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6 April 2017

Ms Carolyn McNally
Secretary
Department of Planning and Environment
320 Pitt Street
SYDNEY NSW 2000

Attention: Amy Watson (Team Leader – Key Sites Assessments)

Dear Amy

**Section 96 (1A) MODIFICATION APPLICATION SSD-6831
SICEEP, INTERNATIONAL CONVENTION CENTRE HOTEL**

On behalf of Lend Lease (Haymarket) Pty Ltd, we hereby submit an application pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Development Consent SSD-6831 relating to the International Convention Centre Hotel (ICC Hotel) which is part of the Sydney International Convention, Exhibition and Entertainment Precinct (SICEEP) at Darling Harbour, Sydney.

The modification relates to an amendment of Condition G30 in Development Consent SSD-6831 to allow for the use of outdoor speakers on the Level 4 terrace. It is intended by the hotel operator that speakers be installed on the Level 4 terrace to play background music, providing a level of ambience to the outdoor terrace and pool area. This approach aligns with the vision of the hotel as a five star facility, with the quality of amenities reflective of other world class hotels.

Since receiving the development consent and substantially completing construction works, Lendlease in collaboration with the selected operator have undertaken further investigations of operational matters and is now seeking modification to the approved development. Such design development changes and further testing of operational requirements are to be expected, especially given the nature and scale of the ICC Hotel and in context of the broader once in a generation SICEEP project.

This application identifies the consent and describes the proposed modifications and is accompanied by:

- Section 96 application form;
- Acoustic report prepared by Acoustic Logic (**Attachment A**).

1.0 BACKGROUND

1.1 CONSENT PROPOSED TO BE MODIFIED

Development consent SSD-6831 was granted by the Department of Planning and Environment (the Department) on the 16 October 2016. This consent permitted the following components of development:

- installation of illuminated lighting to part of the external façade;
- fit out of the ICC hotel as a five star hotel; and
- subdivision of the site to facilitate separate leasehold of the title.

This section 96 application (the Modification Application) constitutes the first modification to the consent.

2.0 PROPOSED MODIFICATIONS TO CONSENT

This Modification Application seeks to amend Condition G30 of development consent SSD-6831. Specifically, an amendment is sought to Condition G30 to allow for the installation and use of six (6) speakers on the Level 4 outdoor terrace. Currently, Condition G30 prohibits the use of speakers and /or noise amplification equipment in any outdoor areas except the porte cochere. The proposed amendment to Condition G30, as set out below, will facilitate the installation and use of speakers as indicatively illustrated in **Figure 1**.

