

ASSESSMENT REPORT

Executive Lounge and Bar at the Four Points by Sheraton Hotel SSD 7014 MOD 3

1. INTRODUCTION

This report is an assessment of an application seeking to modify the State significant development (SSD) approval (SSD 7014) for a two-storey executive lounge and rooftop bar above the northern tower of the Four Points by Sheraton Hotel, 161 Sussex Street, Darling Harbour, in the City of Sydney local government area (LGA).

The application has been lodged by GL Investment Management (the Applicant) pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to continue to operate the rooftop bar 24 hour a day, seven day a week on a permanent basis.

2. SUBJECT SITE

The subject site is located at the western edge of the Sydney central business district (CBD), on the eastern side of Darling Harbour. The site context and location are shown at **Figure 1**.

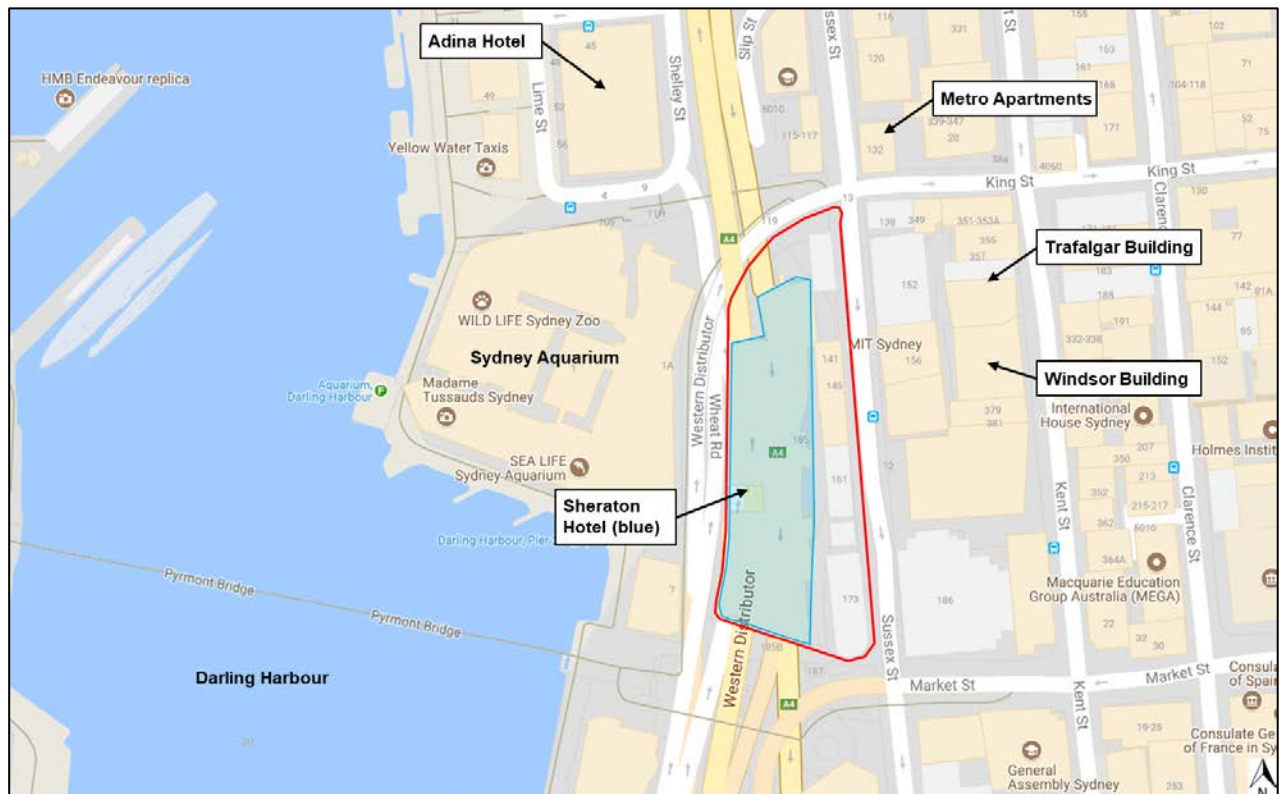


Figure 1: The site (outlined red), the Sheraton Hotel (highlighted blue) and the immediate surrounding context (Base source: Nearmap)

The site is bound by Wheat Road to the west, the Western Distributor to the north and west (and beneath the building), Sussex Street to the east and Market Street and the elevated pedestrian bridge connected to Pyrmont Bridge to the south.

