



***Extension of trial
extended hours of
operation at
Barangaroo House,
Barangaroo***

*State Significant
Development
Modification Assessment
(SSD 6513 MOD 4)*

December 2018

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Glossary

| Abbreviation | Definition |
|-----------------|--|
| AHD | Australian Height Datum |
| APPLICANT | The Barangaroo Partnership |
| BCA | Building Code of Australia |
| BDA | Barangaroo Delivery Authority |
| CIV | Capital Investment Value |
| CIP | Community Involvement Plan |
| Consent | Development Consent |
| Council | City of Sydney Council |
| Department | Department of Planning and Environment |
| DPI | Department of Primary Industries |
| EIS | Environmental Impact Statement |
| EPA | Environment Protection Authority |
| EP&A Act | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation | <i>Environmental Planning and Assessment Regulation 2000</i> |
| EPBC Act | <i>Environment Protection and Biodiversity Conservation Act 1999</i> |
| EPI | Environmental Planning Instrument |
| EPL | Environment Protection Licence |
| ESD | Ecologically Sustainable Development |
| FRNSW | Fire and Rescue NSW |
| LEP | Local Environmental Plan |
| LGA | Local Government Area |
| Minister | Minister for Planning |
| OEH | Office of Environment and Heritage |
| RMS | Roads and Maritime Services |
| RtS | Response to Submissions |
| SEARs | Secretary's Environmental Assessment Requirements |
| Secretary | Secretary of the Department of Planning and Environment |
| SEPP | State Environmental Planning Policy |
| SRD SEPP | <i>State Environmental Planning Policy (State and Regional Development) 2011</i> |
| SSD | State Significant Development |
| SSI | State Significant Infrastructure |



Executive Summary

The Barangaroo Partnership (the Applicant) seeks approval to modify the consent (SSD 6513) granted for the construction, fitout and use of Building R1 (known as Barangaroo House) at Barangaroo South for a pub. The section 4.55(2) modification application seeks to continue the extended trial operation hours, from 11 pm to 12 midnight for indoor areas and from 10 pm to 12 midnight for outdoor areas, for a further two years.

Engagement

The Department publicly exhibited the modification request and sought advice from Council, government agencies and members of the public.

The Department received four submissions from government agencies who reviewed the modification application and made no comments.

One submission was received by a member of the public regarding the potential for noise emanating from Barangaroo to impact residents of Balmain.

City of Sydney Council (Council) did not object to the modification application and confirmed the premises had no history of non-compliance or noise complaints.

Assessment

The key assessment issue for this project is the venue's management performance during the current one-year trial period of extended hours of operation. The potential acoustic impact to residents of Pyrmont and Balmain is also considered.

Summary

The Department considers the modification application to be appropriate as the first trial period has been successful and permitting an additional two years would enable the venue to continue the extended hours of operation within an ongoing compliance management framework.

The Department is also satisfied the premises would continue to be managed effectively in accordance with the Plan of Management.

The Department concludes the modification application is in the public interest and should be approved, subject to conditions.



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1. Introduction

This report is an assessment of an application to modify the State significant development (SSD) approval (SSD 6513) for the construction, fitout and use of Barangaroo House as a pub at Barangaroo South.

The modification application has been lodged by Barangaroo Partnership (the Applicant) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The application seeks approval to continue a trial extension of operating hours (from 11 pm to 12 midnight for indoor areas and from 10 pm to 12 midnight for outdoor areas, seven days) for an additional two years from the date the current trial period expires, being 6 December 2018.

1.1 Background

Barangaroo House, formerly known as Building R1, is located within the City of Sydney local government area (LGA) on the Barangaroo foreshore between Wulugul Walk and Barangaroo Walk. The site is legally described as Lot 214 in DP 1221076 and is owned by the Barangaroo Delivery Authority. Barangaroo House comprises a three storey, licensed pub. Barangaroo House contains two bars and a restaurant. The ground floor comprises the 'House Bar', first floor houses the 'Bea' restaurant and the rooftop area is used for the 'Smoke Bar'. The trial extended hours currently apply to the whole venue. The site is shown in **Figure 1**.

