrown over the glass fence or garden bed onto Pitt Street Mall.</td>
<td>implemented (including the efficient removal of glasses and security measures/staff) to ensure that the premises can operate without adversely impacting on the surrounding locality.</td>
<td></td>
</tr>
<tr>
<td>• Statutory signage</td>
<td>• All statutory signage required by legislation will prominently displayed within the premises in accordance with the Premises Specific Plan of Management that has being prepared by Mantle Group and Conditions 7 and 17 of development consent D/2106/1067.</td>
<td></td>
</tr>
<tr>
<td>• External patrolling particularly between 10.00pm and Midnight at Castlereagh Street exit and taxi rank.</td>
<td>• As detailed in the approved Plan of Management for the Westfield Sydney retail podium dated 23 August 2016, Westfield maintains 24 hour, seven days a week security presence in the Centre. The number of Westfield security personnel, their duties and the hours during which they are employed varies depending on demand on any given night. The security personnel undertake patrols of the perimeter of the centre under existing security procedures. Patrolling the taxi ranks is not considered necessary.</td>
<td></td>
</tr>
<tr>
<td>• Ensuring CCTV has adequate coverage of Castlereagh Street.</td>
<td>• The Westfield CCTV system covers all levels of the retail space including entries, exits, general mall and car park as well as perimeter cameras on the external façade of the centre, including Castlereagh Street. The Operator will maintain CCTV surveillance cameras within their Licensed Premises in accordance with Condition 11 of development consent D/2106/1067.</td>
<td></td>
</tr>
</tbody>
</table>

**USE**

<p>| • Ensure operation is not one of a nightclub and no poker machines. | • The approved operation is for a restaurant/hotel. It is not proposed to use the premises as a nightclub and a designated dance floor is not proposed. This has been referenced in the Plan | Appendix B |</p>
<table>
<thead>
<tr>
<th>NSW Police Comments</th>
<th>Response</th>
<th>Refer To</th>
</tr>
</thead>
<tbody>
<tr>
<td>- No designated dance floor.</td>
<td>- of Management. Further the lease prevents the premises being used as a nightclub and pokies.</td>
<td></td>
</tr>
<tr>
<td>- Police not concerned with using the outdoor area until Midnight provided no issue with noise.</td>
<td>- An Acoustic Plan has been prepared by Acoustic Logic, concluding that the proposed extended hours of trading in the outdoor terrace and music on the outdoor terrace will satisfy the conditions of consent with respect to noise at sensitive receivers.</td>
<td></td>
</tr>
</tbody>
</table>

6. **PROPOSED MODIFICATION**

This section 96 (2) application seeks to make modifications to D/2016/1067, which have arisen from ongoing discussions with the newly agreed upon tenant/operator. This modification is supported by a detailed premises specific Plan of Management prepared by the operator (Appendix A) and an Acoustic Report prepared by Acoustic Logic (Appendix B).

The intent of the section 96 (2) is to extend the hours of operation for the outdoor terrace, remove restrictions on hours of alcohol sales, reduce the ratio of security staff to patrons and permit music on the outdoor terrace.

Council may modify development consent under the provisions of section 96(2) of the EP&A Act if:

> It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before than consent as originally granted was modified (if at all).

The proposed modification to the development consent is outlined below (modifications are shown by removed text struck through and new text in red).

6.1. **CONDITION 3**

This section 96(2) seeks to reword Condition 3 to extend the base hours of operation for the outdoor terrace to 10pm with extended hours of operation permitted to 12:00am subject to a trial period.

(3) **Hours of Operation – external areas**

The hours of operation are regulated as follows:

(a) The hours of operation must be restricted to between 7.00am and **8:00pm 10:00pm**, Monday to Sunday.

(b) Notwithstanding (a) above, the use may operate between 10.00pm and 12.00am, Monday to Sunday, for a trial period of 12 months from the date of issue of the Occupation Certificate.
(c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council’s consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

Comment:

Section 3.15 of the SDCP 2012 permits base outdoor trading hours of 10am - 8pm, with extended hours to midnight permitted subject to a trial period. Notwithstanding, the previous development approval for the outdoor terrace (D/2002/862) approved hours of operation for the outdoor terrace of 10am-10pm Monday to Sunday, with a 6-month trial of outdoor trading until midnight on Thursdays, Fridays and Saturdays.

