

27 November 2017

**NSW Planning Assessment Commission Determination Report
Old Clare Hotel, Block 3A, Central Park MP 11_0089 MOD 3**

1. INTRODUCTION

On 16 October 2017, the Planning Assessment Commission (the Commission) received from the Department of Planning and Environment (the Department) a request to modify the Project Approval (MP 11_0089) for the redevelopment of the Old Clare Hotel at Block 3A, Central Park, in the City of Sydney local government area. The request was lodged by Cirillo Planning Trust (the proponent) and seeks to expand the use of a rooftop bar, establish restrictions on its use, construct a single storey roof structure and a single storey extension containing three toilets on the existing rooftop terrace.

The Department has referred the modification request to the Commission for determination in accordance with the Minister for Planning's delegation because the Department received more than 25 submissions from the public in the nature of objections.

Ms Lynelle Briggs AO, Chair of the Commission, nominated Stephen O'Connor (chair), David Johnson, and Carol Austin to constitute the Commission to determine the modification request.

1.1 Summary of the Proposed Modification

The proposed modification seeks approval to:

- construct a 98m² single storey roof element to the rooftop terrace;
- alterations and additions to provide three toilets with an area of 8.3m² on the existing rooftop pool terrace; and
- establish the following restrictions to the operation of the roof top bar:
 - hours of operation between 7:00am and 10:00pm, seven days a week;
 - sale of alcohol only between midday and 10:00pm, seven days a week;
 - maximum capacity of 150 patrons, including hotel and walk-in guests; and
 - management of the operation of the rooftop bar in accordance with a Plan of Management (PoM).

1.2 Need for modification

The Department's assessment report states that the modification is requested on the basis that:

- establishing the hours of operation, maximum patron capacity and operational management of the approved rooftop bar would provide certainty for the operation of the rooftop bar and minimise operational impacts on neighbouring residential amenity; and
- the proposed roof structure would reduce noise impacts from the use of the rooftop bar and reduce overlooking of neighbouring residential apartments.

The proponent's Statement of Environmental Effects (SEE) states that the proposed roof structure would provide an acoustic enclosure that shelters the adjacent residential development to the west from noise generated by patrons of the rooftop bar and terrace. The proposal also seeks to formalise and regulate use of the approved rooftop pool and bar area, by establishing a management framework around public access, hours of operation and noise management.

1.3 Background

The Central Park site is located on the former Carlton United Brewery site on the south-western edge of the Sydney Central Business District. The Central Park site contains several, high density mixed use buildings, including One Central Park to the west, student accommodation to the south and commercial and residential buildings to the east. A summary of the site's approval history is provided below.

Concept Approval (MP 06-0171)

On 9 February 2007, the Minister for Planning approved a Concept Plan for the redevelopment of the site for residential, commercial, retail uses and public open space (Concept Approval). The Concept Approval established the framework for subsequent detailed project applications within the Central Park Precinct and has been modified on 12 occasions.

Project Approval (MP 11_0089)

On 5 April 2013, the Executive Director, Development Assessment Systems and Approvals, from the Department granted Project Approval for the adaptive reuse of buildings within Block 3A. The Project Approval granted consent to use the administration building and the Old Clare Hotel as a 60-room boutique hotel with a rooftop pool, conference and meeting facilities, three food and drink premises with a new physical link to provide internal access between the two buildings.

The Project Approval did not include the internal fit-out or operation of the restaurants or bars within the Old Clare Hotel, which was subject to a separate development application (DA/2014/1509) to the City of Sydney Council (the Council) (see below).

The Project Approval has been modified on two occasions:

- **MOD 1:** Internal alterations at basement to second floor levels, relocation of the rooftop pool, increase pool canopy by 100mm and modification of external façades – approved on 1 March 2014; and
- **MOD 2:** Modification to the timing of the implementation of façade heritage conservation works – approved on 26 May 2015.

The Department is currently assessing a separate modification application for the site (MP 11_0089 MOD 4), which proposes alterations to the basement of the Old Clare Hotel for a day spa. This modification application (MOD 4) is not related to the subject modification application (MOD 3).

Development Approval (DA/2014/1509)

On 1 March 2014, the Council approved a development application for the fit-out and use of the three restaurants within the Old Clare Hotel and the administration building, including hours of operation and patron capacities.

The Old Clare Hotel operates as a tourist and visitor accommodation premises with the sale of liquor within the premises being ancillary to its primary use.

2. DEPARTMENT'S ASSESSMENT REPORT

The Department's assessment report identified noise and urban design as the key issues associated with the proposal. The Department's assessment report concluded that the proposed modification is appropriate given the rooftop bar is an approved and permissible use, and consistent with a range of uses envisaged under the relevant state and local planning controls for the site. The proposal is not predicted to result in noise impacts, subject to the imposition of conditions on noise limits, hours of operation, maximum patron numbers and management measures.

