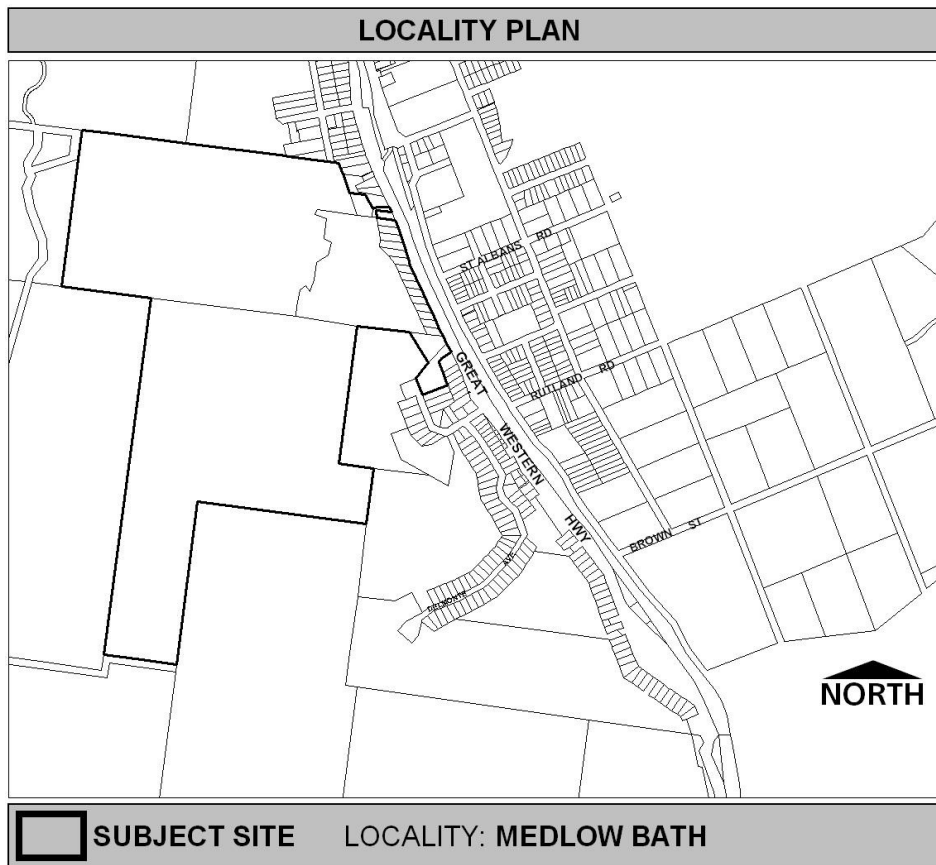


JOINT REGIONAL PLANNING PANEL
(Sydney West Region)

JRPP No	2011SYW079
DA Number	XM/773/2009/A
Local Government Area	Blue Mountains City Council
Proposed Development	Section 96(2) modification of approved alterations and additions to Tourist Accommodation (Hydro Majestic Hotel)
Street Address	52-88 Great Western Highway Medlow Bath
Applicant/Owner	Hydro Majestic Hotel Pty Ltd
Number of Submissions	Eight
Recommendation	Approval with Modified Conditions
Report by	Mr Byron Tully Acting Executive Principal Planner– Development and Planning Services





Site description

The subject site consists of 22 allotments of land located on the western side of the Great Western Highway with 18 of the allotments having a direct highway frontage. The total property area is approximately 91.5 hectares, with the subject site extending west over the edge of the escarpment and into the Megalong Valley. Existing development on the site is located along the site's eastern portion between the highway and the top of the escarpment. The existing tourist accommodation building extends for approximately 400 metres north-south along the site and consists of an eclectic mix of approximately 17 co-joined buildings and associated facilities. The site has been developed incrementally since the late 19th Century, with each cycle of development seeing some of the earlier structures either altered, extended or demolished.

Development in the surrounding area is largely characterised by residential-scale dwellings. In addition to the surrounding residential development there is a service station directly to the south of the site and a car sales yard to the north. The Blue Mountains Railway Line runs parallel to the site on the opposite side of the Great Western Highway.

Approved

At its meeting of 28 October 2010, the Sydney West Regional

Development

Panel granted consent for alterations and additions to the Hydro Majestic Hotel (the “original application”).

Although a significant amount of the approved development involved the repair, refitting and/or reconfiguration of existing buildings, significant additions were also approved to particular buildings or areas within the site.

The approved extent of alterations and additions has been summarised below, with particular reference to the building names and numbers used on the approved CMP Site Plan. A copy of this CMP Site Plan is provided at Attachment 3, with the identified building names and numbers being used consistently throughout this report.

- North End (Building 1) Repair and use as Hotel maintenance building.
- Old Belgravia (Building 2) Repair and reconfigure as accommodation wing.
- Hydro Tavern (Building 3) Repair and reconfigure as guest gymnasium facility.
- Remanent Stone Wall, Construct new accommodation wing (Mark Foy Wing - Building 4- referred to in CMP Plan at Attachment 3 as a segment of the Belgravia Wing), remnant stone wall to be retained and reused. Excavation for lap pool and plant room.
- Belgravia Wing (Building 5) Retain entrance tower, staircase and hall fabric, demolish and redevelop accommodation rooms, provide mansard roof element. Excavation for spa rooms, swimming pool and service corridor.
- Belgravia Entry (Building 6) Internal refitting, adapt western façade for balcony/terraces and provide new lift access. Excavate for new service corridor.
- Casino (Building 7) Adapted and reconfigure as main entrance/foyer area.
- Casino Lounge (Building 8) Replace non-sympathetic western façade and provide new balcony.
- Billiard Room and Hallway (Building 9) Extension to western elevation for Fine Dining room and new kitchen (basement), remove northern enclosure, repair degraded eastern parapet.
- Hargravia (Building 11) Remove eastern enclosure, refit office facilities and accommodation rooms.
- Dining Room and Kitchen (Building 12) Demolish existing service structures, construct new kitchen area, refit existing function rooms, new external steps.
- Delmonte Hallway (Building 13) Demolish existing service structures, restore original colonnade, new landscaped courtyard, refit accommodation rooms.
- Delmonte (Building 14) Refit as conference lobby, reinstate western staircase and balcony, clad external fire stair, provide new lift.
- Buildings 15-18 Demolish existing buildings and construct new

- conference facilities and vehicular drop-off area.
- Boiler House (Building 19) Alteration and refit to allow visitor facilities, gallery and public cafe.

Proposed Modification

The Architectural changes associated with the proposed modifications have been summarised below including, in brackets, comments on the quantitative and qualitative aspects of each point.

- Old Belgravia (Building 2), proposed office and care takers residence, internal alterations, (reduced extent of additions and infill construction).
- Hydro Tavern (Building 3), conversion to “heritage centre” and “providores” (Minor reduction in extent of building work).
- Automobilia (New Building) between Hydro Tavern and Old Belgravia to be deleted (This is in accordance with approved conditions of consent)
- Mark Foy Wing (Building 4), proposed accommodation rooms (Complete redesign with reduced building footprint, overall 900mm height increase, generally increased set back from remanent stone wall, additional storey – from 4 to 5 levels, accommodation increased from 48 to 75 rooms, delete indoor pool, excavation significantly reduced, new screen element to Highway elevation).
- Belgravia Wing (Building 5), proposed accommodation rooms (Design alterations, delete mansard element, floor levels retained, increased from 32 to 36 rooms, excavation significantly reduced).
- Belgravia Entry (Building 6), proposed lounge and accommodation rooms (Reduced additions and footprint, relocated lift).
- Casino (Building 7), proposed main entrance and foyer area (Minor alterations in approved layout and connections to Casino Lounge).
- Casino Lounge (Building 8) proposed lounge and winter garden area (Approved layout retained, minor alterations to western glazed area).
- Billiard Room and Hallway (Building 9) proposed fine dining area and kitchen. (Alteration of kitchen layout and delete basement additions).
- Hargravia (Building 11), proposed guest services area and accommodation rooms (minor changes to fitout).
- Dining Room and Kitchen (Building 12), proposed function room, kitchen and ancillary uses. (Minor changes to function room layout, reduced kitchen area, new waste/store areas, new loading dock, conversion of courtyard to lobby entrance).
- Conference Facilities (New Building), proposed function room (reduced foot print and envelope, reduced excavation, reduced capacity from 400 to 250 people).
- Boiler House (Building 19), proposed café and museum

