

## ASSESSMENT REPORT

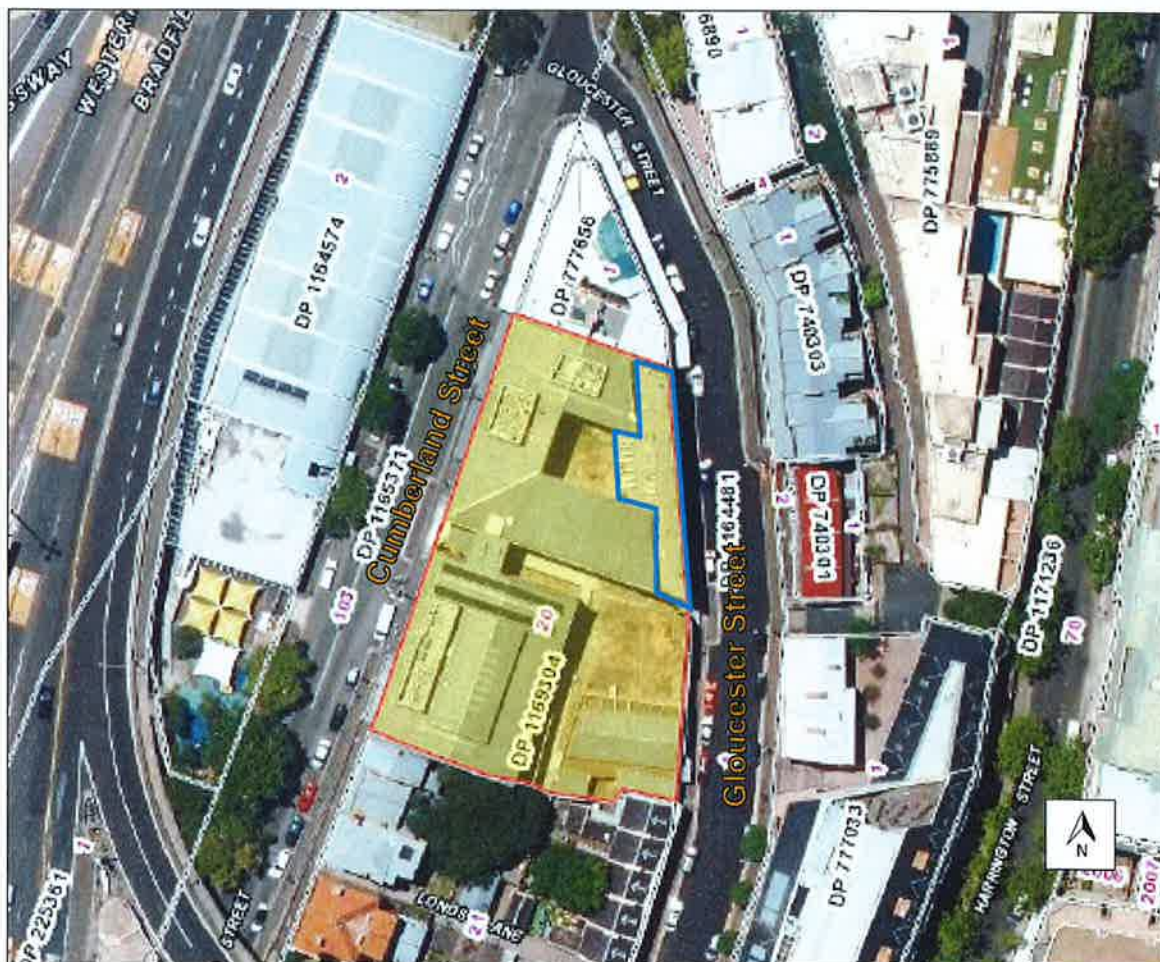
### SYDNEY HARBOUR YHA, THE ROCKS MP 06\_0265 MOD 3

#### 1. BACKGROUND

This report is an assessment of a request to modify the Project Approval (MP 06\_0265) for the Sydney Harbour YHA in The Rocks in the City of Sydney local government area. The request has been lodged by YHA Ltd (the proponent) pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification request seeks approval to extend the hours of operation of the Level 3 rooftop terrace fronting Gloucester Street to allow it to be used from 5:00 am to 11:00 pm, seven days a week.