3. COMMISSION'S MEETINGS AND SITE VISIT

As part of its assessment of the proposal, the Commission met with the Department, the proponent, and visited the site. Notes from these meetings and the site inspection are provided in **Appendix 1**. The Commission also conducted a public meeting. Notes from the public meeting are provided in **Appendix 3**. The Commission notes that the Council did not request to meet with the Commission.

3.1 Briefing from the Department

On 15 November 2017, the Department briefed the Commission on the proposed modification. The briefing covered the approval history, justification for supporting the proposed modification, how the Department assessed the key issues of noise, and urban design impacts and how the project was consistent with the Concept Plan.

3.2 Briefing from the Proponent and Site Visit

On 15 November 2017, the Commission met with the proponent and visited the site. The proponent briefed the Commission on the main components of the proposal, the operational components of the proposal if it was to be approved and how the proponent has responded to Council and the community's concerns.

3.3 Public Meeting

The Commission held a public meeting at the Commission's office, Level 3 201 Elizabeth Street, in Sydney on 15 November 2017 to hear the public's views on the proposal. A list of the three speakers that presented to the Commission is provided in **Appendix 2**. In summary, the main issues of concern included:

- the impact of noise,
- loss of privacy; and
- the impacts of increased patronage and operating hours on the residents of One Central Park.

4. COMMISSION'S CONSIDERATION

In its determination of the modification, the Commission has carefully considered, but not limited to, the following:

- all information provided by the proponent;
- the Department's assessment report;
- advice and recommendations from the Council;
- submissions and comments from the public; and
- relevant matters for consideration specified in section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The key matters considered by the Commission include noise impacts, visual and privacy impacts, and built form and heritage.

The Commission considered that the proposed modification does not fundamentally change the principal intent of the existing approved development. Accordingly, the Commission considers that the proposed changes are within the broad scope of section 75W of the EP&A Act as it applies to the development, and therefore the request to modify may be considered under this section of the EP&A Act.

4.1 Noise impacts

A number of submissions raised concerns regarding existing noise impacts associated with the rooftop pool and bar area and the potential for impacts to increase as a result of the proposed modification.

The proponent submitted an Acoustic Assessment as part of its SEE, which assessed the potential noise impacts on nearby sensitive receivers. The Acoustic Assessment considered the noise impacts of the

proposal against Council's *Conditions of Consent for Entertainment Venues* which has adopted the Office of Liquor Gaming and Racing (OLGR) noise criteria for licensed premises. The Acoustic Assessment recorded existing noise levels at a number of receivers, and predicted that noise impacts would be largely below the relevant noise criteria, with the exception of exceedances at two residential developments R4 (16-18 Broadway) and R6 (Goold Street). The Acoustic Assessment concluded that the exceedances are likely to be minor and are unlikely to be audible above prevailing ambient noise, which is dominated by road traffic noise and mechanical plant noise from surrounding premises.

The Department reviewed the proponent's Acoustic Assessment, noting that the only exceedances are predicted in the 8 kHz octave range, which are considered minor and not expected to be audible. The Department considers that the Acoustic Assessment demonstrates that the proposed use of the rooftop bar is unlikely to result in significant acoustic impacts on surrounding residences as the proposed rooftop structure would mitigate noise emissions impacting on neighbouring residences.

In reviewing the proposed conditions, the Commission noted that Condition F14 Noise Limits, omitted the 8kHz frequency from the noise limit exceedances table. The Commission sought clarification from the Department as to the omission. The Department confirmed that noise at this frequency would be inaudible, as predicted in the assessment, and therefore there was no requirement to monitor noise limits within that frequency. Notwithstanding, the Department confirmed that should the Commission seek to retain the need for the proposal to not exceed the criteria in the 8kHz frequency band, the Department would support this position. The Commission subsequently amended Condition F14 to include the requirement for the proponent to not exceed 31dB(A) at 8kHz.

During the site visit, the proponent outlined how the proposed rooftop structure would be constructed along the western edge of the building façade and explained that the structure would be fully enclosed but would contain sliding doors, as shown in the Plans for Approval (see Figure 1). The proponent volunteered that it would be willing to ensure, by way of condition, that between the hours of 8pm and 10pm, the doors could be closed to avoid potential noise impacts on residents of One Central Park. The Commission sought clarification from the Department, confirming that while the doors are shown on the plans for approval, the Acoustic Assessment states: *'It is necessary to consider the detailing of the junctions to ensure all gaps are sealed airtight so that the acoustic performance of the rooftop canopy is not compromised through sound flanking or leaking through the construction'*.

