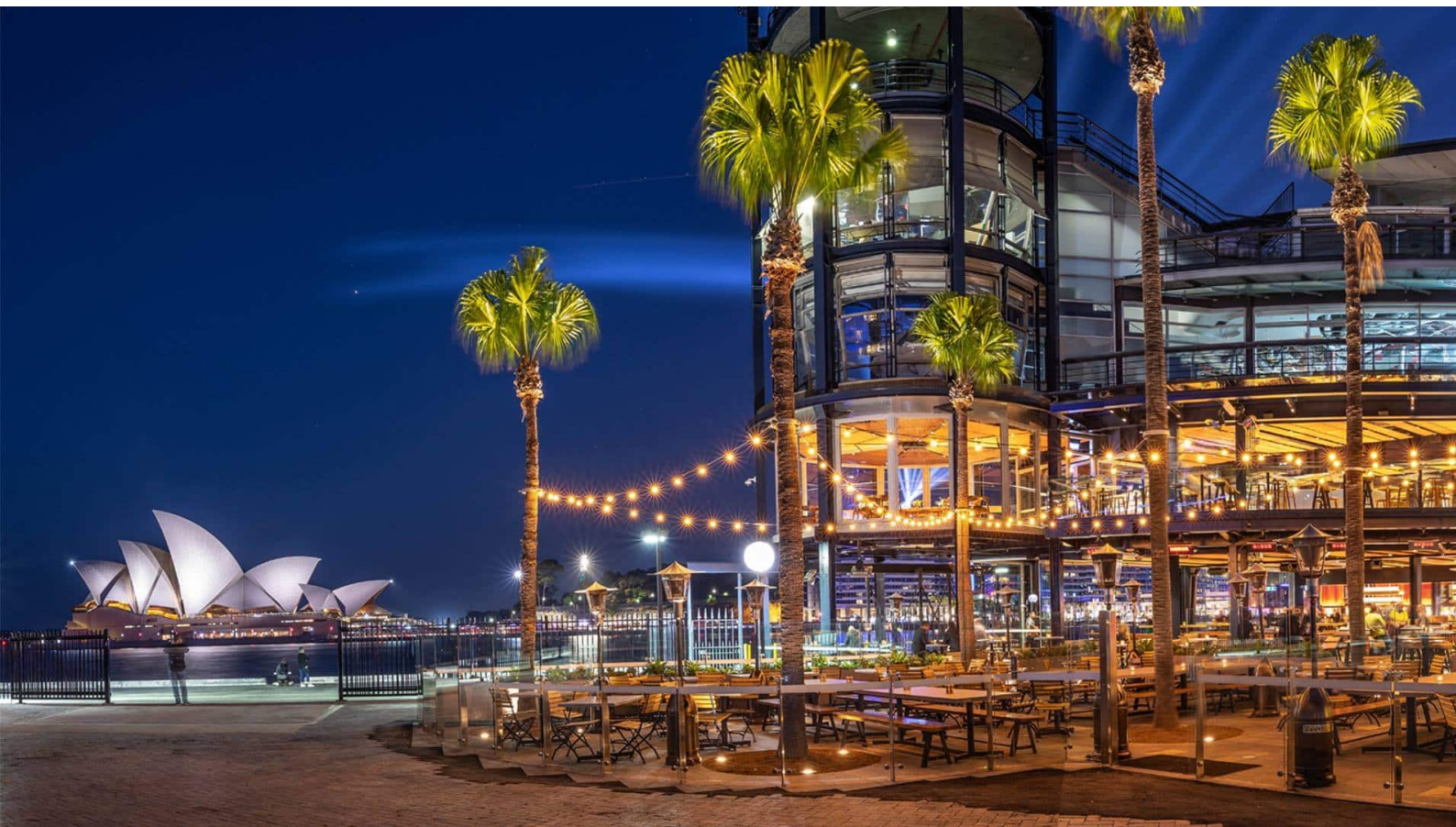


## **Modification Report Section 4.55(2) Modification**

**The Squire's Landing, Overseas Passenger Terminal  
SSD 7683 Mod 3**




Prepared for Jimmy's on the Mall Pty Ltd  
Submitted to the Department of Planning and Environment

**May 2022**



This report has been prepared by:



Cameron Thomson BCP (Hons)  
 Planner  
 E: [cameron@keylan.com.au](mailto:cameron@keylan.com.au)

This report has been reviewed by:



Michael Woodland BTP MPIA  
 Director  
 E: [michael@keylan.com.au](mailto:michael@keylan.com.au)

Cover image: The Squire's Landing (Source: Mantle Group)

All Rights Reserved. No material may be reproduced without prior permission of KEYLAN Consulting Pty Ltd. While KEYLAN Consulting Pty Ltd working on this project has tried to ensure the accuracy of the information in this publication, it accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in the information in this report. This report has relied on information provided by Jimmy's on the Mall in good faith and accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in the information in this report.

