

Department of Planning, Housing and Infrastructure

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# Modification 6 to 1 Dixon Street, Haymarket

Modification Assessment Report (DA 082-07-2007 MOD 6 or PAN-428656)

July 2024



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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# Preface

This assessment report provides a record of the Department of Planning, Housing and Infrastructure's (the Department) assessment and evaluation of Modification 6 of the development consent for a karaoke venue located at 1 Dixon Street, Haymarket lodged by T&W Holdings Pty Limited. The report includes:

- an assessment of the modification against government policy and statutory requirements, including mandatory considerations
- a demonstration of how matters raised by the community and other stakeholders have been considered
- an explanation of any changes made to the modification during the assessment process
- an assessment of the likely environmental, social and economic impacts of the modification
- an evaluation which weighs up the likely impacts and benefits of the modification, having regard to the proposed mitigations, offsets, community views and expert advice, and considers whether the impacts are on balance acceptable
- a recommendation to the decision-maker, along with the reasons for the recommendation, to assist them in making an informed decision about whether the consent should be modified and any conditions that should be imposed.

# Contents

<b>Preface .....</b>	<b>i</b>
<b>1 Introduction.....</b>	<b>1</b>
1.1 The proposal.....	1
1.2 Project location .....	1
1.3 Related projects and works.....	2
<b>2 Proposed modification.....</b>	<b>3</b>
<b>3 Statutory context.....</b>	<b>4</b>
3.1 Scope of modification and assessment pathway.....	4
3.2 Mandatory matters for consideration .....	5
<b>4 Engagement .....</b>	<b>6</b>
4.1 Department's engagement.....	6
4.2 Summary of submissions .....	6
<b>5 Assessment.....</b>	<b>7</b>
5.1 Operational hours and impacts.....	7
<b>6 Evaluation .....</b>	<b>9</b>
<b>7 Recommendation .....</b>	<b>10</b>
<b>8 Determination .....</b>	<b>11</b>
<b>Glossary .....</b>	<b>12</b>
<b>Appendices .....</b>	<b>13</b>
Appendix A – List of referenced documents.....	13
Appendix B – Statutory considerations .....	14
Appendix C – Recommended instrument of modification.....	17

# 1 Introduction

## 1.1 The proposal

On 30 April 2024, T&W Holdings Pty Limited (the Applicant) lodged a modification application seeking approval under section 4.55(1A) of the EP&A Act to amend the approved standard hours of operation to permanently adopt the existing trial operating hours. The proposal does not seek any physical works.

## 1.2 Project location

The subject site is located within the Dixon Street Shopping Centre at 1 Dixon Street, Haymarket in the City of Sydney local government area (LGA) (**Figure 1**). The karaoke bar is wholly located within this shopping centre at Shop 2, Level 1 (Basement), and does not have a street frontage.

The shopping centre is bound by Liverpool Street to the north, Chinatown precinct to the south, Harbour Street and Chinese Garden of Friendship to the west and Dixon Street and retail/residential developments to the east.

In accordance with the City of Sydney Council's Development Control Plan (DCP), the site is located within a Late-Night Management Area.



**Figure 1** | Subject site, outlined in red (base source: NearMaps)

## 1.3 Related projects and works

### 1.3.1 Approval history

On 11 September 2007, the Sydney Harbour Foreshore Authority, acting under delegation from the Minister for Planning, granted consent (DA 082-07-2007) for the use and internal fit-out of Shop 2, Level 1, 1 Dixon Street, Haymarket as a karaoke venue.

Condition E1 prescribes both standard hours of operation and extended hours of operation on a trial basis.

The consent has been modified five times previously to extend the duration of the trial period (**Table 1**). The most recent trial period was for a duration of 5 years, which concluded on 14 May 2024.