The site contains a mix of uses including hotel, commercial offices, retail and restaurant uses. The Four Points by Sheraton Hotel (the Sheraton) comprises part 12, 16 and 27-storey tower buildings providing for 927 hotel rooms (highlighted blue at **Figures 1 and 2**). An executive lounge and rooftop bar are located at Levels 11 and 12 of the 12-storey northern tower (highlighted green at **Figure 2**)

The surrounding area is characterised by a variety of development types and land-uses, including commercial, retail, tourism, entertainment and residential developments and significant road infrastructure.

The closest residential property to the site is the Windsor Building, 365 Kent Street, which is located approximately 70 metres (m) to the east. Other nearby sensitive receivers include the:

- Metro Apartments, 136 Sussex Street, located 85 m to the north-east
- Adina Hotel, 55 Shelley Street, located 100 m to the north-west.

The site's relationship to its surrounding context is shown at **Figure 2**.

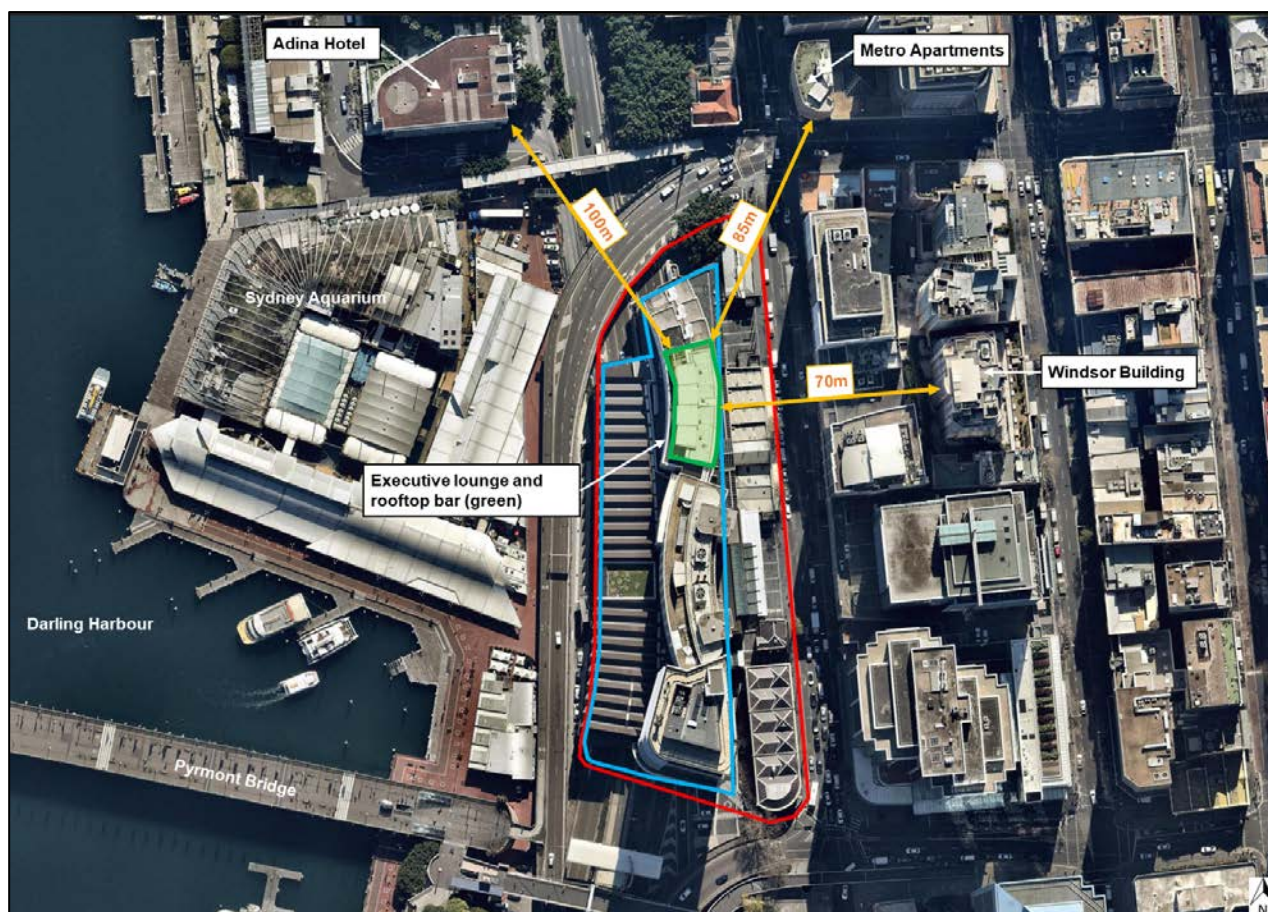


Figure 2: Aerial view of the site, the executive lounge and bar (green) and the distance to nearest sensitive receivers (Base source: Nearmap)

3. APPROVAL HISTORY

On 26 February 2015, the Planning Assessment Commission (the Commission) approved a SSD application (SSD 7014) for the construction of a 2-storey executive lounge and bar above the northern tower of the existing hotel (the SSD Approval), including:

- an executive lounge at Level 11

- a rooftop bar at Level 12
- associated amenities and plant room.

