

Submission to
State Significant Development Application SSD 7014

EXECUTIVE LOUNGE AND HOTEL BAR
FOUR POINTS HOTEL, SYDNEY

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This Submission has been developed based on agreed requirements as understood by DB Consulting at the time of investigation. It applies only to a specific task on the sites nominated. Other interpretations should not be made, including changes in scale or application to other projects.

Any recommendations contained in this report are based on an honest appraisal of the opportunities and constraints that existed at the site at the time of investigation, subject to the limited scope and resources available. Within the confines of the above statements and to the best of my knowledge, this report does not contain any incomplete or misleading information.

Preparation, Review and Authorisation

Revision No.	Date	Prepared By:	Reviewed By:	Approved for issue by:
Draft	10/08/2015	M.Loader	D.Barber	
A	11/08/2015	M.Loader	D.Barber	D.Barber

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EXECUTIVE SUMMARY

DB consulting has been engaged by the strata executive committee of 365 Kent Street, Sydney for the purposes of assessing the potential impacts of State Significant Development Application SSD 7014 on their site. This assessment, informing this submission, has relied on the following publicly available documents:

<i>Title</i>	<i>Prepared by</i>	<i>Date</i>
Environmental Impact Assessment	JBA Urban Planning Consultants	1 July 2015
Acoustic Assessment	Acoustic Studio	3 June 2015
Operational Management Plan	Unknown	Unknown
Visual Impact Assessment	GM Urban Design & Architecture Pty Ltd	22 June 2015
Architectural Plans	Cox Richardson	3 June 2015

This assessment has been made observing the following legislation, environmental planning instrument, and policies, as well as merit based assessment of potential impact:

- *Environmental Planning and Assessment Act 1979*;
- Environmental Planning and Assessment Regulation 2000;
- SEPP (State and Regional Development) 2011;
- Darling Harbour Development Plan No.1 (DHDP);
- City of Sydney Planning Scheme Ordinance;
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- Sydney Development Control Plan 2012 (Late Night Trading Management);
- *Protection of the Environment Operations Act 1997*;
- NSW Industrial Noise Policy; and
- NSW Industrial Noise Policy Application Notes – Sleep Disturbance.

In summary, this submission raises concern in relation to a number of matters including acoustic impact, land use and permissibility and view loss/sharing impacts. All matters raised within this submission have been considered and endorsed by our client.

BACKGROUND

The Subject Site – 161 Sussex Street, Sydney

The Four Points is a four star hotel located at 161 Sussex Street, Sydney. The subject site sits adjacent the site of the Sea Life Sydney Aquarium, separated by the A4 Western Distributor Freeway. The subject site subsequently falls within the district of the Sydney Harbour Foreshore – Darling Harbour, which has uncompromising views of Cockle Bay.

The Site – 365 Kent Street, Sydney

Commonly known as “Windsor on Kent”, 365 Kent Street, Sydney, is located to the east of the subject site, separated by 154-158 Sussex Street, Sydney (University of Ballarat). The site comprises Mixed Use development, with retail frontage and residential tower approximately 27 stories in height. The site exceeds the subject site in height, and also shares direct views to Cockle Bay from Levels 12 and above.

Locational Context

The locational context of the site and the subject site is demonstrated graphically below:



Figure 1 - Locational Context

Proposed Development

The proposed development seeks approval for the following development:

- Addition of 452sqm of Gross Floor Area (GFA) for an executive lounge at level 11;
- Addition of 475sqm of GFA for a public bar at level 12;
- Associated amenities including bar store and kitchen; and
- A plant room.

The proposed addition to the existing development is located on the rooftop of the north tower of the hotel. The proposed addition involves the construction of an additional two levels to the north tower, increasing the existing height of the building by approximately 9 metres.

LEGISLATIVE CONTEXT

In review of the Environmental Impact Assessment prepared by JBA Urban Planning Consultants, an assessment has been provided against a number of legislative requirements, regulations and environmental planning policies. In accordance with Section 79C of the Environmental Planning and Assessment Act 1979, the consent authority is required to consider any relevant environmental planning instruments, development control plans, the regulations, the likely impact of the development, the suitability of the site for the development and public interest.

