



# ***Zephyr Bar – Hyatt Regency***

Section 4.55(1A)  
Modification Assessment  
(SSD 7014 MOD 4)



February 2019

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### **Cover photo**

View towards the subject site from Pyrmont Bridge (Source: Google Maps)

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## Glossary

Abbreviation	Definition
Applicant	GL InvestmentCo Pty Ltd ATF GL No.1 Trust
Council	City of Sydney Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
PoM	Plan of Management
RtS	Response to Submissions
SDCP	Sydney Development Control Plan 2012
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SSD	State Significant Development



# Contents

<b>Glossary .....</b>	<b>iii</b>
<b>1. Introduction .....</b>	<b>5</b>
1.1 Background .....	5
1.2 Subject site .....	5
1.3 Approval History .....	7
<b>2. Proposed Modification .....</b>	<b>9</b>
<b>3. Statutory Context .....</b>	<b>10</b>
3.1 Scope of Modifications .....	10
3.2 Environmental Planning Instruments .....	10
3.3 Consent Authority .....	10
<b>4. Engagement .....</b>	<b>11</b>
4.1 Department's Engagement .....	11
<b>5. Assessment .....</b>	<b>12</b>
5.1 Continuation of 7 days a week, 24 hours a day hours of operation .....	12
<b>6. Evaluation .....</b>	<b>14</b>
<b>7. Recommendation .....</b>	<b>15</b>
<b>8. Determination .....</b>	<b>16</b>
<b>Appendices .....</b>	<b>17</b>
Appendix A – Relevant Supporting Information .....	17
Appendix B – Modification of Development Consent .....	18



# 1. Introduction

## 1.1 Background

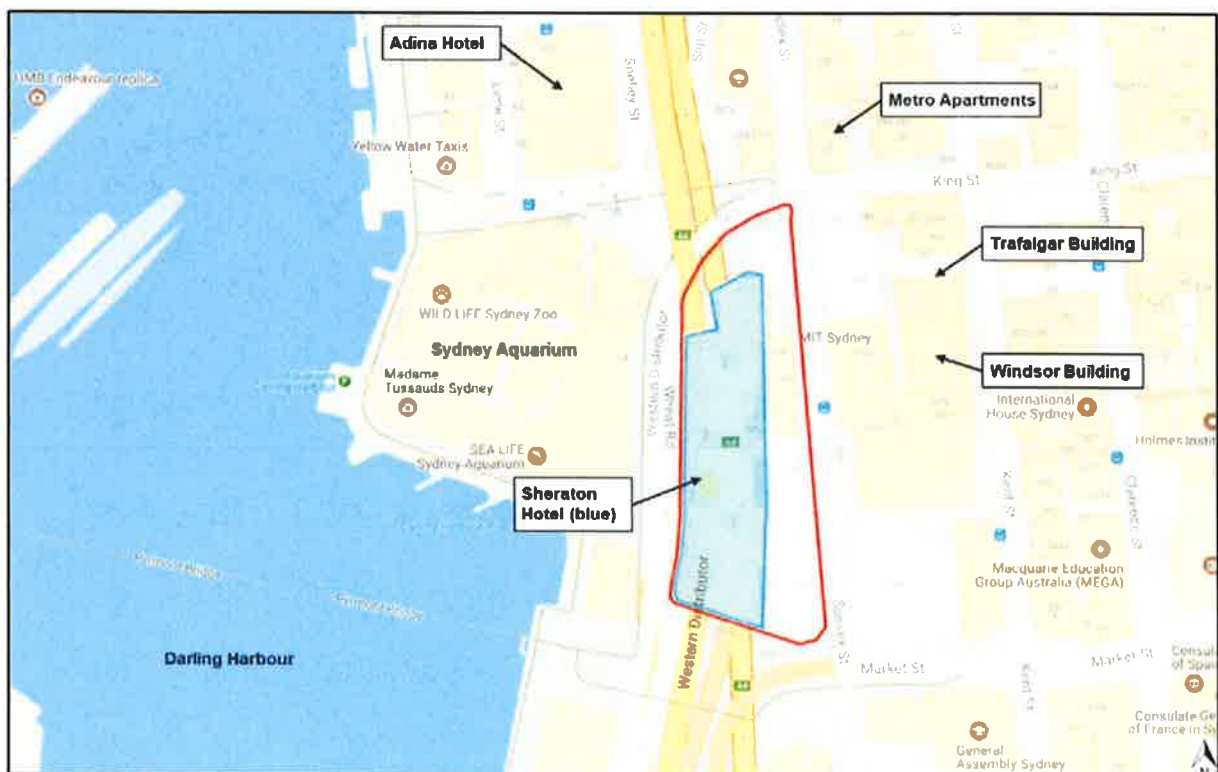
This report is an assessment of a request to modify the State Significant Development (SSD) approval (SSD 7014) for the construction of a two-storey executive lounge and rooftop bar above the northern tower of the former Sheraton Four Points Hotel, now operating as Hyatt Regency Sydney (the Hyatt). The Hyatt is located at 161 Sussex Street, Darling Harbour, in the City of Sydney local government area.