**Table 1 | Summary of modifications**

Modification	Description	Decision-maker	Type	Date
<b>MOD 1</b>	One-year trial: <ul style="list-style-type: none"><li>2 am to 4 am Thursday, Friday, Saturday</li></ul> Permitted a two-year trial: <ul style="list-style-type: none"><li>12 midnight to 2 am from Thursday to Sunday</li></ul>	Minister	4.55(1A)	14 May 2009
<b>MOD 2</b>	Two-year trial: <ul style="list-style-type: none"><li>12 midnight to 2 am from Monday to Sunday (inclusive)</li><li>2 am to 4 am on Friday, Saturday and Sunday</li></ul>	Minister	4.55(1A)	21 June 2010
<b>MOD 3</b>	Two-year trial: <ul style="list-style-type: none"><li>12 midnight to 2 am from Monday to Sunday (inclusive)</li><li>2 am to 4 am on Friday, Saturday and Sunday</li></ul>	Minister	4.55(1A)	3 October 2012
<b>MOD 4</b>	Five-year trial: <ul style="list-style-type: none"><li>12 midnight to 2 am from Monday to Sunday (inclusive)</li><li>2 am to 4 am on Friday, Saturday and Sunday</li></ul>	Minister	4.55(1A)	7 July 2014
<b>MOD 5</b>	Five-year trial: <ul style="list-style-type: none"><li>12 midnight to 2 am from Monday to Sunday (inclusive)</li><li>2 am to 4 am on Friday, Saturday and Sunday</li></ul>	Director	4.55(1A)	23 May 2019



## 2 Proposed modification

The modification is outlined in the Modification Report in **Appendix A**.

The Applicant seeks to amend Condition E1 so that the current late-night trial hours become permanent as follows:

### **E1 Hours of Operation**

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to ~~between 11 am and 12 midnight Monday to Sunday~~
  - (i) 11 am and 2 am on Monday to Thursday (inclusive)
  - (ii) 11 am to 4 am Friday, Saturday and Sunday (inclusive)
- (b) ~~Notwithstanding (a) above, the use may operate:~~
  - ~~(i) Between 12 midnight and 2.00 am on Monday to Sunday (inclusive) for a trial period expiring on 14 May 2024~~
  - ~~(ii) Between 2.00 am and 4.00 am Friday, Saturday and Sunday mornings for a trial period expiring on 14 May 2024.~~

## 3 Statutory context

### 3.1 Scope of modification and assessment pathway

Details of the legal pathway under which modification is sought are provided in **Table 2** below.

**Table 2** | Permissibility and assessment pathway

Consideration	Description
<b>Scope of modification</b>	<p><b>Modification involving minimal environmental impact</b></p> <p>The Department has reviewed the scope of the modification and considers it to be a modification involving minimal environmental impact as it:</p> <ul style="list-style-type: none"><li>• would not significantly increase the environmental impacts of the project as approved</li><li>• is substantially the same development as originally approved; and</li><li>• would not involve any further disturbance outside the already approved disturbance areas for the project.</li></ul> <p>The Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&amp;A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&amp;A Act rather than requiring a new development application to be lodged.</p>
<b>Consent Authority</b>	<p><b>Minister for Planning and Public Spaces</b></p> <p>The Minister was the consent authority for the original application.</p> <p>Therefore, the Minister is the consent authority under section 4.5(a) of the EP&amp;A Act and can modify the development consent.</p>
<b>Decision-maker</b>	<p><b>Delegate</b></p> <p>Under the Minister's Instrument of Delegation, the Team Leader, Key Sites and TOD Assessments may determine the application as:</p> <ul style="list-style-type: none"><li>• a political disclosure statement has not been made</li><li>• there are no public submissions in the nature of objections</li><li>• Council has not made a submission by way of objection.</li></ul>



## 3.2 Mandatory matters for consideration

### 3.2.1 Matters of consideration required by the EP&A Act

In determining the modification, the consent authority must take into consideration such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the development the subject of the application. The Department's consideration of these matters is shown in **Table 3** below.

