

26 February 2016

**NSW Planning Assessment Commission Determination Report
Four Points by Sheraton Executive Lounge/Business Centre and Hotel Bar
SSD-7014**

1. Application

The proposal seeks to replace the existing lounge bar and outdoor roof garden on level 11 of the northern tower of the Four Points by Sheraton Hotel at 161 Sussex St Sydney. The proposal would involve the construction of:

- an executive lounge (for hotel guests only) on level 11 with food and beverage services and a maximum capacity of 200 persons;
- a rooftop bar and outdoor deck (open to the public) on level 12 with a maximum capacity of 200 persons; and
- associated amenities and mechanical plant equipment.

The proposal would increase the height of the northern tower by 8.9 metres. The Applicant is seeking to operate both the proposed executive lounge and rooftop bar 24 hours, 7 days per week. The capital investment value of the proposed development is \$11.985 million.

2. Delegation to the Commission

On 26 November 2015, the Department of Planning and Environment (the Department) referred the application to the Planning Assessment Commission (the Commission) for determination under the Ministerial delegation of 14 September 2011, as more than 25 objections had been received to the proposal.

Ms Lynelle Briggs AO, Chair of the Commission, nominated Ms Abigail Goldberg (chair) and Mr Andrew Hutton to determine the application.

3. Secretary's Environmental Assessment Report

The proposal has been assessed by the Department as documented in the Secretary's Environmental Assessment Report (SEAR). The key issues considered in the SEAR were:

- built form and urban design;
- view impacts;
- operation;
- heritage; and
- developer contributions.

The Department concluded that overall the proposed built form is an appropriate contextual fit to the existing and approved built form for the site. Furthermore, the Department found that the proposed development would assist in revitalising tourism and private investment in hotel infrastructure, and would not result in any adverse noise impacts to residential receivers (subject to appropriate operational procedures).

Taking the above into account, the Department recommended approval of the modification application subject to the proposed conditions of consent.

4. Site Visit and Meetings

Site visit and meeting with the Applicant

On 20 January 2016, the Commission inspected the site and surrounding context, accompanied on site by the Applicant's representatives, who provided details of the current proposal for an executive lounge and rooftop bar, as well as the broader redevelopment of the hotel (which is subject to an existing development consent).

Subsequent to the site visit, the Commission met with the Applicant's representatives at the office of Cox Architects. The Applicant's representatives presented the hotel model and associated perspective diagrams and outlined their design intent for the proposal. The model was used to explain how view impacts of the proposal had been mitigated by reducing the height of the pergola of the proposed rooftop bar. The use of materials and colours was also discussed in relation to the visual impact of the proposal.

A summary of the site visit and meeting with the Applicant is provided in **Appendix 1**.

Briefing by the Department of Planning & Environment

On 20 January 2016, the Commission met with representatives of the Department. The briefing outlined the history of development at the hotel and the Department's assessment of the proposal.

The Department also provided further details on the consultation process it undertook with nearby residents in relation to visual impacts. The proposed management and operation of the executive lounge and rooftop bar in relation to potential noise impacts and anti-social behaviour was discussed.

A summary of key issues discussed is provided in **Appendix 1**.

Public meeting

On 3 February 2016, the Commission held a public meeting at the Portside Centre (207 Kent St, Sydney). Three speakers presented at the public meeting, all of whom objected to the proposal for a variety of reasons, including potential noise impacts during both construction and operation, the possibility of anti-social behaviour by patrons, and the perceived inadequacy of the acoustic and view impact assessments in the Environmental Impact Statement (EIS). A number of other concerns were raised in the public meeting, including permissibility issues, which are discussed in the relevant sections of this report.

A list of speakers at the public meeting is included in **Appendix 2** and a summary of the issues raised is provided in **Appendix 3**.

5. Commission's Consideration

On the basis of the information available to the Commission and concerns raised at the public meeting, the following matters were considered in detail:

- Noise impacts (during construction and operation);
- Operation of the licensed premises;
- View loss;
- Visual impacts; and
- Other issues, including permissibility, development contributions and heritage impacts.

Noise impacts

The primary concern raised in submissions related to noise, specifically the perceived inadequacy of the Noise Impact Assessment, compliance with construction hours under the current consent, potential noise impacts during the operation of the proposed rooftop bar, and cumulative noise impacts.