The request has been lodged by Ethos Urban on behalf of GL InvestmentCo Pty Ltd ATG GL No.1 Trust (the Applicant), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application seeks approval to modify Condition A6 to extend the approved 24 hours, 7 days a week operating hours for the rooftop bar (Zephyr Bar) for a further 60 month trial period.

## 1.2 Subject site

The subject site is located at 161 Sussex Street, Sydney located at the western periphery of the Sydney central business district (CBD) (**Figure 1**). The executive lounge (Level 11) and rooftop bar (Level 12) are located in the 12-storey northern tower of the Hyatt (**Figure 2**). The Hyatt contains a mix of uses including hotel, retail, restaurant uses and commercial offices and comprises part 12, 16 and 27 storey tower buildings.



**Figure 1** | Location of the Site (Base source: Nearmap)



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

The surrounding area is characterised by a variety of development types and land-uses, including commercial, retail, tourism, entertainment, residential and significant road infrastructure (**Figure 2**).

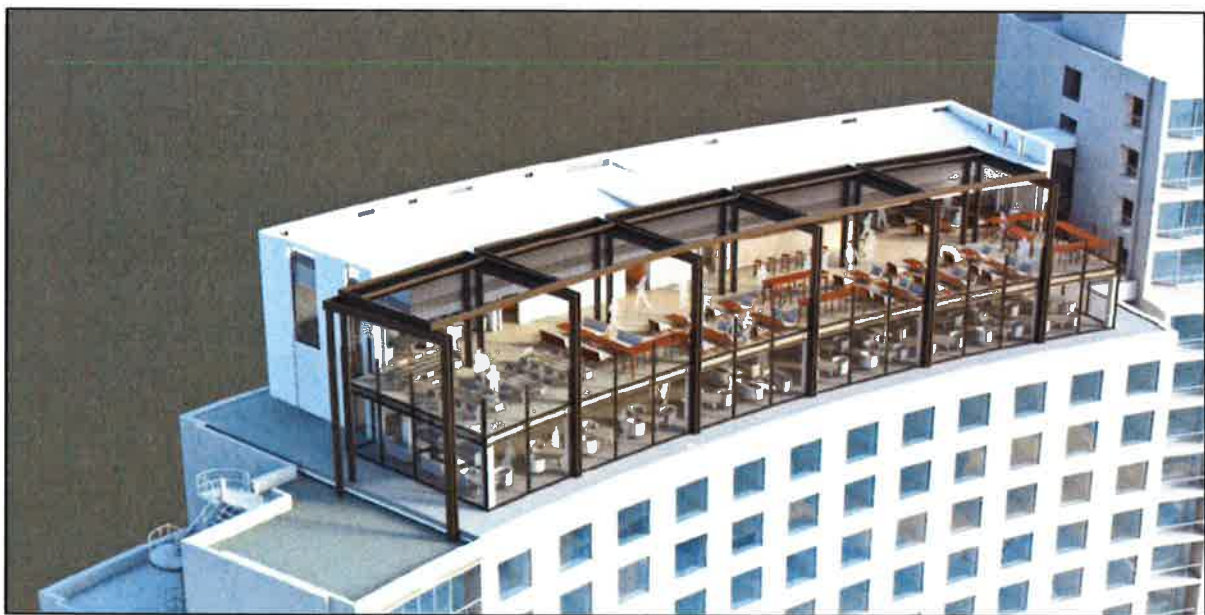
The closest residential properties to the site are the Windsor Building at 365 Kent Street and the Trafalgar Building at 361 Kent Street, which are located approximately 70 metres to the east. Other sensitive receivers are identified in **Figure 2**.



