



# Overseas Passenger Terminal – Restaurant/Micro-Brewery Modification 3

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Extension to Hours of Operation  
State Significant Development Modification Assessment  
(SSD 7683 MOD 3)

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# Glossary

Abbreviation	Definition
<b>Council</b>	City of Sydney Council
<b>Department</b>	Department of Planning and Environment
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2021
<b>EPI</b>	Environnemental Planning Instrument
<b>Minister</b>	Minister for Planning
<b>Planning Secretary</b>	Secretary of the Department of Planning and Environment
<b>SEPP</b>	State Environmental Planning Policy
<b>SDCP 2012</b>	Sydney Development Control Plan 2012

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# 1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) Overseas Passenger Terminal (OPT) Restaurant/Micro-Brewery approval.

The application was lodged by Jimmy's on The Mall Pty Ltd (the Applicant) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification application (as amended by the RtS) seeks approval to:

- extend the evening indoor base hours of operation by 2 hours Sunday to Monday (from midnight to 2 am) and 1 hour Friday and Saturday (from 1 am to 2 am);
- extend outdoor morning base hours of operation (by 1 hour from 8 am to 7 am); and
- extend the trial evening outdoor hours of operation (by 1 hour from 1 am to 2 am).

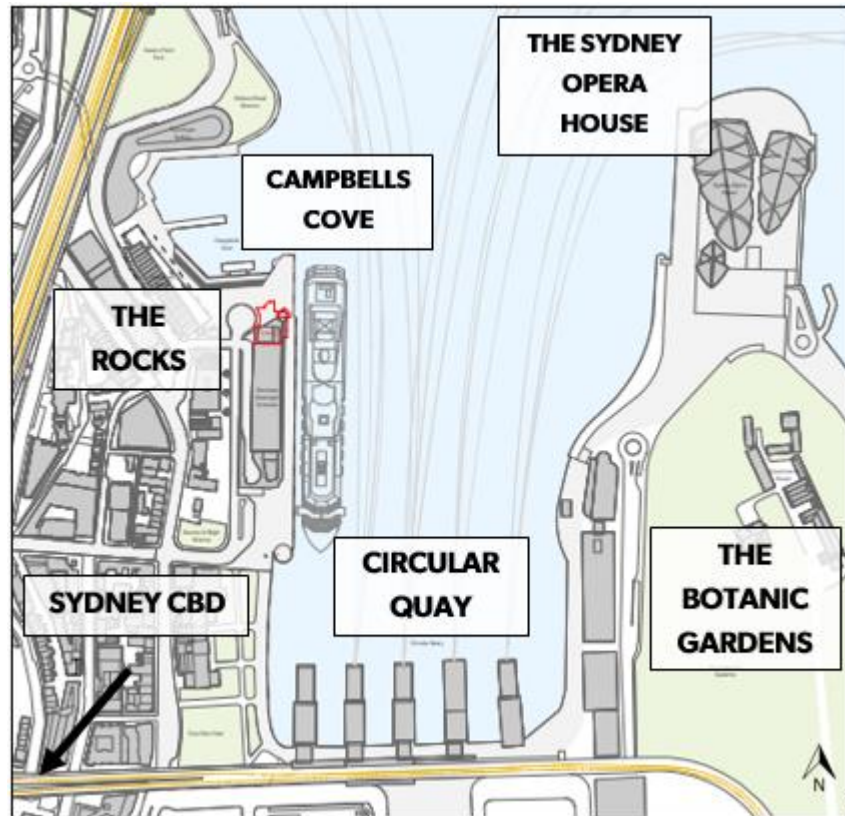
## 1.1 The site

The site is located at the OPT on the western foreshore of Circular Quay, The Rocks, in the City of Sydney local government area (LGA) (**Figure 1 and 2**). The site is used as a restaurant and micro-brewery known as 'Squires Landing' and encompasses a northern portion of both the ground level (known as level 1) and level two of the OPT. The northern end of the site includes an outdoor dining area.