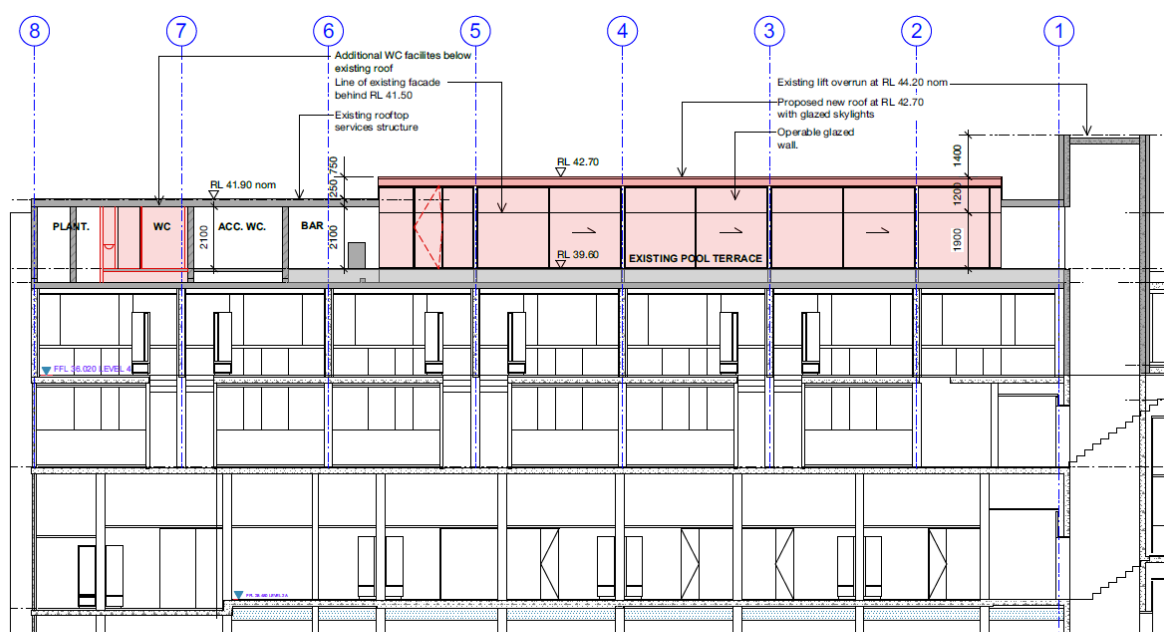


Figure 1: Long Section/East Elevation

During the public meeting, residents of One Central Park raised concerns that the rooftop terrace had been open to the public and events held on the rooftop, which is not currently permitted under the hotel's adopted Plan of Management (PoM), which only allows hotel guests and guests of hotel guests to use the facility. The proponent confirmed that while the rooftop pool and deck was approved under Project Approval MP 11_0089, no conditions of consent were imposed to establish parameters around use of the rooftop pool and terrace.

Further concerns were raised regarding the proponent's capacity to operate within the proposed conditions of consent as outlined in the modification. The Department's assessment report notes that the *Late-Night Trading Management Guidelines* contained in the *Sydney Development Control Plan 2012* (DCP) provide guidance for managing impacts associated with late night trading premises. The DCP recommends base trading hours for outdoor areas to 8:00pm, with extended trading hours permitted to 10:00pm on a trial basis, to allow ongoing performance of a premise and its impact on neighbourhood amenity to be assessed following the one year trial period. The Department notes that given community concerns and previous noise complaints, an initial trial trading period between 8:00pm and 10:00pm is appropriate and would enable the Department to monitor and assess the performance of the rooftop bar and any impacts. Condition F10 sets out the requirement of the one year trial period. The Commission supports the extended trial period of up to once year and agrees that it enables the Department to monitor and assess performance over the period. The proponent would be required to submit a further modification to permit ongoing operations between 8:00pm and 10:00pm.

To further address concerns of residents and provide greater certainty regarding noise management, the Commission has included Condition F18 to require the proponent to undertake a noise audit to be submitted to the Department within three months of commencing operation under this modification. The audit must:

- be undertaken by a suitably qualified and experienced acoustic specialist
- be undertaken whilst the rooftop is in operation at capacity;
- validate the noise levels via noise monitoring against the noise limits in Condition F14;
- include a summary of any noise related complaints and actions taken to address the complaint/s;
- review the management practices against best industry practice;
- include an action plan that identifies and prioritises additional noise mitigation measures that may be necessary to reduce noise levels; and
- if additional noise mitigation measures are recommended, provide a further program of monitoring and reporting.

The Commission considers that the requirement for a noise audit within 3 months of operation will allow issues to be identified and enable any occurring impacts to be rectified. The Commission does not support the opening of the sliding doors and has therefore recommended Condition B23(c) to require the western elevation be constructed with no openings.

