

15 September 2009
Steven Brett
Implementation & Assessment Branch, Nerang
(07) 5582 8866

PN75152/01/DA1
Application No: MCU2900126

Chris Nott, Lola's Restaurant
C/- Patrick Hefferan Town Planning
PO BOX 591
PACIFIC FAIR QLD 4218

Dear Sir/Madam

**DECISION NOTICE TO APPLICANT
APPLICATION TYPE: MATERIAL CHANGE OF USE (CODE ASSESSMENT) FOR A
RESTAURANT**

**PROPERTY DESCRIPTION: LOT 70 ON B8383
PROPERTY SITUATED AT: 101 OLD BURLEIGH ROAD, BROADBEACH**

I wish to advise that on 14 September 2009 the above application was resolved as outlined in the attached document. The conditions indicate whether the Assessment Manager or a Concurrence Agency imposed them.

An extract from the *Integrated Planning Act 1997*, which details your appeal rights, is attached for your information.

If you do not appeal the decision, this Decision Notice is taken to be the Development Approval and has effect immediately.

Pursuant to section 3.5.21A of the *Integrated Planning Act 1997*, this development approval will lapse if the development the subject of this approval is not completed by 6 years from the date of this decision. This date is 14 September 2015.

Should you wish to clarify any issues contained in this letter, please do not hesitate to contact Planning Assessment area on telephone (07) 5582 8866.

Yours faithfully

Harley Day
SUPERVISING PLANNER MCU SOUTH
For the Chief Executive Officer

SB:MR

Attach

Real Property Description	Lot 70 on B8383
Address of Property	101 Old Burleigh Road, Broadbeach
Area of Property	630m ²
Proposed Use	Restaurant
Further Development Permits	Plumbing and Drainage Compliance Permit

NATURE OF DECISION

- A** The applicant (and, as applicable, each referral agency and principal submitter/s) be notified as required under the *Integrated Planning Act 1997* that under delegated authority the Manager of Implementation & Assessment approves the issue of a development permit for material change of use for a Restaurant, subject to the following conditions:

APPROVED PLANS/DRAWINGS

1 Development to be generally in accordance with specified plans/drawings

The development must be carried out generally in accordance with the approved plans/drawings listed below, stamped and returned to the applicant with this decision notice.

Plan No.	Rev.	Title	Date	Prepared by
M246-08	D	Parking Bay Setout	5-09-09	EDB Consulting Pty Ltd

2 Decision notice and approved plans/drawings to be retained on-site

A copy of this decision notice and stamped approved plans/drawings must be retained on site at all times. This decision notice must be read in conjunction with the stamped approved plans to ensure consistency in construction, establishment and maintenance of approved works.

3 Any deviations require further approval

Any proposed deviation from the approved plans/drawings as a result of on-site or in-situ conditions must not be made unless amended plans/drawings are submitted and approved by Council. The development must be carried out in accordance with the approved amended plans/drawings.

CAR PARKING AND ACCESS

4 Off street facilities for car parking and loading/unloading

Off-street facilities for car parking and loading and unloading must be designed, constructed prior to the commencement of the use and maintained, in accordance with the following:

- a 6 off-street car parking spaces must be provided in accordance with Table to Acceptable Solution AS16.1 of the Planning Scheme's *Car Parking, Access and Transport Integration Constraint Code*;

- b The off-street facilities for parking and loading/unloading (including all access driveways, circulation roadways, parking aisles, parking spaces, service areas and landscaping) must be in accordance with:
 - i The approved plan referred to in Condition 1; and
 - ii AS/NZS 2890.1:2004 *Parking facilities - Off-street car parking*; and

5 Freely accessible car parking

All car parking spaces must be freely accessible to employees for the time the use is open for business and to bona fide visitors for the duration of any visit to the site. Car parking spaces for employees and visitors must have no gateways, doors or similar devices which restrict vehicular access.