The OPT is a rectangular, four storey building located south of Campbell's Cove and directly across Sydney Cove from the Sydney Opera House. The OPT is situated between the western foreshore of Circular Quay and Circular Quay West, a service road connecting the OPT with Hickson Road. The site is legally described as Lots 1-3 DP 876516. The OPT was opened in 1960 and has undergone major additions and refurbishments in 1988, 2001 and 2015.



**Figure 1** | The site as viewed from the north (Source: Applicants Modification Application)



**Figure 2|** Location Plan showing Tenancy 5 of the OPT by the red outline (Source: Applicant's EIS SSD 7683)

## 1.2 Approval history

On 25 August 2017, the Acting Executive Director, Key Sites and Industry Assessments, approved SSD 7683 for the use of Tenancy 5 as a restaurant and for alterations to the OPT building. The approval included construction of a new micro-brewery, outdoor dining area and business identification signage.

The base operating hours for the venue, as permitted by Condition F1 are:

- Indoor Areas:
  - 6 am to 12 midnight Sunday to Thursday (inclusive)
  - 6 am to 1 am Friday and Saturday (inclusive)
  - 6 am New Year's Eve to 2 am New Year's Day (inclusive).
- Outdoor Areas:
  - 8 am to 10 pm Monday to Sunday (inclusive).

The consent also includes Condition F2, permitting trial operating hours for the outdoor area as follows:

- 6 am to 8 am Monday to Sunday (inclusive)
- 10 pm to 1 am Monday to Sunday (inclusive)
- 10 pm New Year's Eve to 2 am on New Year's Day

The development consent has been modified on two occasions (**Table 1**).

**Table 1** | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
<b>MOD 1</b>	Amendments and additions to the business identification signage	Department	4.55(1A)	7 March 2019
<b>MOD 2</b>	Extension of trial period trading hours for the outdoor area (for a further 3 years) and increased patron capacity	Department	4.55(2)	16 August 2019



## 2 Proposed modification

On 30 May 2022, the Applicant lodged a modification application (as amended) (SSD 7683 MOD 2) seeking approval, under section 4.55(2) of the EP&A Act, to extend the evening indoor base hours of operation by 2 hours Sunday to Monday (from midnight to 2 am) and 1 hour Friday and Saturday (from 1 am to 2 am) and extend outdoor morning base hours of operation (by 1 hour from 8 am to 7 am) and extend the trial evening outdoor hours of operation (by 1 hour from 1 am to 2 am).

The proposal seeks a further 2-year trial period for the trial outdoor hours.

The original proposal and proposal as amended by the RtS is outlined in **Table 2**.

**Table 2 | Proposed hours of operation as amended by RtS**

Area	Approved	MOD 3	MOD 3 (as amended by RtS)
<b>Indoor areas</b>	<ul style="list-style-type: none"> <li>Base:               <ul style="list-style-type: none"> <li>6 am to midnight, Sunday to Thursday</li> <li>6 am to 1 am, Friday and Saturday</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Base:               <ul style="list-style-type: none"> <li>6 am to 2 am, Monday to Sunday</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Base:               <ul style="list-style-type: none"> <li>6 am to 2 am, Monday to Sunday</li> </ul> </li> </ul>
<b>Outdoor areas</b>	<ul style="list-style-type: none"> <li>Base:               <ul style="list-style-type: none"> <li>8 am to 10 pm, Monday to Sunday</li> </ul> </li> <li>Trial:               <ul style="list-style-type: none"> <li>6 am to 8 am and 10 pm to 1 am, Monday to Sunday</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Base:               <ul style="list-style-type: none"> <li>6 am to 2 am, Monday to Sunday</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Base:               <ul style="list-style-type: none"> <li>7 am to 10 pm, Monday to Sunday</li> </ul> </li> <li>Trial:               <ul style="list-style-type: none"> <li>6 am to 7 am and 10 pm to 2 am, Monday to Sunday</li> </ul> </li> </ul>



## 3 Statutory context

### 3.1 Scope of modifications

The Department has reviewed the scope of the modification application and considers the application can be characterised as a modification that is substantially the same development for which consent was originally granted as it:

- would not adversely increase the environmental impacts of the project as approved, and
- is substantially the same development as originally approved.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(2) of the EP&A Act and does not constitute a new development application. An assessment of the proposed modification application against the requirements of section 4.55(2) of the EP&A Act is provided in **Appendix B**.

