

ASSESSMENT REPORT

IMAX DARLING HARBOUR SSD 7388 MOD 4

1. INTRODUCTION

This report is an assessment of an application seeking to modify the State significant development (SSD) approval (SSD 7388) for a mixed-use development comprising hotel, retail and entertainment uses at 31 Wheat Road, Darling Harbour, in the Sydney local government area (LGA).

The application has been lodged by Grocon (Darling Harbour) (the Applicant) pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to extend the hours of construction.

2. SUBJECT SITE

The site is located at the southern end of Darling Harbour between the two elevated east-west roadways of the Western Distributor. The site adjoins the Darling Harbour public domain to the north and west and Darling Quarter to the south, and fronts Harbour Street and Wheat Street to the east (refer to **Figures 1 and 2**).

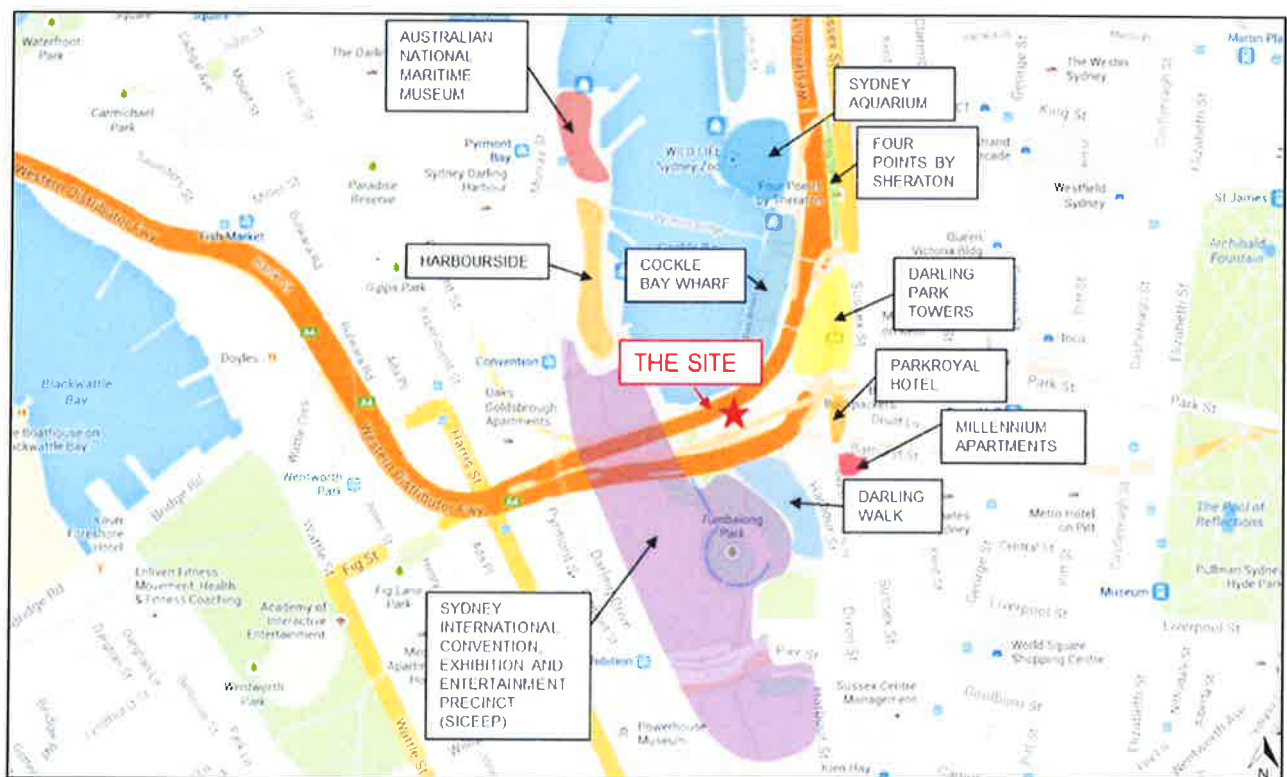


Figure 1: The site and the surrounding context (Base source: SSD 7388)



Figure 2: Aerial view of the site (outlined in red) and its surroundings (Base source: Nearmap)

The site was previously occupied by the IMAX theatre building, a tourist information centre and public amenities. However, these buildings have now been demolished. The site is owned by Property NSW and has a total area of 10,885 square metres (m²).

The surrounding area is characterised by the following development types and land uses:

- to the west, north and south are tourist/entertainment uses, including the Sydney International Convention, Exhibition and Entertainment Precinct, Harbourside, Cockle Bay Wharf and Darling Walk/Quarter
- to the east, is the Sydney Central Business District (the CBD), including the Parkroyal Hotel, Millennium Towers residential building and Darling Park commercial buildings.

