



**REPORT TO ACCOMPANY A SECTION 4.55(2)
APPLICATION TO MODIFY THE CONSENT TO
SSD 6513, SO AS TO CONTINUE THE
CURRENT TRIAL PERIOD FOR EXTENDED
TRADING HOURS AT “BARANGAROO HOUSE”
FOR A FURTHER TWO (2) YEARS**

**BUILDING R1,
No. 35 BARANGAROO AVENUE,
BARANGAROO**

**Prepared for
Barangaroo Partnership**

**By
BBC Consulting Planners**

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1. INTRODUCTION

Consent for State Significant Development (“SSD”) Development Application SSD 6513 (“the consent”) was granted by the Department of Planning and Environment (“the Department”) on 25 August 2016 for “Construction of Building R1, Barangaroo South and fitout and use as a pub” at 51A Hickson Road, Barangaroo. Subsequently Building R1 has been constructed and is now known as “Barangaroo House” which has the new address of 35 Barangaroo Avenue. Barangaroo House operates as a licensed hotel (“the Hotel”).

The operating hours of the Hotel approved by the consent are between 7:00am and 11:00pm for internal areas and 7:00am to 10:00pm for outdoor areas, Monday to Sunday, with extended trading permitted between 11:00pm and 12:00 midnight for internal areas and between 10:00pm and 12:00 midnight for outdoor areas for a trial period of one year from “the date of issue of the occupation certificate”. The date of the occupation certificate is 6 December 2017.

The current one year trial period approved pursuant to the consent to SSD 6513 for extended trading hours of the Hotel is therefore due to expire on 7 December 2018.

BBC Consulting Planners have now been requested by Barangaroo Partnership (“the Applicant”) to prepare this report to accompany a Section 4.55(2) application which seeks to continue the current one year trial period (which expires on 6 December 2018) for the extended trading hours of the Hotel between 11:00pm and 12:00 midnight for indoor areas and between 10:00pm and 12:00 midnight for outdoor areas, 7 days a week, for a further 2 years (i.e. until 6 December 2020).

2. THE SITE

2.1 Location

Building R1 is located in Barangaroo South on the western side of Barangaroo Avenue, as shown on **Figure 1**.

2.2 Real Property Description and Ownership

The site comprises Lot 214 in DP 1221076 and is owned by the Barangaroo Delivery Authority (see **Figure 2**).

2.3 Building R1

Building R1, or Barangaroo House as it is now known, comprises a 3-storey food and drink premises in the form of a licensed hotel (or “pub”) operated by the Applicant, the construction, fit-out and use of which was approved by the subject consent (see **Appendix 1**).

Barangaroo House contains two bars and a restaurant: the ground floor comprises the “House Bar”; the first floor comprises the restaurant “Bea”; and the rooftop comprises the “Smoke Bar”.

2.4 Planning History

The consent has been previously modified on three occasions:-

Section 96(1A) modification: SSD 6513 “MOD 1”

“MOD 1” was determined on 28 July 2017 and approved the following modifications to the consent to SSD 6513:-

- installation of 14 retractable awnings on Levels 1 and 2 of the western façade;
- modification to Conditions B5 and F15 to include a reference to the EPA’s Approved Methods for Modelling and Assessment of Air Pollutants in NSW; and
- modifications to Conditions F8 and F9.

Section 96(1A) modification: SSD 6513 “MOD 2”

“MOD 2” was determined on 7 July 2017 and approved the following modifications to the consent to SSD 6513:-

- relocation of the ground level entry door along the eastern elevation;
- alteration of handrails associated with the stairs at ground level along the southern boundary;
- reconfiguration of the services exhaust cladding above the rooftop plant room;

- concealment of plant room door behind a continuous cladding finish;
- revised rooftop plant room cladding; and
- revised handrail at rooftop from a raking to vertical design.

Section 96(1A) modification: SSD 6513 MOD 3

“MOD 3” was determined on 6 November 2017 and approved the following modifications to the consent to SSD 6513:-

- design amendments to the ground floor planter boxes;
- four (4) signage zones at the ground floor level;
- various other minor ground floor design and layout amendments, including:
 - handrails to match existing public domain handrails;
 - change from operable to fixed lazing on the northern façade;
 - relocation of the water meter to the eastern garden bed; and
 - revised external lighting and seating configuration.

