

Attachment B

Review Statement of Environmental Effects

6 April 2021

2190747

Monica Barone
Chief Executive Officer
City of Sydney Council
456 Kent Street
Sydney NSW 2000

Dear Ms Barone,

Request for Section 8.2 Review of Determination of D/2020/959 relating to 2-12 Carrington Street, Sydney – Shell House Bar

This submission is made on behalf of The Point Group pursuant to Section 8.2 of the *Environmental Planning & Assessment Act 1979* (EP&A Act). A development application (D/2020/959) was approved by the City of Sydney Local Planning Panel on 3 February 2021, for the fit out and use of a licensed food and drink premises at ground floor and levels 9 and 10 of Shell House located at 2-12 Carrington Street, Sydney. This Section 8.2 submission requests that the Local Planning Panel (as the relevant decision making body) review its decision for D/2020/959 with respect to the outdoor hours of operation for Level 9 (contained in Condition 4).

1.0 Background to the Operator and DA

The Point Group have been appointed as the future operators of the Shell House restaurant and bar. The Point Group combines local knowledge and vast experience in Sydney, with a track record of well-established venues in operation currently, such as the internationally renowned Icebergs at Bondi.

The Point Group's vision for Shell House is to establish an iconic hospitality landmark of a global standard, that capitalises on the rich heritage of Shell House and its location overlooking the Wynyard Park precinct. They believe the venue can take a leading role in re-igniting the dining culture in Central Sydney whilst also providing a venue that caters for all demographics, ages and budgets. Their commitment to this vision is reflected by their decision to sign a 15 year lease with 2 x 5 year options.

A DA was lodged in October 2019 for the fit out and use of a licensed food and drink premises at ground floor and levels 9 and 10 of Shell House to realise the Point Group's vision for the site. The DA closely aligned with Council's vision established in its Open Sydney Strategy and Action Plan that seeks to create a City centre that has a night time economy that will maintain Sydney's competitiveness and standing as an international city, and that has the potential 'to attract talented workers, global businesses, jobs, expenditure and international visitors, helping to drive the City's economic growth'.

During the public exhibition process, The Point Group became aware that the residents in the Portico Building had concerns with the potential acoustic and operational impacts of Shell House which had not previously been raised during the Wynyard Place State Significant Development process that granted in-principle approval to the use of Shell House as a bar and restaurant. The Point Group recognised the importance of having a productive on-going relationship with the residents of the Portico Building and has subsequently commenced the process of regular engagement with its representatives, which led to the Point Group adopting additional operational management measures specifically requested by the residents.

2.0 Development Consent and the Condition to be Reviewed

As the application sought to operate a new premises with a hotel liquor licence, it was required to be reported to the Local Planning Panel (the Panel) for determination. The Panel granted consent subject to conditions on 3 February 2021. The consent includes a condition (Condition 4) stating that the outdoor dining on Level 9 is restricted to the base hours, whereas the Level 10 bar may operate until midnight for the trial period as specified. Condition 4 reads as follows:

(4) OUTDOOR HOURS OF OPERATION – SENSITIVE USES

The outdoor hours of operation are regulated as follows:

- (a) The outdoor hours of operation must be restricted to between 10.00am and 10.00pm Monday to Sunday.*
- (b) Notwithstanding (a) above, the use of Level 10 may operate (outdoors) between 9.00am and 12.00am (midnight) the following day for a trial period of 12 months from the date of issue of the first Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au*
- (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.*

The inclusion of Condition 4 (specifically the limitation on the outdoor operation until 10pm for Level 9), was not unanimously supported by the Panel at the determination meeting, with a 2/2 vote, that was determined by the Chair's casting vote. This decision of the Panel was not made having regard to the specific DCP consideration (clause 3.15.6) for when a trial period can be permitted, and is contrary to the objectives of multiple Council policies, its approach to other recent DAs of an identical nature, the Assessing Officer's recommendation, and the advice from Council's Environmental Health Unit.

It is acknowledged that in imposing the restriction on Level 9 outdoor dining the members of the Panel may have been trying to address the residents concerns raised at the meeting, however, it is important to note that the Portico Residents who spoke had requested additional management measures and noise monitoring, and not reduced hours.

Given the vision outlined in Section 2.0 to create a landmark dining venue on the Level 9 Terrace, it is not practical or financially viable to have to cease outdoor dining at 10pm (which involves asking patrons to start finishing at 9pm) as this would prevent a second sitting from occurring, and is not commensurate with the type of venue The Point Group is trying to create or the vision Council has set for a City centre that has a night time economy that will maintain Sydney's competitiveness and standing as an international city.