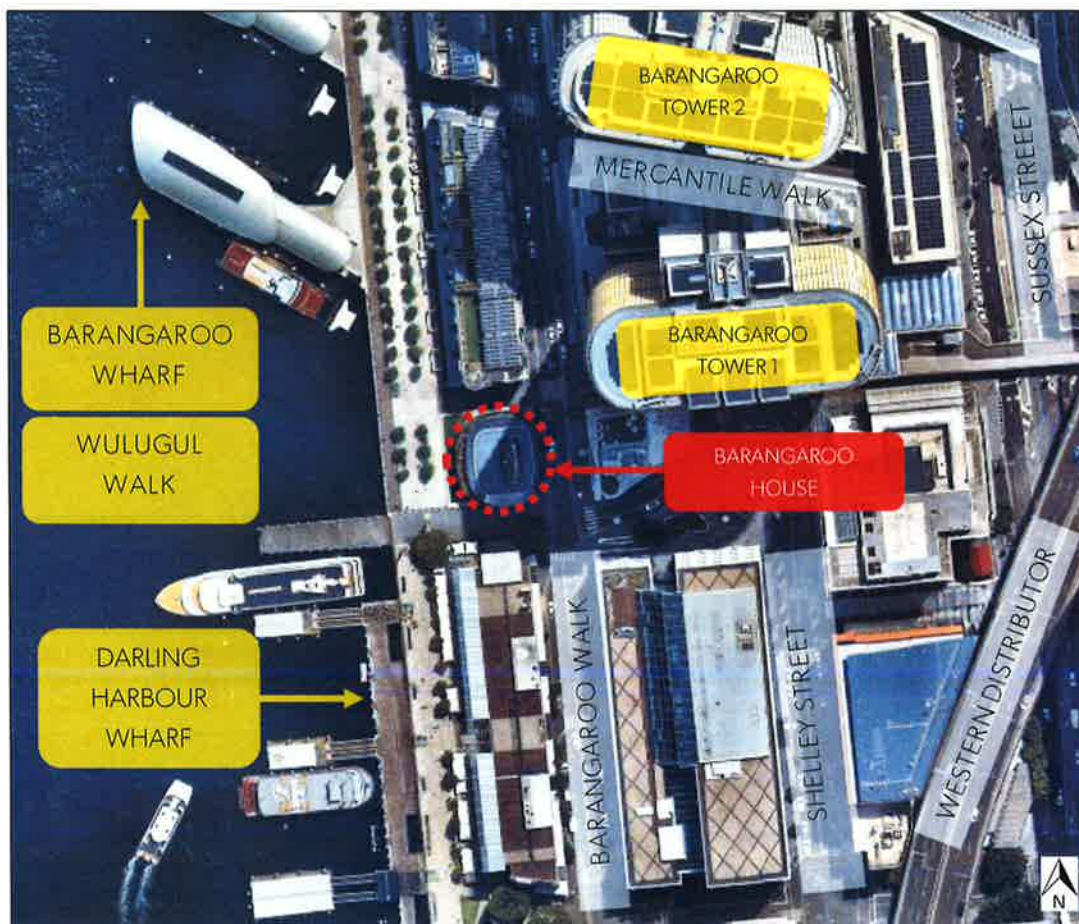


Figure 1 | The site shown outlined in red (Base source: Nearmaps)



Figure 2 | Barangaroo House as viewed from Wulugul Walk (Source: Richard Glover).

1.2 Approval History

On 25 August 2016, the Minister for Planning approved SSD 6513 for the construction, fitout and use of Building R1 as a pub at Barangaroo South.

The consent has been modified three times, as outlined in **Table 1**.

| Mod No. | Summary of Modification | Consent Authority | Mod. Type | Approval Date |
|---------|---|-------------------|-----------|-----------------|
| MOD 1 | Installation of retractable awnings on Level 1 and Level 2 | Minister | 4.55(1A) | 28 July 2017 |
| MOD 2 | Design alterations and additions with new cladding added to rooftop plant | Minister | 4.55(1A) | 7 July 2017 |
| MOD 3 | Design alterations and additions to the ground floor planter boxes | Minister | 4.55(1A) | 6 November 2017 |



2. Proposed Modification

On 10 October 2018, the Applicant lodged a modification application (SSD 6513 MOD 4) seeking approval, under section 4.55(2) of the Environmental Planning & Assessment Act 1979 (EP&A Act), to extend the current twelve-month trial of extended hours of operation for a further two years.

The trial extended hours of operation proposed to be continued are from 10 pm to 12 midnight in external areas and 11 pm to 12 midnight for internal areas.