Information note: A request for approval to change this requirement to enable the charging for the public use of car parking spaces must be supported by full details of the proposed charging arrangements and an assessment of the impacts on nearby parking spaces, whether in public or private ownership.

6 Loading and unloading

- a Loading and unloading operations must be conducted within the existing SRV service bay provided on Armrick Avenue.
- b Loading and unloading of goods is not permitted within the car park area with the exception of vehicles contracted to collect waste.

7 Bicycle parking and storage

- a On-site bicycle parking and storage facilities must be provided prior to the commencement of the use, and maintained, in accordance with:
 - i AS 2890.3-1993 *Parking facilities - Bicycle parking facilities*; and
 - ii Guide to Traffic Engineering Practice Part 14: Table 10-1: Bicycle Parking – Provision for Planning Purposes (Austroads).
- b Bicycles, of staff and patrons are not permitted to be chained to the fences of adjoining properties.

BUILT FORM

8 Maximum total use area

The total use area of the use must not exceed 114m², calculated in accordance with the definition of 'Total Use Area' in the planning scheme applying at the date of this decision notice.

9 Structures within road reserve

This approval does not approve the establishment of any supporting structures outside the subject property being Lot 70 on B8383.

10 Rubber stoppers to be fitted

Rubber stoppers are to be fitted to all external doors to the rear of the tenancy to reduce door closing noise.

11 Installation of lights

Lights shall be installed at the rear of the tenancy to provide lighting at the entrance of the toilets and the rear of the car park, angled downward and away from the side property boundaries so not to cause glare to adjoining residents, prior to three (3) months from the date of this approval and to the satisfaction of the Chief Executive Officer.

OPERATION

12 Cleaning

Cleaning of mats and clothing shall not be undertaken within the car parking area.

13 Management of toilets

- a The car park and toilets shall be appropriately signed and annotated that the facilities are for site patrons' usage only and that trespassers will be prosecuted.
- b Staff and management shall be aware of the potential of noise generation through congregation of patrons in the car park and this shall be discouraged.
- c Toilets are to be locked with a key, and made available to staff and patrons so that only one person be allowed outside to each toilet at any time. The key is to be returned to the counter and collected from there by the next patron.
- d It shall be appropriately signed and annotated within the Restaurant that access to toilets is via consulting with staff to attain a key for access.

14 Beverages to remain in Restaurant

Any beverages in glasses, glass bottles or containers are not to leave the approved areas of the Restaurant.

15 Management and recording of complaints

All staff are to be made aware of the relevant requirements of this development approval. Management must ensure staff knowledge and must be responsible for patron behaviour on the premises and in the car parking area. Management are to provide a single point of contact with a phone contact to allow mitigation of any specific future concerns, should they arise:

- a A complaints register must be kept at the premises and all complaints received about the activity must be recorded in the register with the following details:
 - i time, date and nature of complaint;
 - ii type of communication (telephone, letter, personal, etc);
 - iii name, contact address and contact phone number of the complainant (if the complainant does not wish to be identified then 'not identified' is to be recorded);
 - iv response and investigation undertaken in response to the complaint;
 - v name of the person responsible for investigating the complaint; and
 - vi action taken as a result of the complaint and the investigation and the signature of or under the authorisation of the holder.

AMENITY

16 Acoustic treatment

The suggested acoustic treatments for the development proposed by the acoustic consultant, Carter Rytenskild Group (dated 9 July 2009 ref.09147a report) be implemented into the construction and operations of the development, unless altered in the conditions of this approval.

17 Amplified noise

- a No amplified music is to be provided in outdoor dining areas. Background music is acceptable inside the restaurant on the provision that speakers are directed away from building openings.
- b Amplified noise from the site must not be of a level that is intrusive to a noise sensitive place.

18 Hours of operation

- a All activities associated with the operation of the use are to be conducted only between the hours of 7am to 10pm.
- b The Chief Executive Officer may consider a written request to vary the approved hours of operation for a special event with a minimum of 30 days notice.