The proposal has been previously modified on two occasions, as summarised in **Table 1**.

Table 1: Summary of modifications to the SSD Approval

MOD no.	Summary of Modifications	Approval Date
MOD 1	External changes to the executive lounge and bar including the reduction of the roof structure height and provision of a privacy screen.	5 October 2016
MOD 2	Installation of roof top plant, flues, exhausts and air-ducts.	23 November 2016

The SSD Approval is shown at **Figures 3 and 4**.



Figure 3: View of the site from Pyrmont Bridge



Figure 4: Aerial view of the executive lounge and rooftop bar (Source: the SSD Approval)

In determining the SSD Approval the Commission imposed the following condition, which allows for extended hours of operation on a 12-month trial period in accordance with the Sydney Development Control Plan 2012 (SDCP):

Hours of Operation – Level 12 Rooftop Bar

A6. *The rooftop bar located on Level 12 is permitted to operate 24 hours, 7 days per week for a period of 12-months from the date of occupation. After this initial 12-month period, the approved hours of operation are 7 am to midnight Monday to Sunday, unless otherwise approved by a modification application.*

In addition to the above restriction, the SSD Approval includes the following conditions to ensure the appropriate operational management of the premises and protection of residential amenity:

- E12, which requires the preparation and implementation of a Plan of Management
- E14, which requires the preparation of an Acoustic Verification Report confirming compliance with noise conditions F21 to F27
- F6 to F9, which set operational management restrictions, including maximum capacities of 200 patrons for the executive lounge and 200 patrons for the rooftop bar
- F10 to F11, which require the implementation of a complaints management procedure
- F13 to F19, which require security monitoring via CCTV cameras
- F21 to F27, which establish appropriate noise levels for nearby residential receivers during the operation of the executive lounge and rooftop bar, including the requirement that no noise be audible within habitable rooms between midnight and 7 am.
- F28 and F29, which ensures the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the area
- F31 to F33, which prevent adverse noise impacts from glass crushing and removal.

4. PROPOSED MODIFICATION

On 13 September 2017, the Applicant lodged an application (SSD 7014 MOD 3) seeking approval to:

- continue the extended hours of operation (24 hours a day, seven days a week) of the roof top bar on a permanent basis
- delete condition A6, which limits the extended hours of operation of the lounge and bar to an initial 12-month trial period.

The modification is requested on the basis that the:

- the development has been operating in accordance with the extended hours of operation since 21 December 2016, and will therefore soon reach the end of the 12-month trial period (condition A6)
- executive lounge and bar have been operating in accordance with the approved Plan of Management (PoM) and the hotel’s liquor licence
- the hotel has not received any complaints about noise nuisance or disturbance from the operation of the executive lounge and bar.

5. STATUTORY CONSIDERATION

5.1 Modification of approval

Section 96(1A) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications that seek modification approvals:

Table 2: Section 96(1A) matters for consideration

Section 96(1A) matters for consideration	Comment
That the proposed modification is of minimal environmental impact	Section 7 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.

That the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).	The proposed modification seeks approval to continue operating the rooftop bar under the extended hours of operation and does not include any physical changes to the approved development. The proposed continuation of the extended hours of operation would not result in any additional amenity impacts, as discussed at Section 7 . On this basis, the proposal would result in development that is substantially the same as the originally approved development.
The application has been notified in accordance with the regulations	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 6 of this report.
Any submission made concerning the proposed modification has been considered.	The Department received eight submissions on the proposal. The issues raised in submissions have been considered in Section 7 of this report.

5.2 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State and Regional Development) 2011
- Darling Harbour Development Plan No.1
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied that the modification is generally consistent with the EPIs.

5.3 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Executive Director, Key Sites and Industry Assessment may determine the application under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no more than 10 public submissions in the nature of objections.

6. CONSULTATION

The application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request was made publicly available on the Department's website and referred to City of Sydney Council (Council), NSW Police, Transport for NSW (TfNSW), Roads and Maritime Services (RMS), Liquor and Gaming NSW (LGNSW). Letters were also sent to adjoining owners/occupiers.