An Assessment of the State Significant Development Application has assessed the proposal against the following:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- SEPP (Infrastructure) 2007
- SEPP (State and Regional Development) 2011
- Darling Harbour Development Plan No.1 (DHDP)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- NSW 2021
- A Plan for Growing Sydney
- Draft Sydney City Subregional Strategy
- Sydney 2030 (The City of Sydney Council)
- Towards 2020 NSW Tourism Master Plan
- Sydney Development Control Plan 2012 (Late Night Trading Management)

Other legislation and policies that this development is subject of assessment include Protection of the Environment Operations Act 1997, the NSW Industrial Noise Policy, and the NSW Industrial Noise Policy Application Notes – Sleep Disturbance. Whilst the Environmental Impact Statement is silent on such legislation and policies, the assessment against these policies are made within the accompanying Acoustic Assessment prepared by Acoustic Studio.

AREAS OF CONCERN

A planning assessment of the proposed development has been provided against the relevant heads of consideration, with particular emphasis given to the potential impacts on the site located at 365 Kent Street, Sydney.

Key issues with the proposed development relate predominantly to the following:

- Acoustic Impact – Construction
- Acoustic Impact – Ongoing
- Land Use and Permissibility
- View Loss/Sharing

The abovementioned issues are discussed in the following sections:

Acoustic Impact – Construction

Whilst the Acoustic Assessment prepared by Acoustic Studio provides an assessment of the potential operational noise impacts, it lacks all consideration of potential construction noise during stages of constructing the proposed development. This also raises concern, given the current construction of the south tower and the potential cumulative impacts during the period of construction.

Recommendation 1:	The Acoustic Assessment prepared by Acoustic Studio be revised to include assessment of potential construction noise impacts on affected receivers. This is to include cumulative impact of the construction for the southern tower.
Recommendation 2:	Restriction on machinery and equipment to be utilised during the course of construction to eliminate potential for offensive and obtrusive noise to receivers.

As is the nature of construction within the Sydney CBD, it is acknowledged that during the course of construction there will be the need to use machinery and equipment that will potentially impact nearby receivers. The potential impact relates not only to potentially offensive or obtrusive noise, but also relates to the times of the day of which such activities are to occur. Whilst this may be

acceptable in short periods and in isolated times of the day, concern is raised that this may be undertaken without approval or consultation, and without consideration to the potentially affected receivers. The NSW Industrial Noise Policy Application Notes – Sleep Disturbance provides criteria for which noise levels are acceptable during specific shoulder periods and at night. Given the lack of assessment for construction works, this issue has not been adequately addressed.

Recommendation 3:	Community Consultation Plan is required prior to the commencement of construction.
Recommendation 4:	Community Consultation is required prior to any night works and any activity that may give rise to potentially offensive or obtrusive noise.
Recommendation 5:	Relevant conditions of development consent to restrict all construction work to be carried out during the following hours: Monday to Friday 7 am to 6 pm Saturday 8 am to 1 pm No work on Sundays or public holidays Where construction works are required outside of these hours, relevant community consultation and approvals are sought prior to commencing the activity.

Acoustic Impact – Ongoing

The proposed design includes an enclosed lounge intended for the guests of the hotel and an open air rooftop bar, which will be made accessible to the public.

It is noted that the Level 11 Lounge will service the hotel’s premium guests with limited food and beverage service including buffet breakfast, tea, coffee, evening snacks and alcoholic beverages. It is noted that the operational management plan is inconsistent with its proposed operational times, which provide a 24 hour operating time for all proposed areas, whilst the proposed operation of the Level 11 Lounge implies that it will be operational from 6:00am. Furthermore, the Operational Management Plan does not detail the proposed closure time for the area. The proposed 24 hour operation will be addressed later in this submission, however, the Operational Management Plan is to be complied without any ambiguity for a proper assessment of its operation. Notwithstanding, as access to this area will be controlled by a permanent staff member, with the exception of the above point, no concern is raised in relation to this element of the operation of the proposed development, given that the amended (and consistent) Operational Management Plan for the proposed development is strictly adhered to.

- Recommendation 6: The Operational Management Plan is amended for the purposes of consistency.
- Recommendation 7: Operation of the Level 11 Lounge is restricted to the hours of 6:00am to 12:00am.

The whilst the proposed development provides a roof over the open air Level 12 Bar, the plans indicate that the roof will be operational as an openable louvered system. It is noted that the Operational Management Plan does not address the operation of this roof. Whilst it is assumed that this will be opened and closed pending weather events, the closure of this roof provides a vital role in acoustic mitigation, especially given the line-of-sight between the proposed development and the upper levels of our clients' site.