Accordingly, the Department considers that the application should be assessed and determined under section 4.55 (2) of the EP&A Act rather than requiring a new development application to be lodged.

### 3.2 Consent authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act. However, the Director, Key Sites Assessments, may determine the application under delegation as:

- a political disclosure statement has not been made
- there are less than 15 public submissions in the nature of objections
- Council has not made a submission by way of objection

### 3.3 Mandatory matters for consideration

The following are relevant mandatory matters for consideration:

- section 4.55(2) of the EP&A Act, including environmental planning instruments or proposed
- instruments
- EP&A regulation
- likely impacts of the modification application, including environmental impacts on both the natural and built environments, and social and economic impacts
- suitability of the site
- any submissions
- the public interest; and
- the reasons for granting approval for the original application.

The Department has considered all of these matters in its assessment of the proposal. The Department has also given consideration to the relevant matters in **Section 5** and **Appendix B**.

## 4 Engagement

### 4.1 Department's engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the modification application from 21 June 2022 to 13 July 2022 (14 days).

A public exhibition notice was placed on the Department's website. The application also was made publicly available on the Department's website, and the Department notified adjoining landholders, previous persons who lodged submissions, Council, NSW Police and NSW Port Authority in writing.

All notification and public participation statutory obligations have been satisfied.

### 4.2 Summary of submissions

In response to the exhibition of the proposal, the Department received a submission from Council and NSW Port Authority, providing comments. No comments were received from NSW Police.

No public submissions were received on the proposal.

### 4.3 Key issues raised in submissions

The key issues raised by Council and government agencies are summarised in **Table 3**.

**Table 3 | Summary of key issues raised by Council and government agencies**

Council	
Application	<p>Council raised concerns with extending the base outdoor operating hours to 2 am, as it exceeds the Late Night Management Hours permitted under the SDCP 2012, by 1 hour. Council also noted the removal of the trial periods removes the ability for the consent authority to continue to monitor the operation, management and amenity impacts of the venue.</p> <p>Council recommended a trial period for the extension of the base outdoor operating hours to 2 am.</p>
NSW Port Authority	
Application	Raised no concerns with the proposal.

### 4.4 Response to submissions

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 9 August 2022, the Applicant lodged a Response to Submissions, amending the proposal as follows (**Table 2**):

- align the proposed base hours with the approved base hours or the base hours permitted under the SDCP 2012 (whichever is greater)

- all hours beyond the proposed base hours, subject to a 2-year trial period.

No submissions were received on the RtS.

## 5 Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification applications and associated documents
- the Environmental Assessment and conditions of approval for the original application
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act and Regulation
- submissions received from Council and government agencies.

The Department has considered the key issues associated with the modification below.

### 5.1 Extension of Operating Hours

The proposal (as amended) seeks to extend the base indoor and outdoor operating hours and extend the trial outdoor operating hours (for a further 2-year trial period).

The Applicant notes the extension to the operating hours has arisen out of a need to support the ongoing operation of Squire's Landing, noting that other venues within the locality operate late-night trading hours.