Adequacy of the Noise Impact Assessment

The EIS for the proposal included a Noise Impact Assessment prepared by Acoustic Studio. This document includes an assessment of potential noise impacts from the proposal on nearby sensitive residential receivers, including operational noise from amplified music, patrons and mechanical plant equipment.

The Commission has carefully considered the adequacy of the Noise Impact Assessment and is satisfied that it has been prepared in accordance with the relevant legislative and policy framework, including the:

- *NSW Industrial Noise Policy*;
- *Protection of the Environment Operations Act 1997*;
- City of Sydney standard conditions of consent; and
- Office of Liquor, Gaming and Racing (OLGR) standard octave band noise criteria.

Construction noise

Submissions regarding the proposal alerted the Commission to complaints by local residents about current construction noise outside the approved hours in relation to the broader redevelopment of the Four Points by Sheraton Hotel. At the request of the Commission, the Department provided information on its investigations into this matter. Firstly, it was noted that these investigations showed some confusion by complainants regarding whether to contact the City of Sydney Council or the Department. Secondly, they concluded that the Applicant had breached the existing development consent on a number of occasions. The Commission understands that these breaches are now subject to compliance action by the Department.

While these non-compliance issues relate to a separate, existing development consent, the Commission notes that the Applicant's recent compliance record is a relevant consideration for the current proposal for an executive lounge and rooftop bar. The Commission considers that it is important to ensure that compliance with appropriate construction hours is achieved in the future, particularly given the potential cumulative noise impacts from the various construction activities on the hotel site.

In this regard, the Commission notes that the Department has recommended a condition of consent (D2 of Schedule 2) requiring construction work to be carried out between 7am and 7pm, Monday to Friday, or between 7am and 5pm on Saturday. Specified exceptions only are possible subject to approval from the Roads and Maritime Service (RMS) or the Department. This condition is standard for most construction works in the City of Sydney.

The Commission also notes that the Department has recommended a condition (C4 of Schedule 2) requiring nearby landowners and occupants to be provided with a hotline for lodging complaints pertaining to any construction related issues. The Commission supports this condition and has also made a number of amendments to strengthen it, including by requiring:

- specific reference to all nearby residents that have been identified in the EIS as potentially being affected by construction noise, including those at 132-136 Sussex St and 41-55 Shelley Street; and

- the Applicant to provide in addition to a phone number for their own complaint hotline, the phone number for the Department's compliance team so that channels of complaint are clear and easy to access.

The Commission also notes that the Department has recommended two further conditions that would assist in ensuring compliance with construction hours, including:

- a requirement for the Applicant to submit a Construction Management Plan to the Certifying Authority, RMS, the City of Sydney Council (Council) and the Department, prior to the commencement of works (B9 of Schedule 2); and
- establishment of a complaints register, where both complaints and the subsequent action taken within 48 hours to redress them, are required to be recorded. The register is to be available to the Department at all times (C3 of Schedule 2).

The Commission is satisfied that this set of conditions relating to construction noise (as amended) is sufficient.

Operational noise

Concerns were raised in submissions and at the public meeting regarding potential operational noise impacts on nearby residences, particularly from the proposed rooftop bar and also in relation to cumulative noise impacts.

The Noise Impact Assessment in the EIS concluded that the proposal would comply with the relevant standards and guidelines, and would have no adverse noise impacts at the nearest affected receivers. The EIS also states that the level 11 executive lounge would be acoustically treated to prevent noise breakouts while the level 12 rooftop bar would be predominantly oriented to the west which faces onto Darling Harbour and Cockle Bay. In addition, the music in both the executive lounge and rooftop would be limited to amplified music (i.e. no live music or DJ music).

The Commission notes that the Department has recommended several conditions of consent (F21, 22, 23, 24 and 25 of Schedule 2) that establish appropriate noise levels for nearby residential receivers during the operation of the proposed executive lounge and rooftop bar, including a requirement that noise must not be audible within any habitable room in any residential use between the hours of midnight and 7am. There is also a recommended condition requiring an Acoustic Verification Certificate to be prepared by a suitably qualified acoustic consultant prior to the issue of an Occupation Certificate, which must demonstrate that the proposed development is capable of complying with the noise levels in the conditions.

While the Commission is generally satisfied that the operational noise levels in the recommended conditions can be met, it believes that the proposed level 12 rooftop bar should be subject to a 12 month trial period to ensure that noise levels are maintained at acceptable levels during operation. The Commission notes that this is standard practice for similar development applications overseen by the City of Sydney Council, as outlined in its *Late Night Trading Premises Development Control Plan 2007*.