On 22 November 2017, the proponent submitted an updated Acoustic Assessment, which included modelling of the sliding door scenario. The proponent acknowledged that while the western elevation sliding doors had always been part of the design, neither the Acoustic Assessment of the Department's assessment had considered the management of the doors in their assessments. The updated Acoustic Assessment concluded that the sliding doors would need to be closed when the venue exceeds 30 patrons (50% actively speaking at once) and when music is playing through loudspeakers. The proponent recommended a condition requiring:

- management procedures be established to ensure that when occupancy increases above 30 patrons, or music is played the western elevation doors would be closed; and
- construction of the sliding door must be undertaken to achieve a nominal sound insulation performance to suitably limit sound transmission through the enclosure.

The Commission sought advice from the Department regarding the proponent's updated Acoustic Assessment and suggested condition. The Department confirmed that it did not support the proposed change to allow the sliding doors to be open, as it did not form part of the application as originally notified and had not been assessed by the Department. The Department advised that its assessment was based on the western elevation being shut and sealed at all times, as was the proponent's Acoustic Assessment (22 September 2016)

Based on the recommendations in the Acoustic Assessment, the Commission finds that in order to effectively manage noise impacts, while the rooftop terrace pool and bar is in operation, the sliding doors would need to remain closed. Retaining the doors in a closed position, would prevent noise impacting on neighbouring residents, which is consistent with the assessment submitted by the proponent in its original application and assessed by the Department. The Commission finds the proposal to require the sliding doors be closed when the venue exceeds 30 patrons, has a number of shortcomings including the fact that it would be difficult to manage from a compliance perspective. Condition B23 stipulates the requirements for the rooftop structure, including that it be amended in accordance with the recommendations of the Acoustic Assessment prepared by Parsons Brinckerhoff, dated 22 September 2016.

4.2 Visual and privacy impact

Speakers at the public meeting who are residents of One Central Park raised concerns that their privacy was going to be impacted by the proposal. Residents were concerned that by allowing members of the public to access the pool deck, there would be a loss of privacy as there was insufficient screening in place to prevent overlooking of adjacent residences.

The Department's assessment report noted that privacy had been raised as an issue in 32.1% of submissions received. In response to the issues raised by Council, the proponent proposed the following amendments, which could be imposed through the conditions of consent to reduce the visual impact of the proposed modification:

- soffit cladding finish to be light grey gloss;
- skylights added to the western edge of the roof to increase transparency up to 40% to facilitate sky views from the public domain; and
- provision of slender vertical support beams, within the constraints of the Building Code of Australia (BCA), with details to be provided at detailed design/Construction Certificate stage.

The Department, subsequent to the recommended design and conditional changes, found that the amendments identified by the proponent would sufficiently address privacy concerns. To prevent overlooking, the Department recommended a condition requiring obscured glazing be installed along the western elevation of the roof structure. During the site visit, the proponent presented an alternative treatment for the western façade to address privacy concerns. The treatment involves applying translucent privacy film to the western glazed elevation, in order to obscure views from the rooftop in accordance with the Privacy Film Study (Drawing SK04).

The proponent wrote to the Commission on 20 November 2017 formally submitting the alternative treatment privacy treatment for the Commission's consideration. The proponent also requested various amendments to Condition B23. The Commission sought advice from the Department and determined to retain both the requirement for the roof structure to increase transparency on the western side of the roof by 40% and the requirement for a gloss finish to the soffit cladding, as these measures were proposed by the proponent to address concerns raised by Council. The Commission supports the proposed translucent privacy film on the western façade as it will provide additional privacy to residents of One Central Park. The conditions have been amended accordingly and the plan showing the privacy film study included in the table of plans (Condition A2). The updated plan is provided in Appendix 4.

4.3 Built form and heritage

Council initially objected to the proposed modification on the basis that the proposed roof structure added a degree of 'solidity' to the building, subsequently impacting on its heritage values. The Council noted that the roof structure would remove the majority of the existing views to the sky from the street level. The proponent prepared a Heritage Impact Statement (HIS) which assessed the visual impacts of the proposed structure. The HIS concluded that the roof structure would result in minimal additions to the built form and would not have an adverse impact on the heritage values of the building.

As identified above, in response to issues raised by the Council, the proponent suggested a number of amendments to be imposed by way of condition to reduce the visual impact of the addition, including provision of slender vertical support beams, light grey soffit finish and increased transparency skylights. The Department confirmed that as a result of the proponent's response, Council revised its position and withdrew its objection to the proposed modification. The Department considered the HIS and the proponent's amendments and found that the proposed roof structure would not result in unacceptable visual impacts when viewed from the public domain. The Department also agreed that the modifications proposed by the proponent would reduce the massing of the structure and increase views to the sky.