3. REQUESTED MODIFICATION TO THE CONSENT, AS MODIFIED

3.1 Overview

The operating hours of Barangaroo House approved by the consent are between 7:00am and 11:00pm for internal areas and 7:00am to 10:00pm for outdoor areas, Monday to Sunday, with extended trading permitted between 11:00pm and 12:00 midnight for internal areas and between 10:00pm and 12:00 midnight for outdoor areas for a trial period of one year from the date of issue of the occupation certificate. The date of the occupation certificate is 6 December 2017.

The current one year trial period approved pursuant to the consent for extended trading hours of the Hotel is therefore due to expire on 7 December 2018.

This Section 4.55(2) application seeks approval for a further 2 year trial period for the extended trading hours.

3.2 Condition A5: Hours of Operation

The purpose of this Section 4.55(2) application is to continue the current 12 month trial period (which expires on 6 December 2018) for the extended trading hours of the Hotel between 11:00pm and 12:00 midnight for indoor areas and between 10:00pm and 12:00 midnight for outdoor areas, 7 days a week, for a further 2 years (i.e. until 6 December 2020).

Condition A5 of the consent (as already modified) states as follows:-

“A5 HOURS OF OPERATION

The hours of operation are regulated as follows:

- (1) The hours of operation must be restricted to between 7am and 11pm for internal areas and 10pm for outdoor areas Mondays to Sundays;*
- (2) Notwithstanding (a) above, the use of the premises may operate between 11pm and 12 midnight for indoor areas and 10pm and 12 midnight for outdoor areas for a trial period of one year from the date of issue of the Occupation Certificate. The Secretary is to be informed in writing of the date of commencement of the trial hours;*
- (3) A modification or development application may be lodged to continue any trial period specified in these conditions no earlier than 120 days before the end of the trial period and no later than 60 days before the end of the trial period. The consideration of a proposed continuation and/or extension of a trial will be based on, among other things, the performance of the operator in relation to the compliance with the development consent conditions, any substantiated complaints received and any views expressed by the NSW Police Force;*

(4) Provided that:

- (a) any application to continue a trial period is lodged no earlier than 120 days before the end of the trial period and no later than 60 days before the end of the trial period; and*
- (b) the applicant provides any additional information that the consent authority reasonably requests to assess the application within 7 days of receipt of that request; and*
- (c) the applicant diligently prosecutes the application and any appeal in respect of the application;*

then the activity the subject of the application for extension may continue until such time as the application is finally determined.”

It is requested that Condition A5 be modified as follows:-

“A5 HOURS OF OPERATION

The hours of operation are regulated as follows:

- (1) The hours of operation must be restricted to between 7am and 11pm for internal areas and 10pm for outdoor areas Mondays to Sundays;*
- (2) Notwithstanding (a) above, the use of the premises may operate between 11pm and 12 midnight for indoor areas and 10pm and 12 midnight for outdoor areas for a trial period of ~~one year from the date of issue of the Occupation Certificate. The Secretary is to be informed in writing of the date of commencement of the trial hours~~ **2 years from the date of this consent;***
- (3) A modification or development application may be lodged to continue any trial period specified in these conditions no earlier than 120 days before the end of the trial period and no later than 60 days before the end of the trial period. The consideration of a proposed continuation and/or extension of a trial will be based on, among other things, the performance of the operator in relation to the compliance with the development consent conditions, any substantiated complaints received and any views expressed by the NSW Police Force;*
- (4) Provided that:*
 - (a) any application to continue a trial period is lodged no earlier than 120 days before the end of the trial period and no later than 60 days before the end of the trial period; and*
 - (b) the applicant provides any additional information that the consent authority reasonably requests to assess the application within 7 days of receipt of that request; and*

(c) the applicant diligently prosecutes the application and any appeal in respect of the application;

then the activity the subject of the application for extension may continue until such time as the application is finally determined.”

