



Building R1, Barangaroo South Modification 5

Continuation of extended trading hours
State Significant Development Modification Assessment
(SSD 6513 MOD 5)

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Glossary

| Abbreviation | Definition |
|----------------------------|--|
| Applicant | The Trustee for Barangaroo Trust & The Trustee for the Mash Barangaroo Trust |
| Council | City of Sydney |
| DCP | Development Control Plan |
| Department | Department of Planning, Industry and Environment |
| EIS | Environmental Impact Statement |
| EP&A Act | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation | Environmental Planning and Assessment Regulation 2000 |
| EPI | Environmental Planning Instrument |
| GSC | Greater Sydney Commission |
| LEP | Local Environmental Plan |
| LGA | Local Government Area |
| Minister | Minister for Planning and Public Spaces |
| Planning Secretary | Secretary of the Department of Planning, Industry and Environment |
| SEPP | State Environmental Planning Policy |
| SRD SEPP | State Environmental Planning Policy (State and Regional Development) 2011 |
| SSD | State Significant Development |

Executive Summary

Introduction

This report provides an assessment of an application seeking to modify the State significant development (SSD) consent for the construction, fit-out and use of Building R1 as a pub at Barangaroo South.

The modification application seeks approval for the continuation of the extended trading hours until 12 midnight, 7 days a week for a further trial period of five years until 6 December 2025.

The application has been lodged by BBC Consulting Planners on behalf of The Trustee for Barangaroo Trust & The Trustee for the Mash Barangaroo Trust (the Applicant) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Minister for Planning and Public Spaces is the consent authority for the application.

Engagement

The Department publicly exhibited the application for 14 days from Monday 16 November 2020 until Sunday 29 November 2020. The Department received one submission from City of Sydney (Council) confirming that the development does not have any current or outstanding orders or any history of non-compliance.

Assessment

The Department has reviewed the modification application, and assessed the merits of the proposal, taking into consideration advice from Council. The Department considers the proposal is acceptable for the following reasons:

- noise impacts have been effectively managed by the Plan of Management during the current two-year trial period with minimal impact to surrounding areas
- there is no history of non-compliances or complaints during the current two-year trial period
- the extension of a further five-year trial period will allow for ongoing assessment of the performance and compliance of the premises with the Plan of Management.

Conclusion

The Department considers the proposed modification is acceptable as the continuation of the trial period has been successful and permitting an additional five years would enable the premises to continue extended hours of operation within an ongoing compliance management framework.

The Department considers the modification is in the public interest and should be approved, subject to the recommended modified conditions of consent.

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1 Introduction

This report provides an assessment of an application seeking to modify the State significant development (SSD) consent for the construction, fit-out and use of Building R1 as a pub at Barangaroo South.

The application has been lodged by BBC Consulting Planners on behalf of The Trustee for Barangaroo Trust & The Trustee for the Mash Barangaroo Trust (the Applicant) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

The modification application seeks approval for the continuation of the extended trading hours until 12 midnight, 7 days a week for a further trial period of five years until 6 December 2025.

1.1 Background

Building R1, now known as Barangaroo House, is located at 35 Barangaroo Avenue, Barangaroo within the City of Sydney local government area (LGA). The site is legally described as Lot 301 in DP 1244221 and is owned by Infrastructure NSW. Barangaroo House comprises a three storey licensed pub and 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'.

The site and surrounding land uses are shown in **Figure 1** and **Figure 2**.