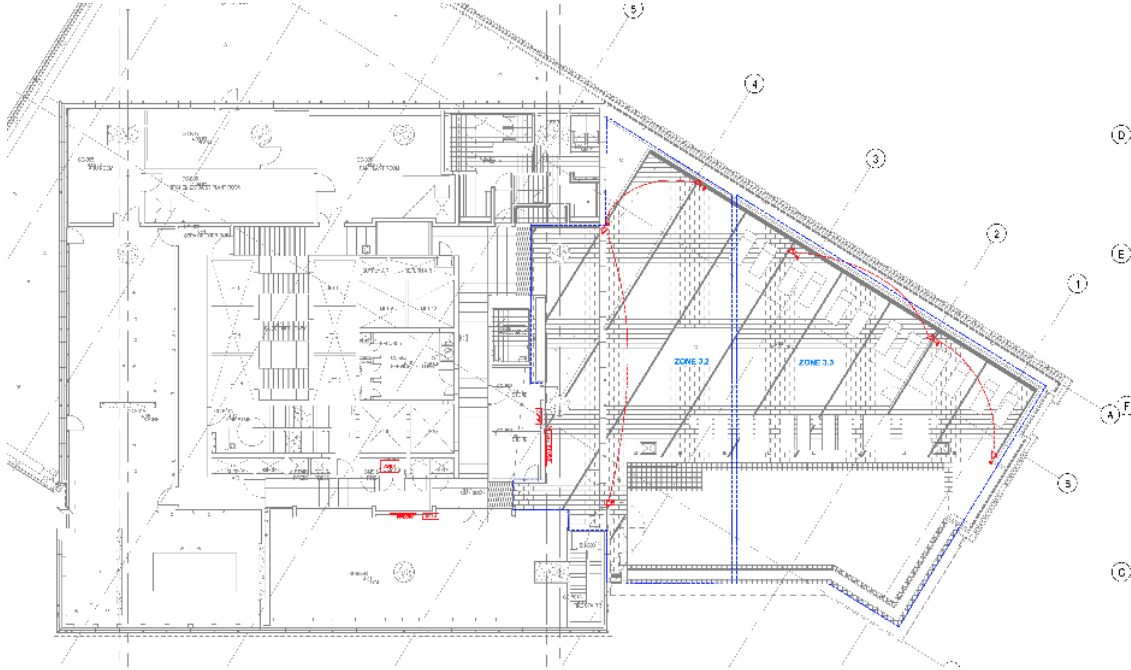


Figure 1 – Indicative location of outdoor speakers on Level 4 terrace.

The proposed amendment to Condition G30 is identified below. Words proposed to be deleted are shown in ~~**bold italics strike through**~~ and words to be inserted are shown in **bold italics**.

- A3 The applicant shall carry out the project in accordance with the following documents and plans:
- SSD consent for the ICC Hotel granted by the Minister delegate, dated 15 June 2014 (SSD6116) (as modified);*
 - SSD Application 6831;*
 - EIS prepared by JBA Urban Planning Consultants Pty Ltd, dated May 15 2015;*
 - RtS Prepared by JBA Urban Planning Consultants Pty Ltd, dated 3 September 2015, and accompanying appendices;*
 - Section 96 (1A) prepared by JBA Urban Planning Consultants Pty Ltd, dated 15 March 2017;***
 - The conditions of this consent; and*
 - The following drawings for:*
 - Any Modifications which are Exempt or Complying Development;*
 - Otherwise provided by the conditions of this consent.*

Reason for Amendment: This condition is sought to be updated to reference the subject Modification Application.

*G30 Speakers and /or noise amplification equipment must not be installed and music must not be played in any of the outdoor areas associated with premises, except; at the Porte Cochere **and on the Level 4 outdoor terrace** where ambient background music complies with the conditions G21 and G25. Speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas associated with the premises.*

The playing of noise via the proposed speakers on the Level four outdoor terrace is to be limited for background noise levels only such that the sound pressure level from the amplified noise (speech or music) in the absence of patron noise is no greater than 70 dB(A) when measured at 2m from any speaker.

Reason for amendment: This condition currently restricts the use of speakers within any outdoor location of the ICC Hotel, including the Level 4 outdoor terrace. Following more detailed analysis and testing of the use of speakers on the Level 4 outdoor terrace, it is considered that speakers playing background music can be installed and operated in accordance with the requirements of Conditions G21 and G25. As such, this condition is requested to be amended to facilitate the installation and use of speakers on the Level 4 outdoor terrace, as well as set out restrictions to ensure no adverse impacts occur on surrounding uses.

3.0 SECTION 96 OF THE EP&A, 1979

The statutory requirements to be satisfied for the granting of consent to modify a development consent are set out in Section 96. These depend on whether or not the modification is made under subsection (1), (1A) or (2).

This modification application to development consent SSD-6831 is accordingly made under Section 96(1A) of the EP&A Act.

Pursuant to Section 96(1A) of the EP&A Act, the Minister or his delegate may modify development consent if:

- (a) *it is satisfied that the proposed modification is of **minimal environmental impact**, and*
- (b) *it is satisfied that the development to which the consent as modified relates is **substantially the same development** as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.*

(emphasis added)

The proposed modifications will not substantially alter the essence of the approved development and will result in no more than minimal/negligible environmental impact for the following reasons:

- the proposed development retains the approved building use as a hotel and does not propose any modifications to the massing of the approved development;
- the approved number of hotel keys is proposed to be maintained across the same extent of the building;
- the proposed changes considered in their totality and in the context of the scale of the overall development are of a minor nature reflective of ordinary development processes;
- the proposed changes result in no increase to the amount of approved floor space and maximum height of the building;
- the ICC Hotel will continue to contribute to the creation of a new lively and vibrant mixed use precinct;
- the ICC Hotel will continue to support the functions of the International Convention and Exhibition Centre Core Facilities;

- there are no environmental impacts resulting from the modified development which have not been considered in the approved development; and
- there are no substantial changes to the external appearance of the approved development.