Accordingly, this letter requests that the City of Sydney Local Planning Panel review the conditions of consent regarding outdoor hours of operation and trial periods for the approved development and provides the necessary justification to support that request. Specifically, it is requested that the Panel amend Condition 4 to allow outdoor trading until 12am in accordance with the extended trading hours for Category A uses. Our recommended wording for Condition 4 (inclusions in **Bold**) is as per the original Council Officer's recommendation:

(4) OUTDOOR HOURS OF OPERATION – SENSITIVE USES

The outdoor hours of operation are regulated as follows:

- (a) The outdoor hours of operation must be restricted to between 10.00am and 10.00pm Monday to Sunday.*
- (b) Notwithstanding (a) above, the use of Levels **9 and 10** may operate (outdoors) between 9.00am and 12.00am (midnight) the following day for a trial period of 12 months from the date of issue of the first Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au*

- (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.

3.0 Justification for the Review

3.1 Council's Assessment

Council's assessment report to the Local Planning Panel stated the following with regards to the proposed outdoor trading hours and operation:

Provision 3.15 of the SDCP 2012 permits extended outdoor trading hours in the Late Night Management Area between 9am and 1am (the following day), in 2 hour increments, for a trial period of 12 months. Base hours permitted are 10am to 10pm. ... A condition restricting the permitted hours of operation to align with the SDCP 2012 is recommended, with a trial period recommended between 9am to 12.00am midnight for a 12 month period.

The recommended hours of operation for outdoor trading are 9.00am to 12.00am (midnight) and will be subject to a 12 month trial as per Clause 3.15.4(8) of the SDCP 2012. It is considered permitting outdoor hours at 9.00am is acceptable given it is not likely to have adverse noise impacts.

The Assessment Report also noted the following advice received from internal referrals:

Environmental Health Unit:

After submissions raised the issue of omitting the residential building at 2 York St Sydney ('Portico' units), discussions with the relevant health officer were undertaken. Whilst generally not considered a major issue, the officer recommended the applicant revise the Acoustic Report to include this residential building, located 58m away. A second referral was sent following the receipt of the revised Acoustic Report. Again, no objection was raised, subject to the inclusion of the recommended conditions and the 'Noise - Entertainment' condition.

Consistent with the assessment provided above, Council's recommended conditions of approval (specifically Condition 4), included allowing outdoor dining on Level 9 until 12am for a trial period of 12 months.

The Point Group requests that the Panel follow the Officer's original recommendation when reviewing its decision.

3.2 Council's Policy Framework

Council's own plans and policies seek to encourage diverse late night trading in the city to meet social and cultural desires of the community. The decision to restrict the use of the Level 9 terrace for outdoor dining after 10pm was directly contrary to Council's own policies. This section demonstrates that the requested trial period hours are aligned with Council's policy framework and should be approved on that basis.

3.2.1 Sydney Local Environmental Plan 2012 – B8 Metropolitan Centre

The site is located within the B8 Metropolitan Centre zone. The objectives of the B8 Metropolitan Centre zone are as follows (our emphasis):

- **To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.**
- **To provide opportunities for an intensity of land uses commensurate with Sydney's global status.**
- **To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.**

- *To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling.*
- *To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.*

The requested outdoor trading hours consistent with Council's DCP (see Section 3.2.3) directly align and respond to the objectives of the zone as it will allow for the Level 9 restaurant to operate in a manner required for a world-class restaurant. This use will, in turn, reinforce Sydney's global status and serve the workforce, visitors and wider community. Requiring the outdoor dining areas of the restaurant to commence the process of closing from 9pm and being finished at 10pm, is not commensurate with the expectations of dining in a global city and fails to achieve the objectives of the zone.

3.2.2 Open Sydney Strategy and Action Plan

Open Sydney is Council's strategy and action plan for the long-term development of the city's night-time economy to 2030. Open Sydney seeks to create a City centre that has a night time economy that will maintain its competitiveness and standing as an international city, and that has the potential to attract talented workers, global businesses, jobs, expenditure and international visitors, helping to drive the City's economic growth. The Strategy sets targets for turnover to double to \$30 billion and increase night-time employment by 25% to 100,000 jobs.

As part of the Strategy, an extensive consultation process in 2018 brought forward the views of more than 10,000 people. They called for late-night activity, increased opening hours and a greater diversity of things to do after dark. In response, Council updated planning controls to provide the foundations for the growth of Sydney's nightlife into the future, which included a move to a '24 hour city centre'. The new controls (refer to Section 3.2.3) explicitly classified the site as part of the Late Night Trading Management Area and provided a framework for operators to seek consent for outdoor trading until 1am, subject to trial periods.

Given the significant strategic work undertaken by Council, following extensive consultation with the community, to develop a night time economy in this part of Sydney we request the Panel review its decision to enable a proposal consistent with Council's strategic intent and the detailed controls it introduced in order to achieve this objective.