Revision	Prepared by	Reviewed by	Date	Revision Type
1	CT	MW	10/05/2022	Draft
2	CT	MW	19/05/2022	Final

## Table of Contents

<b>1</b>	<b>Introduction .....</b>	<b>4</b>
1.1	Site description.....	5
1.2	Surrounding Locality .....	6
1.3	Application history .....	9
<b>2</b>	<b>Strategic Context .....</b>	<b>11</b>
<b>3</b>	<b>Description of Modifications.....</b>	<b>12</b>
3.1	Request to modify the Conditions of Consent.....	13
<b>4</b>	<b>Statutory Planning Framework .....</b>	<b>14</b>
4.1	Environmental Planning and Assessment Act 1979 .....	14
4.1.1	Section 4.55(2) of the EP&A Act.....	14
4.1.2	Section 4.55(3) & 4.15(1) of the EP&A Act .....	15
4.2	Other Statutory Instruments.....	15
4.3	Sydney Development Control Plan 2012 .....	15
<b>5</b>	<b>Engagement.....</b>	<b>17</b>
<b>6</b>	<b>Assessment of Impacts .....</b>	<b>18</b>
6.1	Noise 18	
6.2	Heritage.....	18
6.3	Complaints Record .....	19
6.4	Plan of Management.....	19
6.5	Site Suitability.....	19
6.6	Public Interest.....	20
<b>7</b>	<b>Justification for Modified Project .....</b>	<b>21</b>

## Figures

Figure 1: Site location (Base source: Nearmap).....	5
Figure 2: View northwest across the hard paved area, promenade, and Campbell's Cove towards Campbell's Stores to the left and the Park Hyatt and Sydney Harbour Bridge to the right (Source: Keylan).....	7
Figure 3: Surrounding venue hours of operation (to be viewed in conjunction with Table 2) (Base source: Nearmap).....	9

## Tables

Table 1: Approved and proposed hours of operation.....	4
Table 2: Surrounding venue operating hours (*Note A-LNMA and B-LNMA indicate whether the premises are Category A or B within the Late Night Management Area under the SDCP 2012) ..	8
Table 3: Assessment against the strategic planning context.....	11
Table 4: Approved and proposed hours of operation.....	12
Table 5: Section 4.55(2) Assessment.....	14

## Appendices

Appendix 1	Development Consents SSD 7683, SSD 7683 Mod 1 & SSD 7683 Mod 2
Appendix 2	Updated Plan of Management
Appendix 3	Acoustic Statement
Appendix 4	Sydney Development Control Plan 2012 Assessment

## 1 Introduction

This Modification Report has been prepared by *Keylan Consulting Pty Ltd* (Keylan) to accompany a section 4.55(2) application to modify consent SSD 7683 which relates to a restaurant and micro-brewery occupying Tenancy 5 of the Overseas Passenger Terminal (OPT). This modification application seeks base trading hours from 6:00am until 2:00am for both indoor and outdoor areas of Tenancy 5.

The application has been prepared on behalf of Jimmy's on the Mall Pty Ltd (the Applicant) and is submitted to the Department of Planning and Environment (DPE) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This report should be read in conjunction with the following documents:

- Updated Plan of Management (Appendix 2)
- Acoustic Statement (Appendix 3)
- Sydney Development Control Plan 2012 Assessment (Appendix 4)

This application is the third modification sought to SSD 7683, which was approved by DPE on 25 August 2017. A copy of the original SSD 7683 consent as well as the Mod 1 and Mod 2 consents are provided at Appendix 1.

The proposed modification seeks to revise the approved base hours of operation in accordance with the following table.

Area	Approved	Proposed
<b>Indoor Areas</b>	<ul style="list-style-type: none"> <li>• Base: 6am to 12 midnight, Sunday to Thursday (inclusive)</li> <li>• Base: 6am to 1am, Friday and Saturday (inclusive)</li> </ul>	<ul style="list-style-type: none"> <li>• Base: 6am to 2am, Monday to Sunday (inclusive)</li> </ul>
<b>Outdoor Areas</b>	<ul style="list-style-type: none"> <li>• Base: 8am to 10pm, Monday to Sunday (inclusive)</li> <li>• Trial: 6am to 8am and 10pm to 1am, Monday to Sunday (inclusive)</li> </ul>	<ul style="list-style-type: none"> <li>• Base: 6am to 2am, Monday to Sunday (inclusive)</li> </ul>

Table 1: Approved and proposed hours of operation

It is considered that the proposed modification is acceptable as:

- it is minor in nature and only seeks one additional hour of operation beyond what is already approved
- will support Sydney's night-time economy in an appropriate location
- will enhance the vibrancy and activity of Circular Quay, Sydney's principal tourist attraction
- it is generally consistent with the late night trading hours permissible under the *Sydney Development Control Plan 2012* (SDCP 2012)
- there are minimal sensitive receivers near to the site
- the Applicant has demonstrated excellent management of the venue including late night trading hours with minimal complaints received in the four years since the Squire's Landing opened
- it is consistent with trading hours operated by nearby venues including Cruise Bar which also occupies a tenancy within the Overseas Passenger Terminal



This report concludes that the proposal is substantially the same development and will not result in any significant environment impacts. Accordingly, we recommend that the proposed modification be supported by DPE and approved.