Subsequent to this there were a number of modifications granted as follows:

D/2004/1237 was approved 19 April 2005 and permitted use of the outdoor terrace as follows:

- Outdoor terrace approved for use from 10am to 10pm, seven days.
- Outdoor terrace approved for use from 10pm-12am for Thursday, Fridays, Saturdays and Sundays for a trial of 1 year.
- Outdoor terrace approved for use to 2am, seven days a week, on trial basis, but not involving the sale or consumption of food or beverages (presumably this was an outdoor smoking area).

D/2004/1237/A was approved 22 March 2006 which amended the following:

- Trial period for use of the outdoor terrace from 10pm to 12am was extended for another 2 years
- Use of the outdoor terrace for smoking (no food or drink) was increased to 4am, but was reduced to a smaller area of the terrace. This trial was extended for 2 years.

D/2004/1237/B was approved 23 May 2007 which amended the following:

- Trial period for use of the outdoor terrace from 10pm-12am for Thursday, Fridays, Saturdays and Sundays extended for 5 years expiring 23 May 2012.
- Use of part of the outdoor area for smoking only (no food or drink) approved for an additional 5 year trial expiring 23 May 2012.

There is a strong precedent of extended trial periods until 12am or beyond being approved for the subject outdoor terrace over the years.

In consideration of previous consents issued by the City of Sydney for the outdoor terrace, the established reputation of the Operator, the sit-down style of the restaurant/bar and adoption of the appropriate management practise detailed in the Premises Specific Plan of Management and Acoustic Report, extending the outdoor trading hours to between 7.00am and 12.00am Monday to Sunday (with a trial period between 10pm and 12.00am) is considered appropriate as detailed below.

The premise is to be managed and operated as a world-class restaurant and bar. The vision for the premise is to provide a venue where patrons can enjoy sit-down meals and beverages in a safe and
comfortable environment. The venue will not be a night club and a designated dance floor is not proposed. Formal and casual seating is proposed across the internal/external floor plan.

A Premises Specific Plan of Management has been prepared by Mantle Group to address all operational and management procedures to be employed to ensure that the premises can operate without adversely impacting on the surrounding locality, including the closest sensitive noise receptor (the Swissotel and Tower Apartments), which is located over 60m away on the opposite side of Pitt Street Mall. The Premises Specific Plan of Management outlines a number strategies to manage noise and amenity of the neighbourhood.

Measures to manage noise, include directing patrons to leave through the Castlereagh Street exit and the closure of the Pitt Street Mall entries/exits at 10pm. The entries/exits at Market Street and at the corner of Castlereagh Street and Market Street are closed at 12 midnight. The only entries/exits used for accessing and exiting the Centre after 12.00 midnight are on Castlereagh Street at the northern boundary of the Centre. These entries/exits are adjacent to the retail tenancy Ermenegildo Zegna, and the lobby entry to the commercial towers of Westfield Sydney. The selection of Castlereagh Street for entry/exiting after midnight has been made in recognition that there are no residential towers or hotel rooms overlooking Castlereagh Street on this block. There are also no other licenced premises on Castlereagh Street on this block, removing the potential for patrons to loiter on the street or to enter into confrontation with patrons from other existing licenced premises.

The restaurant shall be under the supervision of a suitably qualified and trained Licensee or approved Manager, who will be in attendance at the restaurant/hotel during all hours of operation to ensure that the restaurant is managed in accordance with the Premises Specific Plan of Management and conditions of consent at all times.

Acoustic Logic assessed the potential noise emissions associated with the revised proposal in accordance with the conditions 19 and 20 of development consent D/2016/1067. The revised proposal includes:

- Extension of operation hours for the outdoor terrace to 12am, 7 days a week; and
- Outdoor music exceeding an ambient noise level as previously assessed.

Acoustic Logic relied on acoustic modelling which has been conducted at the site by ALC and considered by Council under Development Consent D/2016/1067 to establish the background noise levels which was used as the basis for their assessment. It should be noted that the approved restaurant/bar is in area with high ambient and background noise levels associated with the urban environment. This allows for a significantly larger number of patrons to be located externally later into the night, then what would normally be the case in other less urban environments.