Consequently, the Commission has inserted an additional condition of consent (A6) that permits 24 hour operation of the proposed level 12 rooftop bar for a trial period of 12 months from the date of occupation. After the trial period, the approved hours of operation will change to 7am to midnight, Monday to Sunday, unless otherwise approved by a modification application.

The Commission notes that compliance with the Plan of Management (E12) as well as noise conditions F21 to F25, would be taken into consideration if the Applicant lodges a modification application seeking to continue 24 hour operation of the proposed level 12 rooftop bar after the initial 12 month trial period.

Operation of the licensed premises

Concerns were raised in submissions about the possibility of anti-social behaviour resulting from the proposed operation of a 24 hour licensed premises at this site.

The Commission notes that the Department has recommended a set of conditions aimed at ensuring the appropriate management of the proposed premises, including:

- the submission and approval of a Plan of Management to address all operational and management procedures to ensure that the premises can operate without disturbance to the surrounding locality (E12);
- a requirement to place signs in clearly visible positions within the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area (F28); and
- a requirement that the management team ensures that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the area (F29).

While the Commission is generally satisfied that the conditions of consent relating to the operation of the proposed premises (as amended) would minimise anti-social behaviour, it has some residual concerns that the proposed publically accessible 24 hour rooftop bar on level 12 may attract patrons from other premises that are subject to the current 'lock-out laws'.

Consequently, as described above, the Commission has inserted an additional condition of consent making the proposed level 12 rooftop bar subject to a 12 month trial period to ensure that noise levels are maintained at acceptable levels and anti-social behaviour is minimised. The Commission notes that compliance with the Plan of Management (E12) as well as conditions aimed at minimising anti-social behaviour (F28 and F29) would be taken into consideration if the Applicant lodges a modification application seeking to continue 24 hour operation of the proposed level 12 rooftop bar after the initial 12 month trial period.

View loss

The Commission notes that the majority of submissions received by the Department reflected concerns regarding view loss from nearby apartments, in particular view loss from apartments of 365 Kent Street (Windsor on Kent building) and 361-363 Kent Street (the Trafalgar Building).

Concerns were also raised in submissions that the Visual Impact Assessment in the EIS was not adequately undertaken, particularly in relation to certain apartments on the northwest side of the Windsor building and the lower levels of the Trafalgar building. The Applicant provided additional information to the Commission that further explained the methodology that was utilised in the Visual Impact Assessment. The Commission believes that the information overall addresses the concerns raised in submissions and is satisfied that the Visual Impact Assessment was prepared adequately.

The Visual Impact Assessment found that despite a number of mid-level apartments being adversely impacted, the overall view impacts are reasonable when considered against the view sharing principles established by *Tenacity Consulting Vs Warringah* [2004] NSWLEC 140.

The Commission notes moreover that the *Darling Harbour Development Plan No. 1* contains no height or floor space controls for the site and that the proposal is below the existing maximum height of the central tower. The proposal is also significantly below the *City of Sydney Local Environmental Plan 2012* height limit of 80 metres, which applies to immediately adjoining sites to the east of the site.

The Commission has carefully considered the Visual Impact Assessment under these circumstances, and is satisfied that it is adequate, and that the overall view impacts are reasonable.

Visual impacts

The Commission observes that in addition to view loss, the two storey addition to the hotel has a potential visual impact. The Commission has considered the visual impact of the proposal, and notes that the proposed built form of the two storey addition would be an appropriate contextual fit with the existing built form of the Four Points by Sheraton Hotel. The Commission also investigated the proposed materials and colours with the Applicant (and its architect), and considers these suitable to the development. The way in which the proposed building has been functionally integrated with the existing hotel was also considered, and it was noted that access for people with disabilities has been provided where this was previously not possible. Overall, the Commission is satisfied that the addition is contextually appropriate, relatively minor in scale and without any significant visual impacts, while access is improved.

Other issues

Permissibility

Concerns were raised at the public meeting as to whether the proposed licensed premises are permissible in this location. The Commission notes that the applicable environmental planning instrument at the subject site is the *Darling Harbour Development Plan No. 1*. The existing hotel is permissible under Clause 6 of this Plan, which specifies that tourist, recreational, entertainment facilities are permissible with development consent. The Commission has sought internal legal advice and is satisfied that the proposed executive lounge and rooftop bar are ancillary to the hotel, and therefore both permissible and consistent with the objectives of the *Darling Harbour Development Plan No. 1*.