## 1.1 Site description

The application relates to Tenancy 5 within the OPT Building at Circular Quay West, The Rocks in the City of Sydney local government area (LGA). The site is legally described as Lots 1 to 3 DP 876516.

The OPT is a four storey building located on the western side of Circular Quay, south of Campbell's Cove and directly to the west of the Sydney Opera House which is located on the eastern side of Sydney Cove. The OPT fronts Circular Quay West which is a dual carriageway private road that terminates in a roundabout at Campbell's Cove. The site location is shown in Figure 1.



Figure 1: Site location (Base source: Nearmap)

The OPT plays a significant role as an international and domestic port for cruise ships as well as activating Circular Quay and The Rocks with a range of restaurants and temporary events (i.e. the Sydney Vivid Festival). In addition, the OPT provides essential public access along the foreshore of Sydney Cove linking Circular Quay to Campbell's Cove and adjoins areas of public domain.

Tenancy 5 is located at the northern extent of the OPT and encompasses an area of approximately 1,080 m<sup>2</sup>. It occupies the ground and first floor levels of the OPT Building and includes an adjoining area of formalised outdoor seating area as part of the premises.

## 1.2 Surrounding Locality

The OPT building is located on a prominent site within The Rocks overlooking Circular Quay. The site enjoys iconic views across Sydney Harbour including the World Heritage listed Sydney Opera House to the east and the Harbour Bridge to the north. Due to its location, the OPT is highly visible from the eastern foreshore of Circular Quay, northern foreshore of Campbell's Cove and from vessels traversing Sydney Cove.

Tenancy 5 is located at the northern end of the OPT at the ground and first floor level. The remainder of the OPT is located to the south and above Tenancy 5 and comprises:

- the central loading dock and arrival hall of the OPT adjoins Tenancy 5 at ground and first floor levels (levels 1 and 2) and customs and passenger halls at levels 3 and 4;
- the Quay restaurant (Tenancy 6) is located above Tenancy 5 on levels three and four and also occupies the feature tower drum component of the OPT at level 3;
- consolidated Tenancies 1 & 7 (Cruise Bar) occupy three levels at the southern end of the OPT building and include a ground floor level outdoor seating area. All floors are occupied by Cruise Bar;
- Yuki's Restaurant (Tenancy 8) occupies a space on level four towards the southern end of OPT; and
- various publicly accessible exterior areas of the OPT, including balconies at the southern end and along the eastern side on levels 3 and 4, and a 5<sup>th</sup> floor observation level in the feature tower drum.

To the east of the site is Sydney Cove and the OPT ship berth and promenade, which runs along the full length of the OPT building. Public access is only allowed to the ground level promenade, located between the OPT building and the water, when the maritime security zone is not active (i.e. when a cruise ship is not at berth).

The immediate area surrounding Tenancy 5 is characterised by a variety of buildings of differing ages and architectural designs and public spaces, including:

- to the west of the site is the five storey Australian Steam Navigation Company (ASN Co) building, three storey Campbell's Stores buildings and the five storey Metcalf Bond Store building, which include a variety of retail, restaurant and bar uses
- a hard paved area is located to the north and northwest of the site. This area includes the Circular Quay West roundabout and the Campbell's Cove waterfront promenade. This area is principally accessed via Circular Quay West and the Customs Officer's Stairs, which are located adjacent to the Campbell's Stores
- further north, beyond the hard paved area, is Campbell's Cove, which comprises a circular shaped body of water and central jetty ringed by a foreshore promenade and a small wharf. The five storey Park Hyatt frames the western and northern sides of the cove and the three storey Campbell's Stores and outdoor dining area frame the southwestern side
- to the east of the site is Sydney Cove, the Sydney Opera House is located on the opposite side of Sydney Cove to the OPT



Figure 2: View northwest across the hard paved area, promenade, and Campbell's Cove towards Campbell's Stores to the left and the Park Hyatt and Sydney Harbour Bridge to the right (Source: Keylan)

The surrounding locality is characterised by many premises which operate late-night trading hours. Operating hours of surrounding venues in The Rocks are outlined in the table below and mapped at Figure 3.