**Table 3** | Matters for consideration

Matter for consideration	Department's assessment
Environmental planning instruments, proposed instruments, development control plans & planning agreements	Section 5 - Assessment and Appendix B
EP&A Regulation	Appendix B
Likely impacts	Section 5 - Assessment
Suitability of the site	Section 1- Introduction and Section 5- Assessment
Public submissions	Section 4- Engagement and Section 5- Assessment
Public interest	Section 4 - Engagement, Section 5 - Assessment and Section 6- Evaluation

### 3.2.2 Objects of the EP&A Act

In determining whether or not to modify the consent, the consent authority should consider whether the modified project is consistent with the relevant objects of the EP&A Act (section 1.3) including the principles of ecologically sustainable development. Consideration of those factors is described in **Appendix B**.

The Department is satisfied that the development, as proposed to be modified, is consistent with the objects of the EP&A Act and the principles of ecologically sustainable development (ESD).

## 4 Engagement

### 4.1 Department's engagement

In accordance with the EP&A Regulation the Department made the modification application publicly available on the NSW Planning Portal on 1 May 2024 and referred the application to City of Sydney Council (Council) and NSW Police for comment.

### 4.2 Summary of submissions

No public submissions were received.

No comments were received from NSW Police (Sydney City Licensing Team).

Council did not object to the application and provided the following comments:

- while permanently adopting the trial hours would not be supported, a further 5-year trial period would be
- no complaints were received relating to the operation of CEO Karaoke over the last 5-year trial period (May 2019 to present) and the only non-compliance recorded during this period related to a non-operational fire exit sign light.

## 5 Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification applications and associated documents
- the Environmental Assessment and conditions of approval for the original application
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act and Regulation
- the submission from Council.

The Department considered the key issue associated with the proposal to be operational hours and impacts, which is considered below.

### 5.1 Operational hours and impacts

The modification application proposes to permanently adopt the existing trial operating hours. The proposal does not seek any physical works.

Council advised that while permanently adopting the trial hours would not be supported, a further 5-year trial period would be. Both Council and the Department's Compliance Branch also confirmed that they had not received any complaints during the latest 5-year trial period that related to the venue's operation.

The Applicant considers permanently adopting the trial hours is suitable because the venue has been successfully operating under these trial hours for approximately 16 years, and Council's DCP enables sites in the Late-Night Management Area to potentially operate 24-hours a day. In the event that permanent extended hours are not supported, the Applicant requests a further 10-year trial period.

The Department considers that while the Sydney DCP permits 24-hour trading as extended hours for a Category A premises in a Late-Night Management Area, the DCP states this be subject to rolling trial periods to enable ongoing consideration of the performance of the venue and the plan of management. Therefore, the Department recommends a continuation of a trial period for a duration of 5 years.

The Department has considered the modification and the advice from Council and considers a continued 5-year trial period is appropriate and acceptable as:

- the venue is within a Late Night Trading Area in the CBD and would be wholly contained within the shopping centre with no direct exits onto the public domain

- the site has been operating under extended hours for 17 years and no noise or operational complaints have been recorded by Council or the Department during the latest 5-year trial period
- noise and operational effects would continue to be managed in accordance with the revised Plan of Management prepared as part of MOD 3 and endorsed by NSW Police
- it would contribute to Sydney's night-time economy
- a further trial period would enable ongoing consideration of the performance of the venue.

The Department's assessment concludes a further period would not result in any adverse impacts on surrounding receivers, subject to the existing and recommended conditions of consent.

## 6 Evaluation

The Department has reviewed the modification application and comments from Council, taking into consideration the relevant matters under section 4.15 of the EP&A Act and objects of the EP&A Act.

The Department's assessment concludes that the proposal is acceptable, subject to conditions, as:

- the most recent 5-year trial period was successful with no noise or management complaints received by the Department or Council
- a further 5-year trial period would allow the Department to continue to review the ongoing operation of the premises and compliance with the Plan of Management endorsed by NSW Police
- it would continue to contribute to Sydney's night-time economy in an identified Late-Night Management Area
- it is substantially the same development as the approved development and would not result in any adverse environmental impacts
- it continues to comply with relevant statutory provisions and remains consistent with the relevant EPIs and the strategic planning context.

Consequently, the Department considers the modification is in the public interest and should be approved, subject to the recommended modified conditions of consent.

