

Notice of decision

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development
Application number and project name	SSD 8665 Mercantile Hotel - Refurbishment and Rooftop Terrace
Applicant	HBMS NSW Pty Ltd
Consent Authority	Minister for Planning and Public Spaces

Decision

The Executive Director, Compliance, Industry and Key Sites, under delegation from the Minister for Planning and Public Spaces has, under section 4.38 of the *Environmental Planning and Assessment Act 1979 (the Act)* granted consent to the development application subject to the recommended conditions.

A copy of the Department of Planning, Industry and Environment's Assessment Report, development consent and conditions is available [here](#).

Date of decision

12 December, 2019

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act and the additional matters listed in the statutory context section of the Department's Assessment Report;
- the prescribed matters under the *Environmental Planning and Assessment Regulation 2000*;
- the objects of the Act;
- the considerations under s 7.14(2) and 7.16(3) of the *Biodiversity Conservation Act 2016* (NSW);
- all information submitted to the Department during the assessment of the development application;
- the findings and recommendations in the Department's Assessment Report; and
- the views of the community about the project (see Attachment 1).

The findings and recommendations set out in the Department's Assessment Report were accepted and adopted as the reasons for making this decision.

The key reasons for granting consent to the development application are as follows:

- *Benefits* - the project will provide a range of benefits for the region and the State as a whole, including 185 construction jobs and 102 operational jobs;
- *Consistent with NSW Government Policy* – the project is permissible with development consent, and is consistent with NSW Government policies including the Greater Sydney Region Plan, Eastern City District Plan and other relevant policies, as demonstrated in Appendices C and D of the Department's Assessment Report;
- *Impacts can be managed* - the impacts on the community and the environment, including built form and heritage, operational and construction impacts, can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards;
- *Community views considered* - the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and the recommended conditions of consent; and
- *Public interest* – weighing all relevant considerations, the project is in the public interest as it would facilitate the upgrading of an existing State heritage listed building, which would provide social and cultural benefits and improve its commercial viability.

Attachment 1 – Consideration of Community Views

The Department exhibited the Environmental Impact Statement and Sydney Cove Redevelopment Authority (SCRA) Scheme variation for the project from 28 June 2018 until 25 July 2018 (28 days) and received one submission from Council and eight public submissions, including two objections, five comments and one in support of the project.

The Department publicly exhibited the Applicant's Response to Submissions and amended SCRA Scheme variation from 2 May 2019 until 31 May 2019 (30 days) and received one submission from Council and four public submissions, including one objection, two comments and one in support of the project.

The Department also undertook the following consultation activities:

- one site visit
- held one meeting with community members that lodged submissions

The key issues raised by the community (including in submissions) and considered in the Department's Assessment Report and by the decision maker include built form and heritage, noise, hours of operation and air quality. Other issues are addressed in detail in the Department's Assessment Report.

<i>Issue</i>	<i>Consideration</i>
<p>Built form and heritage (Council issue)</p> <ul style="list-style-type: none"> the roof should be reduced in height and bulk a full schedule of materials and finishes is required, and the Quantity Surveyor's report should be audited to ensure it provides for a high level of materials and finishes recommendations in the HIS should be adhered to further information on services is required. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers the rooftop and lift would not adversely impact on the building or surrounding area as they are subservient in form and of complimentary materials that are designed to limit visual impact. The Department considers the information provided is sufficient to determine the proposed works would be of sufficient quality and notes the Heritage Division supports the works. The Department has proposed conditions in accordance with the HIS, as suggested by Council. The Department considers sufficient information has been provided to determine the works (including service upgrades) would not have an adverse impact on the heritage fabric of the building. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Requirements in accordance with the HIS, including for archival photographic recording, a Heritage Interpretation Plan, use of skilled trades people and commissioning of a conservation architect to monitor works.
<p>Hours of operation (public issue)</p> <ul style="list-style-type: none"> hours should be limited to those of the existing premises use of the open area of the roof terrace should cease and the doors to the enclosable are closed by 10 pm. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department notes the hours of operation for the existing premises are not proposed to increase. The Department proposes a three-year trial period for rooftop and rear courtyard operating hours of between 8 pm and 10 pm (outdoors), with the enclosable area to be shut at 10 pm. The Department accepts while the rooftop addition would allow for the use of an area that is not currently available to patrons, the proposed hours are not unreasonable or excessive within The Rocks tourist precinct and operation of the premises will be suitably managed as indicated in the Plan of Management and proposed conditions of consent. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> A three-year trial period for rooftop operating hours of between 8 pm and 10 pm (outdoors), with the enclosable area to be shut at 10 pm.
<p>Operational noise (public issue)</p> <ul style="list-style-type: none"> from patrons, particularly in outdoor areas, and the mechanical exhaust system restrictions should be placed on the number of large events and operating hours for live music, outdoor areas and those opening onto outdoor areas 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department notes the existing capacity of 431 patrons is not proposed to increase. The Department considers the noise impacts, including from the mechanical exhaust located at the southern end of the building, would comply with the relevant criteria at all receivers. This includes consideration of cumulative noise impacts, including The Rocks Market. The comments regarding the use of the George Street footpath, treatment of the northern and eastern elevations of the premises and the restriction of the capping of big events at the premises relate to existing operations and are therefore outside the scope of this application. Adherence to the conditions of consent would be monitored by the Department's

<ul style="list-style-type: none"> the capacity of the outdoor terrace should be restricted to 100 the ground floor elevation facing George Street should be acoustically treated. 	<p>compliance unit.</p> <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Limiting noise emissions from the rooftop to background level +5dBA between 7 am and 12 midnight, and to background level between 12 midnight and 2 am on New Year's Day. Restricting the capacity of the rooftop area to 100 persons (indoor), 70 persons (outdoor) and a total of 150 persons when both are in operation. Prohibiting amplified music in the outdoor portion of the rooftop. Requiring an Operational Noise and Vibration Management Plan (ONVMP), to include, among other measures, regular noise monitoring at the nearest residential premises to ensure the proposed criterion is complied with. Requiring rooftop plant details to be submitted to the certifying authority prior to the issue of a Construction Certificate, to ensure these details are confirmed prior to the installation of the equipment.
<p>Air quality (public issue)</p> <ul style="list-style-type: none"> the mechanical exhaust system should incorporate electro static filtration and ozone odour treatment. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers the mechanical exhaust system would not have adverse impacts with regards to air quality, including odour, as it would be approximately 5 m above the height of the nearest adjoining building and there are no windows facing directly onto it. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Requirements for the mechanical exhaust system to incorporate electro static filtration and ozone odour treatment.
<p>Reflectivity (public issue)</p> <ul style="list-style-type: none"> impacts associated with the reflectivity of the rooftop extension should be considered on the building at 8 Hickson Road, particularly the upper levels. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers the proposal would not have an adverse impact on buildings in the surrounding area with regard to reflectivity. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Requirements for construction materials to avoid highly reflective surfaces.
<p>Security/lighting (public issue)</p> <ul style="list-style-type: none"> additional lighting should be provided to improve security on the section of George Street between Hickson Road and Lower Fort Street. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers a requirement to provide additional lighting on George Street would be overly onerous, and notes existing security measures at the premises would remain in place, including personnel and CCTV, with additional security proposed for the new rooftop. The rooftop would improve passive surveillance to Gloucester Walk and George Street, and therefore the Department considers there could be a resulting improvement in security. <p><i>Recommended Conditions/Response</i></p> <p>No conditions recommended.</p>
<p>Loss of property value (public issue)</p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> Outside the scope of this application.