19 Delivery and collection times

Delivery and collection times at the development are restricted to between the hours of 7am to 6pm.

20 Disposal of glass and bottles

The disposal of glass and bottles into bins located outside the Restaurant is not permitted between the hours of 10pm to 7am.

21 Location of equipment and ventilation/refrigeration units

All service equipment, mechanical ventilation and refrigeration units associated with the use of the premises must be installed and located to the satisfaction of the Chief Executive Officer so as not to cause nuisance or disturbance to persons outside the curtilage of the premises.

- a All roof refrigeration units shall be attenuated in accordance with Sketch 1 of the acoustic report by Carter Rytenskild Group (dated 9 July 2009 ref.09147a report).
- b With the exception of the approved waste storage facilities and roof top refrigeration and ventilation equipment, storage of any equipment associated with the Restaurant shall be located within the building.

22 Exhaust air

All exhaust air shall be discharged to the atmosphere in such a manner that will not cause an odour nuisance to the occupants of the surrounding buildings so as to be in compliance with the *Environmental Protection Act 1994* and to the satisfaction of Council's Health, Regulatory & Lifeguard Services Branch.

23 Refuse storage area

All commercial waste shall be stored in accordance with the *Environmental Protection (Waste Management) Regulation 2000*. The commercial waste shall be stored on an imperviously paved area, suitably drained to the satisfaction of Council's Building Services Section and Health, Regulatory and Lifeguard Services Branch. A suitable hose cock and hose shall be provided in the vicinity of such stand or such paved area and a suitable form of roofed enclosure to the waste container area is to be erected.

24 Screening of storage

The storage of any machinery, materials or vehicles must be screened so as not to be visible from any road to which the site has frontage, to the satisfaction of the Chief Executive Officer.

25 No nuisance from lighting

All lighting devices must be positioned on the premises and shielded to the satisfaction of the Chief Executive Officer so as not to cause glare or other nuisance to surrounding residents and motorists

HEALTH AND REGULATORY SERVICES

26 Food operations

Any food operations on the premises must comply with the *Food Act 2006*, *Food Regulation 2006* and the *Australia New Zealand Food Standards Code*. The operator must apply for the necessary Food Licence for Fixed or Mobile Food Premises from Council's Health, Regulatory & Lifeguard Services Branch prior to three (3) months from the date of this approval.

27 Tables and chairs on public land

The placement of tables and chairs on public land requires a permit under Council's *Local Law No. 11 (Roads and Malls)*. A Table and Chairs Area Permit must be obtained from Council's Health, Regulatory & Lifeguard Services Branch prior to the placement of tables and chairs on public land.

28 Refuse/recycling services

Refuse and recycling services must be provided by the applicant in accordance with Council's *Waste Management Policy Relating to Refuse Requirements for Proposed and Existing Building Developments Within the City of Gold Coast*, dated January 1995, 1st Edition, at no cost to Council.

ADVERTISING DEVICES

29 Advertising device approval required

No advertising device is to be erected on the premises without the necessary development permit for operational work (advertising device) and/or approval under Council's *Local Law No. 16 (Licensing) and Subordinate Local Law 16.8 (Advertisement)*. The applicant should contact Council's Health, Regulatory & Lifeguard Services Branch on (07) 5581 6140 to discuss approval requirements.

ON GOING PROTECTION OF EXISTING VEGETATION

30 Protection of existing vegetation within the public road reserve

The ongoing protection of existing vegetation within the adjoining public road reserve must be ensured throughout the life of the development.

31 Management of retained trees

The applicant must ensure:

- a All existing retained trees within the area identified as road reserve adjoining the subject site this development approval are managed during construction activities to avoid any of the following:
 - i structural damage to the tree;
 - ii compaction of the root plate;
 - iii filling of soil within the drip zone; and
 - iv long-term harm to the health of the tree.
- b Existing trees retained during the construction of the development that die, are visibly dying or are structurally compromised as a result of:
 - i filling to their root zones; or
 - ii damage to their trunks; or
 - iii change to the natural flows of water in the site; or
 - iv for any other reason;are removed by a suitably qualified tree surgeon in a manner that minimises damage to surrounding vegetation and garden plantings and replaced by trees of the same species and a similar size prior to three (3) months from the date of this approval.