**Figure 2** | Aerial view of the site 161 Sussex Street (red), hotel (blue), the executive lounge and bar (green) and the distance to the nearest sensitive receivers (Base source: Nearmap)



**Figure 3** | Subject site as viewed from Pyrmont Bridge, Darling Harbour (Base source: Google Maps)



**Figure 4** | Photomontage of the executive lounge and rooftop bar (Source: Applicant's SSD)

### 1.3 Approval History

On 26 February 2015, the then 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 public rooftop bar at Level 12;
- associated amenities; and
- a plant room.

The SSD Approval has previously been modified on three occasions as outlined in **Table 1**.

**Table 1** | Summary of Modifications

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.	05.10.2016
MOD 2	Installation of roof top plant, flues, exhausts and air-ducts.	23.11.2016
MOD 3	Continuation of the extended hours of operation (24 hours a day, seven days a week) for an additional 24 months.	22.11.2017





## 2. Proposed Modification

On 9 November 2018, the Applicant lodged a modification request (SSD 7014 MOD 4) seeking approval under section 4.55(1A) for the EP&A Act to modify Condition A6 to extend the approved 24 hours a day, 7 days a week operating hours for the rooftop bar for a further 60 months.

The Applicant proposed to amend Condition A6 as follows (insertion of the bold and underlined text and deletion of the bold and struckout texts):

### **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 **24 60**-months from the date of the ~~approval of modification application SSD 7014 MOD-3~~ **conclusion of the second trial period, being 22 December 2019**. After this **24 60**-month period, the approved hours of operation are 7 am to midnight Monday to Sunday, unless otherwise approved by a modification application.

The modification is request on the basis that:

- the development has been operating in accordance with the extended hours of operation since 21 December 2016.
- the bar has been operating in accordance with the approved Plan of Management (PoM) and the hotel's current liquor licence.
- the hotel has not received any complaints about noise or disturbance from the 24-hour, 7 day a week operation of the bar.



## 3. Statutory Context

### 3.1 Scope of Modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application and results in minor environmental impacts.

The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the modification of SSD Approval have been considered in **Table 2**.

**Table 1** | Section 4.55(1A) Modification involving minimal environmental impact

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<b>Section 5</b> of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the modification is of minimal environmental impact.
b) 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), and	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 in <b>Section 5</b> . On this basis, the Department is satisfied the modification is substantially the same development as originally granted.
c) the application is notified in accordance with the regulations, and	The modification application has been notified in accordance with the regulations. Details of the notification are provided in <b>Section 4</b> of this report.
d) any submissions made concerning the proposed modification have been considered.	The Department received a submission from Council on the proposal. Details of the submissions and the Department's consideration can be found in <b>Section 4</b> of this report.

### 3.2 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State & Regional Development) 2011;
- Darling Harbour Development Plan No 1; and
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- Sydney Local Environmental Plan 2012.

The Department has considered the proposed modification against these above-mentioned EPIs in its original assessment. The Department is satisfied that the modification continues to be consistent with the EPIs.

### 3.3 Consent Authority

The Minister for Planning is the consent authority for the application. However, the Director, Regional Assessments may determine the request under delegation as:

- the relevant local council has not made an objection;
- a political donation disclosure statement has not been made; and

- there are no public submissions.



## 4. Engagement

### 4.1 Department's Engagement

The application was made publicly available on the Department's website on 23 November 2018 and was referred to City of Sydney Council (Council) and adjoining owners and occupiers for comment. The Department received one submission from Council. No public submissions were received.

**Council** did not object to the proposed modification, however provided the following comments:

- the application should be referred to NSW Police and LGNSW; and
- If approved, the extended hours of operation should be subject to a further trial period to enable ongoing monitoring.

The application was referred to NSW Police, Liquor & Gaming NSW (LGNSW) and Property NSW for comment. LGNSW advised it does not intend on providing comment, and no comments were received from the other agencies.



## 5. Assessment

The Department has assessed the merits of the proposed modification. During this assessment, the Department considered the:

- environmental assessment and assessment report for the original SSD application
- existing conditions of approval
- modification application and associated documents (**Appendix A**)
- submission from Council
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act.

### 5.1 Continuation of 7 days a week, 24 hours a day hours of operation

The Department considers the key issue associated with the proposed modification is the management performance of the venue during the current trial period, particularly in relation to noise and amenity impacts. The modification seeks approval to continue to operate the rooftop bar 24 hours a day, 7 days a week for an additional 60 months from 22 December 2019.