- (retains approved layout with new café eating area to ground level, provision of accessible path).
- Approved covered walkway/observation deck between Boiler House and Conference Facility deleted. (Overall positive visual impact, impact on vehicular manoeuvring).
 - Seagull intersection removed and sheltered right turn facility provided (Alters potential traffic impacts).
 - Overall Accommodation Rooms – increased from 110 approved rooms to 155 proposed rooms (Potential increased impacts although a portion of the room increase is achieved by retention/reinstatement of existing layouts).
 - Overall Accessible Rooms – Retain 6 accessible rooms as currently approved. Subsequently amended to reduce to a proposed 4 accessible rooms. (A proposed increase in accommodation rooms without a comparative increase in accessible rooms is not supported).
 - Overall Parking – Overall increase of onsite parking from 255 approved spaces to 270 proposed spaces, including 18 additional spaces to northern carpark area. Croquet lawn to be reinstated. (Potential increase impact in terms of visibility and traffic).

In addition to the above changes to the architectural documentation, the proposed modification seeks to amend a number of the procedural requirements contained within the approved conditions of consent. The conditions affected by these requested changes have been identified and discussed under the *9.0 Modified Conditions of Consent* section of this report.

Environmental Planning Instrument

Local Environmental Plan 2005 (LEP 2005)

Local Environmental Plan 1991 (LEP 1991)

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

State Environmental Planning Policy Infrastructure (SEPPINF)

Sydney Regional Environmental Plan 20 – Hawkesbury Nepean River (SREP 20)

Development control plans

Better Living Development Control Plan (BLDCP)

Supporting Documentation

The following documentation, including subsequent amendments or supplementary information, was relied on in assessing the merits of this application.

- Architectural Plans
- Modified Statement of Environmental Effects
- S96 – Conditions of Development Approval

- Fire Safety Upgrade Report
- Schedule of Conservation Works
- Heritage Impact Assessment
- Comments – Development Consent Conditions.
- External Roadworks Design
- Stormwater Management Report
- Traffic and Parking Report
- Interpretation Concept and Site Orientation
- Vegetation Management Plan
- Hazardous Construction Material Survey
- S96 – Access Review
- Environmental Noise Assessment

Notification

The proposed modification was notified in the Blue Mountains Gazette. Written notification was also sent to all adjoining and nearby properties as well as any submitters on the original application. The proposal was on notification for 14 days from 6 July 2011 until 20 July 2011. Written notification was also forwarded to the National Trust for comment.

Eight submissions were received as a result of this notification process, with the concerns raised being summarised in the “Notification Issues” section below.

Notification Issues

- 1) Deletion of the seagull intersection will substantially increase traffic impact on properties west of the site up to the Station St/Great Western Highway intersection, including noise, airborne pollution and congestion.
- 2) Access to the Station St/Great Western Highway intersection will not allow adequate manoeuvring for heavy vehicles.
- 3) Increased noise from traffic congestion following the conclusion of late night functions.
- 4) Intersection ramp is steep and only designed for light local traffic.
- 5) Lights only allow 2-3 cars to turn at any one time, leading to a queue of cars waiting to turn.
- 6) Will limit ability of visitors to residential properties to park on Station St.

A submission was received from the National Trust with the following issues identified:

- 7) Balconies added to the western side of the Belgravia and Mark Foy Wings have pseudo heritage railings.
- 8) The new Mark Foy height dominates the other buildings and needs to be reduced by a floor.

The above issues are addressed within the body of this Report.

Evaluation

Section 96 (Modification of Consents) of the *Environmental*

Planning and Assessment Act 1979 (the Act) allows consent authorities to modify a development consent in certain circumstances. It also provides relevant matters that need to be assessed when considering an application to modify a development consent.

This application has been assessed in accordance with Section 96(2) of the Act. A commentary on the assessment of the proposed modification against the relevant provisions of the Act, has been detailed in this report for the consideration of the Panel.

1. Section 96(2)(a) - Substantially the same development

Section 96(2)(a) of the Act requires the consent authority to be satisfied that the development, as modified, will be substantially the same development as that approved. To prevent the approved development from being significantly altered by virtue of a number of consecutive modifications, S96(2)(a) also requires that each modification is assessed as being substantially the same development as the originally approved development prior to any modifications occurring.

This application will be the first modification to the subject development consent.

The principal elements to be assessed in determining whether the proposal is 'substantially the same development' for the purpose of the Act are the changes to the Mark Foy and the Belgravia Wings, the increased room numbers, the increased car parking areas, the reduction in accessible rooms, and the conversion of the Hydro Tavern from a hotel gymnasium to Heritage Centre and retail use/provedores. Perspectives showing the comparison between the approved and the proposed Mark Foy, Belgravia, Belgravia Entry eastern elevations are provided at Attachment 2.

In considering the Belgravia Wing (Building 5), it is noted that the first two levels remain largely unchanged and the proposal includes the removal of the mansard roof element. Removal of this element reduces its overall height and re-emphasises the existing entrance tower. This was identified as a desirable objective when assessing the original application.

The proposed modification to the approved Mark Foy Wing (Building 4) is visually one of the more fundamental proposed changes. The building is completely redesigned with a new screen element introduced, excavation is significantly decreased, and although the building footprint will be decreased, the overall height will be slightly increased. The proposed modification includes an additional storey and a marked increase in accommodation rooms, as well as an increased setback from the remanent stone wall, which was also identified as a desirable objective in the assessment of the original application.

It is considered that although the increase in accommodation rooms may have a flow on effect to other physical elements, it does not in itself change the character of the use. In essence, the proposed redesign will not result in the final development being perceived as other than tourist accommodation.

It is considered that the change of the Hydro Tavern (Building 3) from Hotel gymnasium to Heritage Centre would be acceptable as this is a use already approved under the original consent, albeit in a different location. However, the proposed inclusion of a new retail use/provedore would result in a perceivable change that would alter the character of the approved use and introduce a new retail element that was not any part of the original approval. Retail is not a permitted use in the Village-Tourist zone.

Prior to, as well as after the lodgement of this modification the applicant discussed the possibility of Hollys Building (North End Building 1) also being converted from Hotel maintenance use to a retail use/provedore. This was never formally proposed as part of the application, however it is unlikely to have been supported, as it would have also altered the character of the approved use and introduce a new element.

Considered overall, the new proposed buildings and uses, including the increased accommodation rooms can be considered substantially the same development, with the exception of the proposed new retail use/provedore. The applicant agreed to delete the conversion of the Hydro Tavern to include a retail use/provedore use and only proceed with the Heritage Centre component as part of the proposed modification, with a separate application to be submitted at a later time for the retail use.

2. Section 96(2)(b) – Approval Authority / Concurrence requirements

Council is required to consult with any public authority or approval body in respect of any general terms of approval that may have been issued in relation to the original consent. In this regard, the proposed modification was referred to the Sydney Catchment Authority under *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*, the Rural Fire Service under Section 91 of the Act and the *Rural Fires Act 1997*, and the Roads and Traffic Authority under *State Environmental Planning Policy (Infrastructure) 2007*.

- a) The Sydney Catchment Authority advised by letter dated 24 August 2011 that the proposed modifications can be supported subject to their new general terms of approval which replace the previous terms advised by letter dated 19 July 2011. These general terms of approval have been included in the modified conditions of consent.
- b) The Rural Fire Service provided their terms of approval by letter dated 25 August 2011. They have no objection to the proposed modification, including the removal of Council Condition 15, subject to compliance with the previous Bush Fire Safety Authority dated 10 November 2009, as issued for the original consent. Condition 15 relates to fire trail construction, and included:
 - All weather gravel with sealed surface on slopes steeper than 10%.
 - Batter construction to be avoided.
 - scour protection and velocity controls to drainage outlets.
 - Existing drainage outlets to be remediated.