The Commission agrees with the Department's recommendation and finds that the proposed modification will not impact on the heritage values of the building. The Commission considers that the proposed roof structure would have minimal impact on the amount of skyline viewed from the street level and is an acceptable addition in its context.

4.4 Other matters

The Commission notes that it amended Condition F11 to address a minor administrative matter. The amendment does not impact on the intent or operation of the proposed modification.

The proponent requested an amendment to the gross floor area (GFA) to provide disabled access and circulation within the proposed toilet and is entirely internal to the existing roof structure. By relocating 1.1m² of redundant mechanical plant the numeric GFA calculation increases by 1.1m² internally because plant is not counted as GFA (however toilets are). The proponent confirmed that the existing structure remains unchanged.

5. COMMISSION'S FINDINGS AND DETERMINATION

The Commission has considered carefully the proposed modification, the Department's assessment report and the relevant matters for consideration under the EP&A Act. The Commission has noted the advice and recommendations from the Council. Finally, the Commission has considered written submissions from the public and heard from members of the local community about their concerns for the proposal during the public meeting on 15 November 2017.

The Commission has closely considered the concerns expressed by speakers at the public meeting, particularly regarding potential amenity impacts for the occupants of One Central Park. The Commission has found that with the proposed roof structure in place, the rooftop bar is unlikely to result in significant acoustic impacts on surrounding residences. The Commission considers that the proposed rooftop structure would mitigate noise emissions impacting on neighbouring residences.

The Commission agrees with the Department's recommended conditions and has imposed an additional condition requiring that the applicant undertake a noise audit within three months of operating under this modified consent to enable issues to be identified early and rectified by hotel management.

The Commission finds that the proponent's proposed translucent privacy screen on the western façade will provide additional privacy to residents of One Central Park. The conditions have been updated to reflect this amendment. Further, the Commission considers that any visual and urban design impacts would be very minimal and have been addressed as far as practicable through the proponent's amendments.

For the reasons set out above within section 4 of this report, the Commission has determined to grant consent to the modification request subject to the conditions set out in the instrument of approval.



Stephen O'Connor (Chair)
Member of the Commission



Carol Austin
Member of the Commission



David Johnson
Member of the Commission

APPENDIX 1
RECORDS OF COMMISSION MEETINGS

Notes of Briefing from the Department

This meeting is part of the Determination process.		
Meeting note taken by Alana Jelfs	Date: 15 November 2017	Time: 9:30am
Project: Modification to the Old Clare Hotel, Block 3A Central Park (MP 11_0089 MOD 3)		
Meeting place: PAC Office		
Attendees: Commission Members: Stephen O'Connor (Chair), David Johnson, Carol Austin. Commission Secretariat: Robert Bisley (Senior Planning Officer), Alana Jelfs (Senior Planning Officer). The Department: Anthony Witherdin (Director, Modification Assessments), Natasha Harras (Team Leader, Modification Assessments).		
The purpose of the meeting: For the Department to brief the Commission on the project		
<p>The Department raised the following matters:</p> <ul style="list-style-type: none"> • Consistency of the proposed modification with the overarching concept plan: <ul style="list-style-type: none"> - Department considered the proposed modification to be consistent with the concept plan; - Project approval obtained in 2013 for construction of a boutique hotel; - Rooftop terrace currently accessible to hotel guests only, but no conditions imposed regarding hours of operation, patron capacity, etc; - minor non-compliances with the concept plan, but within 5% variation allowed; - The application seeks to formalise its use and introduce operating parameters; • Noise: <ul style="list-style-type: none"> - Two minor exceedances predicted, but in an octave band that would be inaudible; - Assessment based on the City of Sydney standard condition for late night trading premises and sets out criteria based on octave bands; - Conditions imposed based on Council's standard approach to trialing extended hours of operation; • Heritage: <ul style="list-style-type: none"> - Council had some initial concerns regarding potential impacts to heritage values of the building requested the roof structure to be lightweight; - Department considers it would not be visible from the street; - internal fit-out for the Old Clare Hotel was subject to a development application to Council; • Resident concerns: <ul style="list-style-type: none"> - complaints regarding existing unauthorised use of the rooftop terrace by members of the public; - the Department's compliance team would be responsible for monitoring compliance with the conditions of consent; • Conditions of consent: <ul style="list-style-type: none"> - the Department clarified B24 applies only to the proposed roof structure; - F11 wording to be reviewed; - F14 to be amended to include the 8 kHz octave band in the noise limit table. 		
Outcomes/Agreed Actions: Department to amend conditions as agreed and reissue draft instrument.		
Meeting closed at 10am		