- Recommendation 8: The operational roof of the Level 12 Bar is to be closed between the hours of 12:00am to 7:00am daily.

The Acoustic Assessment assumes that the patrons of the venue will be *"male patrons talking normally"*, providing the worst case scenario. Whilst this assumption may be acceptable for the Level 11 Lounge, given its somewhat enclosed setting, this assumption falls short of what would be a typical setting for the Level 12 Bar. Rather, the Level 12 Bar, being open to external noise impacts, will promote levels of talking greater than that which would be considered as a "normal" talking voice.

It is acknowledged that the volume of patrons may be difficult to control, however, control of contributing factors will demote the probability of elevated voices. These mitigating measures have not been explored in the acoustic assessment. Furthermore, as background levels decrease between the hours of 12:00am to 7:00am, the proposed 24 hours of operation, provides an unacceptable risk that the patrons' acoustic levels will exceed that of the background levels. In this regard, further consideration should be given to the Operational Management Plan and the proposed acoustic mitigation measures for the proposed development.

In addition to the above, the Acoustic Assessment to states:

There is no patron noise assessment provided for this receiver as it will be totally screened/shielded from the patron areas.

However, this is not true as there is a direct line-of-sight from the upper levels of our clients' site to the Level 12 Bar should the Louvres be open. Furthermore, the assessment does not take into consideration redirections, reflections or reverberation of sound due to the ongoing operation of the Level 12 Bar, especially in a 24 hour format.

In addition to the above, the Acoustic Assessment also states:

Mechanical plant associated with the operation of the proposed Executive Lounge and Bar should be controlled to ensure external noise emissions are not intrusive and do not impact on the amenity of the nearest residential receivers.

It is noted that there has been no assessment of the potential impacts of the mechanical plant room, which is likely to be visually screened by louvres, however does not provide any details for acoustic attenuation.

Recommendation 9: Acoustic Assessment be revised to consider the cumulative impacts of the background sound levels and patrons. The revised assessment should also include an assessment of the proposed mechanical plant and provide recommendations for acoustic screening. This assessment should in increments, within the whole of a 24 hour period as proposed.

The Noise Assessment also states that amplified music is to be provided as background music for the Level 11 Lounge and Level 12 Bar at 10dB lower than the noise levels from patrons normally speaking. There is generally no concern with this requirement, however given that the Acoustic Assessment provides an established criteria of 78 dB(A) for persons talking "normally", it is recommended that appropriate conditions of consent are imposed to ensure that the background music is not to exceed 68 dB(A) at any time.

Recommendation 10: Condition of Consent imposed to ensure that the background music is not to exceed 68 dB(A) at any time.

Notwithstanding the above, should the development be approved in its current form, or otherwise, it has been good practice from the City of Sydney to impose a trial period for the proposed use of the development to demonstrate that the operator is able to demonstrate that the establishment can operate in accordance with the development consent and the operational management plan. It

is recommended that the minister consider this initiative and impose a trial period of 12 months for the proposed use.

Recommendation 11: Development consent for the proposed use remain valid 12 months, being a trial period for the proposed use.

Land Use and Permissibility

Pursuant to Schedule 1 of the Darling Harbour Development Plan No 1, the approved use of the site as a short term stay of accommodation can be defined within a best fit category of “Motel”. This is clearly defined within the *City of Sydney Planning Scheme Ordinance*.

The proposed development does not fit within a best fit category of uses permitted with consent, however it is acknowledged that certain uses are permissible if deemed ancillary to the predominant use of the site.

It is acknowledged that the Level 11 Lounge is provided for the exclusive use of the accommodating guests of the site and hence permissible as an ancillary use of the site. However, concern is raised in relation to the permissibility of the Level 12 Bar due to the following reasons:

- The proposed use is open to the public, which shifts the primary use to that of a Pub as defined in the Standard Instrument.
- There is an existing unauthorised use of the rooftop for the purposes of a Pub, which caters to the public. This does not carry existing use rights as it is not an ongoing approved use of the site.

Given that the proposed development seeks to utilise the proposed Level 12 Bar space as a Pub open to the public, it is considered that it adopts its own primary status. Given that the focus is to cater for the public rather than the guests of the motel (primary use of the building), it is considered that the proposed use is not ancillary to the primary use of the building, and is therefore wholly pursuant to Clause 7 of the Darling Harbour Development Plan No 1.