This matter has been addressed further under the *9.0 Modified Conditions of Consent* section of this report.

- c) The proposed development is considered Traffic Generating Development under clause 104 of the *State Environmental Planning Policy (Infrastructure) 2007* due to the proposed car parking size. In accordance with this policy, the proposed modification was referred to the Roads and Traffic Authority (RTA). The RTA have advised that they will grant concurrence to the proposed modification subject to revised conditions of consent.

These matters are discussed further under the *6.0 Traffic Impacts* section of this report.

3. Section 96(2)(c) - Notification

This section of the Act requires notification to occur in accordance with any relevant provisions within the *Environmental Planning and Assessment Regulations 2000* (the Regulations) and any Development Control Plan (DCP). Clause 119(3) of the Regulations require, where a DCP is in place, for the proposed modification to be notified in accordance with the DCP. Part L, clause 5 of Council's Better Living DCP requires such modifications to include written notification to any submitters on the original application and any properties suffering increased adverse impact.

The proposed modification was notified in accordance with the requirements of the Regulations and the Better Living DCP.

4. Section 96(2)(d) - Submissions

Eight issues were identified during the notification process, which have been summarised under the "Notification Issues" section of this report. These issues have been identified and assessed throughout this assessment report.

It is considered that the issues raised in the submissions do not warrant refusal of the proposed modifications, subject to the requirements of modified conditions of consent.

5. Section 96(3) – Matters for consideration.

This section of the Act requires that an assessment of a proposed modification must include consideration of any matters under Section 79(C)(1) of the Act, which are relevant to the development. Section 79(C)(1) requires an assessment of statutory provisions as well as an assessment of the likely impacts of the development, the suitability of the site, submissions and consideration of the public interest. The relevant parts of the proposed modification have been assessed against the provisions of Local Environmental Plan 2005, Local Environmental 1991 and the Better Living DCP.

The proposed development site straddles five land use zones and is subject to the provisions of two Local Environmental Plans (LEPs), being LEP 2005 and LEP 1991. For the purposes of this assessment report, the components of the development have been divided into five areas, which coincide with the five zones as follows:

- Area A. The bulk of the existing and proposed buildings, main landscaping areas and on-site car parking, except as otherwise indicated. Area A is zoned "Village-Tourist" Zone (LEP 2005).
- Area B. The majority of the southern car park, as well as the Northern End (building 1). Area B is zoned "Living - Bushland Conservation" zone (LEP 2005).
- Area C. The western (rear) half of the Boiler House (building 19), some access ways and a small portion of the southern car park area. Area C is zoned "Bushland Conservation" zone (LEP 1991).
- Area D. The entire Delmonte Hallway (building 13) and Delmonte (building 14) along with the rear 0 to 3 metres of the Casino Lounge (building 8), Belgravia Wing (building 5) and Mark Foy Wing (building 4). Area D is zoned "Environmental Protection" (EP) zone (LEP 1991).
- Area E. The eastern 0 to 5 metres of the existing/proposed development site. Area E is zoned "Regional Transport Corridor" zone (LEP 2005).

Two maps have been provided as Attachment 3 to this report, which show the zones applying to the site. As noted above, development in Areas A, B and E are subject to LEP 2005, with the remaining Areas C and D subject to LEP 1991. Each area will be addressed

in turn under the *5.1 Local Environmental Plan 2005* and *5.2 Local Environmental Plan 1991* sections of this report.

5.1 Local Environmental Plan 2005

The proposed modification (Areas A, B and E), has been assessed against the provisions of LEP 2005, and considered to be appropriate in terms of considerations under Section 96 of the Act. The significant matters identified and discussed during assessment of the original consent have been provided in the following table, and additional comment provided in relation to the proposed modifications, as required.

Clause	Standard	Proposed	Compliance
cl. 9	Consideration before development consent	The modified development satisfactorily complies with the aims, principles, locality provisions and the assessment requirements relevant to the development.	Yes
Div. 2 Part 1	Planning principles	<p>The primary objectives of this plan are concerned with maintaining the unique identity and values of the City being within a World Heritage National Park. The objectives seek to meet the needs of residents, as well as those of visitors to the area and the business community. This is achieved through an appropriate balance of land uses and built forms that follow the broad principles of ecologically sustainable development.</p> <p>In relation to this proposal, the specific relevant objective includes the need to strengthen the local economic base, which specifically includes tourism as an important element. Also relevant is the need to protect local amenity and character. The subject site is not only an important historic tourist related business but also provides an iconic landmark group of buildings for the Blue Mountains region as a whole.</p> <p>The proposed modification is considered to comply with the planning principles of LEP 2005 with relevant principles and objectives considered within the assessment process, and consequently incorporated into the discussions contained within the body of this report</p>	Yes
cl.20	Zone objectives Village Tourist	The relevant objectives of this zone include the development of a variety of tourist related land uses and consolidation of major tourism precincts. This includes consideration of landscape and streetscape character as well as building form and amenity.	Yes
cl.24	Zone objectives	The relevant objectives of this zone include	Yes

	Living Bushland Conservation	single detached dwelling form, preserve/re-establish native bushland, limit non-residential use in association with residential use and that form harmonises with bushland character. The North End (building 1) is a small scale single storey building, whilst the car park area is set within an extensive landscaped area, which is not altered by the proposed modification.	
cl.27	Zone objectives Regional Transport Corridor	The relevant objectives of this zone include ensuring development integrates with the surrounding natural, physical or built environment and contributes to the safe and effective operation of classified roads.	Yes
cl.32	Land use matrix	<p>Village Tourist zone “Tourist accommodation” and associated work within “Area A” is permissible under this clause.</p> <p>Living Bushland Conservation zone Car parking in “Area B”, when associated with another lawful use, is permissible under this clause in accordance with the defined land use “parking”.</p> <p>Use of the North End (building 1) for maintenance associated with tourist accommodation is not permissible under this clause. Similarly a proposed retail use as part of the modification application would be prohibited in this zone. The application has been amended to clarify that the retail use is not included.</p> <p>This building was originally built as a retail premises. It has been used intermittently for storage associated with the hotel use. Existing Use provisions, as provided by Division 10 of the Act and Part 5 of the <i>Environmental Planning and Assessment Regulations 2000</i> (EPAR), may be available to this site. Clause 41 of EPAR relevantly permits change under the Existing Use provisions from a commercial use to another commercial use, as defined in the <i>Standard Instrument (Local Environmental Plans) Order 2006</i>.</p> <p>Regional Transport Corridor zone Landscaping and access work associated with the tourist accommodation is not permissible under this clause. Refer to clause 132 in this table for permissibility.</p>	Yes

cl.44	Environmental Impact	The modified development, including asset protection zones, must be designed to have no adverse impact on identified environmental attributes including significant vegetation communities, hydrological aspect of the site or watercourses/wetland. The original development was considered to adequately address this issue, and the modification does not alter this position.	Yes
cl.48	Protected Area – Water Supply Catchment	As noted above, the proposed modification has been referred to the Sydney Catchment Authority and concurrence provided. The proposed development is considered to appropriately protect water quality and the natural systems. The development will have a neutral or beneficial effect on the hydrological catchment.	Yes
cl.49	Protected Area - Escarpment	The development includes an asset protection zone adjacent to a natural bushland area. No alteration is required as a result of the proposed modification. The provision of bush fire protection measures will continue to involve the removal of exotic plants and weeds, which are currently intruding into the adjoining bushland as well as some regeneration of appropriate species.	Yes
cl.58	Modification of land form	The proposed development is largely contained within existing developed or disturbed areas of the site with the required cuts located within the building footprint. The approved extent of excavation has been substantially reduced as a result of the proposed modification.	Yes
cl.60	Consideration of Character and Landscape	The proposal is considered to respond adequately to the established scale and massing of the buildings on site, with this aspect being considered in more detail under the <i>7.0 Heritage Conservation and Urban Design</i> section of this report.	Yes
cl. 68-77	Heritage Conservation	The subject site is identified as a Heritage Item under Schedule 6 of this LEP. Although not on the State Heritage register, the site is identified or assessed as being of State Significance under the LEP. The relevant conservation objectives in cl.69 relate to the need to conserve the heritage significance of identified items. Any assessment must include the impact of the proposed modified development and conservation of heritage significance.	Yes