3.2.3 Sydney Development Control Plan 2012 – Late Night Trading Management

The site is located in the Late Night Trading Management Area and is identified as a Category A Premises under section 3.15 of the Sydney Development Control Plan 2012 (SDCP 2012). The DCP creates a detailed framework for the approval and on-going review of late night trading premises. It states that "*Approvals for late night trading premises will be limited in time to enable Council to assess the ongoing management performance of a premise and its impacts on neighbourhood amenity. These trial periods allow Council the flexibility to review the conditions on development consents and respond to such things as changes in the late night character of a neighbourhood and changes in management.*"

Subclause (1) sets out that the base outdoor trading hours for a Category A Premises in the Late Night Management Area are 10am to 10pm, with the ability to extend those hours to 9am to 1am. Subclause (6) relevantly states:

(6) Extended trading hours beyond base hours may be permitted at the initial application stage, but only where the Council has determined that the premises have been or will be well managed, including compliance with an approved Plan of Management

Subclause (8) further clarifies that a premises seeking extended trading hours is only permitted up to two additional operating hours per trial period.

Accordingly, under the DCP framework for light night trading management, the premises is eligible for outdoor trading on Level 9 until 12am, subject to a trial period.

This Review requests that the Panel approve these hours consistent with the framework in Council's DCP, specifically having regard to the test for when extended hours can be permitted at the initial application stage, which

is based on consideration of whether the operator will manage the premises well and in compliance with a Plan of Management. Given The Point Group's exemplary record operating high quality venues, and the presence of a Plan of Management, it is our view the Panel can confidently satisfy itself that the proposal does meet the specific test in the DCP and grant consent to a trial period. Furthermore, the Panel's original decision to allow for the trial period to occur on Level 10 outdoors and internally, would indicate that the original Panel also supported this position.

Furthermore we believe that amending the outdoor hours of operation to allow a trial period of operation between 10pm to 12am is consistent with the overarching objectives for late night trading areas as follows:

- The site is located within the Late Night Trading Area and the proposed use as a licenced restaurant and bar, including the operation of the outdoor area until 12am is consistent with the character statement for the area;
- The revised Acoustic Report has outlined predicted noise emissions from similar late night rooftop bar venues in the city and the impact these might have when generated from Shell House to surrounding sensitive receivers. The background noise measurements taken at the boundary of the nearest sensitive receiver at 2 York Street, Sydney identified that there would be no unacceptable noise impact associated from the operation of the development;
- A revised Plan of Management was submitted outlining management of capacity, noise and other environmental / amenity concerns. Further, the conditions of consent has included ability for Council to enforce the venue to comply with the relevant management measures;
- The amended outdoor trading hours will promote vibrancy, vitality and a lively CBD responding to the City's desire for it to become a 24 hour city and a Global City;
- The application and ongoing consultation with Council has allowed the outdoor trading hours to be appropriately assessed and it is considered that sufficient information was provided to illustrate that no surrounding receiver would experience adverse amenity impacts;
- The trading hours would not result in a premises that would operate exclusively during night hours with it being patronised during the morning, lunch time, dinner and late night periods; and
- Revising the trading hours to 12am on the outdoor terrace areas is consistent with other outdoor bar and restaurant premises within the vicinity and any concerns of surrounding receivers can be appropriately managed in accordance with the conditions of consent and the Plan of Management.

3.3 Acoustic Impacts

As highlighted in Section 3.1, Council's Environmental Health Unit supported the conclusions of the proponent's Acoustic Report. This Report demonstrates that the operation of the Level 9 terrace achieves the relevant noise standards and consequently there is no technical acoustic basis to not support the requested outdoor trading hours.

3.4 Consistency with the Panel's other Recent Development Approvals

On Wednesday the 24th of February 2021, only 21 days after the Shell House decision, the Panel considered three separate DAs (D/2020/1232, D/2020/1343, and D/2020/1234) for pubs with outdoor bars in nearby Martin Place. The Panel approved all three DAs with a trial period that allows for outdoor trading until 12am, consistent with the DCP and the request of this Review. There was no acoustic evidence that differentiated these DAs from the Shell House Bar DA that would necessitate a different response. Accordingly, The Point Group requests that the Panel review its decision to not grant Shell House a trial period as a matter of consistency in its decision-making processes.

4.0 Conclusion

The current requirement for the outdoor dining areas of the Level 9 restaurant to commence the process of closing from 9pm and being finished at 10pm, is not commensurate with the expectations of dining in a global city. The original decision of the Panel was not made having regard to the specific DCP consideration (clause 3.15.6) for when a trial period can be permitted, and is contrary to the objectives of multiple Council plans and policies, the

Panel's approach to other recent DAs of an identical nature, the Assessing Officer's recommendation, and the advice from Council's Environmental Health Unit.

This Review has illustrated that there are significant grounds to review and support the outdoor hours of operation of the Shell House Bar and amend Condition 4 to allow outdoor trading on Level 9 until 12am under a 1 year trial period.

The requested amendment will enable the restaurant to positively contribute and promote the City of Sydney as a globally competitive city, while providing a new destination throughout the day and night-time periods for workers, residents, visitors and the wider community consistent with Council's planning policy framework.

We thank you for taking the time to consider this submission and trust that this letter provides the Panel with the relevant information to reconsider the Development Consent and allow for the amendment to Condition 4. Should you have any queries with regards to the issues raised, please do not hesitate to contact the undersigned.

Yours sincerely,



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