## 7 Recommendation

It is recommended that the **Team Leader**, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies the consent** for the karaoke venue at 1 Dixon Street, Haymarket (DA 082-07-2007 MOD 6 or PAN-428656), subject to the conditions in the attached instrument of modification.
- **signs** the attached instrument of modification (**Appendix C**).

Recommended by:

A handwritten signature in black ink, reading 'Lucinda Craig', written in a cursive style.

**Lucinda Craig**

Senior Planning Officer

Key Sites and TOD Assessments

## 8 Determination

The recommendation is **adopted** by:

A handwritten signature in blue ink, appearing to be 'CS', is written over a faint yellow rectangular background.

3 July 2024

**Cameron Sargent**

Team Leader

Key Sites and TOD Assessments



# Glossary

Abbreviation	Definition
<b>Council</b>	City of Sydney Council
<b>Department</b>	Department of Planning, Housing and Infrastructure
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2021
<b>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>EPI</b>	Environmental planning instrument
<b>ESD</b>	Ecologically sustainable development
<b>LGA</b>	Local government area
<b>LEP</b>	Local environmental plan
<b>Minister</b>	Minister for Planning and Public Spaces
<b>NCC</b>	National Construction Code
<b>Planning Systems SEPP</b>	State Environmental Planning Policy (Planning Systems) 2021
<b>SEARs</b>	Planning Secretary's Environmental Assessment Requirements
<b>SEPP</b>	State environmental planning policy

# Appendices

## Appendix A – List of referenced documents

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning, Housing and Infrastructure's website as follows:

<https://www.planningportal.nsw.gov.au/daex/under-consideration/1-dixon-street-haymarket-da-082-07-2007-mod6>

## Appendix B – Statutory considerations

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development. **Table 4** identifies the matters for consideration under section 4.15 of the EP&A Act that apply to the proposed modification.

**Table 4 | Consideration of the matters listed under Section 4.15(1) of the EP&A Act**

Section 4.15(1) Matters for consideration	The Department's assessment
(a) the provision of - (i) any environmental planning instrument	The proposed modification is consistent with, or does not alter compliance with, the relevant Environmental Planning Instruments (EPIs) addressed below in this report.
(ii) any proposed instrument	The proposed modification is consistent with the relevant draft Environmental Planning Instruments (EPIs).
(iii) any development control plan	The Sydney DCP applies to the site. In accordance with the Sydney Development Control Plan (DCP), the site is located within a Late-Night Management Area. Relevant controls are considered in <b>Table 6</b>
(iia) any planning agreement	Not applicable.
(iv) the regulations	The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications, the requirements for notification and fees as addressed in <b>Section 4</b> .
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department considers the likely impacts of the proposed modification acceptable, and have been considered and addressed, subject to the recommended conditions ( <b>Section 5</b> ).
(c) the suitability of the site for the development	The site is suitable for the development ( <b>Section 1</b> and <b>5</b> ).
(d) any submissions	No public submissions were received. The Department has considered the submission from Council as addressed in <b>Sections 4</b> and <b>5</b> .
(e) the public interest	The Department considers the modified proposal to be in the public interest as it would facilitate the continued operation of the site which would contribute to Sydney's night time economy.

A consent authority may modify the consent if it is satisfied the proposed modification application meets the requirements of section 4.55(1A) of the EP&A Act. An assessment of the proposed modification application against the requirements of section 4.55(1A) of the EP&A Act is included in **Table 5**.

**Table 5 | Consideration of section 4.55(1A) of the EP&A Act**

Section 4.55(1A)	Assessment
(a) The proposed modification is of minimal environmental impact	The potential environmental impacts arising from the proposed modification are minor in nature ( <b>Section 5</b> ).