SEWERAGE

32 Application for compliance permit for sewerage works required

The applicant must make an application to Council (Plumbing and Drainage Services) for a compliance permit for any regulated sewerage works within the property. Without limiting the requirements of the *Plumbing and Drainage Act 2002* with which the works must comply, the application must:

- a be accompanied by a hydraulic design for all sewerage works within the property;
- b comply with Council's:
 - i *Trade Waste Policy*; and
 - ii *Trade Waste Pre-treatment Policy and Guidelines*; and
- c comply with Council's *Waste Management Policy Relating to Refuse Requirements for Proposed and Existing Building Developments Within the City of Gold Coast* dated January 1995.

- d External garbage collection and bin washing areas, which must be roofed with an impervious material and provided with a gutter system connected to a stormwater drain. Bunding must be provided to prevent rainfall or surface water entering the sewerage system.
 - i A RPZD protected hose cock must be provided within the bin wash or garbage collection area.
 - ii All garbage areas where garbage is stored, compacted, or processed, must discharge to the sewerage system via a grated sump and silt trap with a minimum capacity of at least 550L.

Information note:

- *Sewerage works must not be carried out until a compliance permit under the Plumbing and Drainage Act 2002 has been issued by Council for the works.*
- *Plumbing and drainage approval is not an approval to discharge trade waste to Council's wastewater system. The generator of trade must complete an Application for Approval to Discharge Trade Waste to Council's Wastewater System (available on Council's website) prior to discharging any trade waste.*

WATER SUPPLY RETICULATION

33 Individual sub-metering to be provided

The developer shall provide individual sub-metering for all units within the complex including any common property, in accordance with *Gold Coast Water Sub-metering Policy dated 1 January 2008*, as follows unless otherwise approved by Gold Coast Water.

- a All meters and their locations shall be approved by Council.
- b Automatic Meter Reading (AMR) technology shall be utilised where free access for meter reading cannot be provided.

NOTES TO APPLICANT – THESE ARE NOT CONDITIONS

B Rights of appeal

This notice is provided pursuant to section 3.5.15(2)(m) of the Integrated Planning Act 1997.

The applicant has a right of appeal to the Planning and Environment Court regarding this decision, pursuant to section 4.1.27 of the *Integrated Planning Act 1997*. A copy of that section is attached to the decision notice.

C Applicant responsibilities

The applicant is responsible for securing all necessary approvals and tenure, providing statutory notifications and complying with all relevant laws.

Nothing in this decision notice alleviates the need for the applicant to comply with all relevant local, State and Commonwealth laws and to ensure appropriate tenure arrangements have been made where the use of/reliance upon land other than that owned by the applicant is involved. Without limiting this obligation, the applicant is responsible for:

- a Obtaining all other/further necessary approvals, licences, permits, resource entitlements etc by whatever name called (this may include further development approvals under the *Integrated Planning Act 1997* and the planning scheme) required by law before the development the subject of this approval can be lawfully commenced and to carry out the activity for its duration;
- b Providing any notifications required by law (by way of example only, to notify the administering authority pursuant to the *Environmental Protection Act 1994* of environmental harm being caused/threatened by the activity, and upon becoming aware the premises is being used for a 'notifiable activity'); and
- c Securing tenure/permission from the relevant owner to use private or public land not owned by the applicant (including for access required by conditions of approval).
- d Ensuring the correct siting of structures on the land. An identification survey demonstrating correct siting and setbacks of structures may be requested of the applicant to ensure compliance with this decision notice and applicable codes.
- e Providing Council with proof of payment of the Portable Long Service Leave building construction levy (or proof of appropriate exemption) where the value of the Operational Works exceeds \$80,000. Acceptable proof of payment is a Q.Leave – Notification and Payment Form approved by the Authority. Proof of payment must be provided before Council can issue a development permit for the Operational Works. This is a requirement of section 77(1) of the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.
- f Making payment of any outstanding Council rates and charges applicable to the development site prior to the lodgement of survey plans.