Justification for the above requested amendment to Condition A5 is provided in Sections 5 and 6 of this report.

4. RELEVANT PROVISIONS OF SECTION 4.55(2)

Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 states as follows:

“(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that 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 (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.”

In relation to Section 4.55(2)(a) above, the Department can be satisfied that the development as originally approved will still be the same development when modified in accordance with this application. The original approval permits the Hotel to operate from 7:00am to 12:00 midnight, Monday to Sunday. However, the period between 11:00pm and 12:00 midnight for indoor areas and between 10:00pm and 12:00 midnight was approved on a trial basis. This Application only seeks to continue the current trial period for a further two years.

In relation to Section 4.55(1)(b),(c) and (d), the Department may notify the application and consider any submissions made.

Section 4.55(3) of the Environmental Planning and Assessment Act, 1979 states as follows:

- “(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the*

development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

These Section 4.15(1) matters are discussed in Section 6 of this report.

5. CONSIDERATION OF CONDITION A5(3)

5.1 Criteria

Condition A5(3) of the modified consent sets out the criteria to be considered for a continuation or extension of the permitted hours for the trial period. These criteria are addressed below.

5.2 Performance of the operator in relation to the compliance with the development consent conditions

The Applicant has advised that all consent conditions have been complied with consistently during the current trial period.

The Hotel is well-managed at all times in accordance with the approved Plan of Management (see **Appendix 2**).

Condition F9(1) of the consent is entitled “Compliance with the Acoustic Report”, required that within 30 days of the start of operations of the licensed premises, an acoustic compliance test had to be undertaken to demonstrate compliance with the acoustic report identified in Condition F8 of the consent. The report relating to this acoustic compliance test (see **Appendix 4**) demonstrates that the conditions of consent relating to acoustic impacts were being complied with at the time of testing. No changes have been made to the operational aspects of the Hotel which would change the findings of the acoustic compliance test.

5.3 Any substantiated complaints received

The Applicant is not aware of any substantiated complaints having been received in relation to the operational performance of the Hotel.

5.4 Any views expressed by the Police

The views of the Police in relation to this modification application will need to be considered. The Police have raised no concerns with the manager/licencee since the Hotel commenced operations on 6 December 2017.

6. PLANNING ASSESSMENT

6.1 Barangaroo Concept Plan: MP06_0162 MOD 8

Section 4.24(2) of the Environmental Planning and Assessment Act 1979 states as follows:-

“(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.”

No changes are proposed to the approved land use or physical form of the Hotel as part of this modification application. As such, the development remains consistent with the Terms of Approval of the Barangaroo Concept Plan MP06_0162 (as modified).

6.2 Section 4.15(1) Consideration

Section 4.55(3) of the Environmental Planning and Assessment Act, 1979 states that the matters referred to in Section 4.15(1) of the Act, as are of relevance to the development the subject of the application, must be taken into consideration in determining an application for modification of a consent.

These Section 4.15(1) matters are discussed below.

6.2.1 Section 4.15(1)(a): Statutory Planning Considerations

Section 4.15(1)(a) requires the consent authority to take into consideration the following matters:-

“(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (iv) (Repealed)*

that apply to the land to which the development application relates”

In relation to Section 4.15(1)(a)(i) and (ii), relevant matters are addressed in Section 6.1.1 below.

In relation to Section 4.15(1)(a)(iii), there are no development control plans of relevance to this application.

In relation to Section 4.15(1)(a)(iiia), there is no planning agreement pursuant to Section 7.4 of the Act relating to this application.

In relation to Section 4.15(1)(a)(iv), there are no matters arising out of the proposed modifications to the consent which raise compliance issues with relevant regulations.

6.2.1.1 State Environmental Planning Policy (State Significant Precincts) 2005

The site is zoned B4 Mixed Use under the provisions of SEPP (State Significant Precincts) 2005 (see **Figure 4A**).