Section 4.55(1A)	Assessment
(b) The development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified.	<p>The development, as proposed to be modified, is substantially the same development as that originally approved in that:</p> <ul style="list-style-type: none"> <li>• there are no changes to any of the approved physical elements of the building</li> <li>• it would not result in any change to the use of the site, or intensity of the use</li> <li>• it relates to the duration of the trial period and no changes are proposed to the previously approved extended hours of operation</li> <li>• the environmental impacts arising from the proposed modification are consistent with those of the approved development.</li> </ul>
(c) The application has been notified in accordance with the regulations.	The application is not required to be notified in accordance with the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) ( <b>Section 4</b> ).
(d) Any submission made concerning the proposed modification has been considered.	No public submissions were received. The Department has considered the submission from Council in <b>Sections 4</b> and <b>5</b> .

## Environmental Planning Instruments

To satisfy the requirements of section 4.15(1)(a)(i) of the EP&A Act, the Department has considered the relevant SEPPs as part of its assessment. The following EPIs are relevant to the application:

- State Environmental Planning Policy (Planning Systems) 2021 (previously SEPP (State and Regional Development) 2011)
- State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021 (includes the previous SEPP (State Significant Precincts) 2005 and Darling Harbour Development Plan No 1)
- State Environmental Planning Policy (Resilience and Hazards) 2021 (previously SEPP No. 55 – Remediation of Land)
- State Environmental Planning Policy (Biodiversity and Conservation) 2021 (includes the previous Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005)
- Sydney Development Control Plan 2012

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

## Sydney Development Control Plan 2012

The Sydney DCP identifies the site as being within a Late-Night Management Area and defines a karaoke venues where liquor is sold/consumed on the premises as a Category A – High Impact Premises. The Department's consideration of the proposal against the Late Night Trading Management provisions with the Sydney DCP is provided in **Table 6**.

**Table 6 | Department's consideration of Sydney DCP Late Night Trading Management provisions**

Sydney DCP provisions			Department comments
3.15.1 General			
(2) These provisions apply to applications for new and existing Category A, B and C premises that:  (a) seek approval for trading hours;  (b) seek refurbishment, additions or extensions that will result in an intensification of an existing use;  (c) seek an extension or renewal of trial trading hours as prescribed in this section of the DCP; or  (d) seek approval for outdoor trading.			The modification seeks approval to amend the approved standard hours of operation to permanently adopt the existing trial operating hours.
3.15.4 Trading hours and trial periods			
(1) Base and extended hours that apply to particular late night trading areas are identified in Table 3.8 Late night trading hours.			The site is located within a Late-Night Management Area and the use of the venue is identified as a Category A – High Impact Premises.  The modification seeks to amend the approved standard hours of operation (11 am to 12 midnight) to permanently adopt the existing trial operating hours, as follows: <ul style="list-style-type: none"><li>11 am and 2 am on Monday to Thursday (inclusive)</li><li>11 am to 4 am Friday, Saturday and Sunday (inclusive).</li></ul> The Department recommends a further period for 5 years.
Late Night Management Area		Category A	
		Indoor	
	Base	6 am to midnight	
	Extended	24 hours	
(3) Any hours that are beyond base hours will be subject to a trial period			The proposed hours of operation are beyond the base hours permitted for the area and have been subject to trial periods (approximate duration of 17 years).
(7) At the completion of a trial period a new application must be lodged to either renew existing trial hours or to seek an extension of trading hours.			As discussed in <b>Section 5</b> , the Department does not support the proposal for permeant hours on the basis it would remove the ability for ongoing consideration of the performance of the venue and the plan of management and would be contrary to the intent of the DCP, which specifies trading hours above the base hours are only to be applied on a trial basis.
(9) Trial periods may be permitted up to the following durations:  (a) First trial – 1 year;  (b) Second trial – 2 years;  (c) Third and subsequent trials – 5 years.			Therefore, the Department recommends a continuation of the trial period for 5 years.
(10) Once the full range of extended trading hours is reached an application must be lodged every 5 years to renew trading hours.			

## Appendix C – Recommended instrument of modification

The Modification Instrument can be found on the Department of Planning, Housing and Infrastructure's website at:

<https://www.planningportal.nsw.gov.au/daex/under-consideration/1-dixon-street-haymarket-da-082-07-2007-mod6>