



15 February 2017

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The Secretary
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

**RE: MODIFICATION TO MP 11_0089
 OLD CLARE HOTEL (20-24 BROADWAY & 1-3 KENSINGTON STREET, CHIPPENDALE)**

Dear Sir/Madam

This submission is written on behalf of the owners of Strata Plan 88765 (3 Carlton Street, Chippendale or as known as One Central Park East (the **adjoining property owners**) in respect of the proposed Section 75W amendment of instrument approval MP 11_0089 at 20-24 Broadway and 1-3 Kensington Street, Chippendale or as known as the Old Clare Hotel (the **site**).

Information reviewed as part of this submission includes:

- Statement of Environmental Effects (**SEE**), by Planning Lab;
- Architectural Drawings and related architectural work, by Huppauf Chesterman Architects;
- Rooftop Acoustic Assessment, by WSP Parsons Brinkerhoff;
- Building Code of Australia (**BCA**) Assessment, by City Plan Services;
- Certificate of Cost, by Con Athanassiou;
- Heritage Impact Statement (**HIS**), by Paul Davies Heritage Architects; and
- Plan of Management, by Unknown.

In addition, a site visit and its adjacent context has been undertaken to determine the specific impacts of the proposal and to determine the locational context.

Having reviewed the above documentation submitted with the 75W Amendments, the adjoining property owner acknowledges the rights of the applicant to appropriately redevelop their land, which has already occurred with previous approvals. However, the adjoining property raises **strong objection to the proposed modification as it has unacceptable impacts on their asset and existing levels of amenity and should be refused accordingly for the following reasons:**

- **Adverse acoustic privacy impacts;**
- **Adverse visual privacy impacts;**
- **Additional loss of solar access to the lower levels of the northern elevation of One Central Park East;**
- **Increased building height is inconsistent with the site's original approval and results in adverse visual impacts;**
- **Cumulative impacts and social issues; and**
- **Additional considerations.**

This submission on behalf of the adjoining property owners should be read in conjunction with numerous apartment / individual owner specific submissions (objections to the proposal) and it is my understanding that a petition has also been prepared by the adjoining property owners and which has also been submitted separately.

A description of the adjoining property follows at Section 1 and a description of the proposal follows at Section 2. It is respectfully requested that the Department of Planning and Environment (**DoPE**) thoroughly consider the specific issues raised by the adjoining property owner at Section 2 of this submission during the assessment and determination of the application.

1. One Central Park East

One Central Park East a mixed use building was approved under MP 09_0078 on 18 June 2010. It is known as Block 2 within the former Carlton United Brewery site. Approved and now constructed, it comprises:

- construction of a new mixed use, retail, commercial and residential building with ancillary retail uses consisting of two towers (east tower 133m AHD and west tower maximum 79.5m AHD) located above a podium accommodating:
 - residential floorspace comprising up to 593 residential apartments;
 - retail floorspace comprising a food court, specialty retail and a supermarket;
 - commercial floorspace;
- construction of terraces (landscaped platforms) which rise from the plaza to podium level 2 of the new building on Block 2;
- installation of a heliostat (consisting of mirrors which are oriented to focus sunlight onto the landscaped platforms);
- construction of the surrounding public domain;
- stratum subdivision of the proposal.

Relative to the proposed modification, the East Tower, a 32 storey built form is immediately adjacent the site. It is provided with a north easterly orientation. Apartments with a north easterly orientation are provided with a principal area of private open space directly accessible from a primary living room along the Carlton Street frontage.

The relative proximity of the existing rooftop terrace and its pool to the north east facing apartments (Level 9 in this instance) at One Central Park East is provided at **Figure 1**. The typical design of these apartments and their private open space is shown at **Figure 2**.



Figure 1 – The proximity of the rooftop terrace and pool to the adjoining property owners



Figure 2 – North east facing Apartment 907 and its primary living room and directly accessible principal (only) area of private open space

2. The Proposal

As described in the SEE by Planning Lab, the proposed modifications to MP 11_0089 comprise:

The application seeks consent for the development of a 98m² structure above an existing approved rooftop pool terrace including three toilets (WCs), within Block 3A, Central Park (Carlton United Brewery's Former Administration Building and the Old Clare Hotel). The primary purpose of the proposed structure is to provide an acoustic enclosure that shelters the residential tower to the west from noise generated by patrons that frequent the existing approved bar and adjacent rooftop terrace.