The one-year trial of extended operating hours commenced from the date the Occupation Certificate was issued, being 6 December 2017. Therefore, the trial period is due to finish on 6 December 2018.

If approved, the trial extension of operating hours would continue for a further two years, finishing on 6 December 2020.



3. Strategic Context

Greater Sydney Regional Plan

The 'Greater Sydney Regional Plan – A Metropolis of Three Cities' sets out the NSW Government's 40-year vision and establishes a 20-year plan to manage growth for Greater Sydney and includes 10 directions. The Plan's key directions are to provide:

- a city supported by infrastructure – infrastructure supporting new developments
- a collaborative city – working together to grow a Greater Sydney
- a city for people – celebrating diversity and putting people at the heart of planning
- housing the city – giving people housing choices
- a city of great places – designing places for people
- a well-connected city – developing a more accessible and walkable city
- jobs and skills for the city – creating conditions for a stronger economy
- a city in its landscape – valuing green spaces and landscape
- an efficient city – using resources wisely
- a resilient city – adapting to a changing world.

The City of Sydney local government area is located within the East Harbour City. The proposed development supports the directions and objectives of the Plan, in particular by:

- ensuring Greater Sydney's harbour central business district is stronger and more competitive
- ensuring Greater Sydney attracts investment and business activity in centres
- ensuring Greater Sydney is a great place that brings people together

Eastern City District Plan

The Greater Sydney Commission's (GSC) role is to coordinate and align planning to shape the future of Metropolitan Sydney. The GSC has prepared District Plans to inform local council and planning and influence the decisions of State agencies. The aim of the District Plans is to connect local planning with the longer-term metropolitan planning for Greater Sydney.

The Eastern City District Plan covers the City of Sydney LGA. The modification application is consistent with the Eastern City District Plan by stimulating the night-time economy within a responsive regulatory environment and helping to grow a more competitive harbour central business district.



4. Statutory Context

4.1 Scope of Modifications

A consent authority may modify the consent if it is satisfied the proposed modification application meets the requirements of section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). An assessment of the proposed modification application against the requirements of section 4.55(2) of the EP&A Act is included in **Table 2**.

Table 2 | Consideration of section 4.55(2) of the EP&A Act

| Section 4.55(2) | Assessment |
|---|--|
| 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. | The modification application would continue the use of Barangaroo House as a pub and would continue the existing trial extended hours of operation for a further two years. Therefore, the Department is satisfied the development is substantially the same development for which consent was originally granted. |
| That consultation has occurred with the relevant Minister, public authority or approval body and an objection has not been received. | The development does not require consultation with any other Minister, public authority or approval body. Notwithstanding this, the Department has consulted the relevant State government authorities, surrounding land owners and the City of Sydney Council in relation to the modification application (refer to Section 5 of this report). |
| The application has been notified in accordance with the regulations. | The modification application has been notified in accordance with the <i>Environmental Planning and Assessment Regulation 2000</i> (refer to Section 5 of this report). |
| Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations. | The Department has considered the submissions received during the exhibition period (refer to Sections 5 and 6 of this report). |
| Consideration of section 4.15(1) of the EP&A Act as are of relevance to the development application and the reasons given by the consent authority for the grant of the consent that is sought to be modified. | The Department has assessed the relevant matters for consideration under section 4.15(1) of the EP&A Act. Refer to Section 6 of this report. |

4.2 Environmental Planning Instruments

The following Environmental Planning Instruments (EPIs) apply to the site:

- State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Infrastructure) 2007
- Sydney Regional Environmental Plan (Sydney Harbour Catchment 2005).

The Department considers the modification application is consistent with the EPIs.

4.3 Consent Authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act.

Minister's delegate as consent authority

Under the Minister's delegation dated 11 October 2017, the Director, Key Sites Assessments, may determine the application as the relevant local council has not made an objection, a political disclosure statement has not been made and there are no submissions in the nature of an objection.

4.4 Objects under the Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.

5. Engagement

5.1 Department's Engagement

In accordance with clause 10 of Schedule 1 of the EP&A Act and clause 118 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), the Department exhibited the application from 1 November 2018 to 14 November 2018 on the Department's website, at the offices of the Department and at the City of Sydney Council offices.