Notes of Site Visit and Briefing from the Proponent

This meeting is part of the Determination process.		
Meeting note taken by Alana Jelfs	Date: 15 November 2017	Time: 10:45am
Project: Modification to the Old Clare Hotel, Block 3A Central Park (MP 11_0089 MOD 3)		
Meeting place: Old Clare Hotel, 26 Broadway, Chippendale, NSW 2008		
Attendees: Commission Members: Stephen O'Connor (Chair), David Johnson, Carol Austin. Commission Secretariat: Robert Bisley (Senior Planning Officer), Alana Jelfs (Senior Planning Officer). Applicant: Tim Bures (General Manager, Old Clare Hotel), Giovanni Cirillo (Planning Lab), John Chesterman (Architect, Hüppauf Chesterman Architects).		
The purpose of the meeting: For the proponent to brief the Commission on the project		
The applicant raised the following matters: <ul style="list-style-type: none"> • Intent of the modification is to formalise the use of the rooftop bar terrace; • The Council raised concerns with elements of the architectural detailing and management matters, which the proponent addressed in response to issues raised by Council; • Potential impacts to acoustic amenity and privacy have been addressed through design; • Increased skylights along western edge to increase transparency when viewed from the street level; • Acoustic report requires the roof structure to be enclosed on the western façade. The proponent proposes to open sliding doors during the day; • Plan of Management will stipulate management controls around use of the rooftop bar; • The proponent explained that translucent privacy screen is now proposed identifying the treatment on a section of glazing on the western façade. The proponent considers this a better outcome to maintain privacy of neighbouring apartments. 		
Outcomes/Agreed Actions: Proponent to provide further detail on privacy screening, rooftop structure and requested amendments to conditions		
Meeting closed at 11:40am		

APPENDIX 2 LIST OF SPEAKERS

Planning Assessment Commission

Modification to Old Clare Hotel, Block 3A Central Park, Project Approval (MP 11_0089)

Date and Time: Wednesday 15 November 2017, 2:00pm

Place: Planning Assessment Commission Office,
Level 3, 201 Elizabeth Street, Sydney NSW 2000

List of Speakers

1. Benjamin Malter
2. Laura Martin
3. Claire Wilson

APPENDIX 3 SUMMARY OF ISSUES FROM WRITTEN AND VERBAL SUBMISSIONS TO THE PUBLIC MEETING

Management of rooftop terrace and bar

- Residents were assured the rooftop pool and bar area would only be for use by hotel guests.
- Previous unauthorised use of the rooftop bar, including parties. Hotel management fined.
- Parties held on the rooftop terrace demonstrate impacts to adjoining residents.
- Other similar venues do not allow this number of patrons.

Roof structure

- Proposed roof structure will be ineffective in mitigating impacts.

Noise impacts

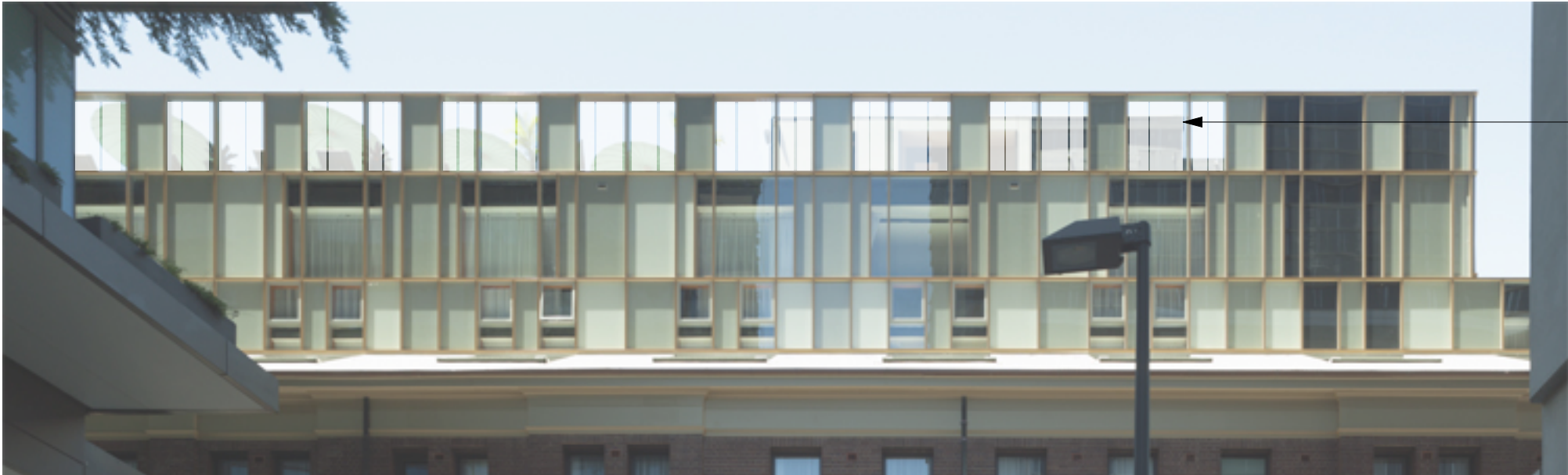
- What protection is given to the neighbouring properties against noise impacts.
- Use of the pool will result in noise impacts as it is not proposed to be enclosed.
- Mitigation measures associated with operation of the rooftop pool and bar areas and enclosing the terrace will be ineffective in mitigating impacts.
- Insufficient consideration given to noise impacts on neighbouring residents.
- Concern regarding noise complaints and how complaints are to be managed from a strata management point of view.