The new roof terrace structure will not be visible from Kensington Street and will not be readily visible from Carlton Street, as demonstrated on the submitted plans. The roof structure is open on one long side, adjacent to the pool, and is therefore not counted as additional Gross Floor Area. The inclusion of the 3WCs on the roof level will however add 8.3m² to the overall Gross Floor Area.

The proposal also seeks to formalise and regulate the approved use of the bar area, creating a framework around access from the public, hours and noise. Whilst the rooftop terrace and bar area has been formally approved by the Minister, and by Council in its endorsement of plans which also show the bar area, there are currently no conditions of consent which manage the capacity, hours of use, or regulate noise impacts on surrounding residents. In order to regulate the use and to minimise the potential impacts of operation, proposed is to:

- *limit the capacity of the rooftop bar to 150 patrons;*
- *limit the hours of operation of the rooftop to between 7.00am and 10.00pm, 7 days. Notwithstanding these hours, it is proposed to restrict the sale of alcohol to between 12.00midday and 10.00pm, 7 days;*
- *require the development to comply with the requirements of the Acoustic Assessment report commissioned by the applicant, with respect to noise and treatment of the roof structure, as well as comply with the submitted Plan of Management.*

The proposed to be modified built form would have a maximum building height of RL 42.7 an increase of 1.2 metres from that approved (existing) at RL 41.5. It is noted the proposal has a capital investment value (CIV) of \$582,230.

3 Specific issues raised by the adjoining property owner

3.1. Adverse acoustic privacy impacts

It is acknowledged the surrounding locality has a relatively high level of background noise, given the inner-city location and frontage to one of the city's busiest arterial roads (Broadway/Parramatta Road).

Whilst the acoustic assessment report submitted with the modification appears to demonstrate that the proposal will not result in any adverse acoustic impacts (internal and external to the site), its assessment is not entirely accurate as it describes the operation of the rooftop terrace as between the hours of 12 noon and 10pm, 7 days a week, as opposed to all other submitted documentation which describes the hours of operation of 7am to 10pm, 7 days a week. Based on this inconsistent description of the proposal, the accuracy of the report and the true acoustic impacts of the proposal are unknown.

The quantifiable and existing adverse acoustic impacts on the adjoining property owners relative to the use of the rooftop terrace and pool is ably demonstrated in individual apartment owner submissions (including videos) provided separately. These submissions demonstrate that the use of the pool area (and not as a public bar with associated music) by only 5 patrons (as opposed to the 150 proposed) results in adverse aural privacy impacts to a level whereby to maintain existing amenity levels, the double-glazed sliding doors to north facing private open space areas and bedrooms must be closed. The closure of these double-glazed sliding doors precludes the only opportunity for natural ventilation of these north facing apartments. Their continued closure as will be required with the use of the rooftop terrace as a public bar for 150 patrons, 7 days a week from 7am to 10pm will unquestionably reduce existing amenity levels and provide an inappropriate planning outcome.

In addition to the above, the following issues should be addressed:

- the consistency of the proposed significant operable glazing along the western elevation of the terrace enclosure and its effective or realistic compliance with the highest acoustic criteria of the BCA and Australian Standards as outlined/required by the Acoustic Assessment. The operable glazed wall has a setback of 1.55 metres from the existing balustrade and with this separation will permit noise to escape from the rooftop terrace rather than be contained;
- the rooftop terrace is proposed to operate until 10pm. Therefore, previous noise measurements in the evening are relevant;
- Figure 6.1 within the Acoustic Assessment provides an inaccurate depiction of the northern elevation openings (and therefore results acoustic impacts) of One Central Park East and the adjacent built form;
- noise receivers are placed at the ground level, as opposed to higher levels (such as 4 and 5) of One Central Park East. Therefore, the true acoustic impacts and background noise levels are unknown;
- the imposition of a condition requiring all mechanical plant and equipment to comply with the highest acoustic criteria;
- the aural privacy impacts associated with the extensively permitted public access to and use of the rooftop terrace and the site generally;
- excessive hours of operation for the rooftop terrace and the resultant acoustic impacts, not to mention the increased potential for anti-social behaviour (see Section 3.5 below) given the proposed trading hours.