DA & Venue	Category*	Hours of Operation	Determination
<b>DA 58-03-01 Mod 1 Cruise Bar</b>	A-LNMA	<ul style="list-style-type: none"> <li>Level 01 (Ground floor)               <ul style="list-style-type: none"> <li>Internal – 10am – 3am, 7 days/week</li> <li>External – 10am – midnight, 7 days/week and midnight to 2:00am (subject to a trial period) – Confirmed that pre-Covid, Cruise Bar were trading until 2am</li> </ul> </li> <li>Levels 02 and 03               <ul style="list-style-type: none"> <li>Internal – 10am – 3am 7 days/ week</li> <li>External – 10am – 2am 7 days/week</li> </ul> </li> </ul>	Approved 30/05/2008
<b>D/2021/626/ A Watersedge at Campbell's Stores</b>	B-LNMA	<ul style="list-style-type: none"> <li>Bays 4 to 8 (internal)               <ul style="list-style-type: none"> <li>Base: 10am – 12am, 7 days/week</li> <li>Trial: 12am – 2am, 7 days/week</li> </ul> </li> </ul>	Approved 14/12/2021
<b>D/2017/1683 The Doss House</b>	B-LNMA	<ul style="list-style-type: none"> <li>Internal               <ul style="list-style-type: none"> <li>Monday to Saturday: 12.00pm to 2.00am</li> <li>Sunday: 12.00pm to 12.00am</li> </ul> </li> </ul>	Approved 19/01/2018



DA & Venue	Category*	Hours of Operation	Determination
		<ul style="list-style-type: none"> <li>Courtyard               <ul style="list-style-type: none"> <li>Base: 12.00pm to 10.00pm</li> <li>Trial: 10.00pm to 12.00am (12 months)</li> </ul> </li> </ul>	
<b>D/2017/18/A</b> The Orient Hotel	A-LNMA	<ul style="list-style-type: none"> <li>Liquor license permits 24 hour trading for the ground, first and second floors</li> <li>All other areas               <ul style="list-style-type: none"> <li>Monday to Saturday: 5.00am to 12.00 midnight</li> <li>Sunday: 10.00am to 10.00pm</li> </ul> </li> </ul>	Approved 09/09/2019
<b>D/2014/1192/B</b> 100 George Street	A-LNMA	<ul style="list-style-type: none"> <li>Internal               <ul style="list-style-type: none"> <li>Base: 10.00am to 1.00am</li> <li>Trial Level 3: 1.00am to 3.00am</li> </ul> </li> <li>Outdoor               <ul style="list-style-type: none"> <li>Base: 10.00am to 1.00am</li> <li>Trial Level 2: 1.00am to 2.30am (5 year trial period)</li> </ul> </li> </ul>	Approved 23/05/2017
<b>DA174-07-2005-Mod-7</b> The Argyle	A-LNMA	<ul style="list-style-type: none"> <li>Internal               <ul style="list-style-type: none"> <li>8.00am to 3.00am</li> </ul> </li> <li>External (Courtyard)               <ul style="list-style-type: none"> <li>8.00am to 3.00am</li> </ul> </li> </ul>	Approved 23/11/2011
<b>DA/2018/129 7/B</b> 6 Head Restaurant (Campbell's Stores)	B-LNMA	<ul style="list-style-type: none"> <li>Internal               <ul style="list-style-type: none"> <li>11:30am to 2am</li> </ul> </li> <li>External               <ul style="list-style-type: none"> <li>Base: 11:30am to 1pm</li> <li>Trial: 10pm to 12am (two years)</li> </ul> </li> </ul>	Approved 1/07/2020
<b>DA/2017/105/B</b> Pancakes at The Rocks	B-LNMA	<ul style="list-style-type: none"> <li>Base: 6am to 2am</li> <li>Trial: 2am to 6am (two years)</li> </ul>	Approved 17/08/2020
<b>DA/2021/294</b> Frank Mac's (81-85 George Street)	B-LNMA	<ul style="list-style-type: none"> <li>Internal: 7am to 2am</li> <li>External               <ul style="list-style-type: none"> <li>Base: 7am to 10pm</li> <li>Trial: 10pm to 1am</li> </ul> </li> </ul>	Approved 12/05/2021

Table 2: Surrounding venue operating hours (\*Note A-LNMA and B-LNMA indicate whether the premises are Category A or B within the Late Night Management Area under the SDCP 2012)