The modification application was advertised in the Central Courier on 31 October 2018. The modification application was also referred to the following government agencies for comment:

- Council
- Ausgrid
- Environment Protection Agency (EPA)
- NSW Police
- Roads and Maritime Service (RMS)
- Sydney Water
- Transport for New South Wales (TfNSW)
- Office of Environment and Heritage (OEH).

5.2 Summary of Submissions

During the exhibition period, the Department received six submissions on the modification application.

Four submissions were received by government agencies, including Sydney Water, EPA, OEH and TfNSW, who reviewed the application and provided no comments.

One submission was received from a member of the public who commented that the potential for noise emanating from the Barangaroo area to impact upon residents of Balmain should be considered.

Council provided a submission confirming they did not object to the application and that there is no history of non-compliance or any complaints relating to Barangaroo House.

5.3 Response to Submissions

The Department placed the public submission and the Council submission on its website and requested the Applicant provide a response to the matters raised. The Department also requested the Applicant clarify the timing of the proposed out of hours trial period and provide landowner's consent.

On 26 November 2018, the Applicant provided a Response to Submissions (RtS) report that addressed the matters raised by the submissions and the Department. The Applicant also provided landowner's consent, a revised Plan of Management (dated December 2017) and an updated Environmental Impact Statement (EIS) report (dated November 2018). The updated Plan of Management and EIS corrected minor errors in the documents and confirmed the two-year continuation of trial extended hours of operation is proposed from 6 December 2018.

6. Assessment

6.1 Section 4.15(1) Matters for consideration

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development. **Table 3** identifies the matters for consideration under section 4.15 of the EP&A Act that apply to the proposed modification.

Table 3 | Consideration of section 4.15(1) of the EP&A Act.

| Section 4.15(1) Matters for consideration | Department's assessment |
|---|--|
| (a)(i) any environmental planning instrument | The modified proposal remains compliant with the relevant legislation as addressed in Section 4 of this report. |
| (a)(ii) any proposed instrument | Not applicable. |
| (a)(iii) any development control plan | Under clause 11 of the SRD SEPP, Development Control Plans (DCPs) do not apply to SSD. However, the Department has considered the relevant provisions of Sydney Development Control Plan 2012 (SDCP 2012). |
| (a)(iia) any planning agreement | Not applicable. |
| (a)(iv) the regulations | The application satisfactorily meets the relevant requirements of the <i>Environmental Planning and Assessment Regulation 2000</i> , including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA) (refer to Section 5 of this report). |
| (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, | The Department considers the likely impacts of the development are acceptable and have been appropriately addressed by recommended conditions (refer to Section 6 of this report). |
| (c) the suitability of the site for the development | The site is suitable for the development as addressed in Section 6 of this report. |
| (d) any submissions | The Department has considered the submissions received (refer to Sections 5 and 6 of this report). |
| (e) the public interest | The Department considers the modified proposal to be in the public interest as it would result in the continued trial extended hours of operation at the venue within an ongoing compliance management framework. |

The Department has considered the Applicant's modification application and the issues raised in submissions in its assessment of the modification request. The Department considers the key issues associated with the proposal to be the venue's management performance and potential acoustic impacts to residents of Pyrmont and Balmain.

6.2 Venue Management Performance

The Department notes any extended trading hours beyond the initial base hours are subject to a trial period. The City of Sydney's late-night trading provisions within the SDCP 2012 require trial periods to be granted for 1 year (first trial), 2 years (second trial) and 5 years (third and subsequent trials). Renewal or extension of trading hours are only continued subject to review, and satisfaction that the premises has demonstrated good management performance and compliance with the plan of management.

In its submission, Council confirmed there were no records of any complaints from members of the public or local stakeholders during the 12 month trial period. The Department's compliance branch has also confirmed no compliance action had been taken in regard to Barangaroo House. Council did not raise any objection to the renewal of the extended operating hours for a further two-year trial period subject to ongoing performance and compliance monitoring.

The Department therefore concludes the current one-year trial period has been successful and the Applicant has demonstrated sound management and compliance practice. The Department also supports Council's requirement for email notification to liquor@cityofsydney.nsw.gov.au as per Condition F1A of SSD 6513.

6.3 Acoustic Impact

The noise impact arising from operating during the extended hours has previously been assessed in an acoustic assessment provided by the Applicant. The assessment confirms that the venue has installed, tested and calibrated noise limiters such that amplified music will comply with Condition F6 of SSD 6513.