The objectives of the B4 zone are as follows:-

- “(a) to provide a mixture of compatible land uses,*
- (b) to integrate suitable development in accessible locations so as to maximise public transport patronage and encourage walking and cycling,*
- (c) to encourage a diverse and compatible range of activities through various means, including the following:*
 - (i) commercial and retail development,*
 - (ii) cultural and entertainment facilities,*
 - (iii) tourism, leisure and recreation facilities,*
 - (iv) social, education and health services,*
 - (v) higher density residential development,*
- (d) to incorporate contemporary urban design principles in the design of new buildings and the interpretation of their relationship with the public domain,*
- (e) to implement the principles of energy efficiency, travel demand management and other sustainable development practices as part of the development assessment process,*
- (f) to facilitate the conservation of heritage items,*
- (g) to ensure that the nuisance generated by non-residential development, such as that related to operating hours, noise, loss of privacy, vehicular and pedestrian traffic or other factors, is controlled so as to preserve the quality of life for residents in the area.”*

The proposed continuation of the current extended trading hours of the Hotel is permissible with consent in the B4 zone and is consistent with the above objectives.

No changes are proposed to the approved physical form of the Hotel as part of this application and will therefore not affect the consistency of the development with the maximum height and GFA provisions in SEPP (State Significant Precincts) 2005 (see **Figures 4B and 4C**).

6.2.2 Section 4.15(1)(b): Impacts on the Environment

Section 4.15(1)(b) requires the consent authority to take into consideration the following:-

“(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”

6.2.2.1 Impacts on the natural and built environment

The proposal will have no impact on either the natural or built environment. It is solely for the continuation of the current trial period for extending trading hours for the Hotel (as approved by the original consent).

6.2.2.2 Social and economic impacts in the locality

The social and economic impacts of the proposal will be positive, in that:-

- the employment opportunities provided by the Hotel will be maintained;
- the reasonable expectation of the public will continue to be met (i.e. the expectation that in a vibrant mixed-use precinct, a well-managed and comprehensive licensed premises will stay open until 12:00 midnight, seven days a week);
- the public will continue to be served by a high-quality, food-focussed Hotel in a highly accessible and convenient location, well-served by public transport (including taxis); and
- the night-time economy will be maintained.

6.2.3 Section 4.15(1)(c): Suitability of the Site

Section 4.15(1)(c) requires the consent authority to take into consideration the following:-

“(c) the suitability of the site for the development”

The Hotel comprises a well-managed, safe, highly presentable and highly accessible licensed premises. The site is therefore considered entirely suitable for the proposal.

6.2.4 Section 4.15(1)(d): Submissions Received

Section 4.15(1)(d) requires the consent authority to take into consideration the following:-

“(d) any submissions made in accordance with this Act or the regulations”

Any submissions made when the Section 4.55(2) application is notified for public comment will need to be considered by the Department in the determination of the application.

6.2.5 Section 4.15(1)(e): The Public Interest

Section 4.15(1)(e) requires the consent authority to take into consideration the following:-

“(e) the public interest.”

The continuation of the current trial period for extended trading hours for the Hotel is in the public interest due to the matters outlined above.

7. CONCLUSION

The extended trading hours of Barangaroo House have been demonstrably successful during the current trial period. No issues have been raised by the Police since the commencement of the extended operating hours during this period. The Applicant is also not aware of any substantiated complaints having been received in relation to the Hotel's operation since the issue of the occupation certificate on 6 December 2017.

The Applicant has demonstrated commitment to good management and operation of the Hotel and compliance with all conditions of relevant consents, including those related to acoustic impacts (see **Appendix 3**).

Having regard to the above, the proposed modifications to the consent are considered to be in the public interest and are not likely to give rise to any significant adverse amenity impacts.

As such, it is considered appropriate, warranted and reasonable for extended trading hours of the Hotel to be continued, and for a second trial period to be granted for 2 years.

The modification of the consent for which approval is now sought does not alter the original findings made in relation to SSD 6513 regarding the appropriateness and reasonableness of the proposal when considered in light of the matters listed in Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

The Section 4.55(2) application thus warrants approval.



FIGURES



APPENDICES



APPENDIX 1

Development Consent to SSD 6513



APPENDIX 2

Plan of Management



APPENDIX 3

Acoustic Compliance Report