In accordance with Section 89E (2) of the *Environmental Planning and Assessment Act 1979*, the minister may not grant development consent if the development is wholly prohibited by an environmental planning instrument – in this case the prohibition of the use in accordance with Clause 7 of the Darling Harbour Development Plan No 1.

Recommendation 12: The use of the Level 12 Bar be restricted for use only by the Four Seasons guests and operation management for access be similar to those procedures for the Level 11 Lounge be adopted.

View Loss/Sharing

The State Significant Development Application is accompanied by a Visual Impact Assessment prepared by GM Urban Design & Architecture Pty Ltd, which states it provides an independent assessment of the potential impacts on views of private residences, including those within our clients' site. Upon review of the Visual Impact Assessment, it has concluded the following:

The Windsor on Kent and Trafalgar will experience a higher level of view impact ranging from moderate to severe. This is largely due to their proximity to the proposal and their direct westerly orientation to Darling Harbour... The mid-level units of Windsor on Kent, represented by selected views from level 18 in this report, are found to be most impacted.

The report further states that the "GMU considers that the likelihood of these affected units' existing views being retained is low based on our review of the current building height controls under the Sydney Local Environmental Plan 2012." The Visual Impact Assessment acknowledges that our clients' site is one that is significantly affected by the proposal and a high level of concern is raised in relation to the conclusions drawn to this proposal. This is discussed later in this section.

In the case of *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*, Senior Commissioner Roseth SC created precedent and Planning Principle for view loss. The Planning Principle established four criteria for considering impact of view loss:

1. Value of views affected in relation to their nature, extent and completeness.
2. How views are obtained and where in the property the views originate.
3. Severity of the impact being negligible minor, moderate, severe or devastating.
4. Reasonableness of the proposal causing the impact. Consideration is to be given to compliance with planning controls and if a better outcome would be achieved with an alternative design or with compliance with the controls.

In the case of our clients' site, the following is concluded:

1. Views are of a high water to land interface value.
2. Views of this interface are seen from Levels 14 and above.
3. The body of water being Cockle Bay is increasingly visible from Level 14 to Level 26, being 95% visible at Level 26.
4. The abovementioned views are obtained from the living rooms of the apartments of the site.

The Visual Impact Assessment accompanying the Development Application considers each of the Criteria of the Planning Principle at each of its pre-determined viewpoints. However it is believed that the assessment provides poor choice in the view points to justify the proposal. In the case of our clients' site, viewpoints are selected at Levels 10, 12, 18, 24 and 26.

Please note that the conclusions of the Visual Impact Assessment are acceptable in large part for selected viewpoints, with the exception of the assessment, and associated recommendations at the end of the report, for the following units:

- Level 18 Northwest Apartment
- Level 18 West Apartment

The level of impact, being a view loss to over 95% of Cockle Bay, would be more akin to a devastating impact, with the recommendations of the report contributing nil to the mitigation of view loss.

Notwithstanding the above, views of a high value are gained from all apartments from Level 14 and above. Given a conclusion of a "Significant-Severe" impact (although our assessment is of devastating impact) from the proposed development on Level 18, this impact is not reduced to a "Nil" impact until a Level 26 apartment. It is therefore safe to conclude, that all apartments from Levels 14 through to Level 17 will have devastating impact from view loss, whilst view loss from Levels 19 through Level 24 experience impact from severe to minor impact, respectively.

To illustrate above point, please see the below Figure 2 demonstrating our assessment of impact of the proposed development:

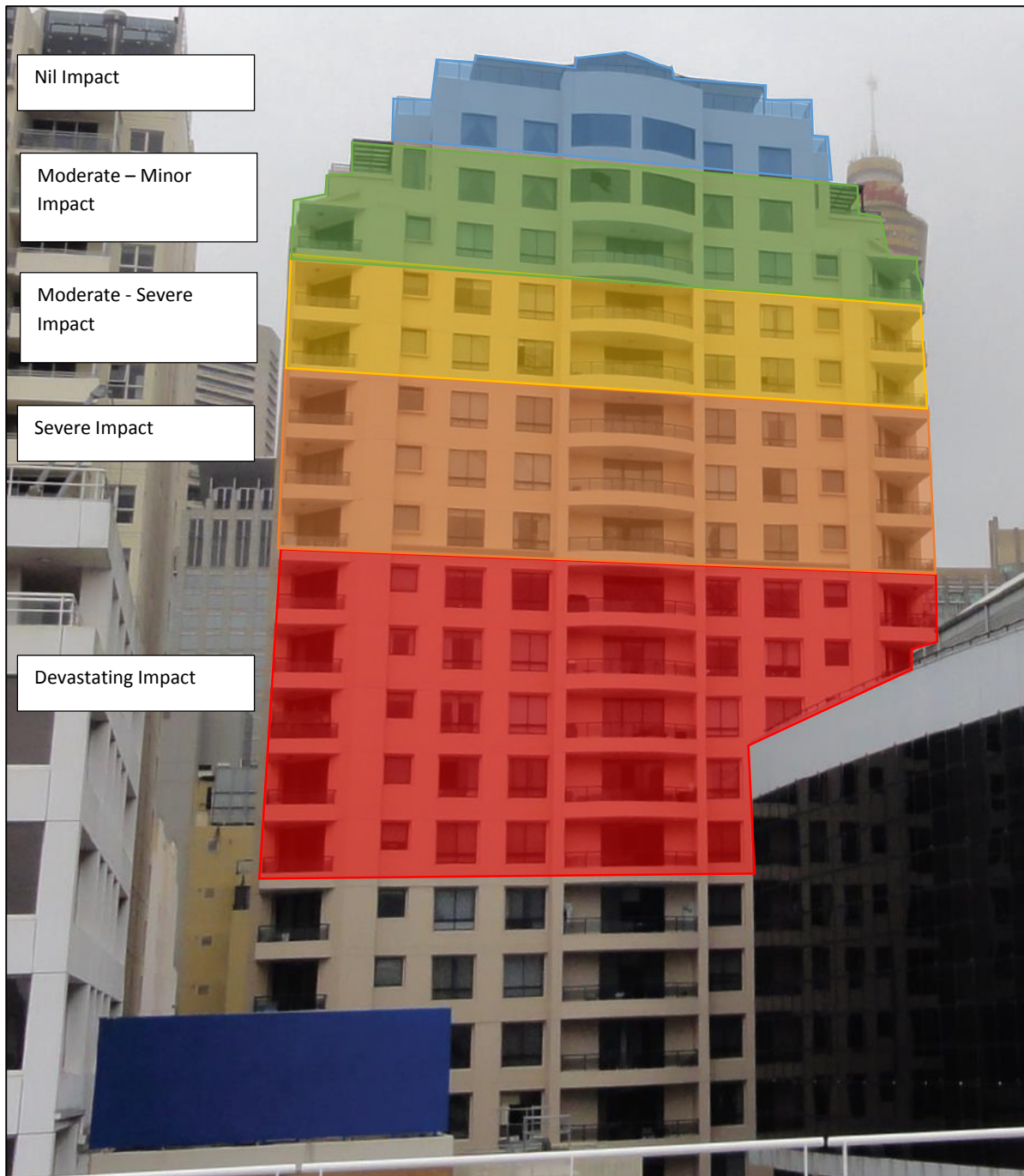


Figure 2 - View Loss Impact Analysis

In raw figures, of the 35 apartments on the western façade, 15 dwellings (43%) experience a “Devastating” impact, 9 dwellings (26%) experience a “Severe” Impact, 6 dwellings (17%) experience a “Moderate-Severe” impact, 4 dwellings (11%) experience a “Moderate-Minor” impact, whilst only one unit receives nil impact from this proposal.

With due consideration to the above, the fourth criteria of the Planning Principle provides a subjective assessment of the potential impact of the proposed development. The Visual Impact Assessment states that all impacts are acceptable, however the full scale of the impact has not been fully assessed, particularly to those apartments between Levels 14 to 24. The fourth criteria considers an alternatives analysis to achieve a better outcome. With reference to both the Visual

Impact Assessment and the Environmental Impact Statement, neither of these consider any alternative proposal to mitigate this impact, with the sole purpose of the development being to exploit the views available to it with no consideration to the surrounding sites. To elaborate on this point, the Environmental Impact Statement states:

“The desire to formalise the rooftop bar [will]... maximise and take advantage of, the excellent site attributes and views available from the site... No alternative options were considered for the proposed new use.”

This lacks consideration to the Planning Principle set by *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*, and is insufficient in its justification of why no alternatives assessment was carried out, especially given this highly contentious issue. Furthermore, it lacks its obligation of assessment pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979*.