		<p>Clause 77(2) of the LEP allows development of a heritage item, even though it may contravene a development standard relating to height, site coverage or development density. Where relevant areas of non-compliance are subject to cl.77(2), this will be noted accordingly and discussed further under the <i>7.0 Heritage Conservation and Urban Design</i> section of this report.</p>	
cl.94	Provision of Services	<p>A reticulated water and sewer system is available to service the site and will be subject to a Section 73 approval by Sydney Water. An electricity substation is currently located to the east of the existing Dining Room (building 12). The proposed modification was referred to the electricity authority, which required that the development includes 2 substations of a specified capacity. The proposed modification includes retention of the existing substation adjacent to the new Function/Conference room kitchen area and a new substation on the northern boundary adjacent to the Hydro Tavern, Building 3.</p>	Yes
cl. 98	Access to land from a public road.	<p>This clause states that consent shall not be granted to development that requires vehicular access from a public road, unless it includes a legally constituted access.</p> <p>The modified development proposes to remove the approved seagull intersection which provides for vehicles entering and exiting from the southern car park. This was referred to the Roads and Traffic Authority (RTA) for their agreement and was assessed by Council's Development Engineers. Refer to the <i>6.0 Traffic Impacts</i> section of this report for further discussion.</p>	Yes
cl.99	Car Parking Provisions	Refer to the <i>6.0 Traffic Impacts</i> section of this report for further discussion.	Yes
cl. 101	Loading facilities	Refer to the <i>6.0 Traffic Impacts</i> section of this report for further discussion.	Yes
Div. 6	Equity of Access	<p>The modified development proposes significant works to provide a continuous accessible path of travel throughout the facility for all people, including those with a disability.</p> <p>The development has been considered against</p>	Yes

		<p>cl. 94 of the <i>Environmental Planning and Assessment Regulation 2000</i>, which provides discretion for the level of upgrade in relation to the BCA for development involving rebuilding, alteration, enlargement or extension. This extends to the level of access for people with a disability, and the provision of accommodation units that are accessible.</p> <p>Although the modified proposal seeks to increase the room numbers, it reduces the number of accessible and adaptable units. Refer to the <i>8.0 Accessibility Impacts</i> section of this report for further discussion.</p>	
cl.132	Development in the Regional Transport Corridor	<p>A portion of the works associated with the tourist accommodation, as proposed in Area E, are located within the Regional Transport Corridor. This clause allows a Consent Authority to approve development within the Corridor, if it is of a type that is permissible in the adjoining land. The adjoining zone is "Village Tourist" with tourist accommodation and associated works permissible with consent. The proposed work must be consistent with the objectives of the "Village Tourist" zone (cl.20). The proposed modified development in Area E is consistent with these objectives.</p>	Yes
Sch 1	Medlow Bath Precinct (VT-MB01)	<p>The objectives for this Precinct are:</p> <ul style="list-style-type: none"> a) <i>To encourage development that complements and is sympathetic to the heritage significance of the Hydro Majestic.</i> b) <i>To encourage development that maintains the Hydro Majestic as the predominant feature in this precinct.</i> c) <i>To minimise the impact of development on escarpment areas.</i> <p>The proposed development is assessed against the specific precinct controls, based only on that portion of the development located within the land zoned Village Tourist, as follows:</p>	
		<p>Maximum building height 8m, proposed (new buildings) 18.5m. Refer to the <i>7.0 Heritage Conservation and Urban Design</i> for further discussion.</p>	No
		<p>Maximum eaves height 6.5m, proposed (new buildings) 18.5m. Refer to the <i>7.0 Heritage Conservation and Urban Design</i> for further</p>	No

		discussion.	
		Minimum setback 10m, the existing development already has an established minimum setback of 3m in vicinity of the existing function room, which is not altered by the proposed development.	No
		Maximum site coverage 35%, proposed site coverage 35%	Yes
		Maximum floor space ratio 0.4:1, proposed floor space ratio 0.35:1	Yes
		Landscaping to front setback, articulation of front facades, non reflective material.	Yes

5.2 Local Environmental Plan 1991

The proposed modification (Areas C and D), has been assessed against the provisions of LEP 1991, and considered to be appropriate in terms of considerations under Section 96 of the Act. The significant matters identified and discussed during assessment of the original consent have been provided in the following table, and additional comment provided in relation to the proposed modifications, as required.

Clause	Standard	Proposed	Compliance
cl.6.2	Zone objectives Bushland Conservation	The relevant objectives of this zone include to conserve natural environment and to ensure that the built environment is consistent with the bushland character. That relevant part of the development (Area C) conforms to these objectives.	Yes
cl.6.8	Zone objectives Environmental Protection	The relevant objectives of this zone include the protection of environmentally sensitive land and to provide buffers around natural areas of ecological significance. It also includes encouraging the restoration of disturbed bushland.	Yes
cl.7.3	Protected Area - Escarpment	The development needs to enhance the natural environment and to limit the presence of buildings on the perception of the escarpment as a significant natural feature. The modified proposal does not exacerbate impacts in that regard.	Yes
cl.9	General Control of Development	Bushland Conservation Refreshment rooms and car parking associated with an approved use, as proposed within Area C, is permissible with consent.	Yes

		Environmental Protection Tourist accommodation and associated work, as proposed in Area D, are not permissible under this clause. The applicant has relied on the Existing Use provisions of the Act for permissibility as per the original application.	
cl.10.2	Access	Appropriate vehicular access has been provided to the site. Vehicular access is not provided to the portion of the site associated with LEP 1991. The modified proposal removes the large deliveries to the basement level of the conference centre.	Yes
cl.10.4	Design and Character	The proposed development is considered appropriate in that it primarily involves minor additions to or use of existing buildings. The primary variation relates to development associated with the new Mark Foy building (Building 4) and the Belgravia Wing (Building 5) as discussed under the <i>7.0 Heritage Conservation and Urban Design</i> section of this report.	Yes
cl.10.5	Environmental Impact	The proposed development is considered to adequately address the issues of site disturbance, significant vegetation communities, hydrology and watercourses/wetland. No change is proposed as part of the modification application.	Yes
cl.10.6	Height of Buildings.	Development shall not exceed two storeys, maximum building height of 8m and eaves height of 6.5m. The approved development already substantially exceeds both these height limits. The proposed modification is considered acceptable as it does not significantly alter the approved maximum height and continues the established historic form and scale of development on the site. The required variation is permissible in accordance with clause 108 (Existing Use provisions) of the Act, and the assessment of heritage impact. Refer to the <i>7.0 Heritage Conservation and Urban Design</i> section of this report for further discussion.	No
cl.10.7	Heritage	The proposed modification has been appropriately assessed in terms of heritage significance. Refer to the <i>7.0 Heritage Conservation and Urban Design</i> section of this report for further discussion.	Yes
cl.10.8	Services	Adequate provisions have been made in	Yes

		relation to drainage, effluent and water.	
cl.10.9	Site Coverage	This clause relates to Area C (Boiler Room) portion of the development. The maximum site cover is 160m ² , with the existing building site cover being 72m ² , which is not being substantially altered by the proposed modification.	Yes
cl.11.4	Development Criteria - Escarpment	Clearing of vegetation requires an assessment of landscape and environmental Impact. The proposed building additions do not project above the height of adjoining buildings.	Yes
cl.25	Heritage Conservation	The subject site is identified as a Heritage Item under Schedule 2 of LEP 1991. Refer to the <i>7.0 Heritage Conservation and Urban Design</i> section of this report for further discussion.	Yes

6.0 Traffic Impacts

6.1 Parking.

The proposed modification was supported by a "Traffic and Parking Report" which concluded that the parking provisions were considered appropriate. The Report calculated a maximum demand of 263 car parking spaces, whilst the proposed development provides a total of 270 car parking spaces. However, the calculations at point 2.16 of the Report have been based on 80% of people attending conferences also being guests of the hotel, as well as 80% of people in the refreshment room either being guests of the hotel or people attending conferences. No supporting data was provided in relation to these assumptions and therefore, they could not be accepted without reservation.