3.2. Adverse visual privacy impacts

The site and surrounding locality is an area that has undergone significant redevelopment for medium to high density mixed use (predominantly residential) purposes. Varied building typologies are found in the area. The relative topographical consistency between the site and its immediately properties and the relatively dense built form environment generates a pattern of relatively closely spaced built form with limited buffers provided between properties. Thus, there is mutual overlooking of private and communal open space areas of adjacent properties.

Notwithstanding the above, the nearest residential neighbour is One Central Park East, immediately adjoining the site to its west and only separated by the relatively narrow carriageway of Carlton Street and its verge. One Central Park East, a 32 storey mixed use (predominantly residential apartments) is provided with a north easterly orientation that has its primary frontage to Carlton Street. Apartments are provided with their principal area of private open space directly accessible from their primary living room along this north-eastern elevation. Numerous openings in addition to balconies are provided along this elevation at each level of the building.

Despite privacy being a desirable element for residential amenity, the existing rooftop terrace area and conversely the residents within One Central Park East are provided with direct lines of sight to and from primary living spaces (particularly those residents at Levels 4 and 5 of the building) only separated by Carlton Street. The extent of mutual overlooking will unquestionably be exacerbated by the proposed 150 patron capacity public bar operating 7am to 10pm, 7 days a week. This unquestionable loss of aural and visual privacy is directly attributable to the proposed intensification of use of the rooftop terrace from currently an area enjoyed by guests as opposed to a public bar.

3.3 Additional loss of solar access to the lower levels of the northern elevation of One Central Park East

Despite a technical increase of 1.2 metres in the site's maximum building height shadow diagrams have not been provided. In the absence of such diagrams, the actual additional overshadowing impacts to the lower level (4 and 5) of north east facing apartments (including their principal areas of private open space) are unknown. It is requested that the DoPE thoroughly consider the overshadowing impact to the eastern elevation of One Central Park East. As these apartments are provided with this single orientation and no other openings, solar access is already restricted. The potential additional overshadowing impact is exacerbated by the proposed 1.2 metre increase in height above that originally approved under MP 11_0089.

3.4 Increased building height is inconsistent with the site's original approval and results in additional visual impacts

As noted at Section 3.3, the modification proposes to increase the built form's maximum building height by 1.2 metres. This is not only inconsistent with the original approval for the site under MP 11_0089 but also results in additional visual impacts when viewed from the surrounding public domain, particularly Carlton Street and its surrounds. The existing view of the rooftop terrace from Carlton Street is shown at **Figure 3**.



Figure 3 – Existing view of the rooftop terrace from Carlton Street

A key element in the original approval of the redevelopment of the site's existing built form relative to heritage, height, bulk and scale was:

The design of the vertical additions has been sensitively undertaken to minimise immediate visibility and to establish a pattern of design that relates to the existing building

The proposed modification to increase the built form's overall height by 1.2 metres and in addition the cumulative increase in vertical and horizontal bulk and scale with the 21-metre-long by 4.6m wide roof

structure at the rooftop terrace level is inconsistent with the stated reasons for why the original and now approved built form was previously considered to be acceptable. The new roof structure will be unquestionably visible from the surrounding public domain and will add to the built form's actual height and perceived bulk and scale.

The following points in relation to planning should be noted:

- the excessive height, bulk and scale of the built form and its proposed use cumulatively results in adverse environmental impacts to the adjoining property owners;
- the substantial increase in intensification of use will cumulatively result in adverse environmental impacts to the adjoining and adjacent properties as follows:
 - loss of solar access to lower level north east facing apartments at One Central Park East;
 - potential for the loss of natural ventilation (so as to maintain amenity) through the required closure of north east elevation openings for the majority of north east facing apartments at One Central Park East;
 - increase in overlooking (aural and visual privacy) to an unacceptable level;
 - the overbearing nature of any built form on the site and its resultant visual impact;
 - no relief of visual built form prominence and lack of potential for landscape buffer or perimeter plantings between the two properties;
- the proposed height, bulk and scale of the building makes it visually prominent when viewed from the surrounding public domain.