4.0 ENVIRONMENTAL ASSESSMENT

Section 96(3) of the EP&A requires the consent authority to take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Section 79C(1) of the EP&A Act states:

“In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
- (iii) any development control plan, and*
- (iv) any matters prescribed by the regulations, that apply to the land to which the development application relates,*

(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,

(c) the suitability of the site for the development,

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

(e) the public interest.”

4.1 Section 79 (1) (a) Planning Instruments

The Environmental Impact Statement (EIS) submitted with the original State Significant Development Application (SSDA) addressed the proposed development’s level of compliance against the relevant environmental planning instruments, including:

- State Environmental Planning Policy – (State & Regional Development) 2011;
- State Environmental Planning Policy No. 55 Remediation of Land;
- Darling Harbour Development Plan No. 1; and
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The proposed modifications will not alter the level of compliance of the development with the above relevant planning instruments. For completeness, **Table 1** provides a summary overview of the proposed modified development’s continued level of compliance with relevant planning instruments.

Table 1 – Compliance with relevant environmental planning instruments

Instrument	Comments
SEPP (State & Regional Development)	The modified development continues to meet the threshold for State Significant Development.
Darling Harbour Development Plan (DHDP) No. 1	The proposed modified development continues to support the objectives of the DHDP and retains the same permissible land uses as originally approved.

Instrument	Comments
SREP Sydney Harbour Catchment	The proposed modified development does not affect the level of compliance with the key relevant matters for consideration.
SEPP 55 (Remediation of Land)	The site remains suitable for the proposed development (with no change to the approved uses). The proposed modifications do not alter the site's suitability.

4.2 Section 79C(1)(b) Impact on the Environment

The EIS submitted with the original SSDA addressed the likely impacts of the development. The proposed modified development does not give rise to any material alteration to the assessment of the potential impacts considered as part of the original SSDA.

Where relevant, the technical reports and plans addressing the above matters have been updated to provide an assessment of the modified design (refer attached technical reports). The consensus has been that considering the nature of the modifications to the approved development the conclusions of the original assessment remain valid and no further assessment or mitigation measures are required.

The following matters, however warrant further assessment and consideration.

4.3 Acoustic Impacts

Acoustic Logic have prepared a Noise Impact assessment to outline the potential noise emissions associated with the speakers to be installed and operated on the Level 4 outdoor terrace (refer to **Attachment A**). Acoustic Logic have identified the relevant acoustic criteria for the noise emissions on the outdoor terrace, consistent with the assessment of the original SSDA and the requirements of Conditions G21 and G25 of development consent SSD-6831.

Based on the nearest receiver, being the Novotel Hotel, and the relevant acoustic criteria, Acoustic Logic has completed an assessment of the permitted noise levels on the Level 4 outdoor terrace. As a result of this assessment, Acoustic Logic has recommended the adoption of the following mitigation measure:

The playing of noise via the proposed speakers to the Level 4 outdoor terrace is to be limited for background noise levels only such that the sound pressure level from the amplified noise (speech or music) in the absence of patron noise is no greater than 70 dB(A) when measured at 2m from any speaker.

This mitigation measure has been recommended to be included in Condition G30 to ensure no adverse impacts occur to surrounding users as a result of playing background music on the Level 4 outdoor terrace.

4.4 Section 79C (1)(c) Suitability of the site for the proposed development

The site remains suitable for the proposed development for the reasons outlined in the EIS lodged with the original SSDA.

4.5 Section 79C (1)(d) Submission made

Any submissions made on this subject modification application will be duly considered and addressed by Lendlease and its experienced project team.

4.6 Section 79C(1)(e) The public interest

The proposed modifications to the approved development are in the public interest, as the implementation of speakers on the Level 4 outdoor terrace will contribute to achieving a pleasant and relaxed environment for building guests without any impacts on surrounding users.

5.0 CONCLUSION

The proposed modification seeks to allow for the installation and operation of outdoor speakers on the Level 4 terrace. This will ensure that the outdoor terrace and pool area is able to achieve a quality level of ambience, consistent with the five star intention for the ICC Hotel.

In accordance with section 96(1A) of the EP&A Act, Council may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on (02)9956 6962 or brendan@jbaurban.com.au.

Kind Regards,



Brendan Hoskins
Principal Planner



Laura Morabito
Junior Urban Planner