The applicants report also notes at point 2.14 that during conferences, the adjoining function room would be utilised as dining facilities for conference attendees. Therefore separate, concurrent use of the function rooms and the conference rooms would not occur.

Clause D7.91 of the Better Living DCP requires parking for Tourist Accommodation at the rate of 1 space per accommodation unit, plus 2 spaces per 3 employees. In addition, clause D9.91 of the DCP requires parking for a refreshment room at the rate of 15 spaces per 100m² of gross floor area, and parking for conference rooms (places of assembly) at the rate of 1 space per 10m² of gross floor area or 1 space per 4 seats.

The individual car parking requirements of each of the above elements can be summarised as follows:

- Tourist Accommodation – 155 guest spaces plus 17 staff spaces
- Refreshment Room – 18 spaces
- Conferences (250 attendees) – 62 spaces, or
- Functions (200 attendees) – 50 spaces

The above individual requirements, and the restriction on concurrent conference/function use, results in a maximum total demand of 252 on site car parking spaces, whilst the proposed development provides a total of 270 car parking space, an overall credit of 18

spaces. The proposed development is considered supportable in terms of car parking requirements.

To ensure that the maximum number of attendees does not exceed the maximums identified above, whilst still providing some flexibility in the mix of function and conference attendees, a new condition of consent will limit the combined maximum number of function and/or conference attendees at any one time to no more than 250 attendees.

6.2 On Site Manoeuvring and Loading

The current development approval for the site includes a portion of land that has been historically developed with landscaping and forecourt elements but which is located within the Great Western Highway road reserve. The extent of this encroachment varies in depth up to a maximum of approximately 5m. In overcoming this historic anomaly, it was considered necessary to facilitate the legal incorporation of that part of the Highway into the Hotel grounds, and a condition of consent was imposed to achieve that outcome. This process has included complex negotiations between the site owner, the RTA and Council, which is still underway. All operational elements of the Hydro Majestic site need to be capable of being accommodated without reliance on the road reserve land that is presently incorporated into the site. Such an approach provides for the contingency that this land or part thereof may be returned to highway use at some time in the future.

The proposed modification includes the relocation of the approved primary loading dock from the western elevation to the eastern elevation, adjacent to the Great Western Highway. The relocation was associated with a reduced footprint for the conference and function rooms, and had the benefit of reducing the approved extent of excavation and site disturbance. It is also proposed to reconfigure the approved turning area adjacent to the conference rooms.

The submitted Traffic and Parking Report states at point 2.26 that *“Modification would be made internally for service vehicles and buses, compared to the approved development. The drop-off area for buses would be modified and the loading dock would be relocated to the front of the site. The proposed modifications would continue to provide for buses and service vehicles to the site”*.

Concern was raised that the revised layout required buses and large rigid vehicles to reverse within the main vehicular entrance area, which is inherently dangerous. It was also identified that the manoeuvring path of large rigid vehicles into the relocated loading dock as well as their swept path when exiting the site required inappropriate manoeuvring across the encroachment area. The RTA were concerned about the proposed use of the new exit gate (E2) adjacent to the loading dock and the ability for large vehicles to appropriately exit the site. On 22 July 2011, the RTA further advised that buses needing to reverse across the main entrance *“may impact on the through traffic movement on Great Western Highway. The RTA is going to request the applicant to provide a left turn slip lane to the main access. Provision of a slip lane will mitigate the impact of this reversing movement on through traffic on Great Western Highway”*.

Additional information was submitted by the applicant on 26 July 2011 to address the manoeuvring and swept paths for the loading dock. This information also showed that buses will be able to enter the site and park clear of the driveway whilst passengers alight, without impeding the vehicular movement of cars entering the site at the same time. It was also advised that bus arrival times could be booked, with a maximum of three buses expected per day. During the short period that buses will be reversing into the bus parking bays, there is space available on site for entering vehicles to stand clear.

The onsite vehicular manoeuvring for coaches is adequate and can be managed to limit the potential impact on other vehicles entering the site, however the location of the loading dock makes it difficult for large rigid vehicles to enter and exit the site in an appropriate manner. Therefore, to ensure the ongoing safe operation of onsite vehicular manoeuvring, a condition of consent is proposed limiting the largest delivery vehicle permitted on site to a 12.5m Heavy Rigid Vehicle, and coaches are to be managed as outlined above

The RTA provided their approval including concurrence conditions that reflect their previous comments. The conditions also require the applicant to submit turning path designs for the largest vehicle entering the site to the RTA for approval and that the design must be in accordance with Ausroads. The RTA concurrence will be included in the modified conditions of consent.

6.3 Traffic Amenity Impacts

The proposed modification initially included the removal of a seagull intersection to the site's southern entry and exit gate, and the provision of a dedicated right turn lane (east bound). Under the current approval all vehicles associated with the conference/functions rooms, the Boiler House refreshment room and all delivery vehicles can make a left or right hand turn when exiting the site. Whilst vehicles associated with the accommodation rooms could only exit left. Under the proposed modification all vehicles, if wanting to head east, would then be required to travel approximately 300m west along the highway to a highway service road that would provide access to traffic lights that then would allow them to return east along the highway.

The proposed modification and removal of seagull intersection would result in an increased number of vehicles being required to access these traffic lights to head east, including additional vehicles associated with the increased 45 accommodation rooms as well as all traffic movements associated with the use of the conference centre/function rooms and the refreshment room.

There are approximately 5 residential dwellings between the Hydro Majestic site and the traffic lights, with a further 11 residential dwellings needing to access the service road/traffic lights to enter and exit the vicinity.

The Traffic and Parking Report submitted with the application found that during the estimated Sunday peak period, approximately 5 vehicles utilised the traffic lights to enter or exit the vicinity. Point 2.33 of the report states that "*Peak hour traffic generation of the proposed development would be some 100 to 120 vehicles per hour two-way.* This compares to 1,550 vehicles per hour (peak-hour), two-way on the Great Western Highway. The full length of the service road is directly adjacent to the highway and runs parallel to it. This means that vehicles using the service road to access the traffic lights are at all times within the highway road reserve and do not need to move into any adjoining built up residential area. The distance between the start of the service road and the highway traffic lights is approximately 230m in length.

In assessing the proposed removal of the seagull intersection, the RTA concluded that there is no major safety deficiency with the intersection, although vehicle conflict with the adjacent service station was a potential minor safety deficiency, and on this basis, they did not raise an objection to its removal. However, the RTA does not support the dedicated right turn lane, instead they prefer an auxiliary right turn lane that allows vehicles to continue to turn right into the site from the east bound side of the highway, and a deceleration/slip lane to facilitate left turns from the GWH into the site. This is a similar arrangement to the service station to the south of the site. The RTA also advised that, with this configuration, they have

no objection to the driveways along the site retaining the ability to exit the site either to the left or to the right. It will therefore be a condition of consent that the road design is in accordance with the RTA requirements. The RTA road design will remove the need for vehicles wanting to head east, having to first travel west to the traffic lights before returning along the highway. It will also remove one element that is of significant concern to potentially affected residents, being increased traffic impact between the site and the traffic lights.

7.0 Heritage Conservation and Urban Design

The assessment of heritage conservation focuses on the modifications to the design and in particular new buildings that generate or potentially generate changes to heritage impacts.

7.1 Conservation Management Plan and Heritage Impact Assessment

Section 4.5 of the approved Conservation Management Plan (CMP) includes a “Grading of Significance” for each of the important components of the site and how it contributes to the overall significance of the Hydro Majestic. This grading ranges from “Exceptional” down to “Intrusive”. The important component of each grading is summarised as follows:

- “Exceptional” identifies an element that provides a fundamental aspect of the site’s heritage significance. These should be protected, retained, restored or, if necessary, reconstructed.
- “High” identifies an element that has a direct association with the site’s heritage significance which is demonstrated in the element. These should be preserved, restored, reconstructed or sensitively adapted.
- “Moderate” identifies an element that has an incidental association with the site’s heritage significance or elements that have a direct association but have been altered. These should be retained, restored, reconstructed or sensitively adapted if practical, although removal may be acceptable.
- “Low” identifies an element that has an incidental association with the site’s heritage significance which is not demonstrated in the element. These may be retained, adapted or removed as necessary.
- “Intrusive” identifies an element that is later fabric and which adversely affects the site’s heritage significance. These should be removed or adapted as the opportunity arises.