The cumulative noise impact from the proposed internal and outdoor seating areas, as well as noise impacts predicted from any future restaurant/bar at the adjoining 7001 tenancy on Level 7 was assessed at the nearest surrounding hotel/residential development (Swissotel and Tower Apartments). Subject to compliance with the following Acoustic Logic recommendations, noise emissions to all nearby development will be compliant with the noise emissions requirements of the City of Sydney Council:

- Music from external speaker should not exceed 83dB(A)\(_{10}\) when measured at 3m.
- The facade to the terrace is to be closed after 12am to minimise any potential noise impact to receivers within the Swissotel and Tower Apartments.
• No more than 300 patrons are to utilise the external terrace at any time.

6.2. CONDITION 4
This section 96(2) seeks to remove Condition 4: Hours of Sale and Consumption of Alcohol.

Comment:
It is not Council's responsibility to impose conditions relating to liquor licences. The NSW Office of Liquor and Gaming regulate and control the sale and supply of alcohol and will do this through the liquor license.

In the first pre-DA meeting it was acknowledged by Council that this condition could confuse The NSW Office of Liquor and Gaming in their ability to determine the hours of the liquor licence, and it was confirmed by Council that this was not the intention of the condition.

6.3. CONDITION 6
This section 96 (2) seeks to reword Condition 6, as a Premise Specific Plan of Management is attached at Appendix A, which addresses Condition 6.

(6) Plan of Management
The use must always be operated / managed in accordance with the Plan of Management – Westfield Sydney – Retail Podium 188 Pitt Street, dated 23 August 2016 and the Premises Specific Plan of Management – Babylon Sydney, Westfield Sydney, Level 7, 188 Pitt Street, dated [draft] that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

Notwithstanding the above, a premises specific Plan of Management must be prepared by the operator of the premises to address all operational and management procedures to be employed, to ensure that the premises can operate without disturbance to the surrounding locality. The plan must address the whole of the operations and include the following:

(i) Plan of management requirements for High Impact Premises pursuant to Schedule 3.2 of the Sydney Development Control Plan 2012;

(ii) The provisions relating to the 1.30am lockout and cessation of liquor sales at 3.00am within the Sydney CBD Entertainment Precinct; and

(iii) A declaration from the licencee that they have read and understood the Plan of Management.

(b) The plan must include but not be restricted to; compliance with all other operational conditions of this consent; hours of operation; noise; security management; and handling complaints.

(c) The plan must be submitted to and approved by Council's Area Planning Manager prior to an Occupation Certificate being issued.

Comment:
This addendum is accompanied by a Premise Specific Plan of Management, which has been prepared in accordance with Schedule 3.2 of the Sydney Development Control Plan and condition 6 of the
development consent for D/2016/1067. This Plan should be referred to the Council’s Area Planning Management to satisfy part (c) of Condition 6.

The Plan of Management is located at Appendix A.

6.4. CONDITION 7

This section 96(2) seeks to amend Condition 7, specifically parts (a) and (b) relating to the maximum number of patrons in the internal area of the premises, and parts (c) and (d) to correct minor errors.

(7) Maximum Capacity of Patrons

(a) The maximum number of patrons permitted in the premises at any one time is 800 patrons:

(i) Internal areas – 500 patrons; and
(ii) Outdoor terrace – 300 patrons.

(b) The capacity of the outdoor terrace for each area shall not exceed 300 patrons, the maximum numbers at any given time.

(c) The manager/licensee is responsible for ensuring the number of persons in the premises does not exceed that specified above.

(d) A sign in letters not less than 25mm in height must be fixed at the main entry point to the premises alongside the Licensee’s name stating the maximum number of persons, as specified in the development consent, that are permitted in the building premises. Details of the sign are to be submitted to Council’s Health and Building Unit for approval prior to issue of a Construction Certificate.

Comment:

Part (a) Rationale:

The maximum number of patrons is restricted to 800 patrons under the existing licence arrangements. The number of patrons of the outdoor terrace has been restricted by the development consent for the purposes of limiting noise generation. However, there should not be a restriction on the number of patrons in the internal areas of the premises, provided that the maximum number of patrons in the premises overall does not exceed 800 patrons. Examples of when this may occur is when temperature or inclement weather makes the use of the outdoor terrace undesirable.

Part (b) Rationale:

As per part (a), this re-wording will achieve the objective of restricting the number of patrons outdoors but without needing to limit the number of patrons indoors.

Part (c) and (d) Rationale:

Minor correction of formatting and correction of error regarding reference to the building vs premises.
6.5. **CONDITION 9**

This section 96(2) seeks to amend Condition 9, specific part (a) relating to the minimum ratio of 1 security staff member to 100 patrons and part (d) relating to queuing, and to remove part (c) relating to printing of the word security on attire.