A public submission was received raising concern that noise from the Barangaroo area could be heard from properties in Balmain on Melbourne Cup Day, 2018. The acoustic assessment provided by the Applicant measured the noise impact of Barangaroo House on Sydney Wharf Apartments, located across the harbour at Pyrmont Bay. Sydney Wharf Apartments are located approximately 250 m to the east of Barangaroo House while the closest receivers in Balmain are located approximately 840 m to the north west of the site (**Figure 3**). The noise assessment concluded the noise contribution of Barangaroo House is less than the limits stipulated in SSD 6513. The Department therefore considers the acoustic impact to Balmain is negligible and is satisfied the continued acoustic impact generated by Barangaroo House would not have any adverse noise impacts on the Sydney Wharf Apartments or properties in Balmain. The Department concludes the two-year extension of extended hours of operation would enable the ongoing operation of the venue within a compliance management framework.

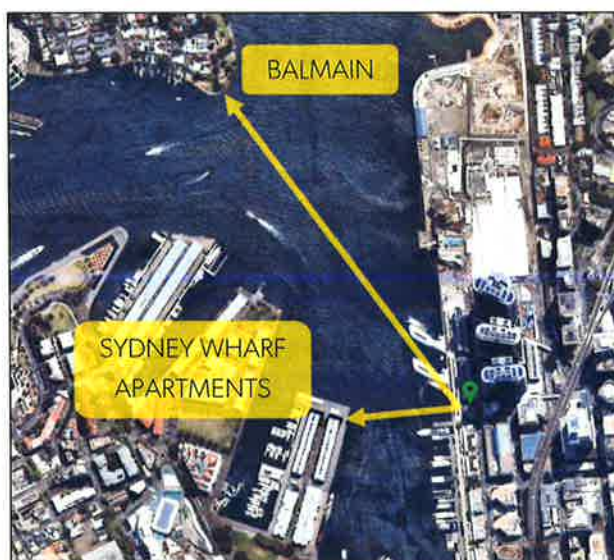


Figure 3 | A comparison of noise receivers (Base source: Nearmaps)

7. *Evaluation*

The Department has reviewed the proposed modification application, taking into consideration advice received from Council. Comments raised in the community submission relating to noise has also been considered.

The Department is satisfied the modification application is appropriate on the basis that:

- the noise has been effectively managed by the Plan of Management during the current trial period with minimal impact to surrounding areas
- there is no history of noncompliance or complaints at the premises during the current 12-month trial period
- the extension of a further 2-year trial period will allow for ongoing assessment of the performance and compliance of the premises with the Plan of Management.

Consequently, the Department considers the development is in the public interest and should be approved, subject to conditions.



8. Recommendation

It is recommended that the Director, Key Sites Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report; and
- **determines** that the application SSD 6513 MOD 4 falls within the scope of section 4.55(2) of the EP&A Act;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **agrees** with the key reasons for approval listed in the draft notice of decision;
- **modify** the consent SSD 6513;
- **signs** the attached approval of the modification (Attachment C).

Timothy Green
Planning Officer
Key Sites Assessments

Recommended by:

Cameron Sargent
Team Leader
Key Sites Assessments

9. Determination

The recommendation is **adopted** by:



David McNamara

Director

Key Sites Assessments



Appendices

Appendix A – Documentation

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. Environmental Impact Statement
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9675
2. Submissions
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9675
3. Applicant's Response to Submissions
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9675

Appendix B– Community Views for Draft Notice of Decision

| Issue | Consideration |
|--|---|
| Acoustic impact | <ul style="list-style-type: none">• A public submission was received raising concern that noise from the Barangaroo area could be heard from properties in Balmain. |
| <ul style="list-style-type: none">• Noise from premises at Barangaroo can sometimes be heard at residences in Balmain. | <ul style="list-style-type: none">• The Acoustic Impact Statement provided by the Applicant measured noise levels at the site and confirmed the noise contribution was less than the levels stipulated in SSD 6513.• The Department therefore concludes the noise impact to residents in Balmain would be negligible and not likely to result in any adverse impacts.• The Department notes that extending the trial operating hours for a further two years would enable the operation of the pub within an ongoing compliance management framework. |

Appendix C– Notice of Modification

The Notice of Modification can be found on the Department of Planning and Environment's website as follows.

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9675

Appendix D – Consolidated Consent

The Consolidated Consent can be found on the Department of Planning and Environment's website as follows.

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9675