Council reviewed the modification application and noted the site is located in a Late Night Management Area under the SDCP 2012, which encourages diverse late-night trading in the CBD. The Department notes SDCP 2012, permits the following trading hours:

- Indoor areas: base operating hours of 6 am to 2 am, with extended 24-hour trading, subject to a trial period
- outdoor areas: base operating hours of 7 am to 10 pm, with extended hours to 1 am, subject to a trial period

Council initially raised concerns with the proposed increase to the evening base outdoor operating hours (from 10 pm to 2 am), as the proposed hours exceed the base outdoor operating hours and extended hours within the SDCP 2012. Council therefore recommended a trial period for outdoor operating hours till 2 am to allow ongoing review.

In response, the Applicant revised the proposal to align the base hours with the approved base hours or the base hours permitted under the SDCP 2012 (whichever is greater), and with all hours beyond the base hours subject to a 2-year trial period (**Table 2**).

The Department considers the proposed extension to the base indoor operating hours (from 12 midnight to 2 am Sunday to Thursday, and from 1 am to 2 am Friday and Saturday) and base morning outdoor operating hours (from 8 am to 7am) acceptable as:

- the approved use is for a restaurant not a pub
- Council have not raised any issues relating to the management performance of the venue
- the Department's compliance branch confirmed there had been no compliance issues relating to the operation of the venue
- the site is located in The Rocks and the proposed base indoor and morning outdoor hours align with the Late Night Management Area under the SDCP 2012

- existing conditions of approval would continue to protect the amenity of surrounding residents and ensure the venue is appropriately managed. This includes condition:
  - F5, which requires compliance with the plan of management
  - F8, which establishes appropriate noise levels for nearby residential receivers during operation
  - F19, which ensures the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the area.

In respect to the proposed increase in the trial evening outdoor areas, the Department does not support an extension from 1 am to 2 am Monday to Sunday as:

- the size of the outdoor area is significant and can accommodate 430 patrons
- the utilisation of the trial hours has been significantly affected by COVID-19 closures over two of the past three years
- the nature and extent of impacts on amenity and public safety is uncertain given COVID-19 closures during the trial period
- it exceeds the trial hours for outdoor areas in the Late Night Management Area in the SDCP 2012
- Council does not support the extension.

The Department therefore recommends the previous trial outdoor operating hours are continued for a further two years to allow the venue to utilise the full three-year trial period and demonstrate good management performance.

## 5.2 Other issues

Other relevant issues for consideration are addressed in **Table 4**.

**Table 4 | Summary of other issues raised**

Issue	Findings	Recommendations
Noise	<ul style="list-style-type: none"> <li>• The modification application is supported by an Acoustic Statement which confirms the proposal remains consistent with the Noise Impact Assessment submitted with SSD 7683 and as amended by modification application SSD 7683 MOD 2.</li> <li>• The SSD was assessed against the strictest noise criteria for the night period (10 pm to 7 am).</li> <li>• The proposed extended hours fall within the strictest noise criteria and would not affect the outcomes of the NIA. The Acoustic Statement confirms the proposal would continue to comply with the noise criteria under Condition F8, which requires:               <ul style="list-style-type: none"> <li>○ noise levels to not exceed the background noise by more than 5dB between 7 am and 12 midnight</li> <li>○ noise levels to not exceed the background noise level between 12 midnight and 7 am</li> </ul> </li> <li>• The Department considers noise impacts acceptable as the venue will continue to comply with the night period noise criteria and be</li> </ul>	None required.

appropriately managed via existing conditions of consent.

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**Plan of Management**

- The modification application included an updated Plan of Management (POM) to reflect the proposed extended operating hours.
- No amendments have been made to the existing management measures.
- The Department recommends the POM is updated to include the recommended trial period for the operational hours.

The Department recommends:

- a new Condition (Condition F5(A) requiring an updated POM to be submitted to the Planning Secretary, which includes the recommended trial hours of operation.
  - Amend Condition F5, to reference the updated POM in Condition F5(A).
-

## 6 Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is acceptable as:

- would not result in adverse noise or amenity impacts, subject to conditions
- would facilitate the continued operation of the premises within an ongoing compliance framework
- the trial outdoor hours are consistent with Council's recommendation
- existing and recommended conditions will manage and mitigate any environmental impacts.