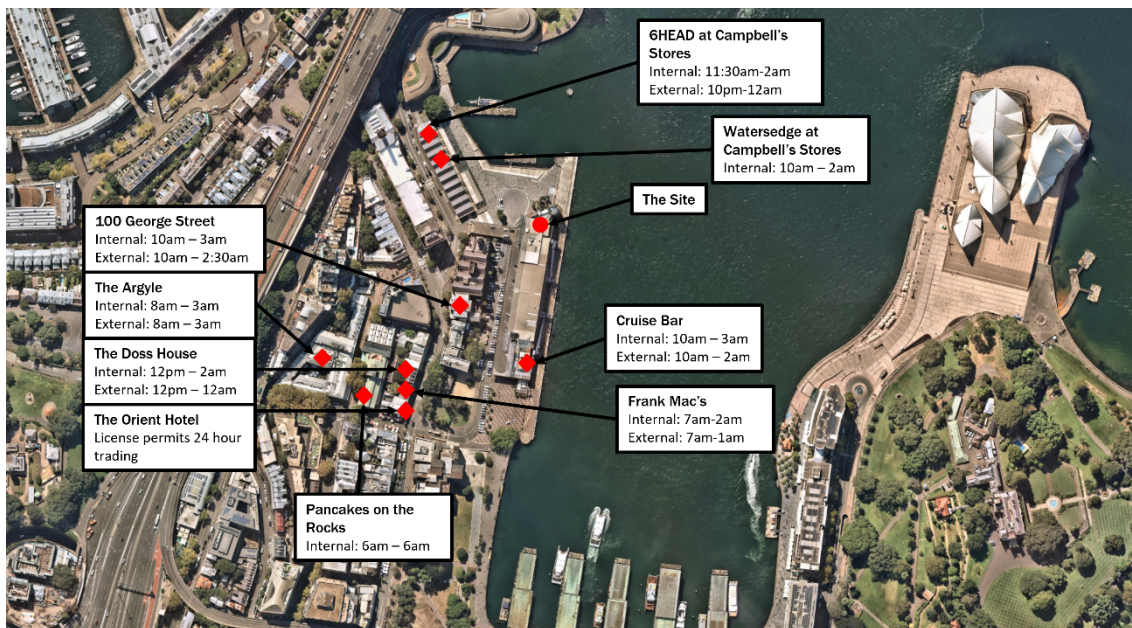


Figure 3: Surrounding venue hours of operation (to be viewed in conjunction with Table 2) (Base source: Nearmap)

### 1.3 Application history

#### SSD 7683

On 25 August 2017, the Acting Executive Director, Key Sites and Industry Assessments (as delegate of the Minister for Planning) granted development consent to SSD 7683. Consent was granted for:

*The use of Tenancy 5 of the Overseas Passenger Terminal (OPT) as a restaurant and:*

- external alterations to the OPT building;
- new elevated micro-brewery pod to the north of the OPT;
- outdoor dining area to the north of the site; and
- business identification signage.

#### SSD 7683 Mod 1

On 7 March 2019, the Director, Key Sites Assessments (as delegate of the Minister for Planning) granted consent to SSD 7683 Mod 1.

Consent was granted for various signage amendments and additions.

#### SSD 7683 Mod 2

On 16 August 2019, the Director, Key Sites Assessments (as delegate of the Minister for Planning) granted consent to SSD 7683 Mod 2. Consent was granted for a 3-year extension to the hours of operation trial period and to increase the maximum patron capacity from 800 to 1,000 patrons.

The trial period extension approved as part of SSD 7683 Mod 2 lapses on 21 May 2022. Accordingly, this modification application seeks to establish new base trading hours which include the previously approved trial hours of operation.

## 2 Strategic Context

The original proposal was assessed against the strategic planning context within the EIS submitted with SSD 7683 and the proposed modification remains consistent with this assessment.

Despite this, the strategic context has evolved since the submission of the EIS as several new strategic plans have been released including the *Greater Sydney Region Plan* (Region Plan), the *Eastern City District Plan* (District Plan) and *City Plan 2036: Local Strategic Planning Statement* (Sydney LSPS).

An assessment of the proposed modification against the current strategic planning context is provided in the table below.

Strategic Plan	Comment
<b>Greater Sydney Region Plan</b>	<ul style="list-style-type: none"> <li>The proposal is consistent with the Region Plan as it seeks to enhance the night time economy and vibrancy of the Sydney CBD and Circular Quay as the city's principal tourist destination</li> <li>In particular, the proposal is consistent with the below objectives:               <ul style="list-style-type: none"> <li><i>Objective 12: Great places that bring people together</i></li> <li><i>Objective 14: A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities</i></li> <li><i>Objective 18: Harbour CBD is stronger and more competitive</i></li> <li><i>Objective 24: Economic sectors (Tourism) are targeted for success</i></li> </ul> </li> <li>The proposal assists to facilitate a diverse and vibrant night-time economy in a way that responds to potential negative impacts</li> </ul>
<b>Eastern City District Plan</b>	<ul style="list-style-type: none"> <li>The District Plan establishes further priorities and actions to implement the objectives of the Region Plan</li> <li>The proposal is consistent with the District Plan as it:               <ul style="list-style-type: none"> <li>will enhance a vibrant, safe and diverse night-time economy</li> <li>will support tourism and entertainment in the Harbour CBD</li> <li>will contribute to the renewal of Circular Quay</li> </ul> </li> </ul>
<b>City Plan 2036: Local Strategic Planning Statement</b>	<ul style="list-style-type: none"> <li>The proposal is consistent with the Sydney LSPS, particularly the below planning priorities:               <ul style="list-style-type: none"> <li><i>I1: Movement for walkable neighbourhoods and a connected city</i></li> <li><i>L2: Creating great places</i></li> <li><i>P1: Growing a stronger, more competitive Central Sydney</i></li> </ul> </li> </ul>
<b>Other Initiatives</b>	<ul style="list-style-type: none"> <li>The proposed modification is also consistent with the intent of several other initiatives by the City of Sydney and NSW Government which seek to enhance the night-time economy, particularly following the onset of the COVID-19 pandemic</li> <li>Such initiatives include:               <ul style="list-style-type: none"> <li>Council's <i>Open Sydney: Strategy and Action Plan 2013-2030</i> which notes there are limited options for late night dining and outdoor dining in the CBD</li> <li>The NSW Government's <i>24-hour Economy Strategy</i> which seeks to extend Greater Sydney's economic vibrancy of the day into the night and support the most affected sectors from the pandemic</li> <li>The NSW Government's <i>Outdoor Dining in The Rocks</i> trial that has since been made permanent which sought to bring life and vibrancy to the streets and public spaces</li> </ul> </li> </ul>