The CMP has assessed the existing buildings and elements on the site as follows:

- Old Belgravia (Building 2) Moderate significance.
- Hydro Tavern (Building 3) Moderate significance.
- Mark Foy Wing (Building 4) Remanent stone wall is of Moderate significance.
- Belgravia Wing (Building 5) Moderate significance.
- Belgravia Entry (Building 6) High Significance.
- Casino (Building 7) High significance.
- Casino Lounge (Building 8) Low significance.
- Billiard Room and Hallway (Building 9) High significance.
- Hargravia (Building 11) High significance.
- Dining Room and Kitchen (Building 12) Dining Room is High significance, Kitchen is Low significance
- Delmonte Hallway (Building 13) High significance.
- Delmonte (Building 14) Moderate significance
- Boiler House and Ice Works (Building 19) Moderate significance.

A revised Heritage Impact Assessment was submitted in support of the proposed modifications and summarises the heritage impact from each of the proposed modifications as follows:

- Croquet lawn (Reinstated) positive heritage impact
- Northern Car Parking (increased) acceptable heritage impact
- Mark Foy Wing (reduced foot print/redesign) increased distance to remnant stone wall - positive heritage impact, internal reconfiguration - no additional heritage impact, proposed screen and redesigned western facade – acceptable heritage impact.
- Belgravia Wing (reconfigured/redesign/deleted mansard) reconfiguration - no additional heritage impact, deleted mansard – positive heritage impact, redesigned facades - positive heritage impact, subject to restoring the external prominence of central stair.
- Belgravia Entry (reduced foot print/relocated lift/ reduced envelope) internal changes - positive heritage impact, relocated lift - positive heritage impact, relocated toilets facilities – minor heritage impact (considered acceptable),
- Casino (minor modifications) neutral heritage impact.
- Casino Lounge (replaced façade) no additional heritage impact.
- Billiard Room and Hallway (redesign) acceptable heritage impact
- Hargravia (redesign) positive heritage impact.
- Majestic Ballroom and Kitchen (redesign) retention of kitchen - positive heritage impact, blocking western windows - acceptable heritage impact.
- New Conference Facilities (redesign/reduced foot print) Deleted basement – no additional heritage impact, reduced footprint – positive heritage impact, revised lobby - no additional heritage impact.
- Boiler House (redesign) acceptable heritage impact.

The Council's heritage consultant has reviewed the proposal. There is general accord with the assessment of the items above, with the important exception being the Mark Foy Wing. There were also some issues raised in relation to the Belgravia Wing and Conference Centre, which are detailed separately below.

7.2 Mark Foy Wing

The most significant component of the modification application is the remodelled Mark Foy Wing. As described previously, the changes in this building include an increase from 4 storeys to 5, with an overall increase of height by 900mm, an increase from 48 to 75 rooms, with the building façade being located behind a stand-alone laser cut aluminium screen. Beyond these quantitative changes, the Mark Foy building represents a very different architectural expression from the building as originally approved.

The initial reference point for assessing this building is the Architect's Statement, which outlined the design outcomes and goals for the proposed modifications. It suggests that the approved buildings work well as modern elements, but indicates the visual relationship to the heritage fabric is "highly interpreted" and at times dominates the existing. In relation to the Mark Foy Wing and the Belgravia Wing, the architect identifies the main alterations to the Great Western Highway elevation including the retention of the original Belgravia Wing façade as well as the increased distance between the Mark Foy building façade and the remnant stone wall. A perspective showing the interaction between the eastern façade of the Mark Foy building, the Belgravia building and the remanent stone wall is provided as Attachment 4.

The Architect's Statement then identifies that the landscape-inspired screen, which is designed to create a softer transition between the existing stone wall and the Mark Foy Wing,

with the lines of the existing Belgravia Wing being continued across into the screen. A number of examples of other building's that include a screen element within their design has been provided as Attachment 5. The main elemental difference between these examples and the proposed screen is that in the example screens are generally attached to the external façade of the building whilst the proposed screen will be entirely separated and set forward of the building. The Mark Foy Wing is also finished in darker recessive tones which will assist in accentuating the landscape-inspired screen as a primary visual element.

Following the Council's initial assessment, including briefing of the Regional Panel, it was identified that the nature and extent of the modified Mark Foy Wing warranted an independent Heritage and Urban Design assessment, in addition to the review by the Council's heritage consultant. This building has elicited a range of responses from the specialists.

The independent assessment was undertaken by Robert Staas from Noel Bell Ridley Smith and Partners - Architects. Mr Staas is a Director of the firm and a Heritage Consultant. Preparation of the independent assessment included a site inspection on 24 August 2011, which was also attended by Council staff, Council's heritage consultant and the applicant's project team.

Mr Staas undertook a heritage assessment based on the guidelines set out by the New South Wales Heritage Office publication "Statements of Heritage Impact". The outcome of his assessment in terms of impact on heritage significance can be summarised as follows:

- The proposal overall will enhance the Hydro's use as a spa hotel site and conserves surviving heritage components.
- The location, scale, height, facade treatment and colour of the proposed Mark Foy Wing are sympathetic to the existing components of the heritage site.
- The distinctly contemporary architectural character is sympathetic to the existing heritage components of the site.
- The proposed white screen reflects the horizontal lines of the adjoining Belgravia Wing without imitating it. Mr Staas considers that the proposed screen relates the new building to the other structures on the site in an innovative way.
- The proposed wing does not affect views to or from heritage components nor dominate views from the Highway or the valley.

A number of potential adverse impacts were also identified by Mr Staas, but he ultimately concluded these were satisfied as follows:

- Any development would change the existing relationships that provide the site's landmark qualities, however the proposed modification achieves heritage compatibility in a subtle and sophisticated way.
- The additional parking to the front of the Hydro Majestic could have reduced the quality of its heritage setting. However reinstating the croquet lawn in front of the Belgravia Wing will be an important mitigating element in the Belgravia's immediate setting.

The assessment concluded that the proposed works in the redesign of the Mark Foy Wing and resultant changes to the Belgravia Wing do not significantly adversely affect the identified heritage significance of the site as a whole.

In urban design terms, the proposed modification is assessed as being no more intrusive than what was previously approved and is better in its relationship to the existing buildings. The minor increase in height of the Mark Foy Wing would not be perceptible compared to the existing approval and the removal of the approved storey to the Belgravia Wing is an overall improvement.

The assessment by Mr Staas identified a general preference for the revised proposal compared to the approved design. It concluded that the *“architectural character created by the screen is a subtle and effective way of relating the new wing to the existing wings of the hotel”*. He evaluated the rationale behind the use of the new screen, which seeks to replicate the form and proportions of the adjoining wings in a subtle way while acting as a decorative element. Mr Staas considers this approach to be legitimate for the location and will not have a significant adverse impact on the overall heritage value of the Hydro Majestic site. Additionally, the western façade of the Mark Foy Wing is compatible with the general character of the other wings of the hotel and will have a low visual impact from the valley.

The review by the Council’s heritage advisor, Christo Aitken raises significant concerns with the redesign of the Mark Foy building. He does not consider that the architects and Graham Brooks and Associates (the applicant’s heritage consultants) have prepared a similarly well considered architectural argument to support the current proposals compared to that submitted with the original proposal to which consent was granted.

Mr Aitken is critical of the two dimensional character of the screen element, querying its ‘multiple layers’ of articulation and the extent to which it breaks down the mass of the five storey building. The fact that the screen is detached from the building sets it apart from other examples proffered by the architect of sculptural forms that are attached to and integral to the buildings they complete. He considers that the proposed screen wall at the Hydro is not well developed or sophisticated in architectural terms and only serves the purpose of concealing an inappropriate façade and the two fire escapes. It is the case that the bulk and scale of the Mark Foy Wing represents a visual problem, relying on dark recessive tones and the screen to mitigate impacts. In this way, the screen-like wall appears to be driven more as a protective measure in “concealing the bad” rather than a creative measure in “expressing the good”.

