

ADDENDUM - ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2012

11.1.7 Proposed Change of Use to Offices, Restaurant and Cabaret Club (Nightclub) and Associated Alterations

Location: Lot 101, No. 505 Walter Road East, Morley
Attachments: 1. Location Plan and Site Photograph
2. Plans for Development
File No: DA12-0462
Applicant: Major Hospitality Group Pty Ltd
Owner: Pizzino Holdings Pty Ltd
Officer: Director of Planning and Development Services
Refer: Item 12.3.11: OCM 27.5.2008
Item 12.3.6: OCM 26.2.2008
Item 12.5.9: OCM 26.8.2003
Item 12.5.13: OCM 27.8.2002
Item 9.2.24: OCM 24.10.2000
Item 14.1: OCM 23.9.1997
S.A. 65/84: OCM 24.9.1985
S.A. 58/79: OCM 19.12.1979
S.A. 65/79: OCM 14.11.1979
S.A. 79/15: OCM 9.5.1979
S.A. 78/48: OCM 8.11.1978

Additional Information

At the Planning and Development Services & Administration and Community Services Committee Meeting held on 17 September 2012, a query was raised in relation to the planning definitions for the cabaret club use and nightclub use, and how these uses differ within the context of obtaining a licence under the *Liquor Control Act 1988*.

In general terms, the activities associated with both a nightclub use and cabaret club use are essentially the same from a planning perspective, as both involve the use of the building for entertainment purposes. In this context, the City's Town Planning Scheme No. 24 (TPS 24) defines a nightclub as "*any land or buildings used for the entertainment and/or eating facilities and to which a licence under the provisions of the Liquor Licensing Act 1988 has been granted*".

Under the *Liquor Control Act 1988*, there are two (2) main types of liquor licences that could be applied for should the application for the cabaret club (nightclub) be approved. These applications are:

- A 'nightclub licence' (previously termed a 'cabaret licence' prior to the amendment of the *Liquor Control Act* in 2006), which provides for on-site liquor consumption with live or pre-recorded entertainment; or
- A 'special facility licence (theatre or cinema)', which provides for on-site liquor consumption only to persons attending a performance or film at the venue within trading hours as stipulated by Council.

The core issue of the proposal is considered to be the use of the site for entertainment purposes in conjunction with food and/or liquor, rather than the type of liquor licence that could be applied for. It is considered that if the proposed cabaret club (nightclub) use was approved, it would be difficult to apply or enforce conditions that prohibited the use of the property for activities that are consistent with the definition of nightclub as detailed above. In other words, it would be difficult to prohibit the activities changing from the proposed 'cabaret club' to a different type of nightclub activity, or restrict the use of pre-recorded music or limit the use of the premises to patrons of a specific age.

A query was also raised as to whether the proposal would need to provide a lift to meet with the access for people with disabilities requirements under the Building Code of Australia (BCA). Whilst the applicant is able to seek private certification to demonstrate compliance with the BCA, the City's Building Services have advised that the proposal would require access for people with disabilities to be provided by way of a lift or ramp to the upper floor of the building. This matter would need to be addressed by the applicant in the event that the proposed cabaret club (nightclub) and/or office use is granted planning approval.

Recommendation Implications

In light of the above, the officer's recommendation remains unchanged.