Privacy

- Patrons of the rooftop bar can overlook residents of One Central Park impacting on privacy and amenity.
- Insufficient consideration given to consider privacy impacts on neighbouring residents.
- One Central Park is often a backdrop for people taking photos impacting privacy of residents.

Process

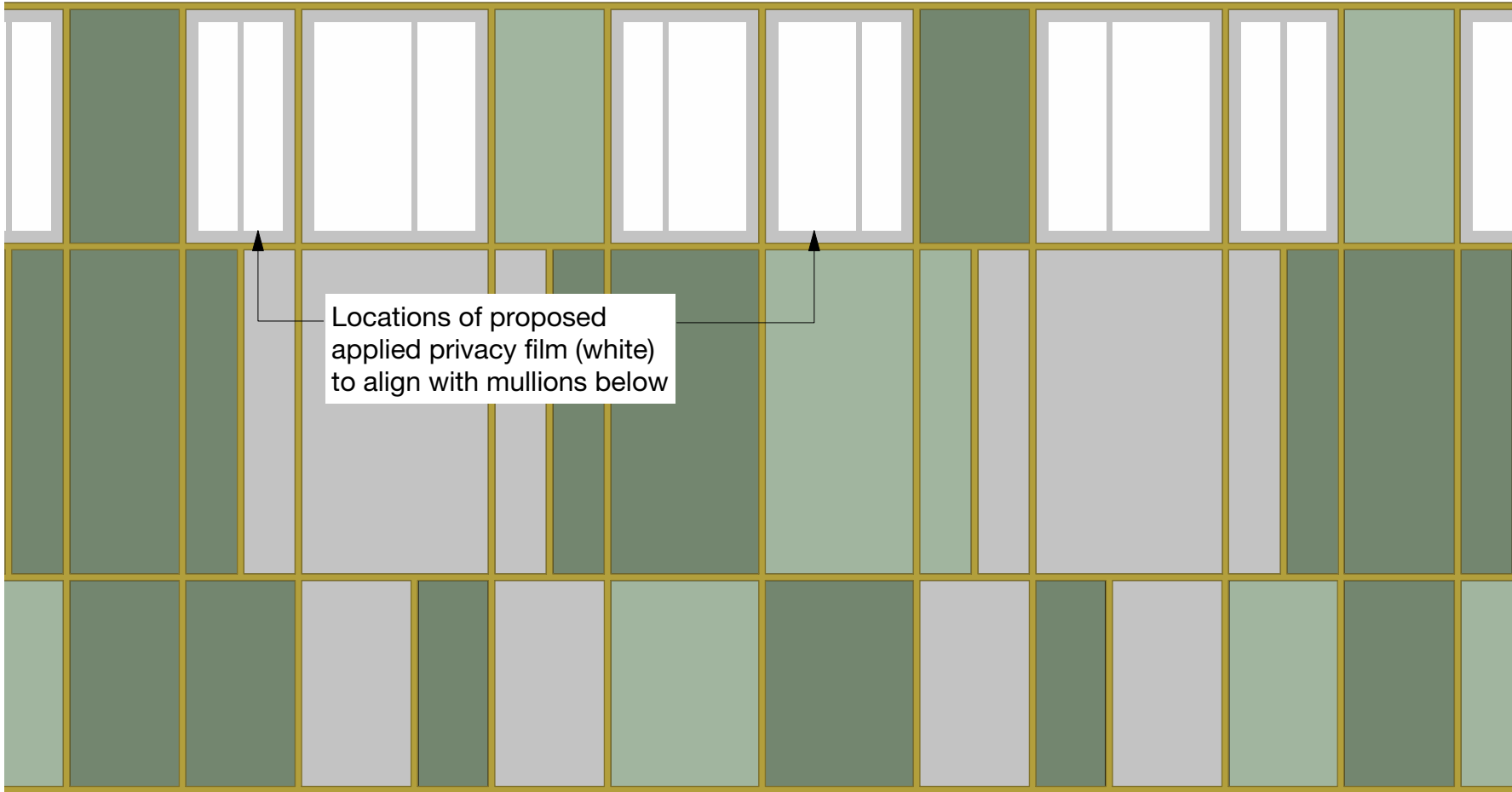
- Residents feel let down, having signed petitions and made submissions to no avail.
- The Department's report states the hotel is in a city location. Chippendale is a residential area.
- The Department has failed to address concerns of the public.