Both Mr Staas and Mr Aitken acknowledge that the 900mm increase over the approved development is minor. However, Mr Aitken is concerned that the additional floor further aggravates the height differential between the Hydro’s existing buildings and also impacts on scale and character of the village of Medlow Bath. He notes the building has increased incrementally from a 3 storey building as initially lodged in 2009, then approved as 4 storeys, with the present proposal at 5 storeys.

Importantly, the relevant test for the s. 96 is a comparison with the DA as approved. In this respect the present proposal extends beyond the approved ‘envelope’ by only a minor amount. This leaves the form, finish and the masking of the building’s bulk as the determinative issues. From the pre-lodgement stage, the Council has requested an elevation, absent the screen, so that the façade to the Highway can be discerned. From plans it is clear the fenestration is not uniform between the levels and it is difficult to appreciate the quality of the building as it will be viewed through penetrations in the screen. The applicant has refused to provide this information following the argument that the screen forms part of the building. Details of finishes for the Mark Foy Wing have not been provided as part of the modification. The LEP requires the use of non-reflective building materials within the Precinct in which the Hydro is located. Consequently, it will be required as condition of consent that non-reflective glass be used on the Mark Foy and Belgravia Wings and that the screen element shall also avoid obtrusive light reflection.

The western elevation to the Megalong Valley increases the window to wall ratio in order to maximise views, but Mr Aitken considers the multi-storeyed development visually overwhelms the scale of the existing building. Critical reference is made to the perspective in

attachment 6 which depicts the spa area, the Mark Foy Wing and the Belgravia Wing, which shows the commercial character and scale of the proposed development. From this view the proposals seem “*more representative of typical Gold Coast speculative development than sensitive extensions to a historic icon in the Blue Mountains*”. However, it is the case that the siting of the building on the escarpment and distance from viewpoints moderate impacts arising from these details. Mr Aitken is of the view that the use of an ivy pattern for the wrought iron balconies, which reflects an existing detail at the Hydro, is a positive initiative. A representation of the Wrought Iron Balustrade has been provided as Attachment 7.

In reconciling the divergent views of the Council’s consultants about the architectural merit of the proposal, some guidance is drawn from the Land and Environment Court’s ‘Planning Principles’. In the case of *Architects Marshall v Lake Macquarie City Council [2005] NSWLEC 78*, the then Senior Commissioner noted:

What weight should be given to an expert’s opinion about the appropriateness of a building’s style, character, material or colour, as distinct from its height, bulk and density? The question does not admit of an unequivocal answer. Expert opinion on architectural character tends to be subjective. What one highly regarded professional likes, another, similarly highly regarded, dislikes. What, then, are appropriate criteria for assessing subjective evidence of this kind?

There are two principal tests: whether there are guidelines or community endorsed codes against which to test claims made about the style, form or function of the proposed screening of the Mark Foy building, or whether objections to the screen are held by a representative group of architects?

In regard to the building height and bulk, this will be considered separately below with reference to the LEP provisions. In terms of whether the critique of the screen represents a statement along the lines that “one architect would have designed it differently”, the Court has suggested the need to refer to responses from the architectural profession more generally to validate views expressed. It is the case that the screen is unusual and the Council sought other examples during the assessment process. In response the project architect has provided examples of screens integrated with buildings, but not stand alone as in the current case. It cannot be said that the practice of using a stand-alone screen along a principal facade has been widely adopted by the architectural profession and certainly not in a context such as the Hydro Majestic.

Against this, Mr Staas has been commissioned by the Council to review the proposal and has embraced the innovation without any reservation about its architectural merits. Mr Aitken notes that the previously approved scheme was considered by some to be controversial in design terms, albeit that the scheme’s architectural basis and design evolution could be clearly followed. The present proposal will also be controversial, but will follow a continuing theme that has been informed by the eclectic evolution of design of the Hydro complex.

On balance, it is considered overall that the proposed redesign of the Mark Foy Wing should not be refused on the basis of its architectural merit. Consideration has been given to potential amendments to the Mark Foy Wing by way of conditions. Consideration was given to seeking further integration of the screen with the building façade, relocation of fire stairs, and reviewing levels. Each of these would have flow-on effects to design that may not necessarily improve the design outcome, and may give rise to unintended consequences.

As a relatively minor matter, the landscape setting of the proposed new Mark Foy Wing is also proposed to be modified to allow for additional car parking areas. The proposed landscaping and croquet lawn around the new car parking area reduces its visual impact from the public domain.

New hedging along the front boundary and replacement trees for the now removed pines will serve to partially reduce the visual impact of the proposed parking. The success of this parking arrangement will however rely on the quality of the landscape treatment of the area. This outcome will be included in the Landscaping conditions of consent.

7.3 Conservation incentives

The current development consent permits the Mark Foy Wing to significantly exceed the building height standards of LEP 2005. Clause 77(2) of the LEP permits such non-compliance as a conservation incentive. As noted above, incremental increases in building height occurred during the original assessment, as a concession to achieving conservation outcomes. This continues as part of the s.96 modification.

The Architect's Statement claims that the number of hotel rooms of the original proposal made the project financially untenable and that the cost of construction was beyond the client's feasibility. Detailed information has not been provided to confirm the financial veracity of the claims about project viability, or to specifically address the threshold tests of cl. 77(2). Importantly, however, it is the case that the overall height and bulk of the development, as nominated by the development standards, has been only been marginally increased compared to the approved development. The tests having been satisfied with the original application cannot reasonably be revisited in case of the modification.

It is considered that the proposed modifications are appropriate in terms of the identified heritage significance outlined in the approved Conservation Management Plan (CMP). The development continues to protect the important aspects of the site that contribute to its heritage significance, with the modifications resulting in an overall positive heritage outcome, including the improved heritage approach incorporated into the redesigned Belgravia Wing.

7.4 Belgravia Wing

As noted above, each of the consultants agree the removal of the top storey of the Belgravia is a positive aspect of the modified development, which was sought during the original assessment process.

The only matter to be clarified as part of the consent is the detailed design for the restoration and reconstruction work proposed for the central portion of the eastern façade of the Belgravia Wing. The documentation submitted with the application is variable, depicting in some instances, an intent to return it to its c1930s form, proportion and detail as illustrated by the available early 20th Century photographs and that is the outcome that is proposed to be secured by the recommended conditions. The conditions require that the existing stair is to be retained and restored, externally the stair tower should be returned to its original height and detail, and the window openings on either side of the stair tower, within the recessed section of the façade, will match those shown in the available early 20th Century photographs. A photograph of the original central portion of the Belgravia's Eastern Façade has been included as Attachment 8.

7.5 Conference facility

This building will be visible from the Great Western Highway and the assessment of the modification proposals as initially submitted by the Council's Heritage Advisor raised

concerns that the design of the eastern elevation was not sufficiently responsive to Conservation Management Plan requirements.

The approved DA, when viewed from the highway, clearly defines the conference centre and adjacent kitchen facilities on the elevations. The massing is broken up by this definition in contrast to the present proposal as originally submitted. The approved DA also concealed the 'back of house' facilities, such as garbage, switch rooms and external fire escapes etc from public view, whilst in the modification as initially proposed these were not concealed. Other deficiencies that were also raised included the height to width ratio of the column spacing and the lack of any referencing of the modelling and relief pattern in the facades of the 1920s and 1930s fabric. The raising of the facility onto a podium with the flight of steps also gave the modification as originally submitted a prominence and late 20th Century and urban character not appropriate in the Hydro group.

The applicant submitted revised plans which included refinements that appropriately addressed the issues raised above. The scale and massing of the Conference Centre was reduced by distinguishing the Conference Hall from the adjacent kitchen facilities by use of a well defined offset in the building façade. The existing rhythm and proportion of the key buildings behind was better reflected by reducing the proposed column height.