The Applicant states that the rooftop bar has operated on a 24 hour a day, 7 days a week basis since 21 December 2016 in accordance with the trial period and the noise and complaint management conditions. The Applicant has confirmed that to date it has not received any complaints in relation to noise or disturbance since the opening of the bar (**Appendix A**). It is noted that the extended hours of operation will continue to be consistent with the conditions of the current liquor licence for the hotel which allows 24- hour service of alcohol for level 12 (**Appendix A**).

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 trial period to enable ongoing monitoring, in accordance with its controls.

The Department notes late-night trading provisions within the Sydney Development Control Plan (SDCP) 2012 permit trial periods to be granted for 1 year (first trial), 2 years (second trial) and 5 years (third and subsequent trials). Renewal or extensions of trading hours under a trial period are subject to satisfaction that the premises have demonstrated good management performance and compliance with the Plan of Management.

The Department has considered the Council submissions, and is satisfied the continuation of the extended hours of operation is acceptable for the following reasons:

- no complaints have been received by the Applicant or the Department's Compliance Team regarding the 24 hour, 7 day a week operation of the rooftop bar
- existing conditions in the SSD Approval relating to noise and amenity would continue to protect the amenity of surrounding residents and ensure the bar is appropriately managed. This includes conditions: F10 to F11 (Complaints Management), E12 (Plan of Management), F13 to F19 (CCT surveillance cameras), F21 to F27 (Noise) and F28 and F29 (Anti-social behavior).



- the proposed 60-months trial period of the extended hours allows for ongoing management performance of the venue, in accordance with Council's controls
- 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.

The Department considers that the Applicant has appropriately managed noise and amenity impacts as per the SSD Approval during the trial period. These results indicate that to date, the Applicant has maintained good management and compliance practice, with minimal environmental impact to surrounding areas.

Notwithstanding the above, the Department notes that at the date of lodgement, the venue is approximately midway through the 24 months (second trial) that is due to expire on 22 December 2019. As such, the Department recommends that Condition A6 be amended to specify when a future modification application may be lodged to renew the trial hours of operation, in accordance with the SDCP 2012.

### **Proposed Condition A6:**

#### **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 ~~24~~**60**-months from the date of the ~~approval of modification application SSD 7014 MOD 3 conclusion of the second trial period, being 22 December 2019.~~ After this ~~24~~**60**-month period, the approved hours of operation are 7 am to midnight Monday to Sunday. ~~unless otherwise approved by a modification application.~~

**Applications for a renewal of trial hours of operation should be lodged within 30 days of the expiry period and the Applicant will be allowed a period of 'grace' from the termination of the trial period until the new application has been determined. During this period, the premises may continue to trade during existing approved trial hours.**

Overall, the Department's assessment concludes the continuation of the extended hours of operation for 60 months is acceptable as the Applicant has demonstrated good management performance and compliance with the PoM. Consequently, it is recommended the application is in the public interest and the modification should be approved.



## 6. *Evaluation*

The Department has assessed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate as it:

- complies with the relevant statutory provisions and remains consistent with relevant EPIs
- is substantially the same development as originally approved
- does not result in any adverse environmental impacts
- demonstrates good management performance and compliance with the PoM, with no complaints received by the Hyatt or the Department's Compliance Team.

Consequently, the Department concludes the proposal is in the public interest and should be approved, subject to changes in the existing conditions of consent.



## 7. Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **determines** that the application (SSD 7014 MOD 4) falls within the scope of Section 4.55(1A) of the EP&A Act;
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **modifies** the approval (SSD 7014); and
- **signs** the attached modification of approval (**Appendix B**)

Recommended by:

**Lawren Drummond**

Planning Officer

Regional Assessments



## 8. Determination

The recommendation is: **Approved by:**

*Anthony Witherdin 8.2.19*

**Anthony Witherdin**

Director

Regional Assessments





# Appendices

## Appendix A – Relevant Supporting Information

The following supporting documents and supporting information to this assessment report can be found on the Department's website at:

1. Modification Request  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9725](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9725)
2. Submissions  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9725](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9725)

## Appendix B – Modification of Development Consent

The recommended modification of Development Consent can be found on the Department's website at:  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9725](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9725)