#### 2. SUBJECT SITE

The subject site is located on the western side of Sydney Cove, between Cumberland and Gloucester Streets at 106-128 Cumberland Street, The Rocks. The site contains the Sydney Harbour YHA, which is a youth hostel building of four storeys in height with a rooftop terrace at Level 3 fronting Gloucester Street (see **Figure 1**)



**Figure 1:** Site Location (roof top terrace outlined in blue)



### 3. APPROVAL HISTORY

On 23 January 2008, Project Application (MP06\_0265) was approved by the then Minister for Planning for the construction of a 4 storey youth hostel containing 106 ensuite bedrooms and 354 beds, ground floor retail floor space, and a single storey archaeological centre. The approval included:

- Condition G3 which allows the use of the rooftop terrace at Level 3 until 10:00 pm at night, seven days a week, except for up to six special events per year, which are allowed to operate until later; and
- A Plan of Management approved under Condition A3 which provides that the terrace is to be closed between 10.00 pm and 7.00 am the following day, seven days a week.

The Project Approval (MP 06\_0265) has been modified on two occasions:

MOD	Modification	Date Approved
1	<ul style="list-style-type: none"><li>• change the height and configuration of the rooftop plant</li></ul>	26 April 2009
2	<ul style="list-style-type: none"><li>• construct a pergola and increase the height of the balustrade by 200mm at the Level 3 rooftop terrace</li></ul>	22 November 2011

### 4. PROPOSED MODIFICATION

On 19 May 2015, the proponent lodged a Section 75W modification application (MP 06\_0265 MOD 3) seeking approval to extend the hours of operation of the Level 3 rooftop terrace fronting Gloucester Street by one hour at night time (from 10:00 pm to 11:00 pm) and two hours in the morning (from 5:00 am to 7:00 am) seven days a week.

There is no variation sought to the use of the rooftop terrace for special events, which is covered by a separate condition.

The proponent advises that the modification is sought to allow guests the opportunity to view the sunrise in the morning, and utilise the terrace until later in the evening for passive recreation activities and social interaction.

Figures 2 and 3 provide an aerial view and photo view of the rooftop terrace.



**Figure 2** – Aerial view of site showing the location of the terrace at Level 3 (Source: Nearmap)



**Figure 3** – Photo view of the rooftop terrace at Level 3

## **5. STATUTORY CONSIDERATION**

### **5.1 Section 75W**

The project was originally approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Although Part 3A was repealed on 11 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former Section 75W of the Act.

The Department is satisfied that the proposed changes are within the scope of Section 75W of the EP&A Act, and do not constitute a new application.

### **5.2 Approval Authority**

The Minister for Planning is the approval authority for the application. However, the Acting Director, Regional Assessments may determine the application under delegation as:

- Council has not made an objection;
- a political donation disclosure statement has not been made for this application; and
- no public submissions were received objecting to the proposed modification.

## **6. CONSULTATION**

The Department made the modification application publicly available on its website and notified surrounding properties by letter, and consulted with City of Sydney Council (Council) and SHFA about the proposed modification.

**Council** raises no objection to the proposed modification, noting that consideration should be given to:

- a 12 month trial period to enable the opportunity to review management of the rooftop



