

# LEE WHARF

## NEWCASTLE

19 June 2009

The Director – General  
NSW Department of Planning  
GPO Box 39  
Sydney NSW 2001

Attention: Development Assessment Team

To whom it may concern,

**RE: Proposed Amendment to Major Projects No. 05-0007**  
**Property: Lee Wharf C Building, 9 Honeysuckle Drive, Newcastle**

This submission has been prepared to address the concerns of the Department of Planning regarding the use of the outdoor deck to Lee Wharf C Building the subject of Major Project No. 05-0007 and seeks to amend the consent to permit the use of the deck in accordance with Condition A6(1).

### **BACKGROUND**

On 9 July 2008, the Minister for Planning approved Major Project No. 05-0007. The approved development is formally described as follows:

- *adaptive reuse to facilitate the use of a hotel incorporating a restaurant, including fit-out, outdoor deck areas, and associated signage;*
- *the creation of open space to be named Worth Park;*
- *demolition of the remnant wharf substructure and construction of a new seawall;*
- *extension of the foreshore promenade and public forecourt;*
- *associated drainage works; and*
- *stratum subdivision to reflect the configuration of the proposed works.*

The approved development generally comprise the adaptive re-use and fit-out of Lee Wharf Building C to facilitate its use as a hotel incorporating a restaurant, and the carrying out of public asset works associated with Stage 3 of the Lee Wharf Development, located in Honeysuckle Drive, Newcastle.

The Conditions of approval are set out in Schedule 2 of the Notice of Determination, and include Condition A6:

#### ***A6 Hours of Operation***

(1) *The hours of operation of the hotel and restaurant are as follows:*

- *Monday to Thursday: 10.00 AM – 11.00 PM*
- *Friday and Saturday: 10.00 AM – 12.00 AM*
- *Sunday 10.00 AM – 10.00 PM*

- (2) *The outdoor deck area is to operate between the hours of 10:00 AM and 10.00 PM, seven (7) days a week. No patrons in this area after 10:00 PM.*
- (3) *A maximum of 2 special events per calendar year are permitted at which time the hotel and restaurant use may be extended until 1.00PM on a public holiday, night preceding a public holiday or on a Friday or Saturday night. During special events, use of the outdoor deck area must cease by 10.00 PM. Any additional events to this area to be subject to a separate approval by Newcastle City Council*

We note condition A(2) and A(3) which restrict the use of the deck after 10pm (including special events).

Lee Wharf Developments have consulted with the Department of Planning on the 19 May 2009 and 4 June 2009 regarding the use of the deck. In addition LWD commissioned Renzo Tonin Associates to undertake a peer review of previous reports and present their findings to the Department of Planning.

As a result of this consultation and evidence produced by Renzo Tonin Associates we submit the proposed amendment to the Department of Planning for their consideration.

## **THE PROPOSED MODIFICATION**

The 1.5m and 1.8m acoustic screen approved pursuant to Reverb Acoustics Noise Impact Assessment Report dated December 2007 is proposed to be modified to 4.27m from deck level (4.95m from ground level) as illustrated in the Architectural drawings prepared by EJE Architects dated 15 June 2009. The increase in height of the approved screen will attenuate noise from the use of the deck in the extended hours from 10.00PM to midnight.

The proposed modification also comprises the deletion of Condition A6(2) and amendment to A2, A3, A6(3), A7 and B3 on the basis that the conditions are unnecessary and require amendment to reflect the proposed acoustic screen and recommendations of Renzo Tonin Associates.

It is also proposed to introduce new Conditions G5 and G6 to ensure the performance of the proposed acoustic screen and continued compliance with the noise criteria.

The following documents are submitted in support of this application to modify the approved acoustic screen and conditions of consent:

- Architectural Drawings dated 15 June 2009 prepared by EJE Architects;
- Noise Impact Assessment on Outdoor Terrace dated 19 June 2009 prepared by Renzo Tonin Associates; and
- Heritage Impact Statement Addendum dated 17 June 2009 prepared by EJE Architects.

## ASSESSMENT

### Acoustic Screen

The use of the deck to 12.00 AM is vital to the commercial viability of the approved use and restriction on the use of the deck is unnecessary because, as demonstrated in this submission, noise can be suitably attenuated.