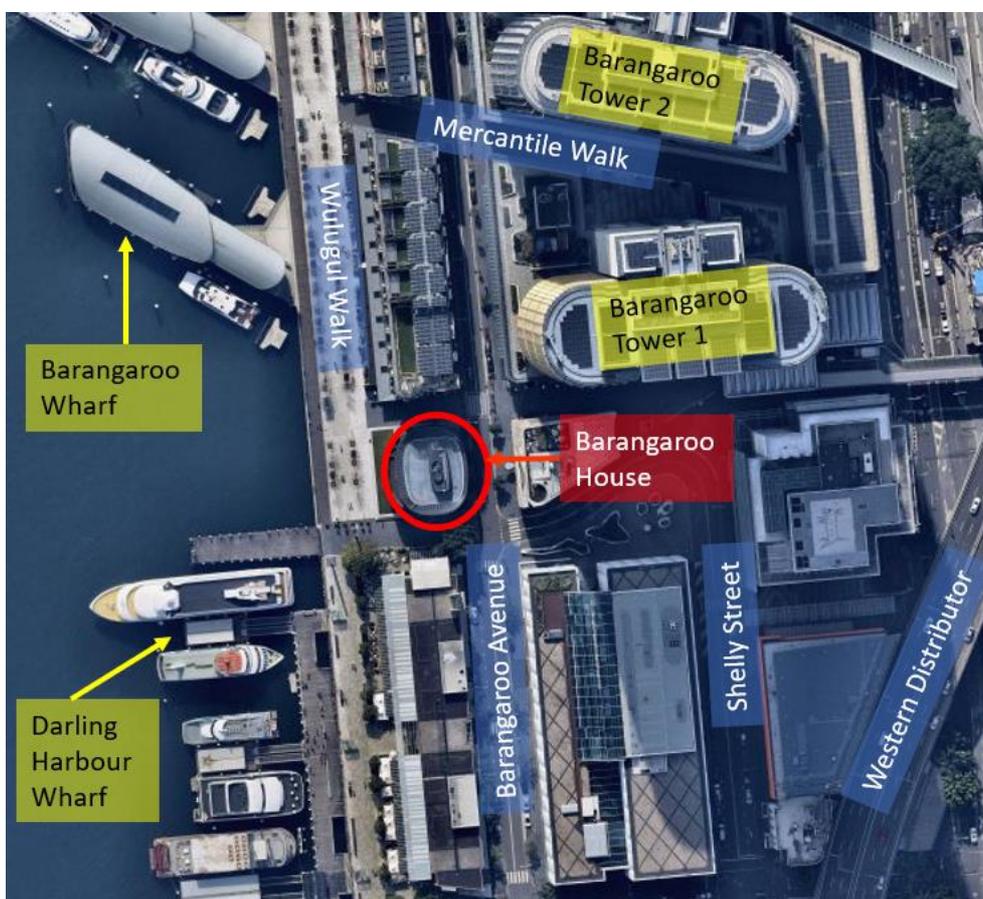


Figure 1 | Site Location (Source: Nearmap 2020)



Figure 2 | View of Barangaroo House from Wulugul Walk (Source: Google Street View 2020)

1.2 Approval history

On 25 August 2016, the Executive Director, Key Sites and Industry Assessments approved an SSD application (SSD 6513) for the construction, fit-out and use of Building R1 as a pub and restaurant at Barangaroo South.

The development consent has been modified on four occasions (see **Table 1**)

Table 1 | Summary of Modifications

| Mod No. | Summary of Modifications | Approval Authority | Type | Approval Date |
|--------------|---|--------------------|----------|-----------------|
| MOD 1 | Installation of retractable awnings on Level 1 and Level 2 and modification on Conditions B5, F8, F9 and F15 | Director | 4.55(1A) | 28 July 2017 |
| MOD 2 | Design amendments at the ground and rooftop level | Director | 4.55(1A) | 7 July 2017 |
| MOD 3 | Design amendments to the ground floor planter boxes, four signage zones and ground floor design and layout amendments | Director | 4.55(1A) | 6 November 2017 |

MOD 4

Continuation of existing trial period for extended hours of operation until 6 December 2020

Director

4.55(2)

6 December 2018

2 Proposed modification

On 2 November 2020, the Applicant lodged a modification application (SSD 6513 MOD 5) seeking approval under section 4.55(2) of the EP&A Act to extend the current two-year trial of extended hours of operation for a further five years.

The approved operating hours of Barangaroo House are between 7:00 am and 11:00 pm for internal areas and 7:00 am and 10:00 pm for outdoor areas, Monday to Sunday. Extended trading is permitted under SSD 6513 MOD 4 between 11:00 pm and 12 midnight for internal areas and between 10:00 pm and 12 midnight for outdoor areas for a trial period of two years ending on 6 December 2020.

The proposal seeks to continue the extended trading hours until 12 midnight, 7 days a week for a further trial period of five years until 6 December 2025.

The Applicant proposes to modify Condition A5 as follows. Words proposed to be deleted are shown in ~~strike through~~ and words to be inserted are shown in **bold and underline**.

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 further trial period of ~~2 years ending on 6 December 2020~~ **5 years ending on 6 December 2025**;*
- 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.

3 Statutory context

3.1 Scope of modifications

The Department is satisfied the proposed modification is within the scope of section 4.55(2) of the EP&A Act and is substantially the same development for which consent was originally granted as it:

- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved; and
- would not involve any further disturbance outside the already approved disturbance areas for the project.

An assessment of the proposed modification application against the requirements of section 4.55(2) of the EP&A Act is provided in **Appendix B**.

Accordingly, the Department considers that the application should be assessed and determined under section 4.55(2) of the EP&A Act rather than requiring a new development application to be lodged.

3.2 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the application. However, the Director, Key Sites Assessments, may determine the application under delegation as:

- a political disclosure statement has not been made
- there are less than 10 public submissions in the nature of objection.

3.3 Mandatory matters for consideration

The following are relevant mandatory matters for consideration:

- section 4.55(2) of the EP&A Act, including environmental planning instruments or proposed instruments;
- EP&A regulation;
- likely impacts of the modification application, including environmental impacts on both the natural and built environments, and social and economic impacts;
- suitability of the site;
- any submissions;
- the public interest; and
- the reasons for granting approval for the original application.