The closest sensitive receivers to the site are located on the opposite side of the Western Distributor and Harbour Street (**Figure 2**), and include:

- the Parkroyal Hotel, 150 Day Street, which is located approximately 105 m west of the site
- the Millennium Apartments, 289-295 Sussex Street, which is located approximately 130 m south east of the site.

3. APPROVAL HISTORY

On 16 June 2014, the Planning Assessment Commission (the Commission) approved an SSD application (SSD 5397) for a mixed-use office/commercial development comprising:

- demolition of the existing IMAX building, tourist office and amenities block
- construction of a new 20 storey building and separate 2 storey building
- office, retail and entertainment uses
- 86 car parking spaces within the podium levels of the 20 storey building and 332 bicycle spaces at ground level
- realignment of Wheat Road
- upgrade to the surrounding public domain including a new playground and relocation of heritage items

- installation of a City Screen and two signage zones on the 20 storey building.

On 28 June 2016, the Commission approved a revised SSD application (SSD 7388) for the site providing for a mixed-use hotel/retail development (the SSD consent) comprising:

- demolition of the existing IMAX building, tourist office and amenities block
- construction of a new 25-storey building and separate 2-storey building
- hotel, serviced apartments, retail and entertainment uses
- 170 car parking spaces within the podium and 239 bicycle spaces at ground level
- realignment of Wheat Road
- upgrade to the surrounding public domain including a new playground and relocation of heritage items
- installation of a City Screen and signage zones.

Construction of the development approved under SSD 7388 has commenced on the site.

The SSD consent (SSD 7388) includes the following conditions, which limit the hours of construction work:

Hours of Work

D1 All work, including demolition, excavation and building work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out:

- between 7:00 am and 7:00 pm, Mondays to Fridays inclusive; and*
- between 7:00 am and 5:00 pm, Saturdays; and*
- no works is to be undertaken on Sundays and public holidays; and*
- works may be undertaken outside these hours where:*
 - it is required by a major works authorisation deed executed with the RMS; or*
 - the delivery of materials is required outside these hours by Police or other authorities; or*
 - it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and*
 - variation is approved in advance in writing by the Secretary.*

D2 Internal works may be undertaken outside the approved hours of work in Condition D1, only after the completion of the external shell and the sealing of the entire floor, during the following hours:

- between 7:00 pm and 7:00 am, Mondays to Fridays inclusive; and*
- between 5:00 pm and 7:00 am, Saturdays, subject to:*
- no work is to be undertaken externally without the prior consent from the Secretary;*
- no material delivery or removal of waste must take place during the extended hours; and*
- approval is not given for the use of any high noise intrusive plant and equipment other than hand operated power tools.*

Condition C5 of the SSD consent (SSD 7388) requires the preparation of a Construction Noise and Vibration Management Plan (CNVMP). In addition, Conditions D20 to D25 set requirements to prevent offensive noise being emitted during construction, including compliance with the:

- *City of Sydney Construction Hours/Noise within the Central Business District Code of Practice 1992 (the Code of Practice)*
- *Interim Construction Noise Guideline 2009 (ICNG).*

On 2 November 2017, the Executive Director, Key Sites and Industry Assessments, approved a modification application (SSD 7388 MOD 3) for internal and external amendments to the building, additional gross floor area (GFA), reduced the eastern footpath width and modified bicycle parking.

The Department is concurrently assessing a separate modification application relating to the site (SSD 7388 MOD 5), which proposes internal amendments to increase the number of hotel rooms and decrease the number of serviced apartments within the approved building.

The Applicant has submitted two previous modification applications (SSD 7388 MOD 1 and MOD 2) relating to the staging of conditions. However, both of these applications were withdrawn prior to determination.

4. PROPOSED MODIFICATION

On 25 July 2017, the Applicant lodged an application (SSD 7388 MOD 4) seeking approval to amend Condition D2 and extend the hours of construction for all works (as amended by the Response to Submissions). The extended hours of construction are summarised below:

- extended hours of construction for all works:
 - between 6:00 am and 7:00 am, Monday to Saturday
 - between 7:00 pm and 12:00 midnight, Monday to Friday
 - between 5:00 pm and 12:00 midnight, Saturdays
 - no work on Sundays or public holidays
- no material delivery or waste removal during the extended hours.

The modification is requested on the basis that the extended hours of construction would:

- reduce the construction time of the development by approximately six months and minimise the impact on surrounding properties, public domain and State assets
- not result in adverse noise impacts on nearby sensitive receivers
- enable construction works to be undertaken in the most efficient and practical manner.