In their assessment of MP05\_0007 MOD 1 the Department of Planning stated that:

*On review it has not been satisfactorily justified to the Department that an extension to the trading hours would not result in a negative impact on the amenity of nearby residential properties. By extending the operational hours of the outdoor deck area as well as removing the limit on the number of patrons, a real risk is posed in terms of exceeding reasonable noise levels.*

To remove any doubt Renzo Tonin Associates were commissioned by LWD to undertake a detailed noise assessment of the proposed use of the deck from 10.00PM to midnight and confirm the noise criteria applicable to the land and use. In addition, new noise measurements were conducted in May 2009 to supplement the background noise levels originally measured in May 2004.

In their Noise Impact Assessment on Outdoor Terrace, Renzo Tonin Associates established that the applicable noise criteria would be enforced by the NSW Office of Liquor, Gaming and Racing (which is stricter than those imposed by the Department of Environment and Climate Change) and are set at background noise + 5dB. Noise levels received at surrounding residential properties can therefore not exceed the criteria. Renzo Tonin Associates has concluded in their report that, having reviewed the background noise levels for May 2009, if the approved acoustic wall was increased in height to 4.27m from the deck level then:

*It is evident from the foregoing analysis that noise levels from use of the outside deck in the extended hours will comply with the nominated OLGR and DECC criteria and will therefore be acceptable and will not cause unacceptable noise impacts at any residential receiver.*

*The Department of Planning should therefore be satisfied that [based on state-of-the-art computer modeling and applied conservatism] the forecast noise levels will be met.*

Notwithstanding that the worst case scenario has been accounted for (ie. a max 380 patrons has been modeled) it should be noted that considerable conservatism has been applied to Renzo Tonin Associates assessment where in reality Laundry Group (the leasee) has designed a high quality, spacious fit-out for an 'upmarket' and mature clientele including lounge type furniture, feature works and decoration and corridors for movement more. . The fit-out of this establishment will therefore result in potentially half the predicted 1 patron per m<sup>2</sup> which has been accounted for as this use is likely to attract clientele more akin to a restaurant. The Department of Planning should therefore be further assured that residential amenity and acoustic privacy will be protected and the use of the deck from 10.00PM to midnight is acceptable.

The acoustic wall illustrated in EJE Architects drawings has also been designed to ensure it is sympathetic to the heritage significance of the site and buildings and that public access is maintained.

EJE concludes in their Heritage Impact Statement Addendum that:

*...it is considered that the screen will have a minimal impact on heritage significance of the site. Indeed this proposal has a positive impact upon the heritage of the site by opening up public access and providing site interpretation of a heritage item of state significance.*

As demonstrated in the accompanying reports, the increased height of the acoustic screen will suitably attenuate noise from the use of the deck, protecting the acoustic amenity of surrounding residential properties. The structure is also designed such that there will not be any adverse impact on the heritage significance of the site. The proposed structure reflects the height, proportions and materials of an existing form constructed within the Lee Wharf promenade complementing the urban character of the area.

In the absence of any adverse impacts and considering all environmental factors the use is therefore acceptable and therefore we see no reason why the restriction on the use of the deck to midnight should not be removed.

## **Noise Monitoring**

During consultation with the Department of Planning it was suggested that a further level of protection is afforded to residents by way of a condition to ensure that noise criteria were being met post commencement. Renzo Tonin Associates has therefore recommended two new conditions of consent that confirm the criteria to be met by the development and specify an additional noise assessment to be undertaken six months after the commencement of the use.

These conditions will ensure the performance of the proposed acoustic screen and once confirmed by an acoustic consultant will ensure longevity of the acoustic amenity of adjoining residential properties.

## **CONCLUSION**

In conclusion, we request that the development consent is amended in the following manner (deletion shown ~~striketrough~~ and additions shown in **bold**):

### ***A2 Development in Accordance with Plans***

*The development will be undertaken in accordance with the Environmental Assessment dated September 2007 prepared by James Lovell and Associates, Subsequent Preferred Project Report dated April 2008 prepared by Caverstock Group Pty Ltd and additional information received in May 2008 including all Appendices **and additional information received in June 2009 including all Appendices** and the following drawings prepared by Altis Architecture, ~~and~~ **Occulus and EJE Architecture.***

