



Dr Liz Develin  
A / Secretary  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

6 September 2018

Dear Dr Develin,

**Modification to Old Clare Hotel, Block 3A Central Park, Chippendale  
(MP 11\_0089 MOD 5)**

1. Thank you for your Department's letter received on 22 August 2018 referring the above modification to the Independent Planning Commission (the **Commission**) for determination. The Department of Planning and Environment (the **Department**) has referred the Modification to Old Clare Hotel, Block 3A Central Park (MP 11\_0089 MOD 5) (the **modification application**) to the Commission for determination, because it relates to a condition imposed by the then Planning Assessment Commission (**PAC**).
2. On 1 March 2018, the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) was amended. The project is a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings and Transitional and Other Provisions) Regulation 2017* (**EP&A (ST&OP) Regulations**).
3. The ability to modify transitional Part 3A projects under the former section 75W of the EP&A Act has been discontinued. In order to modify a transitional Part 3A approval, the Minister for Planning can declare the development to be State Significant Development (**SSD**) by order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulations. If a declaration is made, the approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant test.
4. On 11 July 2018, the Director, Regional Assessments (as delegate of the Minister for Planning), made an order under clause 6 of Schedule 2 declaring the development the subject of the project approval to be SSD. The order was published in the NSW Government Gazette on 20 July 2018 and took effect from that date. The Department's Assessment Report (the **Department's AR**) stated that the effect of the order is as follows:
  - *"the project approval is taken to be a development consent under Part 4 for the carrying out of the development*
  - *modification request is taken to be an application to modify under section 4.55 of the EP&A Act"*.
5. Mary O'Kane, Chair of Commission, nominated Adrian Pilton to constitute the Commission to determine the modification application.

*Project Background*

6. The Department's AR stated that on 5 April 2013, the then Executive Director, Development Assessments and Approvals, granted Project Approval (MP 11\_0089) for the adaptive reuse of buildings within Block 3A. The Project Approval granted consent for the following:
  - *"construction of a boutique hotel consisting of:*
    - *60 hotel rooms*
    - *a total GFA of 4,595.90 m<sup>2</sup>*
    - *1,098 m<sup>2</sup> of food and drink premises, including three restaurants and a lounge*
    - *a rooftop deck and pool*
    - *storage and loading facilities*

- *a single storey addition to the Old Clare Hotel and a two-storey addition to the Administration Building*
  - *construction of a new, glazed link between the two buildings to create a hotel foyer/entry space”.*
7. The Project Approval has been modified on four occasions:
- *Modification 1: Internal alterations at basement to second floor levels, relocation of the rooftop pool, increase pool canopy by 100 millimetre (mm) and modification of external façades (approved 1 March 2014);*
  - *Modification 2: Modification to the timing of the implementation of façade heritage conservation works (approved 26 May 2015);*
  - *Modification 3: Establishment of hours of operation of the rooftop pool terrace bar and erection of rooftop structures (approved 27 November 2017);*
  - *Modification 4: Conversion of existing basement storage space into a day spa/salon and associated internal alterations and establishing the hours of operation for the day spa/salon (approved 28 February 2018).*
8. According to the Department’s AR the modification application was made publicly available on the Department’s website and sent to the Sydney City Council (**Council**) for comment. According to the Department’s AR, Council advised the Department that *“they would not be providing comments on the modification”*. No public submissions were received.

