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By email: Emma.Butcher@planning.nsw.gov.au

Copy: Ben Lusher Benjamin.Lusher@planning.nsw.gov.au
Director, Key Sites Assessments

21 August 2017

Dear Ms Butcher

Re: SSD 7388 MOD 4 – IMAX Redevelopment Option No. 2 - Section 96 (2)
Modification Application to modify the consent
Our ref: 277/2017

We act for the owners of Strata Plan 49249 which comprises the major residential development known as One Darling Harbour. One Darling Harbour is located at 50 Murray Street, Sydney and is home to approximately 750 residents.

It is our client's submission that the application for modification of SSD 7388 to extend the hours of construction works for the IMAX redevelopment ought not be approved. In summary:

1. Permitting any construction noise to occur before 7am and after 7pm until midnight Monday to Friday (or 5pm on Saturdays) is unreasonable, unjustified and entirely inappropriate in an area recognised as Sydney's premier tourist destination and housing large numbers of hotels and residential buildings.
2. Construction work is already permitted to occur outside standard construction hours. Contrary to the relevant guidelines, the proponent has failed to provide any (or any adequate) justification for the proposed further extension of construction hours.

3. The acoustic modelling used to establish the criteria for assessment of the impacts of the additional construction hours is unreliable and cannot be relied upon as a proper basis for any analysis of impacts.

Our client has obtained a peer review from Acoustic Dynamics of the acoustic report provided with the application for modification. A copy of this report is **attached**.

Our client's detailed submissions are set out below.

1. Character of the Area

The Darling Harbour area is of State and Regional significance and is a designated tourism and entertainment precinct. It is marketed as a celebration space and leisure complex. It is also home to our clients' 750 plus residents and many other residential developments, including the new Darling Square. The area has also undergone significant transformation in recent years with the development of the Sydney International Convention, Exhibition and Entertainment Precinct and the Sofitel hotel on the other side of Tumbalong Park to the IMAX Project. In addition to sleep disturbance and amenity issues, the proposed extended hours of construction would also conflict with performance times at the ICC Theatres.

Extending the hours of construction noise into the early morning and late evening (until midnight) is entirely inappropriate, contrary to the public interest and an unreasonable imposition on the residents living in, and tourists staying at, and visiting the area.

2. Lack of Justification for extension of hours

Construction of the Project is already permitted to occur outside standard construction hours. Under the consent, construction is permitted 7am – 7pm Monday to Friday and 7am – 5pm Saturdays. This already exceeds the standard construction hours prescribed by the City of Sydney for areas outside the City Centre and by the Environment Protection Authority (EPA).

- The Project site is outside the "City Centre" as defined by the City of Sydney Code of Practice 1992: Construction Hours/ Noise within the Central Business



District of Sydney (**Council Code**). For areas outside the City Centre construction work is to take place between the hours of 7.30am and 5.30pm Mondays to Fridays and 7.30am and 3.30pm Saturdays¹;

- The Department of Environment and Climate Change NSW Interim Noise Guidelines 2009 (**EPA Guidelines**) provides the following recommended standard hours for normal construction (excluding blasting): Monday to Friday 7 am to 6 pm Saturday 8 am to 1 pm.

Standard construction hours provide community and government expectation regarding hours of work. They should not be exceeded without strong justification and a clear benefit to the public.

Section 2.3 of the EPA Guidelines provides a framework for assessing construction outside the recommended hours. It provides:

“The five categories of works that might be undertaken outside the recommended standard hours are:

- *the **delivery of oversized plant or structures** that police or other authorities determine require special arrangements to transport along public roads*
- ***emergency work** to avoid the loss of life or damage to property, or to prevent environmental harm*
- ***maintenance and repair of public infrastructure** where disruption to essential services and/or considerations of worker safety do not allow work within standard hours*
- ***public infrastructure works** that shorten the length of the project and are supported by the affected community*
- *works where a proponent demonstrates and justifies **a need to operate outside the recommended standard hours**.*

In the last two categories, the proponent should provide the relevant authority with clear justification for reasons other than convenience, such as to sustain operational integrity of road, rail and utility networks. [Emphasis added] The relevant authority may be the same as the government organisation undertaking the works.

In general, only works undertaken on public infrastructure need to be undertaken outside the recommended standard hours. This need is typically based on a requirement to sustain the operational integrity of public infrastructure, as works to

¹ <http://www.cityofsydney.nsw.gov.au/business/regulations/health-and-safety/construction-site-noise>

restore operation of the infrastructure provide benefit to the greater community (that is more than just local residents). Examples of public infrastructure are:

- *transport—railways, roads, ferries, airports*
- *utilities—water, electricity or gas, sewerage or drainage.*

The proponent should address in reports prepared under the environmental impact assessment (EIA) process any expected need to undertake work outside the standard hours. Consultation required under the EIA process allows community views to be considered when deciding whether the need to work outside standard hours has been adequately justified.”

The proposed works do not fall within any of the five categories listed in section 2.3 of the EPA Guidelines. The Proponent suggests in its application that the extension of construction hours is in the public interest due to the potential for a reduction in the overall duration of the construction period. The Proponent provides no information on the current proposed construction duration or how that might be reduced should the modification be refused.

In short, the Proponent has not demonstrated any “need” to operate outside standard construction hours and to further extend construction hours. The proposed further extension of construction hours imposes an unreasonable burden on the community (residents and visitors).

3. Unreliability of noise modelling

We **attach** a report on the acoustic impacts of the Proposal prepared by Mr. Richard Haydon of Acoustic Dynamics. Mr. Haydon has undertaken an independent review of the s96 application and the accompanying Acoustic Report for the Proposal prepared by Acoustic Logic. The report concludes:

- impacts on other nearby sensitive receivers such as our clients, and the Novotel, Ibis and Sofitel hotels have not been considered; and
- the unattended noise logging data provided in the Acoustic Logic report is not appropriate to establish the project-specific construction noise criteria, specifically, the logging location and use of unattended noise data from May 2012 is not representative of the existing noise environment which includes sensitive residential noise receivers.

For these reasons, the construction noise objectives set out in the Acoustic Logic report needs to be re-evaluated. There is no reasonable basis for the Proponent's conclusion that there will be no adverse acoustic impacts arising out of the proposed modification.


4. Conditions

The proposed extension of construction hours is unreasonable and unjustified. Should the consent authority nevertheless determine to approve the modification, the conditions proposed by the proponent are inadequate and do not even reflect the commitments made in its application. They will also be extremely difficult to monitor and enforce. The City of Sydney Code referenced in the proposed amended conditions uses the definitions of "Category 1", "Category 2", "Category 3" and "Category 4" to determine hours of work, not types of construction work. Hence proposed conditions D2(a)-(d) are meaningless. What is required is an absolute prohibition on intrusive noise outside standard hours and conditions requiring the proponent to undertake regular independent noise monitoring.

Conclusion

The proposed modification is entirely without merit, contrary to applicable guidelines and could not be approved by any consent authority acting reasonably.

Yours faithfully



Andrew Beatty/Ballanda Sack
Director/Special Counsel

encl: Acoustic Dynamics Report dated 18 August 2017