The Department considers the modification is in the public interest and should be approved, subject to the recommended modified conditions of consent.



## 7 Recommendation

It is recommended that the Director, Key Sites Assessments, as delegate of the Minister for Planning

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 7683 MOD 3 falls within the scope of section 4.55(2) of the EP&A Act;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **modify** the consent SSD 7683
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



**Rodger Roppolo**  
Senior Planner  
Key Sites Assessments

Recommended by:



**Cameron Sargent**  
Team Leader  
Key Sites Assessments

## 8 Determination

The recommendation is **adopted** / ~~not adopted~~ by:



4 October 2022

**Anthony Witherdin**

Director

Key Sites Assessments

(as delegate of the Minister for Planning)

# Appendices

## Appendix A – List of referenced documents

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

Modification Application, submissions and RtS:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-3-extension-hours-operation>

## Appendix B – Statutory Considerations

A consent authority may modify the consent if it is satisfied the proposed modification application meets the requirements of section 4.55(2) of the EP&A Act. An assessment of the proposed modification application against the requirements of section 4.55(2) of the EP&A Act is included in **Table 1**.

**Table 1** | Consideration of section 4.55(2) of the EP&A Act

Section 4.55(2)	Department's consideration
(a) 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.	The development, as proposed to be modified, is substantially the same development as the originally approved as it: <ul style="list-style-type: none"><li>would not result in any physical works</li><li>would not result in any adverse environmental impacts that cannot be appropriately managed or mitigated.</li></ul>
(b) It has consulted with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent	The Department has consulted the relevant government agencies, previous submitters and Council in relation to the modification application, as addressed in <b>Section 4</b> of this report.
(c) The application has been notified in accordance with the regulations.	<b>Section 4</b> of this report demonstrates the modification application followed the consultation requirements as outlined in the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).
(d) Any submission made concerning the proposed modification has been considered.	The Department has considered submissions made, as addressed in <b>Section 4</b> and <b>Section 5</b> of this report.

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development. **Table 2** identifies the matters for consideration under section 4.15(1) of the EP&A Act that apply to the proposed modification.

**Table 2** | Consideration of the matters listed under Section 4.15(1) of the EP&A Act

Section 4.15(1) Matters for consideration	Department's consideration
(a)(i) any environmental planning instrument	The proposed modifications are consistent with the relevant Environmental Planning Instruments (EPIs) as addressed in this report.
(a)(ii) any proposed instrument	The proposed modifications are consistent with relevant draft EPIs.
(a)(iii) any development control plan	Under the State Environmental Planning Policy (Planning Systems) 2021, DCPs do not apply to SSD. Notwithstanding, consideration has been given to the Sydney Development Control Plan 2012, where relevant, in <b>Section 5</b> .
(a)(iia) any planning agreement	Not applicable.

(a)(iv) the regulations	The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications, the requirements for notification, and fees as addressed in <b>Section 4</b> .
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The Department considers the likely impacts of the proposed modifications acceptable and have been appropriately addressed in <b>Section 5</b> .
(c) the suitability of the site for the development	The site is suitable for the development as addressed in <b>Section 5</b> .
(d) any submissions	The Department has considered submissions made, as addressed in <b>Section 4</b> and <b>Section 5</b> of this report.
(e) the public interest	The Department considers the modified proposal to be in the public interest as it would not result in any adverse impacts.

### Environmental Planning Instruments

Controls considered as part of the assessment of the proposal are:

- Sydney Cove Redevelopment Authority Scheme
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- Sydney Regional Environmental Plan (Biodiversity and Conservation) 2021

The Department undertook a comprehensive assessment of the proposal against the relevant EPIs in its original assessment and is satisfied the modification application remains consistent with the EPIs.

### Objects under the act

The Minister or delegate must consider the objects of the EP&A act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.

## Appendix C – Modification instrument

The Modification Instrument can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-3-extension-hours-operation>