5. STATUTORY CONSIDERATION

5.1 Modification of approval

Section 96(1A) of the EP&A Act requires the consent authority to be satisfied that the matters listed in **Table 1** are addressed in respect of all applications that seek modification approvals.

Table 1: Section 96(1A) matters for consideration

Section 96(1A) matters for consideration	Comment
That the proposed modification is of minimal environmental impact	Section 7 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied the environmental impacts of the proposed extension of hours of construction can be appropriately managed and mitigated so they are of minimal overall impact.
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).	The proposed modification seeks approval to extend the approved construction hours and no physical changes to the development or its use are proposed. The Department is satisfied the impacts of the extended hours of construction are negligible and can be appropriately managed subject to conditions. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
The application has been notified in accordance with the regulations	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 6 of this report.
Any submission made concerning the proposed modification has been considered.	The Department received 11 submissions on the proposal. The issues raised in submissions have been considered in Section 7 of this report.

5.2 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55 - Remediation of Land
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Darling Harbour Development Plan No 1.

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied the modification does not result in any inconsistency with the EPIs.

5.3 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Executive Director, Key Sites and Industry Assessments may determine the application under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

6. CONSULTATION

6.1 Consultation

The application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request was made publicly available on the Department's website and referred to the City of Sydney Council (Council) and the Environmental Protection Authority (EPA). Letters were also sent to adjoining owners/occupiers.

Council did not object to the proposal. However, Council initially raised the following concerns:

- the amended condition includes inaccuracies
- it is unclear when noise monitoring was undertaken
- the acoustic report should define what is meant by a 'closed façade'.

EPA did not object to the proposal. However, it initially raised the following concerns:

- the construction works should be managed in accordance with the ICNG
- inadequate justification has been provided for the extension of hours
- the acoustic report should be updated to include reference to the ICNG.

There were nine public submissions received on the proposal. Key issues raised in public submissions included:

- adverse noise impacts
- inadequate justification for the extensions of hours
- the acoustic modelling cannot be relied upon.

6.2 Response to Submissions (RtS)

Following notification of the application, the Department placed copies of all submissions received on its website and requested the Applicant to provide a response to the issues raised in the submissions.

On 28 August 2017, the Applicant provided a RtS (**Appendix A**). The RtS contained further information and clarification of the key issues raised in public submissions and by the government authorities. The RtS also confirmed the proposed extended hours of work:

- relates to all construction works and not just internal works
- would comply with the Council's Code of Practice.

The Department made the RtS publicly available on its website and referred the RtS to relevant government authorities.

Council reviewed the RtS and confirmed it has no objection to the proposal and noted the construction works would be required to comply with its Code of Practice.

EPA reviewed the RtS and confirmed it has no further comments on the proposal.

7. ASSESSMENT

7.1. Noise from extended hours of construction

The key issue for consideration relates to potential noise impacts associated with the extended hours of construction on nearby sensitive receivers.

The modification seeks to extend the construction hours for all construction works as shown in **Table 2**.

Table 2: Amendment to hours of construction

	Approved Hours of Construction (all works)	Approved Extended Hours of Construction (internal works only)	Proposed Extended Hours of Construction (all works)
Monday to Friday	7:00 am and 7:00 pm	7:00 pm and 7:00 am	6:00 am and 7:00 am 7:00 pm and 12 midnight
Saturdays	7:00 am and 5:00 pm	5:00 pm and 7:00 am	6:00 am and 7:00 am 5:00 pm and 12 midnight
Sundays and Public Holidays	No work	No work	No work

During the extended construction hours, the following restrictions would apply:

- no delivery of materials or removal of waste
- no use of high noise generating appliances, including hydraulic/pneumatic hammers, angle grinders, concrete saws and rock saws
- operation in accordance with Recommended Management Controls contained within the Construction Noise Assessment (CNA).

The modification does not propose any amendments to the:

- standard hours of construction for all works required under Condition D1
- extended hours of construction for internal works required under Condition D2.

In support of the application, the Applicant submitted a CNA to assess the potential noise impacts associated with the extended construction hours on nearby sensitive receivers. The CNA identified the nearest sensitive receivers (**Figure 2**) as:

- the Parkroyal Hotel, approximately 105 m east of the site
- the Millennium Apartment building, approximately 130 m south east of the site

The Noise Assessment notes other nearby commercial receivers include:

- Darling Park, 241a Sussex Street, approximately 65 m north east of the site
- Darling Quarter, 1-25 Harbour Street, approximately 70 m to the south of the site.

The Department is satisfied the Noise Assessment has appropriately identified the key sensitive and nearby receivers potentially impacted by the proposal. Impacts on the affected receivers are considered below.