Table 3: Assessment against the strategic planning context

### 3 Description of Modifications

The proposed modification seeks to amend base trading hours under SSD 7683 to 6:00am until 2:00am for both indoor and outdoor areas of Tenancy 5. The approved and proposed hours of operation are outlined in the following table.

Area	Approved	Proposed
<b>Indoor Areas</b>	<ul style="list-style-type: none"> <li>Base: 6am to 12 midnight, Sunday to Thursday (inclusive)</li> <li>Base: 6am to 1am, Friday and Saturday (inclusive)</li> </ul>	<ul style="list-style-type: none"> <li>Base: 6am to 2am, Monday to Sunday (inclusive)</li> </ul>
<b>Outdoor Areas</b>	<ul style="list-style-type: none"> <li>Base: 8am to 10pm, Monday to Sunday (inclusive)</li> <li>Trial: 6am to 8am and 10pm to 1am, Monday to Sunday (inclusive)</li> </ul>	<ul style="list-style-type: none"> <li>Base: 6am to 2am, Monday to Sunday (inclusive)</li> </ul>

Table 4: Approved and proposed hours of operation

The hours of operation sought as part of this modification have been determined based on the applicable hours for *Category B Premises in Late Night Management Areas* under the *Sydney Development Control Plan 2012* (SDCP 2012).

Despite this, an additional hour beyond the hours prescribed under the SDCP 2012 is sought for outdoor areas between 1am and 2am. **It is noted that the SDCP 2012 does not apply to this application as it is State Significant Development (SSD). Notwithstanding, a detailed planning justification for this minor departure is provided at Section 4.3.**

Further, the hours of operation are sought on a permanent basis rather than a trial basis given the proposed modification only seeks one additional hour and the Applicant's has demonstrated excellent management performance during previous trial periods.

The proposed modification is considered justified on the basis that it will support the ongoing operation of the Squires Landing at Tenancy 5 of the OPT, will contribute to the night time economy and vibrancy of the Sydney CBD and support Circular Quay as Sydney's premiere tourist destination.

The approved Plan of Management is also proposed to be updated by this modification to reflect the updated hours of operation.

There are no physical or built form changes proposed as part of the application. Further, no changes are proposed to the approved use of the premises or the patron capacity.

Note, in accordance with Condition F3 of SSD 7683, the Applicant intends to continue operating the existing trial hours of operation whilst this modification application is being assessed.



### 3.1 Request to modify the Conditions of Consent

To formalise the proposed modification, amendments are required to Condition F1, F2 and F5 under Schedule 2, Part F of the development consent for SSD 7683.

The words proposed to be inserted are shown in ***bold italics*** and words proposed to be deleted are shown in ~~***bold italics strikethrough***~~.

#### ***Hours of Operation***

F1 The hour of operation are restricted as follows:

##### *Indoor Areas*

- a) 6am to ~~2am~~ ***12 midnight Monday to Sunday to Thursday*** (inclusive);
- ~~b) 6am to 1am Friday and Saturday (inclusive); and~~
- ~~c) 6am New Years Eve to 2am New Year's Day (inclusive).~~

##### *Outdoor Areas*

- d) ~~6am 8am~~ ***6am*** to ~~2am~~ ***10pm*** Monday to Sunday (inclusive)

~~F2 Notwithstanding (d) above, the use of the outdoor areas of the premises may operate between 6am to 8am and 10pm to 1am Monday to Sunday; and between 10pm on New Year's Eve to 2am on New Year's Day for a trial period of one year until 21 May 2022. The Secretary must be informed in writing of the date of commencement of the trial hours.~~

#### ***Plan of Management***

F4 The use of the premises as a restaurant must operate at all times in accordance with the approved Plan of Management required by Condition E2 ***and updated by The Squire's Landing Plan of Management dated April 2022 submitted with SSD 7683 Mod 3.***