Modification Application

9. The Planning Lab, on behalf of SONRAC Pty Ltd (the **applicant**) seeks approval to amend Condition 23 (c) of MP 11\_0089 (Modification 3) (the **existing approval**) as it currently restricts the use of a self-closing door, which is required to provide the rooftop bar with access to the toilets, fire stairs and a store room. The applicant stated in its Statement of Environmental Effects (**SEE**) that the use of the self-closing door is essential for compliance with the Building Code of Australia (**BCA**).
10. The relevant part of Condition 23 (c) currently states:
- B23 Amendment of the roof structure*  
*The roof structure approved by modification application MP 11\_0089 MOD 3 shall be amended:*  
 (c) *the western elevation of the structure is to be constructed of fixed glazing, with no openings.*
11. The proposed amendment to Condition 23 (c) is:
- B23 Amendment of the roof structure*  
*The roof structure approved by modification application MP 11\_0089 MOD 3 shall be amended:*  
 (c) *with the exception of the self-closing door in the new glazed wall required to access the toilets, fire stairs and store room.*
12. In determining this modification application, the Commission considered:
- the modification application;
  - the original development consent (MP 11\_0089) and subsequent modifications (see paragraph 7);
  - all information provided by the applicant to the Department, including:
    - SEE, Old Clare Hotel, 20-24 Broadway & 1-3 Kensington Street, Chippendale, Section 4.55(1A) Amendment of Instrument of Approval MP 11\_0089, dated 11 July 2018;
    - Old Clare Hotel - Acoustic Review, dated 4 June 2018;
  - the Department’s AR, dated 22 August 2018 and the Modification of Project Approval - Instrument MP 11\_0089; and
  - section 4.55 of the EP&A Act and the likely impacts to the environment, social and economic impacts in the locality, and the public interest.
13. The applicant submitted an Acoustic Review, prepared by WSP Australia Pty Limited, dated 4 June 2018, to assess the noise impacts associated with the modification application. The Acoustic Review stated: *“the introduction of the doors to the bathrooms and fire stair will not result in non-compliance with the established noise criteria and we recommend that the DoPE condition “(c) the western*

*elevation of the structure is to be constructed of fixed glazing, with no openings” can be removed without an adverse effect on the noise emissions from the development”.*

14. The Department’s AR stated that its assessment considered the modification application as well as the previous assessment undertaken to support MP 11\_089 Modification 3 and the PAC’s Determination dated 27 November 2017. The Department’s AR stated that it is satisfied that the modification application will have minimal environmental impacts and would result in development that is substantially the same as the originally approved development.
15. The Department’s AR concluded that the modification application is acceptable as it would:
  - *“not result in any significant noise impacts beyond those already assessed and approved*
  - *ensure the rooftop bar complies with BCA requirements for fire egress*
  - *provide access to the toilets, fire stairs and store room, which are essential for the operation of the rooftop bar”.*
16. In addition, the Department noted that the existing approval includes a suite of conditions relating to strict noise limits and requirements for noise monitoring, venue management and restricted operating hours. The Department has recommended that the Plan of Management (**PoM**) for the venue be updated to include measures to manage the use of the area providing access to the toilets, to minimise potential amenity impacts.
17. After careful consideration, the Commission accepts the conclusions in the Department’s AR, as described above in paragraphs 14 and 16, and finds that the proposed amendment to Condition 23 (c) is acceptable because:
  - the modification application would not result in noise impacts above those that have already been previously assessed and approved;
  - the intent of Condition 23 (c) was to manage potential noise impacts associated with the rooftop bar and to ensure the western elevation was constructed of fixed glazing, not to prevent use of the self-closing doors within the western elevation; and
  - amending the condition would enable compliance with BCA requirements.
18. The Commission finds that the application complies with the relevant statutory scheme for modifications, set out in paragraph 4. The Commission accepts the Department’s assessment set out in paragraph 14 and finds that in accordance with section 4.55(1A), the modification application is substantially the same development and is of minimal environmental impact.
19. The Commission finds that the modification application represents ecologically sustainable development, orderly and economic use of the land and promotes good design and amenity of the built environment in accordance with section 1.3 (b), (c), (g) and (h) of the EP&A Act. The Commission finds that the modification application is in the public interest for the reasons set out in paragraphs 15 and 17, namely that the modification application would not result in noise impacts beyond those already assessed and approved and would allow the development to comply with BCA requirements.
20. The Commission has modified the existing approval, in the modification instrument, for the following reasons:
  - to prevent, minimise and/or offset adverse environmental impacts; and
  - to set standards and performance measures for acceptable environmental performance.
21. The Commission has therefore determined to approve the modification application, subject to the attached modification instrument, for the reasons set out in paragraphs 15 and 17.
22. The reasons for the Decision are given in this Statement of Reasons for Decision dated 6 September 2018.



Mr Adrian Pilton (Chair)  
**Member of the Commission**