<i>Architectural (or Design) Drawings prepared by Altis Architecture and Occulus and EJE Architecture</i>			
<i>Drawing No</i>	<i>Revision</i>	<i>Name of Plan</i>	<i>Date</i>
A02	4	Proposed Ground Floor Plan	14.02.08
A03	2	Mezzanine Plan	14.02.08
A04	2	North & South Elevations	14/02/08
A05	2	East & West Elevations	14.02.08
A06	C	Proposed Ground Floor Plan – Furniture + Interior Features	Dec 2007
A07	A	Proposed Ground Floor plan – Furniture + Interior Features	Dec 2007
A08	-	North & South Materials and Finishes Board	06/12/07
A09	-	East & West Materials and Finishes Board	-
DA-L07-1		Landscape Concept Plan	31 July 2007
<b>A01</b>	-	<b>Part Floor Plan and Elevation</b>	<b>15 June '09</b>
<b>A02</b>	-	<b>Floor Plan and North Elevation</b>	<b>15 June '09</b>
<b>A03</b>	-	<b>Roof Plan and South Elevation</b>	<b>15 June '09</b>
<b>A04</b>	-	<b>View Along Concourse</b>	<b>15 June '09</b>
<b>A05</b>	-	<b>Aerial View</b>	<b>15 June '09</b>
<b>A06</b>	-	<b>View from Concourse</b>	<b>15 June '09</b>
<b>A07</b>	-	<b>View from North East</b>	<b>15 June '09</b>

### **A3 Development in Accordance with Documents**

*The development will be undertaken in accordance with the following documents:*

#### **[EXTRACT]**

...

- (2) *Architectural Plans prepared by Altis Architecture, various dates, and Architectural drawings prepared by EJE Architecture dated 15 June 2009*

...

- (5) *Revised Statement of Heritage Impact prepared by EJE Heritage dated May 2007 and Heritage Impact Statement Addendum prepared by EJE Heritage dated 17 June 2009.*

...

- (7) *Noise Impact Assessment prepared by Reverb Acoustics dated December 2007 the Noise Impact Assessment on Outdoor Terrace prepared by Renzo Tonin Associated dated 19 June 2009,*

...

### **A6 Hours of Operation**

- (1) *The hours of operation of the hotel and restaurant are as follows:*

- *Monday to Thursday: 10.00 AM – 11.00 PM*
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### **A7 Acoustic Treatment**

Acoustic measures, as recommended in the Noise Impact Assessment report prepared by Reverb Acoustics and **those superseded by the recommendations of the Noise Impact Assessment of Outdoor Terrace prepared by Renzo Tonin Associated dated 19 June 2009**, are to be implemented and details submitted to the Department prior to commencement of works.

### **B3 Noise Attenuation Measure**

Prior to the issue of a Construction Certificate, the Proponent shall submit to the satisfaction of the Certifying Authority, drawings and documentation demonstrating that the construction and fit-out of the building incorporates the recommendations of the Noise Impact Assessment prepared by Reverb Acoustics, December 2007 and **those superseded by the recommendations of the Noise Impact Assessment on Outdoor Terrace prepared by Renzo Tonin Associated dated 19 June 2009.**

In addition, with reference to the requirements of the Department of Planning in the event that there is an exceedance of the noise criteria, we agree to the following condition being imposed in order to give the Department of Planning greater certainty and control. A new condition should be inserted as follows:

### **G5 Noise from Use of the Premises**

The LA10 noise level emitted from the premises shall not exceed the LA90 background noise level (measured in the absence of noise from the premises) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7:00am and 12:00 midnight at the boundary of any affected residence. For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the premises.

### **G6 Noise Compliance Certification**

Within 6 months of commencement of operation, the Licensee shall engage an accredited acoustic engineer (who shall be a member of the Association of Australian Acoustical Consultants) to measure noise emitted from the premises in accordance with Condition G5 and to

**prepare an acoustic report setting out the results obtained. Noise levels shall be measured between the hours of 10pm and midnight on a day when patronage on the outdoor deck is at or close to its maximum as evidenced by historical records kept by the Licensee. The measurement procedures specified in the Industrial Noise Policy issued by the Department of Environment and Climate Change shall apply. The Licensee shall provide a copy of the acoustic report to the Consent Authority upon request.**

**In the event that noise levels exceed the prescribed limits of Condition G5, the Licensee shall as soon as practical implement any reasonable recommendations made by the acoustic engineer to reduce noise levels to the prescribed limits. Within 1 month of implementation of those recommendations, the acoustic engineer shall undertake a supplementary noise measurement as specified in the previous paragraph to demonstrate compliance with Condition G5 and a final acoustic report shall be provided to the Consent Authority upon request.**

I trust this submission is satisfactory for your purposes, however should you require any further information or clarification please do not hesitate to contact me on 0414 557 531 or by email at [bmitchell@rio-group.com.au](mailto:bmitchell@rio-group.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B. Mitchell', written in a cursive style.

Briony Mitchell  
Planning & Project Manager