(9) **Security and Queuing – Category a Licensed Premises**

(a) Security guards are to be provided at the premises on Monday to Sunday from 6.00pm at a minimum ratio of 1 security staff member to 100 patrons or part thereof. In calculating the number of patrons the area of the count will be limited to the outdoor terrace and indoor general bar area as shown in Figure 2 of the Plan of Management – Babylon Sydney, Westfield Sydney, Level 7, 188 Pitt Street, dated [draft].

(b) Security personnel shall remain at the premises for at least 30 minutes after closing and shall assist in ensuring that patrons leave quietly.

(c) All licensed security officers whilst employed at the premises are to wear clearly identifiable security attire at all times, with the word “SECURITY” clearly identifiable in bold print at least 100mm high, on the front and back.

(d) (c) Management staff at the venue shall ensure that a clear footway width of 1 metre is maintained at all times along all footpaths immediately adjoining the premises. Patrons waiting to enter the premises shall queue along the immediate frontage of the premises. The Internal queues on Level 7 must not obstruct any fire exit of any building or entrance to any other premises.

(e) (d) When more than one security guard is on duty, security officers and management shall communicate by hand held radios at all times.

Comment:

**Part (a) Rationale:**

The Plan of Management confirms that the style of the premises is one that is managed and operated as a world class restaurant and bar that would be considered a premium hospitality establishment, appealing to visitors of Westfield Sydney and the central CBD.

The premises layout plan shows how the venue has been designed into segments that will appeal to different users and at different times of the day. A separated dining area will be situated at the eastern end of the premises, at the entry from the commercial sky lobby of the Westfield Sydney commercial office towers. This dining area is operated as full table service, with a seat for every patron. The area will be separated from the remainder of the venue by a glazed partition, and for these reasons the dining area is not considered high risk and should not require security presence.

**Part (c) Rationale:**

As in Part (a) above, the style of premise will be for a table service dining area and bar with formal and casual seating. The Plan of Management requires security guards to be dressed in an identifiable uniform and to display identification. For the style of the premises to be maintained it is not desirable nor considered necessary for them to have “SECURITY” in bold print at least 100mm high on the front and back of attire, as the obvious presence of security is not in keeping with the intended upmarket atmosphere and vision for the restaurant/bar.
Part (d) Rationale:

The premises is not directly accessible from the public domain (i.e. from a public footpath). As such there is no requirement for external queue management procedures. There is no expectation that patrons of the Restaurant will queue for entry. If queuing is required, it will be formed outside the entrance near the escalator on Level 7. Generally, when the maximum capacity of the Restaurant is reached further patrons wishing to dine will give their contact details to the host who will enter those details into a reservation system.

6.6. CONDITION 12

This section 96 (2) seeks to remove Condition 12: No Speakers or Music Outside.

Comment:

Outdoor music is fundamental to the restaurant and bar experience. The modification seeks to remove condition 12 to enable outdoor speakers to play music on the outdoor terrace, such as solo and duo live music.

The speakers in the outdoor terrace area will be strategically located to minimise noise spill to sensitive noise receptors. In addition, live acts will be required to plug into the house system to enable control of the volume by management.

The Acoustic Report attached at Appendix B has considered the noise generation from solo or duo live performances, and concludes that the predicted noise levels to external residential receivers will be compliant with the “background + 5dB(A)L_{10}” criteria during the evening and night period up to 12am provided music from external speakers will not exceed 83dB(A) L_{10} when measured at 3m and no more than 300 patrons utilise the external terrace at any one time.

7. REQUIREMENTS PURSUANT TO SECTION 96 (2) AND 79C OF THE EP&A ACT

7.1. SECTION 96 (2) CONSIDERATIONS

The proposal has been assessed in accordance with the relevant requirements of section 96 of the Environmental Planning and Assessment (EP&A) Act 1979.

7.1.1. Substantially the Same Development

In accordance with section 96(2)(a), the proposed development is considered to be substantially the same as the approved with consideration to the following:

- The proposal retains the use approved for the site under the development consent.
- The proposed modifications do no result in any significant additional environmental, economic or social impacts that cannot be mitigated.
- The proposal will not alter the physical appearance of the overall approved development.
The application is accompanied by a Plan of Management (Appendix A) and Acoustic Report (Appendix B) which details the measures the Operator will undertake to mitigate any potential additional adverse impacts on adjoining properties, including the nearest sensitive noise receptor.