Developer Contributions

The Commission observed that there has been some debate for this site as to whether developer contributions are payable to the City of Sydney Council or the Sydney Harbour Foreshore Authority. The Commission has considered the matter and is satisfied that contributions should be payable to the Sydney Harbour Foreshore Authority as recommended in the conditions of consent. This is consistent with the existing development consent for the hotel redevelopment.

Heritage

The Commission has considered the potential heritage impacts of the proposed development and the comments from the NSW Heritage Council, and is satisfied that there would not be any adverse impacts on existing heritage items or known archaeological resources.

6. Commission's Determination

The Commission has carefully considered all the information available to it, including the Secretary's Environmental Assessment Report, submissions to the Department of Planning and Environment and at the public meeting, information provided at and subsequent to meetings, and a site visit.

The Commission has considered in detail matters regarding noise impacts (during construction and operation), operation of the licensed premises, view loss and visual impact. The Commission has also considered other issues including permissibility, developer contributions and heritage.

The Commission supports the Department's recommendation that the application be approved, subject to the recommended conditions, which are revised and supplemented as follows:

- the inclusion of specific reference to nearby residents that have been identified as potentially being affected by construction noise in the conditions, so that they are advised of the proposed commencement of works and provided with contact numbers for both the applicant's construction manager and the Department's compliance team should issues arise; and
- requiring a 12 month trial period for the operation of the proposed 24 hour rooftop bar on level 12, after which the hours of operation of the bar will be substantially reduced, unless otherwise approved by a modification application. Any future modification application would be subject to a comprehensive assessment, including consideration of compliance with the Plan of Management as well as the relevant conditions relating to noise and anti-social behaviour during the 12 month trial period.



Abigail Goldberg
Commission Member (Chair)



Andrew Hutton
Commission Member

Appendix 1

Meeting Notes

Meeting with the GL Investment Co		
Meeting note taken by Jorge Van Den Brande	Date: Wednesday, 20 January 2016	Time: 11:00am
Project: Proposed Executive Lounge and Bar at the Four Points by Sheraton Hotel		
Meeting place: Four Points by Sheraton Hotel, Sussex Street, Sydney (site visit) followed by Cox Richardson Architects, 155 Clarence Street, Sydney (briefing by Applicant)		
Attendees: Commission Members: Ms Abigail Goldberg, Mr Andrew Hutton PAC Secretariat: Clay Preshaw, Jorge Van Den Brande GL Investment Co: Jenny Watt Cox Architects: Ramin Jahromi, James Vine JBA: Tom Goode, Chris McGillack, Clare Swan (late arrival) Brookfield Multiplex: Daniel Saman (site visit)		
<p>The Commission inspected the existing lounge bar and outdoor roof garden on level 11 of the hotel. Matters related to current and proposed future operations as well as anticipated visual impacts of the proposal from overlooking buildings, and outlook from the proposed new building, were discussed.</p> <p>The Commission was also briefly escorted through new areas of the hotel that are under construction, including the porte cochere, lobby, function and meeting areas.</p> <p>Following the site visit, a meeting was convened at the office of Cox Richardson architects, where a model of the proposal (as part of the overall hotel) is retained. A summary of the key issues discussed at this meeting is provided below.</p> <ul style="list-style-type: none">• The Applicant's representatives presented the hotel model and associated perspective diagrams and outlined their design intent for the proposal as being to create a "simple, subtle extension".• The Applicant's representatives noted their understanding of objections to the proposal as being primarily view loss. They explained that view loss issues had been researched, and the apartments impacted taken into consideration. The representatives noted that there are no actual planning controls for this location due to its location in the Darling Harbour precinct, however the proposal does not exceed the height permissible for comparable sites in the adjacent City of Sydney area.• The Applicant's representatives noted that design was constrained by existing levels and functionality of the building, as well as the need to meet current building standards for bars, and requirements such as access for people with disabilities.• The model was used by the Applicant's representatives to explain how view impacts of the proposal had been mitigated by reducing the height of the pergola of the proposed level 12 bar, following advice and modelling by a visual impact consultant.• The use of materials and colours was discussed in relation to the visual impact of the proposal.• The Applicant's representatives asserted that the proposal was not significant in relation to the entire construction works currently underway.• The Commission raised concerns in regard to complaints about construction noise and builders operating outside the approved construction hours.		