The Department has considered all these matters in its assessment of the proposal. The Department has also considered the relevant matters in **Section 5** and **Appendix B** of this report.

4 Engagement

4.1 Department's engagement

In accordance with clause 10 of Schedule 1 to the EP&A Act and clause 118 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), the Department exhibited the application from Monday 16 November 2020 until Sunday 29 November 2020 (14 days).

The application was made publicly available on the Department's website and was referred to City of Sydney (Council) and NSW Police for comment.

Previous submitters and surrounding landowners were notified of the modification application and invited to make a submission.

4.2 Summary of submissions

The Department received one submission from Council making comments on the proposal. Council confirmed that they had reviewed Council's records and that the development does not have any current or outstanding orders or any history of non-compliance.

No submission was received from the NSW Police and no public submissions were received.

5 Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original application (as modified)
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act
- Council's submission.

The Department considers the key assessment issues associated with the proposal are the venue's management performance and noise impacts.

5.1 Venue Management Performance

The Department notes any extended trading hours beyond the initial base hours are subject to a trial period. Council's late-night trading provisions within the Sydney Development Control Plan (DCP) 2012 require trial periods to be granted for one year (first trial), two years (second trial) and five 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 current or outstanding orders or any history of non-compliance during the current two-year trial period. Council did not raise any objection to the renewal of the extended operating hours for a further five-year trial period. The Department's compliance branch has also confirmed no compliance action has been taken in regard to the venue's operations.

The Department therefore concludes the current two-year trial period has been successful and the Applicant has demonstrated sound management and compliance practices. The Department therefore recommends Condition A5 is amended to permit a further trial period of five years ending on 6 December 2025.

5.2 Acoustic Impact

The noise impacts arising from the extended operating hours was previously 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.

The Department is satisfied the acoustic impacts generated by Barangaroo House can be appropriately mitigated and managed during the five year extension, in accordance with the existing conditions of approval and the Plan of Management.

6 Evaluation

The Department has reviewed the modification application, and assessed the merits of the proposal, taking into consideration advice from Council.

The Department has considered all relevant matters under section 4.15 of the EP&A Act, and is satisfied that the development, as proposed to be modified, is substantially the same development as that originally approved.

The Department considers the proposal is acceptable for the following reasons:

- potential noise emissions have been effectively managed by the Plan of Management and conditions of approval during the current trial period with minimal impact to surrounding areas
- there is no history of non-compliances or complaints at the premises during the current two-year trial period
- the extension of a further five-year trial period will allow for ongoing assessment of the performance and compliance of the premises with the Plan of Management and conditions of approval.

The Department considers the modification is in the public interest and should be approved, subject to the recommended modified conditions of consent.

7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the application SSD 6513 MOD 5 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 approve the modification
- **modify** the consent SSD 6513
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



Minoshi Weerasinghe
Planner Officer
Key Sites Assessments

Recommended by:



Cameron Sargent
Team Leader
Key Sites Assessments

8 Determination

The recommendation is **Adopted** by:

 9/12/2020

Anthony Witherdin

Director

Key Sites Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of referenced documents

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

1. Modification report

2. Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/40531>

Appendix B – Statutory considerations

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 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 1**.

Table 1 | Consideration of section 4.55(1A) 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 restaurant and would continue the existing trial extended hours of operation for a further five 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 modification application does not require consultation with any other Minister, public authority or approval body. Notwithstanding, the Department has consulted the relevant government agencies and Council in relation to the modification application (refer to Section 4 of this report). |
| The application has been notified in accordance with the regulations. | The modification application has been notified in accordance with the clause 10 of Schedule 1 of the EP&A Act and clause 118 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). Details of the notification are provided in Section 4 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 4 and 5 of this report). |

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 2** identifies the matters for consideration under section 4.15 of the EP&A Act that apply to the proposed modification.

Table 2 | Consideration of the matters listed under Section 4.15(1) of the EP&A Act

| Section 4.15(1) Matters for consideration | The Department’s assessment |
|---|--|
| (a)(i) any environmental planning instrument | Not applicable. |
| (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. |
| (a)(iiia) 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 3). |
| (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 proposed modification acceptable and have been appropriately addressed (refer to Section 5 of this report). |
| (c) the suitability of the site for the development | The site is suitable for the development as addressed in Sections 3 and 5 . |
| (d) any submissions | The Department has considered the submissions received (refer to Section 4 and 5 of this report). |
| (e) the public interest | The Department considers the proposed modification to be in the public interest. |

Appendix C – Notice of modification

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

<https://www.planningportal.nsw.gov.au/major-projects/project/40531>