In addition, and despite the limited assessment in the HIS which states relative to the impact of the built form as viewed from Carlton Street:

from Carlton Street the structure will have minimal visual impact, as demonstrated in the plans,

the proposed modifications to the built form will undoubtedly be visible from Carlton Street as is demonstrated by the existing view available at the Carlton Street ground level of One Central Park East.

3.5 Cumulative impacts and social issues

Notwithstanding that a rooftop terrace has been formally approved under previous applications, the proposed modification represents a substantial intensification and change of use of the rooftop terrace to a public bar (and not just for hotel patrons) with a capacity for 150 patrons and hours of operation 7am to 10pm, 7 days a week. The adjoining property owners **strongly object to the proposed modification on cumulative impacts and adverse social issues** as outlined below:

- There is no nexus or detailed justification presented to permit such a significant intensification of use without a detailed assessment of the cumulative impact of the proposed hours of operation, patron capacity and acoustic impacts. The site and its adjacent properties (including One Central Park East) are within a relatively dense mixed use (albeit predominantly residential redevelopment promoting the concept of a living city and/or a city of villages) locality, being the former CUB site and its surrounds. There are already numerous late trading establishments (excluding traditional restaurants [despite also serving alcohol] and specifically within the area known as Spice Alley) within the site's vicinity including:
 - Kensington Street Social;
 - Bar Broadway;
 - Off Broadway Hotel;
 - Handpicked Cellar Door;
 - The Underground UTS;
 - The Loft UTS;
 - Penny Lane Bar;
 - Bar Chinois;
 - Essen Beer Café;
 - Side Bar;
 - Scubar;
 - The Chipppo Hotel;

- The Lord Gladstone Hotel; and
- ZIGIS.
- The site is located within the former CUB site a mixed use albeit predominantly residential redevelopment. The proposed modification is therefore considered to be inconsistent with the prevailing and future character of the locality and will adversely impact on levels of amenity enjoyed by the residents and businesses alike;
- The use of the rooftop terrace as a public bar operating 7 days a week from 7am to 10pm with a capacity for 150 patrons may give rise to:
 - increased anti-social behaviour (including between patrons, employees and residents); and
 - increased aural privacy impacts (increased noise level is sensitive to residents and adjoining/adjacent properties no matter what time it occurs) on the adjoining and adjacent residential and retail properties. This could be through people either entering or leaving the site by foot, conversations, music (which will be amplified) and traffic noise. Therefore, it is considered the proposal significantly reduces existing levels of amenity enjoyed by those residents and businesses in the site's vicinity;
- Under the City of Sydney Council's Development Control Plan 2012 (**DCP 2012**) the site is classified as Category A Premises – High Impact and furthermore lies with a City Living Area. The Kensington Precinct which includes the site and its adjacent properties is a definitive mixed use area and development within its vicinity also is of a distinct mixed use albeit predominantly residential character. Within the site's vicinity there are already numerous pubs/hotels that operate with late trading hours. Furthermore, numerous residential and serviced apartment developments consistent with the prevailing mixed use character of the area are located within the site's vicinity. The proposed modification to a late night operating outdoor rooftop public bar with a capacity for 150 patrons provides an additional use which cumulatively adds to an already unacceptable situation, being a high concentration of late opening pubs in the Category A area (High Impact) under DCP 2012;
- Given the general anti-social behaviour (including between patrons, employees and residents) of patrons in a facility with extensive operating hours any further increase in the number of facilities capable of providing such a service is considered to be unacceptable and should be refused accordingly;
- As stated in the applicant's documentation, the site already contains several bar/hotel operations. There is no nexus to increase the number of bars within the site considering those existing. The rooftop terrace should be an area available for the exclusive use of hotel guests, rather than as a public bar; and
- It is questionable as to whether a bar area within the rooftop area was part of any previous approval whether by the DoPE or the City of Sydney Council;
- should the DoPE consider the application favourably, relative to the rooftop terrace being used for the purposes of a public bar, it specifically requested that conditions of development consent be imposed (irrespective of the Acoustic Assessment) as follows:
 - there is to be no amplified music on any outside area, including within the new rooftop terrace structure;
 - restricting the use of the rooftop terrace to hotel patrons only; and
 - restricting the hours of operation of the rooftop terrace as a patron only bar to a maximum of 8pm each night; or
 - restricting the hours of operation of the rooftop terrace as a public bar to a maximum of 8pm each night.