7.1.2. Notification in accordance with Regulations and DCP

In accordance with section 69 (2) (c) and Schedule 1 of the Sydney DCP 2012, this application will require 14 days advertising and notification to anyone who made submissions to the original application will be notified.

7.1.3. Submissions

In accordance with section 96 (2) (d) Council will need to consider any submissions received in respect to the proposed modification.

7.2. SECTION 79C CONSIDERATIONS

7.2.1. Any Environmental Planning Instruments

- The application has been submitted in accordance with the requirements of section 96 (2) of the EP&A Act.

- The proposal is consistent with the current hotel liquor licence (LIQH400104243). Pursuant to Clause 471 of the Liquor Act 2007 prevents Council from granting consent to development applications for Hotel licences that would result in an increase in the number of persons who enter the CBD Entertainment Precinct principally to consume alcohol. This modification will not change the approved capacity. The Liquor Authority will outline hour of consumption and service of alcohol.

- The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed modification has no bearing on these controls and remains consistent with the controls and objectives.

- The proposed modification has no bearing on the provisions or development standards contained within the SLEP 2012.

7.2.2. Any Draft Environmental Planning Instruments

There are non-relevant to the proposed amendments.

7.2.3. Any Development Control Plan

Sydney Development Control Plan 2012 (SDCP 2012)

Sydney Development Control Plan 2012 (SDCP 2012) provides the detailed guidelines for development supplementary to SLEP 2012. The subject site is located in the Pitt Street Mall Special Character Area. The proposal is considered in keeping with its unique character and will contribute to the diversity of uses in this active area.

According to section Schedule 3 – Late Night Trading of Sydney DCP 2012, the site is located within a City Living Area. These areas are characterised as:
'Late night trading premises that are desirable in the City Living Area are premises that reinforce the rich cultural life of the City, establish places of interest and provide for the cosmopolitan needs of the community.

The City Living Area accommodates a wide range of commercial, retail, cultural, tourism and entertainment uses with wide variations in operating hours, with many premises operating late at night throughout the week.'

The premise is highly accessible to both rail and bus public transits systems and will add to the diversity of late night activities in this predominantly commercial/retail area. The proposed modification seeks to extend trading hours and play music on an outdoor terrace in a key location for entertainment, tourists, and workers in the Sydney Central Business District. The vast majority of surrounding land uses is retail and commercial development, with only one known sensitive receiver. The Acoustic Report and Premises Specific Plan of Management detail the relevant management procedures to minimise any acoustic, safety, security or amenity impacts on the surrounding locality, including the only known nearby sensitive land use (Swissotel and Tower Apartments).