Translucent privacy film located on existing clear facade glazing

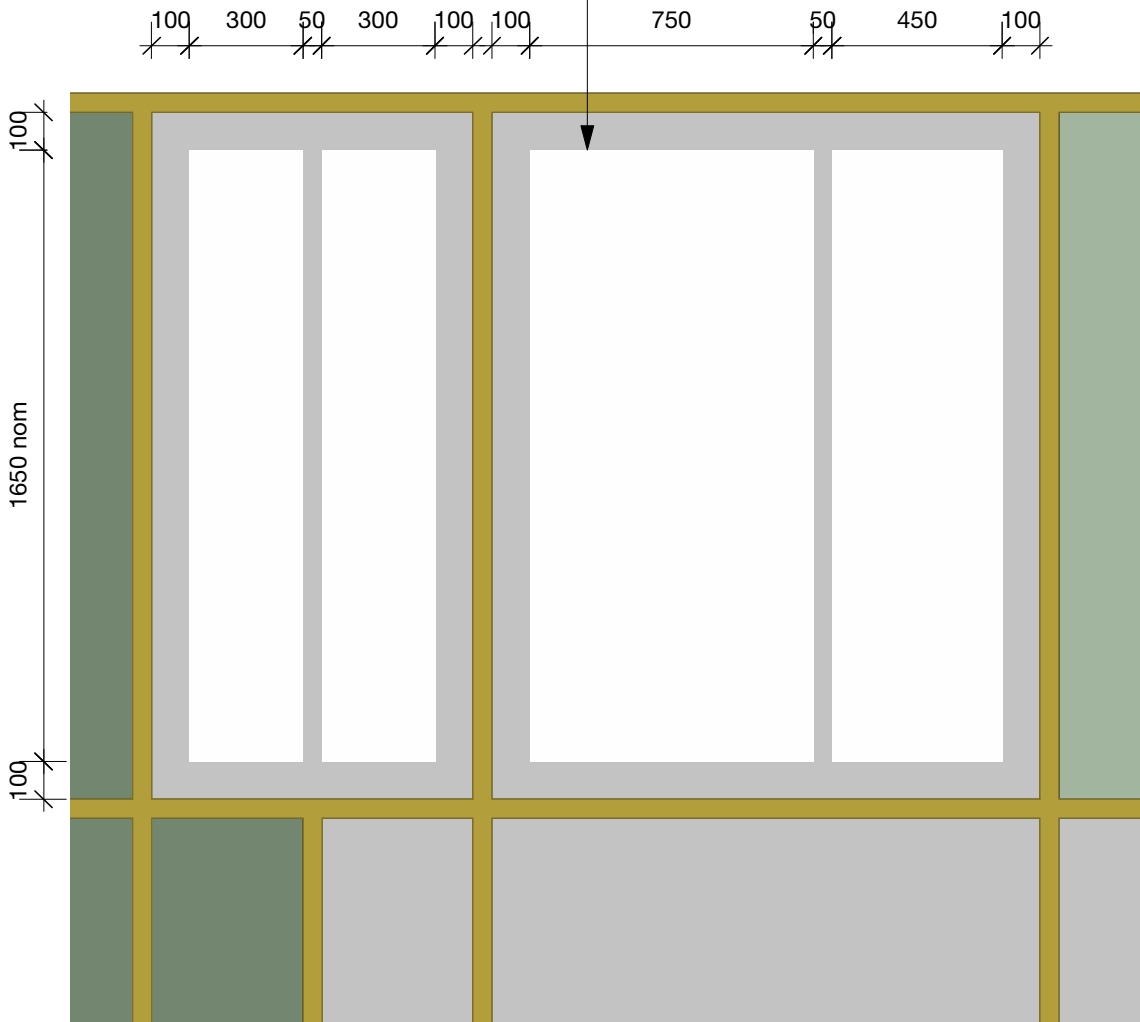
Translucent privacy film located on existing clear facade glazing

1 PHOTOMONTAGE OF PRIVACY FILM STUDY
1:100



Locations of proposed applied privacy film (white) to align with mullions below

2 FACADE PRIVACY FILM ELEVATION STUDY
1:100



3 FACADE PANEL FILM STUDY
1:20

REV DATE AMENDMENTS

LEGEND

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DRAWING
PRIVACY FILM STUDY

DATE SCALE DWG NUMBER
OCT 2017 1:20 @ A3 SK04

ISSUE
FOR DISCUSSION
REVISION DATE
1411.17
REVISION
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