3.6 Additional considerations

It is requested that the DoPE in its assessment of the modifications also consider/assess the following:

- is a Place of Public Entertainment (**POPE**) licence required? If a POPE licence is required, it is requested that any licence preclude the use of amplified music on the rooftop terrace area;
- will the type of entertainment permitted under any existing POPE licence be altered under the current proposal? If not, any favourable determination should be conditioned accordingly stipulating the types of entertainment approved on the site under the POPE licence (as referenced above);
- does the building overall still comply with the requirements of the BCA and relevant Australian Standards because of the proposed works?
- there is no detailed assessment of the amended proposal's consistency with Clause 29 of Sydney Local Environmental Plan 2005 (**LEP 2005**). This requires an applicant for a late opening amusement centre, hotel, pub and the like to demonstrate that:
 - the proposal would not have a detrimental impact on the amenity of the locality and the desired character of the locality, as indicated by the objectives for the zone in which the land is situated;
 - the proposal would not result in an inappropriate concentration of that use and, together with the other inappropriate uses in the locality, result in a detrimental cumulative impact, and
 - the proposal would not be detrimental to other uses considered to be more consistent with the objectives of the zone in which the land is situated.
- there is inconsistency between the Architectural Drawings and the HIS relative to the ends of the proposed rooftop structure. The Architectural Drawings show this area as containing external enclosing and acoustically treated (as required by the Acoustic Assessment) end walls, whereas the HIS refers to this part of the structure as being open ended;
- does the building and the rooftop terrace comply with the BCA relative egress and fire safety certificates/schedules?
- are continuous paths of travel provided on the rooftop terrace in accordance with AS 1428?
- has compliance with relevant acoustic performance criteria (BCA, Australian Standards and Council requirements) been achieved? This is particularly relevant given the mixed use nature (predominantly residential) of the adjacent buildings/development and the general impact of additional and excessive noise at inappropriate hours (i.e. late night); and
- as demonstrated by individual apartment owner submissions, the rooftop terrace has in the past operated as a public bar without the appropriate development consent being issued by either the DoPE or City of Sydney Council. This illegal operation only ceased following complaints by apartment owners from adjacent buildings. Given this previous illegal use of the site, there is an expectation that the applicant will (if approved) operate outside of the proposed parameters. The only avenue left for adjoining property owners is to lodge continued formal complaints with Council and the DoPE. This is an undesirable planning and social outcome.

Given the above and lack of justification for such, the adjoining property owners specifically reserve their rights in this regard. The resultant impacts on their and other buildings amenity are considered material and therefore warrants refusal of the application or substantial amendments to the design to reduce the impacts of such.

4. Conclusion

The proposed modification to permit a public bar with a capacity for 150 patrons operating from 7am to 10pm, 7 days a week within the site's existing (and generally open) rooftop terrace raises numerous issues including:

- a reduction in existing levels of amenity for adjoining and adjacent properties
- inconsistent use and operation given the existing and desired character of the locality;
- increased aural privacy impacts;
- increased visual privacy impacts;
- increased visual impacts;

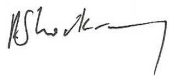
- the possibility of increased anti-social behaviour; and
- the inappropriate proliferation of late night operating premises within a Category A area.

Generally, the proposed modification will have a materially detrimental impact on the adjoining property owners. At the very least further modifications (by way of conditions) should be made having regard to the above issues raised or preferably refuse the modification. Should further information be submitted addressing the abovementioned concerns, it is requested that the adjoining property owner be re-notified.

The adjoining property owners would have no hesitation in meeting with DoPE and the applicant to discuss the issues raised in this submission. Such a meeting may result in an acceptable outcome to all parties. The adjoining property owners are not adverse to progress and the appropriate redevelopment of the locality, albeit not at the expense of existing levels of amenity, a realistic and desirable planning expectation.

Should you have any further queries or require clarification of the matters contained herein, please do not hesitate to contact the undersigned.

Yours faithfully



Scott Lockrey
Director