- Recommendation 13: Additional visual impact assessment of all apartments with potential impact being of a “moderate” impact or greater.
- Recommendation 14: Further justification for lack of alternatives assessment. Should this not be justified, additional assessment of alternatives should be required.
- Recommendation 15: Further consideration be given to the proposed development being provided within the existing building envelope (re-allocating the lost rooms to the southern tower), or relocation of the proposal to the central tower.

Lighting

Concern is raised in relation to the potential for light spill from directional lights installed within the proposed development. Given the predominant hours of operation occurring after dawn, this has potential to cause adverse impact into the western elevation bedrooms of our clients site.

- Recommendation 16: Relevant conditions of consent requiring a detailed lighting assessment prior to construction, to mitigate unnecessary adverse light spill onto the surrounding development.

RECOMMENDATIONS

The table below provides a summary of the recommendations outlined in this submission for the proposed State Significant Development Application:

- Recommendation 1:** The Acoustic Assessment prepared by Acoustic Studio be revised to include assessment of potential construction noise impacts on affected receivers. This is to include cumulative impact of the construction for the southern tower.
- Recommendation 2:** Restriction on machinery and equipment to be utilised during the course of construction to eliminate potential for offensive and obtrusive noise to receivers.
- Recommendation 3:** Community Consultation Plan is required prior to the commencement of construction.
- Recommendation 4:** Community Consultation is required prior to any night works and any activity that may give rise to potentially offensive or obtrusive noise.
- Recommendation 5:** Relevant conditions of development consent to restrict all construction work to be carried out during the following hours:
- | | |
|---------------------------------------|--------------|
| Monday to Friday | 7 am to 6 pm |
| Saturday | 8 am to 1 pm |
| No work on Sundays or public holidays | |
- Where construction works are required outside of these hours, relevant community consultation and approvals are sought prior to commencing the activity.
- Recommendation 6:** The Operational Management Plan is amended for the purposes of consistency.
- Recommendation 7:** Operation of the Level 11 Lounge is restricted to the hours of 6:00am to 12:00am.
- Recommendation 8:** The operational roof of the Level 12 Bar is to be closed between the hours of 12:00am to 7:00am daily.
- Recommendation 9:** Acoustic Assessment be revised to consider the cumulative impacts of the background sound levels and patrons. This assessment should be for the full 24 hour period as proposed.
- Recommendation 10:** Condition of Consent imposed to ensure that the background music is not to exceed 68 dB(A) at any time.
- Recommendation 11:** Development consent for the proposed use remain valid 12 months, being a trial period for the proposed use.

- Recommendation 12:** The use of the Level 12 Bar be restricted for use only by the Four Seasons guests and operation management for access be similar to those procedures for the Level 11 Lounge be adopted.
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- Recommendation 14:** Further justification for lack of alternatives assessment. Should this not be justified, additional assessment of alternatives should be required.
- Recommendation 15:** Further consideration be given to the proposed development being provided within the existing building envelope (re-allocating the lost rooms to the southern tower), or relocation of the proposal to the central tower.
- Recommendation 16:** Relevant conditions of consent requiring a detailed lighting assessment prior to construction, to mitigate unnecessary adverse light spill onto the surrounding development.

DEVELOPMENT IN THE PUBLIC INTEREST

Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979, provides that the consent authority must consider if the proposed development is in the public interest. It is the opinion that the proposal, as it is currently proposed is not in the public interest. This opinion is formed pursuant to the matters outlined within this submission. All matters carry equal merit in the assessment of the impacts of the proposed development to its natural and built environment, social and economic impacts.

Upon review and assessment of this submission, it would be appreciated if the assessment officer advises of its proposed methodology to resolve these matters. Furthermore, it would be appreciated if the amended proposal is presented for an additional period of consultation, if this so happens to occur.

CONCLUSION

DB consulting has been engaged by the strata executive committee of 365 Kent Street, Sydney for the purposes of assessing the potential impacts of State Significant Development Application SSD 7014 on their site.

The proposed development has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the relevant Environmental Planning Policies, Strategies, Plans, and other statutory policies. It has been concluded that the proposed development is not in the public interest given the following key issues raised within this submission:

- Acoustic Impact – Construction
- Acoustic Impact – Ongoing
- Land Use and Permissibility
- View Loss/Sharing

This submission provides a number of recommendations for the purposes of addressing its failure to mitigate impact the proposed development on the natural and built environment, social and economic impacts.

Our clients wish to be notified of the outcome of the assessment of this submission and would embrace the opportunity to further participate in addition community consultation of a duly considered development.