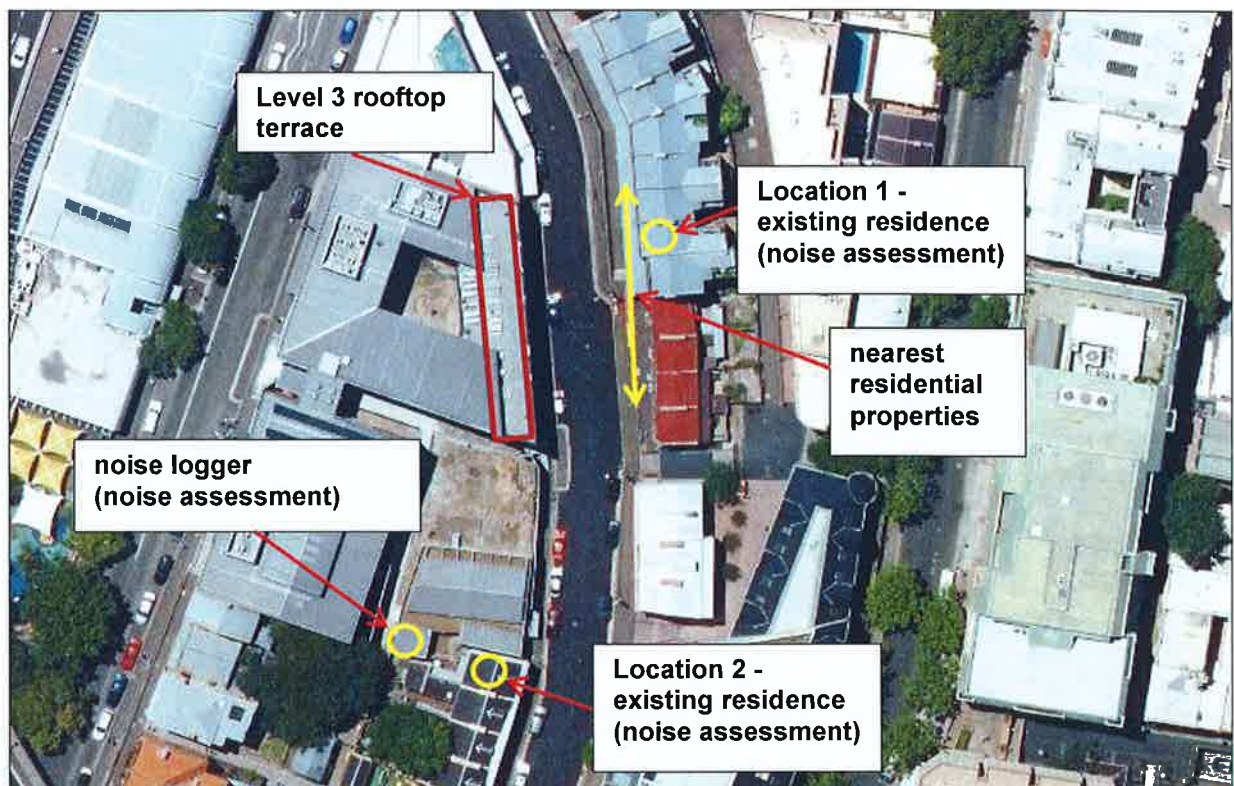
- terrace, which is in accordance with its Late Night Trading Development Control Plan; and
- conditions in relation to moving guests on before 11:00 pm, glass removal and cleaning times.

**SHFA** raises no objection to the proposed modification.

No submissions were received from the public.

## 7. ASSESSMENT

The Department considers the key assessment issue associated with the proposed extension to the hours of operation of the rooftop terrace is the potential noise impact on nearby residential development. The nearest residential properties are located approximately 18 metres to the east in Gloucester Street directly opposite the site. Those premises are two to three storeys high and below the level of the rooftop terrace. The nearest sensitive receivers are shown in **Figure 4** below.



**Figure 4** – Location of nearest residential receivers and noise logger

The proponent has advised that typically the number of people on the rooftop terrace at any one time is significantly lower than the maximum capacity of 200 people, as it is mostly used by guests staying at the hostel for social interaction, and passive recreation activities such as alfresco dining, taking photographs and reading. It is only special events such as New Year's Eve when the rooftop terrace reaches maximum capacity. Whilst the rooftop terrace is not a licensed area, guests can consume BYO alcohol.

The proponent provided a noise assessment with the application, which identified:

- allowable noise levels at nearby residences in order to comply with the requirements of the Office of Liquor, Gaming and Racing and the City of Sydney; and
- predicted noise levels during the extended hours.

The Department has assessed the potential noise impacts associated with the extended night time and morning periods below.