- The Applicant's representatives advised that the crane was not being turned on before 6am, They noted however that some complaints had been made to the City of Sydney which had not been passed on at the time. A 24/7 complaints line has been put in place by the Applicant since these complaints have been received.
- The Commission raised concerns regarding potential noise transmission from the proposed building if approved.
- The Applicant's representatives stated that noise from the new lounge would be closely monitored due to the proximity of adjacent hotel rooms, as well as a result of operating conditions which would be imposed. It was noted that patrons of the Executive Lounge would be hotel guests only while it was anticipated that patrons of the bar would also be primarily hotel guests. Members of the public seeking to enter the lounge would be required to go through the standard security points of the hotel.

Meeting closed at 12:30pm

Meeting with the Department		
Meeting note taken by Jorge Van Den Brande	Date: Wednesday, 20 January 2016	Time: 2:00pm
Project: Proposed Executive Lounge and Bar at the Four Points by Sheraton Hotel		
Meeting place: PAC Office		
Attendees: PAC Members: Ms Abigail Goldberg, Mr Andrew Hutton PAC Secretariat: Clay Preshaw & Jorge Van Den Brande Department: Amy Watson Department: Simon Truong		
<p>A summary of the key issues discussed is provided below.</p> <ul style="list-style-type: none"> • The Department explained that they had considered the application as outlined in the assessment report, and in particular in terms of visual appearance, relationship to planning controls (however there are no controls for this building due to its location in the Darling Harbour precinct), built form and fit with existing building. It was noted that the proposed building was 30m lower than the adjacent new hotel tower that is currently under construction. • It was explained that the main issues from the Department's point of view were considered to be view loss, the potential impact of noise from the bar and potential impacts resulting from anti-social behaviour. • The Department had been in contact with 12 affected apartment owners/residents to assess the visual impact from their view point. • The Department explained numerous considerations into why the project will not cause adverse noise impacts on nearby receivers. • Following discussion the Department acknowledged that operational noise conditions C3, C4, F10 and F11 could be further strengthened in line with recent practice in relation to similar developments. • The matter of non-compliance with construction conditions and related noise impacts was discussed. The Department noted that noise complaints from residents had been investigated and that situations of non-compliance had been identified. The Department undertook to forward information regarding non-compliance events and actions. • The matter of potential anti-social behaviour was discussed. The Department noted that the proposal was not affected by the liquor licence freeze as the premises were already licensed and the hotel is within an existing tourist precinct. The Department also highlighted that the lounge would be for hotel guests only. • The Department noted that the Applicant has improved disability access. • The matter of developer contributions was raised by the Commission. The Department explained that it had been agreed with the applicant that contributions equivalent to the S94 requirements of the City of Sydney would be made to the Sydney Harbour Foreshore Authority, in whose administrative area the hotel is located. 		
Documents to be provided: Revised draft conditions and record of non-compliance and actions taken.		
Meeting closed at 3:00pm		

Appendix 2

List of Speakers

Planning Assessment Commission Meeting

Proposed Executive Lounge and Bar at the Four Points by Sheraton Hotel

Date & Time: Wednesday, 3rd February 2016 at 3pm

Place: The Portside Centre, 207 Kent Street Sydney NSW 2000

Speakers:

1. David Osborne
2. Rodney Hoskinson
3. Matt Loader (Owners Corporation of the Windsor on Kent)

Appendix 3

Key issues raised at the Public Meeting

Comments provided during the public meeting are summarised below:

- Noise impacts – concerns were raised about:
 - the adequacy of the Noise Impact Assessment;
 - potential construction noise impacts, with speakers referring to previous after hours noise impacts relating to the ongoing redevelopment of the hotel;
 - potential operational noise impacts, particularly on residents located to the north and west of the site; and
 - cumulative impacts of noise (both construction and operational noise).
- Operation of a licensed premises – concerns were raised about:
 - a potential increase in the anti-social behaviour around the area (e.g. vomiting, urinating and assaults);
 - the location of an excessive number of licensed premises in surrounding the area; and
 - the adequacy of safeguards in regards to anti-social behaviour (and noise) in the recommended conditions.
- Visual impacts – concerns were raised about:
 - the adequacy of the Visual Impact Assessment, particularly in relation to certain apartments on the northwest side of the Windsor building and the lower levels of the Trafalgar building.
- Other issues:
 - whether the proposed licensed premises is permissible on the site; and
 - whether a twelve month trial period should be implemented.