## 4 Statutory Planning Framework

### 4.1 Environmental Planning and Assessment Act 1979

#### 4.1.1 Section 4.55(2) of the EP&A Act

The provisions under Section 4.55(2) of the EP&A Act are required to be considered by the consent authority in determining a modification application. Section 4.55(2) of the EP&A Act states:

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

Section 4.55(2) Provision	Response
(a) <i>it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</i>	The development is substantially the same as the development for which consent was originally granted as the modification does not seek to change the approved use, built form or significantly increase environmental impacts associated with the development.
(b) <i>it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</i>	The proposal is not integrated development and is not subject to any concurrence requirements. However, it is anticipated that the DPE will consult with any relevant public authorities including Council during the notification period for the application.
(c) <i>it has notified the application in accordance with:</i> <i>i. the regulations, if the regulations so require, or</i> <i>ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i>	The application will be notified in accordance with the regulations and DPE's Community Participation Plan.
(d) <i>it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i>	Consideration will be given to any submissions received.

Table 5: Section 4.55(2) Assessment

#### **4.1.2 Section 4.55(3) & 4.15(1) of the EP&A Act**

Section 4.55(3) of the EP&A Act states:

*In determining an application for modification of a consent under this section, the consent authority must take into consideration of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

Accordingly, this modification report considers the relevant matters prescribed within section 4.15(1) of the EP&A Act. The relevant environmental planning instruments, development control plans and statutory instruments are addressed within this section. The likely impacts of the development, site suitability and public interest is addressed at Section 6.

#### **4.2 Other Statutory Instruments**

The proposed modifications are minor in nature and do not affect the development's compliance with the following statutory instruments as assessed under SSD 7683:

- *Heritage Act 1977*
- *National Parks and Wildlife Act 1974*
- *Liquor Act 2007*
- Chapter 2 of *State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021*
- Chapter 10 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- Chapter 3 of *State Environmental Planning Policy (Industry and Employment) 2021*
- Chapters 3 and 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Sydney Cove Redevelopment Authority Scheme*

#### **4.3 Sydney Development Control Plan 2012**

Under section 2.10 of *State Environmental Planning Policy (Planning Systems) 2021*, development control plans do not apply to State Significant Development (SSD). As this modification application seeks to modify an SSD approval, the *Sydney Development Control Plan 2012* (SDCP 2012) does not apply to this modification.

Notwithstanding, the SDCP 2012 includes specific provisions which address how late night trading hours should be considered within the LGA. Accordingly, the provisions of Part 3.15 – Late Night Trading Management of the SDCP 2012 are considered at Appendix 4.

In summary, the proposed modification is consistent with the provisions and matters for consideration under Part 3.15 of the SDCP 2012 as:

- the proposal is consistent with the location and context of the premises
- the likely impacts on the amenity of surrounding sensitive land uses can be appropriately managed as demonstrated by the Applicant's management performance to date
- the Applicant has demonstrated compliance with the consent conditions and the approved Plan of Management
- the proposal contributes to street activation of Circular Quay West and activation of the Circular Quay foreshore

However, the proposal seeks a minor departure from the SDCP 2012 as an additional hour beyond the hours prescribed under the SDCP 2012 is sought for outdoor areas between 1am and 2am. Additionally, the proposed hours of operation are sought on a permanent basis rather than a trial basis.

This departure is considered justified given:

- the proposal is SSD
- the site is located within a nightlife area being The Rocks/Circular Quay
- the site is far from any residential receivers and the venue will continue to not be audible from residential premises after midnight
- the applicant has demonstrated excellent management performance resulting in minimal complaints to date (discussed a Section 6.1 and Section 6.3)
- the hours sought are consistent with other venues within the locality including Cruise Bar, The Orient Hotel, 100 George Street and The Argyle (discussed at Section 1.2)
- many other venues within the locality have late night trading hours until or past 2:00am on a permanent basis (discussed at Section 1.2)
- the modification is minor given it only results in a single additional hour beyond the current approval



## 5 Engagement

Extensive consultation was undertaken with DPE, Council, the relevant NSW Government agencies and the community as part of SSD 7683.

Given the minor nature of the proposed modification and general consistency with the approved development, no further formal engagement has been undertaken as part of the preparation of this modification.

The Applicant will consider and respond to any submissions made as necessary.

## 6 Assessment of Impacts

The modification is consistent with the findings of the submitted with the original DA and subsequent modifications.

Notwithstanding, Section 4.15(1) of the EP&A Act requires an assessment of the impact of development on environmental impacts (natural and built) and social and economic impacts. Impacts associated with the modification are discussed in detail below.

### 6.1 Noise

During the four years that The Squire's Landing has been operating, the Applicant has complied with the Approved Plan of Management and conditions relating to noise under the consent for SSD 7683.

Of relevance to this modification is Condition F8(d) which states:

*... all noise associated with the premises must not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am.*

The Applicant has complied with this condition whilst operating the currently approved trading hours which permit indoor and outdoor trading until 1:00am. The Applicant has shown good management performance to date which is evident as the premises have not resulted in any noise to habitable rooms of residential premises after midnight.