Table 1 – DCP Compliance Table

<table>
<thead>
<tr>
<th>Consideration</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The location and context of the premises, including proximity to residential and other sensitive land uses and other late trading premises.</td>
<td>The site is located within a City Living Area and is situated on the main retail street of Sydney. The site is a key tourism location, anchored by Sydney Tower, and is surrounded by other commercial and retail developments, with a number of late night venues in the area. The approved restraint/bar is therefore in a suitable location. The Acoustic Report and Premises Specific Plan of Management detail the relevant management procedures to minimise any noise or amenity impacts on the Swissotel and Tower Apartments</td>
</tr>
<tr>
<td>The specific nature of the premises i.e. pub, nightclub, restaurant etc. and the proposed hours of operation.</td>
<td>The venue is approved as a ‘restaurant’/‘hotel’. The proposed extended trading hours for the external terrace is consistent with other approvals that have been granted for the site and other restaurants/late night venues in the area. The proposed extended outdoor closing time of midnight is also appropriate for the area as demonstrated in the accompanying Acoustic Report it will not have a detrimental impact on any nearby residents/hotel guests by way of noise.</td>
</tr>
<tr>
<td>The existing hours of operation of</td>
<td>There are several late-night trading premises within 200m-300m of the centre which open after midnight.</td>
</tr>
<tr>
<td>Consideration</td>
<td>Comment</td>
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<td>------------------------------------------------------------------------------</td>
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<tr>
<td>surrounding business uses.</td>
<td>Several are linked to accommodation hotels and include:</td>
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<td>- Gowing Bar and Grill</td>
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<td>- Gilt Lounge</td>
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<td>- Marble Bar</td>
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<td>- Zeta Bar</td>
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<td>- Sheraton on the Park</td>
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<td>- City Tattersalls Club</td>
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<td>- St James Hotel</td>
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<td>The surrounding entertainment venues include a mix of operating hours, open 24 hours, open until 3:00am and open until 12:00am.</td>
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<td>The size and patron capacity of the premises.</td>
<td>The maximum number of patrons remains at 800, unchanged from D/2016/1067.</td>
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<td>The impact of the premises on the mix, diversity and possible concentration,</td>
<td>The proposed modifications will not result in an inappropriate concentration of licensed premises in the area. The site has already</td>
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<td>of late night uses in the locality.</td>
<td>received approval to operate as a restaurant/hotel, as such the proposed modifications to the consent does not increase the number of</td>
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<td>licensed premises in the area.</td>
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<td>The likely operation of the proposal during day time hours.</td>
<td>The proposal will not impact the venue operation during day times hours. The use will continue to be operational from 7:00am to</td>
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<td>attract breakfast trade, noting the liquor licence currently does not allow the consumption of alcohol prior to 10am.</td>
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<td>Submission of a plan of management that demonstrates a strong commitment to</td>
<td>An updated tenancy specific Plan of Management is attached at Appendix A, which has been prepared in accordance Council Guidelines for</td>
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<td>good management of the operation of the business, particularly in relation to</td>
<td>high impact premises pursuant to Schedule 3.2 of SDCP 2012.</td>
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<td>managing potential impacts on adjoining</td>
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Consideration | Comment
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and surrounding land uses and premises, as well as the public domain. | The proposed modifications will not adversely impact upon the operation of any retail services within the area or within Westfield Sydney.
The diversity of retail services within an area and the impact of a late-night proposal on this diversity. | An updated tenancy specific Plan of Management is attached at Appendix A which sets out the steps the Operator will take to mitigate any of these potential impacts.
Measures to be used for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises. | The site is located within 100m of St James Railway Station and 300m of Martin Place Railway Station. These stations provide access to key areas across metropolitan Sydney, including the North Shore, Northern, Western, Airport, Inner West and South, Bankstown, Eastern Suburbs & Illawarra, Blue Mountains, Central Coast and Newcastle and South Coast lines. Buses providing access to key metropolitan areas are also available in close proximity to the site and the closest taxi rank is located on Market Street, between Pitt and Castlereagh.
The accessibility and frequency of public transport during late night trading hours. | 7.2.4. **Any Matters Prescribed by the Regulations**
There are none relevant to the proposed amendments.

7.2.5. **The suitability of the Site**
The proposed development is considered suitable for the site. The proposal is located within the B8 Metropolitan Centre zone, and is surrounded by commercial and retail uses.

7.3. **LIKELY IMPACTS OF THE PROPOSED DEVELOPMENT**
It is considered that the proposal will have not have any significant detrimental effect relating to environmental, social or economic impacts on the locality.
The surrounding vicinity of the subject site is predominantly retail and commercial in nature, however a residential apartment and hotel complex is located approximately 60 metres from the subject premises.
on the opposite side of Pitt Street Mall. The Acoustic Report and Premises Specific Plan of Management identify the nearest noise sensitive receivers and outline management procedures to minimise acoustic impacts.

The proposal, as amended, can comply with the noise emission requirements of D/2016/1067. The Acoustic Report predicted noise levels to external residential receivers will be compliant with the “background + 5dB(A) L10 octaves” criteria during the evening and night time period up to 12 am. The nearby residential receivers will not be adversely impacted by the section 96 (2).

8. CONCLUSION

The proposed modification is considered to have minimal adverse impact and is substantially the same development as approved under D/2016/1067. As outlined in Section 4, this application seeks to extend the approved trading hours for external areas to 7:00am to 12:00am seven days a week (with a trial period between 10pm and 12.00am) and allow for music to be played on the terrace. The modification also seeks to remove condition 4 and 12, and amend conditions 3, 6, 7 and 9.

The Acoustic Report addresses issues in relation to potential noise impacts on any known surrounding sensitive receivers and the Plan of Management addresses strict management procedures that will be enforced to ensure the modification will not result in adverse social, economic or environmental impacts.

As demonstrated within this section 96(2) modification application, the proposal is considered to be satisfactory under section 79C of the Environmental Planning and Assessment Act 1979, and as such is recommended for approval.

If you have any questions please don’t hesitate to contact me on (02) 8233 9976.

Yours sincerely,

Sarah Horsfield
Director