D Indigenous cultural heritage legislation and duty of care requirement

The *Aboriginal Cultural Heritage Act 2003* ('AHCA') is administered by the Department of Natural Resources and Water (NRW). The AHCA establishes a duty of care to take all reasonable and practicable measures to ensure any activity does not harm Aboriginal cultural heritage. This duty of care:

- a Is not negated by the issuing of this development approval;
- b Applies on all land and water, including freehold land;
- c Lies with the person or entity conducting an activity; and
- d If breached, is subject to criminal offence penalties.

Those proposing an activity involving surface disturbance beyond that which has already occurred at the proposed site must observe this duty of care.

Details of how to fulfil this duty of care are outlined in the duty of care guidelines gazetted with the AHCA.

The applicant should contact NRW's Cultural Heritage Coordination Unit on (07) 3238 3838 for further information on the responsibilities of developers under the AHCA.

E Greenhouse gas emissions

As part of Council's commitment to reducing greenhouse gas emissions Council is encouraging the expansion of the natural gas reticulation network. In particular, the use of natural gas hot water systems will result in significantly less greenhouse gas emissions than equivalent electric storage hot water systems.

The applicant should contact the local natural gas reticulator (APA Group) to arrange an assessment of the suitability of the proposed development for connection to the existing gas reticulation network. Please contact Ramon O'Keefe on 0438708798 or email: ramon.o'keefe@apa.com.au.

F Obligation to ensure electrical safety

Under the *Electrical Safety Act 2002* you have an obligation to ensure your business or undertaking is conducted in an electrically safe way, whether or not it is electrical work.

If there is a reasonable likelihood that your work may cause a person, vehicle, operating plant or equipment to come into contact with an overhead electric line, you must consult with the person in control of powerlines.

Persons, vehicles, operating plant or equipment must stay outside the defined exclusion zone applicable to the powerline.

Information Note:

An exclusion zone sets the minimum safe approach distance to the powerline.

Guidance on exclusion zones can be found in the Code of Practice - Working Near Exposed Live Parts issued by the Electrical Safety Office.

For further information, including codes of practice and legislation, either check the Department of Employment and Industrial Relations' web site – www.deir.qld.gov.au, or contact the Electrical Safety Office Infoline – 1300 650 662.

G Water restrictions to be complied with

All persons and/or companies engaging in landscaping works must comply with current water restrictions. These restrictions detail specific times and methods for the watering of newly established gardens and turf for both residential and non-residential developments.

Any person or company found contravening current water restrictions may incur fines of up to 200 penalty units. [*Water Supply (Safety and Reliability) Act 2008* Section 43 (3)] (1 Penalty Unit = \$100.00).

Integrated Planning Act 1997

**APPEAL RIGHTS FOR APPROVAL OR REFUSAL OF DEVELOPMENT APPLICATIONS
FOR MATERIAL CHANGE OF USE, RECONFIGURATION OF A LOT OR
OPERATIONAL WORKS APPLICATIONS.**

Appeals by applicants

- 4.1.27 (1)** An applicant for a development application may appeal to the court against any of the following -
- (a) the refusal, or the refusal in part, of a development application;
 - (b) a matter stated in a development approval, including any condition applying to the development, and the identification of a code under section 3.1.6; **
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a currency period;
 - (e) a deemed refusal.
- (2)** An appeal under subsection (1)(a) to (d) must be started within 20 business days (the **“applicant’s appeal period”**) after the day the decision notice or negotiated decision notice is given to the applicant.
- (3)** An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.