### *Night time noise*

The noise assessment indicates the use of the rooftop terrace by 200 people (worst case scenario), between 10.00 pm and 11:00 pm is capable of complying with the relevant noise criteria (57dBA) for the nearest residential properties, subject to management controls in relation to capacity; background music; and patron management. Further, as management of the terrace would be a key factor in determining whether there would be any adverse noise impacts to the surrounding area, the proponent submitted a Plan of Management (POM) specifically in relation to the use of the rooftop terrace at Level 3, to supplement the approved Sydney YHA Plan of Management. A key aspect of the POM includes the requirement for a manager to be on duty at all times to monitor the number of patrons, music levels, any noisy behaviour and closing times.

In addition to the above requirements, Council have suggested that patrons be moved off the terrace before closing time and any bottles and glasses are cleared prior to 11:00 pm, and no cleaning before 7:00 am the following morning. Further, Council suggest that the proposed extension to the operating hours be subject to a trial period for 12 months to enable the assessment of any complaints, and the performance of the use of the terrace against the POM. This approach is consistent with the provisions of its Late Night Trading Development Control Plan (DCP) 2007, although the Department notes that the DCP does not apply to the assessment of this application, or this part of the city.

The Department considers that potential noise impacts to the surrounding area can be appropriately mitigated and managed subject to conditions requiring adherence to recommendations of the acoustic report, the POM, and the recommendations of Council with respect to patron departure and cleaning times. A condition incorporating these requirements is therefore recommended in the modified consent.

However, the Department does not consider it necessary to apply a one year trial period to the extended night time operating hours. The Department notes that:

- the premises has been operating since 2009 and the proponent advises that since that time it has received no noise complaints from any surrounding neighbours;
- no submissions have been received from surrounding neighbours, the City of Sydney, or SHFA evidencing noise issues from the use of the premises over the last eight years;
- the proponent does not propose to change the way the terrace operates, and only seeks to extend the night time operating hours by one hour;
- the terrace is not a licenced premises, is only for the use of hostel guests, and therefore does not raise the same noise issues that would be typical of a licenced restaurant or bar open to the public; and
- the proposed operating hours are consistent with the approved operating hours of the outdoor terrace at the neighbouring Australian Hotel, which has approval to operate until 11.00 pm.

Further, the proposed conditions discussed above are considered to provide sufficient measures to appropriately mitigate and manage noise emissions from the use of the terrace.

### *Morning Noise*

The noise assessment indicates the use of the rooftop terrace between 5.00 am and 7.00am is capable of complying with the relevant noise emission criteria (52dBA), providing that no more than 40 patrons are using the terrace.

The proponent has advised that the use of the terrace in the early morning would be restricted to passive activities such as photography and the POM provides that a manger will be on duty to monitor the use of the terrace.

The Department considers that the use of the terrace at this time can be appropriately managed so that it does not result in sleep disturbance for nearby residential properties, subject to conditions:

- restricting the use to low key activities such as viewing the sunrise and photography and prohibiting cleaning activities;
- restricting patron numbers to a maximum of 40;
- signage advising guests that noisy behaviour is prohibited; and
- requiring compliance with the POM (which includes a duty manager to monitor the use of the terrace) and management protocols to remove noisy patrons.

Conditions to this effect are recommended in the modified approval.

## 8. CONCLUSION

The Department has assessed the modification request and consulted with Council and SHFA and nearby residential properties. The Department's assessment concludes the proposed modification is appropriate on the basis that:

- the noise emitted from the use of the terrace can comply with the relevant noise criteria when predicted at the nearest residences to the site; and
- the POM submitted with the application in conjunction with recommended conditions provides a satisfactory range of measures to manage and minimise noise impacts to the surrounding area.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.

## 9. RECOMMENDATION

It is recommended that the Acting Director, Regional Assessments:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modification under Section 75W, subject to conditions; and
- (c) **sign** the attached notice of modification (**Appendix A**).

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Endorsed by:



Natasha Harras  
Team Leader  
Regional Assessments

Approved by:

 29.7.15

Anthony Witherdin  
Acting Director  
Regional Assessments

## **APPENDIX A: NOTICE OF MODIFICATION**

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The Notice of Modification can be found on the Department's website at the following address:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=06\\_0265](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=06_0265)

## **APPENDIX B: SUPPORTING INFORMATION**

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

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=06\\_0265](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=06_0265)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=06\\_0265](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=06_0265)