The relevant guideline governing construction noise in this location is Council's Code of Practice, which establishes the noise criteria shown in **Table 3**. The CNA also considered the ICNG and notes the ICNG's construction noise criteria is less strict than Council's Code of Practice.

Table 3: Council's Code of Practice working hours and noise criteria

Day	Working Hours	Category	Noise Criteria
Monday to Friday	00.00 – 07.00	4	Background + 0dB(A)
	07.00 – 08.00	1	Background + 5dB(A)
	08.00 – 19.00	1	Background + 5dB(A) + 5dB(A) (to be determined on a site basis)
	19.00 – 23.00	2	Background + 3dB(A)
	23.00 – 24.00	4	Background + 0dB(A)
Saturdays	00.00 – 07.00	4	Background + 0dB(A)
	07.00 – 08.00	1	Background + 5dB(A)
	08.00 – 17.00	1	Background + 10dB(A)
	17.00 – 23.00	2	Background + 3dB(A)
	23.00 – 24.00	4	Background + 0dB(A)
Sundays and Public Holidays	00.00 – 07.00	4	Background + 0dB(A)
	07.00 – 17.00	3	Background + 3dB(A)
	17.00 – 24.00	4	Background + 0dB(A)

The CNA confirms monitoring was undertaken to determine the existing background noise levels applicable to nearby sensitive receivers. The background noise level was established to be 58 dB(A) L_{90} between 6 am and 7 am, and 64 dB(A) L_{90} between 7 pm and midnight. The applicable noise criteria are therefore:

- 67 dB(A) L_{10} between 7:00 pm and 11:00 pm (Monday to Friday)
- 67 dB(A) L_{10} between 5:00 pm and 11:00 pm (Saturdays)
- 64 dB(A) L_{10} between 11:00 pm and midnight (Monday to Saturday)
- 58 dB(A) L_{10} between 6:00 am and 7:00 am (Monday to Saturday).

The CNA predicted noise levels at the nearest sensitive receiver (Park Royal Hotel) using a worst-case scenario to determine whether the proposal would comply with the applicable Code of Practice noise criteria of 58 – 67 dB(A). The results are presented at **Table 4**.

Table 4: Predicted Construction noise levels

Activity	Predicted Noise Level dB(A) $L_{10\ 15min}$	Construction Noise Criteria dB(A) $L_{10\ 15min}$	Complies
5 pm until 11 pm			
Piling	Up to 57	67	Yes
General Construction Activities	Up to 56	67	Yes
11 pm until 12 midnight			
Piling	Up to 57	64	Yes
General Construction Activities	Up to 56	64	Yes
6 am until 7 am			
Piling	Up to 57	58	Yes
General Construction Activities	Up to 56	58	Yes

As indicated above, the NCA predicts noise from construction works during the extended hours would be below the Code of Practice recommended noise levels.

The Department has carefully considered the findings of the CNA as well as public and agency submissions, and is satisfied the extended construction hours would be acceptable in this instance for the following reasons:

- the CNA has demonstrated the proposal would comply with Council's Code of Practice (and the ICNG)
- the existing background noise levels at this location are dominated by traffic noise, which would conceal the predicted construction noise during the extended construction hours
- the extended construction hours are generally outside the normal operating hours of surrounding commercial properties
- the extended hours would reduce the construction time by approximately six months, which would significantly reduce the duration of any impacts on neighbouring properties and sensitive receivers.

To further mitigate and manage potential noise impacts during the extended hours of construction, the Department recommends:

- the development be carried out in accordance with the recommendations of the CNA
- internal construction works proposed outside the extended hours of construction remain subject to the approved requirements for extended hours of construction under Condition D2
- construction staff working on the site during the extended hours of construction adhere to appropriate noise reduction practices.

The Department has also recommended a new condition requiring the Applicant to restrict hours of construction or to revert to the standard hours of construction (Condition D1) where complaints demonstrate the extended hours of construction are causing offensive noise or are not being carried out in accordance with the conditions of consent.

Subject to the recommended conditions, the Department's assessment concludes the extended hours of construction are acceptable in this instance. Consequently, it is recommended that the modification be approved.

8. RECOMMENDATION

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

- **consider** the findings and recommendations of this report
- **determine** that the application falls within the scope of section 96(1A) of the EP&A Act
- **approve** the IMAX Darling Harbour modification application (SSD 7388 MOD 4), subject to conditions
- **sign** the attached notice of modification (**Attachment A**).

Recommended by:



Anthony Witherdin
Director
Modification Assessments

DECISION

Approved by:



Anthea Sargeant 10/11/17
Executive Director
Key Sites and Industry Assessments

as delegate of the Minister for Planning.

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8644

APPENDIX B: SUPPORTING INFORMATION

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. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8644

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8644

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8644