The Applicant is committed to continual compliance with Condition F8(d) ensuring the premises will continue to not be audible from habitable rooms of residential premises after midnight. Accordingly, the proposed additional hour of operation between 1:00am and 2:00am will not result in any additional noise impacts to residential receivers.

Further, an Acoustic Statement has been prepared by EMM to accompany this modification and is included at Appendix 3.

The Acoustic Statement confirms the proposal remains consistent with the findings of the Operational Noise Impact Assessment (ONIA) originally submitted with SSD 7683. This is because under the original ONIA, the venue was already assessed against the strictest noise criteria applicable to the site (noise criteria for the night period from 12am to 7am).

Therefore, the additional hours of operation sought under this modification would not affect the outcomes of the assessment and the venue will continue to comply with the night noise criteria.

### 6.2 Heritage

This modification application does not involve any physical works and will not have any impacts on the area's heritage significance beyond those already assessed and approved as part of SSD 7683.

### **6.3 Complaints Record**

In accordance with Condition F20 of SSD 7683, the Applicant has maintained a Complaints Register of all disturbance complaints made to the Squire's Landing management and staff with respect to the manner in which the premises are operated and the behaviour of patrons entering or leaving the premises.

Since opening in 2018, the Squire's Landing has received only seven calls regarding noise, however, none have been received since October 2019. Additionally, it was found that five of the seven calls related to noise from other venues and events in the locality rather than the Squires Landing.

Further, the Squires Landing utilises limiters on speakers to ensure noise levels do not disturb surrounding land uses. The limiters were fine tuned following the first complaints in 2018 to ensure acceptable noise levels.

Importantly, there have been no compliance issues raised by Council or NSW Police since the venue commenced operation. Additionally, Port Authority of NSW has not received any complaints regarding the Squire's Landing since the commencement of operations in 2018.

Based on the above, it is considered the Applicant has demonstrated excellent management performance of the venue.

### **6.4 Plan of Management**

The Applicant's Plan of Management has successfully mitigated impacts associated with the development's operation which is demonstrated by the fact that the venue has not received any complaints since 2019.

The Applicant is committed to continued adherence with the approved Plan of Management.

An updated Plan of Management which reflects the proposed hours of operation is included at Appendix 2. Given the success of the existing Plan of Management, no amendments have been made to the existing management measures.

### **6.5 Site Suitability**

The site remains suitable for the proposed development for the reasons outlined in the EIS submitted with SSD 7683. The proposed hours of operation are considered suitable for the site and locality as:

- the site is located within a nightlife area being The Rocks/Circular Quay
- the site is far from any residential receivers and the venue will continue to not be audible from residential premises after midnight
- the applicant has demonstrated excellent management performance resulting in minimal complaints to date (discussed a Section 6.1 and Section 6.3)
- the hours sought are consistent with other venues within the locality including Cruise Bar, The Orient Hotel, 100 George Street and The Argyle (discussed at Section 1.2)
- the modification is minor given it only results in a single additional hour beyond the current approval

## 6.6 Public Interest

The proposal continues to be in the public interest as the modification will:

- contribute to the night-time economy of the Sydney CBD, which has suffered significantly since the COVID 19 pandemic
- contribute to the tourist and visitor economy of Circular Quay as Sydney's principal tourist destination
- contribute to the diversity of late night trading venues by providing an additional option for late night dining
- assist the hospitality sector's recovery from the COVID-19 pandemic
- not result in any adverse impacts on sensitive receivers
- is compatible with surrounding land uses
- continue to be managed in accordance with the approved Plan of Management which has resulted in no complaints being received since 2019

In addition, DPE will consider any public submissions relating to the proposal during its assessment. Accordingly, it can be concluded that the proposed development is entirely in the public interest.



## 7 Justification for Modified Project

This report has assessed the proposed modification of SSD 7683 against the requirements of sections 4.15 and 4.55(2) of the EP&A Act. This assessment has concluded that the proposed modification is acceptable as:

- it is minor in nature and only seeks one additional hour of operation beyond what is already approved
- it will support the Sydney night-time economy
- it will enhance the vibrancy and activity of Circular Quay, Sydney's principal tourist attraction
- it is generally consistent with the late night trading hours permissible under the *Sydney Development Control Plan 2012* (SDCP 2012)
- the Applicant has demonstrated excellent management of the venue including late night trading hours with minimal complaints received in the four years since The Squire's Landing opened
- it is consistent with trading hours operated by nearby venues including Cruise Bar which also occupies a tenancy within the Overseas Passenger Terminal
- there are minimal sensitive receivers near to the site and the venue will continue to not be audible from residential premises after midnight

This assessment has concluded that on balance, the changes proposed:

- are substantially the same as the development for which consent was originally granted
- will not result in any adverse environmental impacts

Based on the assessment in this report, we consider that the Applicant has shown good cause for DPE to modify the consent as requested.