Council does not object to the proposed modification and provided the following comments:

- the extended hours of operation should be subject to a new trial period of two years
- the application should be referred to NSW Police and the LGNSW for their consideration.

LGNSW does not object to the proposed modification and confirmed the Applicant would be required to separately submit an application to the LGNSW's should it seek to amend the current liquor licence.

RMS does not object to the proposed modification and provided no additional comments.

TfNSW does not object to the proposed modification and provided no additional comments.

NSW Police did not make any comments on the application.

There were three public submissions received on the proposal. Key issues raised in public submissions included noise impact and anti-social behaviour associated with the 24-hour operation.

6.2 Response to Submissions (RtS)

Following the notification of the modification application the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in the submissions.

On 6 November 2017, the Applicant provided a RtS (**Appendix A**). The RtS contains further information and clarification of the key issues raised by the government authorities. The RtS does not include any amendments to the proposal.

The Department made the RtS publicly available on its website and referred the RtS to relevant government authorities.

No additional submissions were received from government authorities or the public.

7. ASSESSMENT

7.1. Continuation of the extended hours of operation

The Department considers the key issue associated with the proposed modification is the noise and amenity impact from the continuation of the extended hours of operation of the roof top bar.

The modification seeks approval to continue to operate the rooftop bar 24 hours a day, seven days a week on a permanent basis. The Applicant states the rooftop bar has operated on a 24-hour a day, seven days a week basis for the past 12 months, in accordance with the trial period and the noise and complaint management conditions (summarised at **Section 3**). The Applicant has confirmed it has not received any complaints about the operation of the venue during the 12-month trial period and the extended hours of operation can therefore be made permanent.

Council has not objected to the proposed continuation of the extended hours of operation. However, it has recommended the extended hours be subject to a further two-year trial period to allow for ongoing monitoring.

The Department has carefully considered the public and agency submissions, and is satisfied the continuation of the extended hours of operation would be acceptable in this instance for the following reasons:

- no complaints have been received by the Applicant or the Department's Compliance Team regarding the 24 hour, seven day a week operation of the roof top bar
- public submissions raised concerns about the potential impacts of the operation of the rooftop bar beyond midnight, however the roof top bar has already been operating 24 hour a day, seven day a week for the past 12 months. The Department also notes Condition F24 requires noise from the roof top bar must not be audible within any habitable room in any residential use between midnight and 7 am
- the Applicant has submitted a copy of the Statement of Acoustic Compliance, required by condition E14, which confirms the development complies with the operational noise requirements of conditions F21 to F27
- conditions F10 to F11 (Complaints Management), E12 (Plan of Management) and F13 to F19, F28 and F29 (anti-social behaviour) would ensure rooftop bar would be appropriately managed
- the proposal does not seek approval to change the operation of the rooftop bar or physically alter the building. As such, the proposal would not result in any additional amenity impacts beyond what has already been assessed and approved under the SSD Approval.

Notwithstanding, in response to Council and public submissions, the Department considers the extended hours of operation should be subject to a second trial period of two years to allow for ongoing monitoring of amenity impacts, in accordance with the SDCP.

The SDCP states up to 24-hour trading may be permitted in circumstances where Applicant has a sustained record of good management, minimising amenity and safety impacts. The SDCP recommends an initial trial period of 12 months following by a second trial period of two years to allow for the flexible review of conditions, consideration of changes in the late-night character of a neighbourhood, venue management and impacts on amenity.

The Department therefore considers that condition A6 be amended to allow the continuation of the extended hours of operation on a two-year trial basis in accordance with the SDCP. Subject to a further two-year trial period, the Department's assessment concludes the extended hours of operation are acceptable. Consequently, it is recommended the application is in the public interest and the modification should be approved.

8. RECOMMENDATION

It is recommended that the Executive Director, Key Sites and Industry Assessments, as delegate for the Minister for Planning:

- **consider** the findings and recommendations of this report
- **determine** that the application falls within the scope of section 96(1A) of the EP&A Act
- **approve** the Four Points by Sheraton modification application (SSD 7014 MOD 3), subject to conditions
- **sign** the attached notice of modification (**Attachment A**).

Recommended by:

Recommended by:

Natasha Harras
Team Leader
Modification Assessments

Anthony Witherdin
Director
Modification Assessments

DECISION

Approved by:

Anthea Sargeant
Executive Director
Key Sites and Industry Assessments

as delegate of the Minister for Planning

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8749

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8749

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8749

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8749