8.0 Accessibility Impacts

The approved development included significant works to achieve a continuous accessible path of travel throughout the facility for all people, including those with a disability. This quality of access is retained within the proposed modification.

However, the proposal seeks to reduce the number of accessible units available whilst significantly increasing the number of rooms to 155 units. The approved development proposed six (6) accessible rooms for a development increasing from 84 rooms up to 110 accommodation rooms. Whilst this complies with the *Building Code of Australia*, consideration was also given to cl. 108 of LEP 2005. Under the LEP, 20 per cent of units are to be accessible. Whilst that standard is suitable for 5 or 10 unit developments, such a high rate of provision for a major tourist operation would not be reasonable or practical. At that time consideration was given to the increase of units above the existing unit provision, which accords also with six units.

Since determination of the original application, the Commonwealth has introduced the *Disability (Access to Premises – buildings) Standards 2010*, which commenced on 1 May 2011. It provides further requirements to improve the accessibility to all new and upgraded public buildings. However, this standard does not apply to the current application, as the applicant applied for a Construction Certificate prior to its commencement. Nonetheless, it is noteworthy that under the Standard a requirement for 8 accessible guest rooms would apply. This is a good reference point as the best practice standard for considering reductions in the provisions set by the LEP.

The modification application proposed that 6 units would be accessible, as set out by an Access Review prepared by Morris-Goding Accessibility Consulting. When concerns were raised with this level of provision by the assessment staff, an alternative suggestion was to provide 4 accessible units with 6 adaptable units. This approach is not supported. For an individual requiring an accessible unit, it would be unacceptable for such rooms to be unavailable, with only the promise of future conversions to meet an emerging need. Whilst the standard for accessibility in the LEP is high, it was set before the Commonwealth review was in place. The *Disability (Access to Premises – buildings) Standards 2010* has been

many years in development and sets an appropriate benchmark nationally. Although the provision of eight (8) units is less than that required by the LEP, such a level of provision reflects the best practice of the Standards and informs a reduction in the LEP requirement.

The proposed modification also seeks to remove the requirement for adaptable units to be provided. The LEP requires all accommodation units to be designed to be adaptable to meet changing needs. The Access Review considers this requirement to be incorrect and “implementation of this condition would be discriminatory”, without explaining why this would be the case. Coupled with the provision of 8 accessible units, the provision of two adaptable units would provide a reasonable stock of units to meet current and future accessibility requirements. It is noted the proposed modification does include improved access to many common areas within the facility, even given the difficulty posed by potential heritage impact. The applicants proposed alteration to the adaptability conditions is supported.

In addition, the proposed modification includes the provision of two new small conference rooms (conference rooms 3 and 4) in the lower level of the Delmonte building. In response to this, Council proposed to amend the accessibility condition to ensure access to these new conference rooms for people with a disability.

The proposed wording of the relevant part of a condition on access is “(k) *Access to Conference Rooms 3 and 4 on Level 0 of Delmonte shall be provided in accordance with the relevant performance requirement of the Building Code of Australia.*” The applicant has requested that this part of the condition be removed and reference be made instead to a submission by the applicant’s Access Consultant and dated 30 September 2011.

The Access Consultant’s submission notes that appropriate access is provided to the conference rooms on level 1 of Delmonte and that access to the lower level conference rooms would involve the provision of a platform lift. This is identified as being impractical due to heritage constraints. The submission further notes that the applicant’s Heritage Consultant identifies the building as being of high significance and intervention should be avoided in sensitive areas. In conclusion, the submission notes that equal alternative conference facilities are available which have appropriate accessibility and, whilst this does not meet the Deemed to Satisfy requirements of the BCA, it is their opinion that these alternative facilities can be managed as part of a wider management strategy, “*and therefore would satisfy the performance solutions of the BCA*”.

Clause 94 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations) requires that Council, when assessing development applications involving defined alterations and extensions to an existing building, considers bringing the existing building into total or partial conformity with the *Building Code of Australia*. The proposed modification does not show any work in conference rooms 3 and 4 that would otherwise require a certifying authority to issue a Construction Certificate over these areas, and the applicant’s Construction Certificate application was made prior to 1 May 2010, therefore the new requirements of Disability (Access to Premises – Buildings) Standards 2010 do not apply. However, it is considered appropriate to look to the Standards as an appropriate guide to assist in assessing the application under the provisions of Clause 94 of the Regulations.

The detail submitted by the Access Consultant was insufficient to assess the validity of the concern raised regarding the position of the platform lift, its design or its potential heritage impact. However, it is clear the Access Consultant is suggesting heritage constraint is the primary reason for not providing the appropriate access. The submitted Schedule of Conservation Works assessed the ground floor and basement levels in the Delmonte Hallway and identified one possible element of high significance that may be affected by a lift installation, whilst the stairway is identified as medium significance. The highly significant

elements in the basement level are mainly the external walls and openings which appear unlikely to be affected by the installation of a lift.

The applicant's request that the 30 September 2011 submission be referenced in the condition instead of the draft as proposed by the assessment staff is not agreed, as it will be giving approval to an alternative solution outcome under the BCA. Ultimately it is the Certifying Authorities role to accept alternative solutions during assessment of the Construction Certificate. There is also the issue that if Council incorporates a specific strategy into the condition, which changes during the Construction Certificate process, the condition may need to be further modified.

In conclusion, it is considered that the condition as proposed by the Council is clear as to its intention that access should be provided, but allows the Principal Certifier the ability to adopt an alternative solution outcome without being constrained to one particular strategy.

9.0 Modified Conditions of Consent.

The architectural changes proposed by this modification have been summarised under the Proposed Modification section of this report. In addition to the changes to Architectural documentation, the applicant has sought a number of procedural changes to the approved conditions of consent. The conditions affected by these requested changes have been identified in the following list with a brief comment.

Condition 12 – Driveways, aisles, car parking areas and service vehicle area.

The application requests that the condition be amended to remove reference to southern most car park as an "overflow" car park, also the use of reinforced grass cell treatment is inconsistent with Condition 30 Landscaping. This is agreed with and the term "overflow" will be deleted and the wording of the two conditions will be reworded for consistency.

Condition 13 – Site Stormwater System.

The application requests that the condition be amended to remove the requirement for stormwater for the fire/emergency trail to be dealt with as part of an overall upgrade. It is agreed that the requirement appears unnecessary. The fire/emergency trail is altered by virtue of conditions 15 (see below) which the Rural Fire Service has agreed can be deleted. The condition also has a requirement for the stormwater system to be designed to a "*1 in 20 year ARI, 5 minute duration*", generally and a "*1 in 100 year ARI, 5 minute duration*" adjacent to an adjoining residential property.

The application requests that the condition be amended to remove the "*5 minute duration design*" requirement and rely on a "*Critical Storm Duration*" to be set by the designing Engineer. The "*1 in 20 year ARI, 5 minute duration*" is considered by Council as Best Practice and is supported as being the appropriate minimum level of design. Use of this approach is consistent with Part 3.5.2 Gutters and Down Pipes in the *Building Code of Australia* and Section 3 (Roof Drainage Systems) of *Australian Standard 3500*.

However, following discussion with the applicant's Engineer, it was agreed that the condition could be appropriately amended to "*1 in 20 years ARI, 5 minutes duration storm and/or the critical storm duration that gives the greatest flow rate for the catchment*"

Condition 15 – Fire Trail Construction.

The application requests that the condition for all weather gravel, batters and the like to the fire trail be deleted due to the extent of works and its unjustifiable nature. The revised RFS

condition supports the deletion of this condition, as the fire trail is existing, and the upgrade work is not necessary for fire protection. It is agreed that this condition could be deleted.

Condition 17 – Consolidation of lots.

The application requests that the condition be altered so that the evidence of consolidation can be provided prior to the Final Occupation Certificate, rather than prior to Construction Certificate. It is agreed that this condition can be amended.

Condition 20 – Occupancy and use of land within the GWH road reserve.

The application requests that the condition be altered so that the evidence of lease/licence is required prior to Final Occupation Certificate, rather than prior to Construction Certificate. It is agreed that this condition can be amended.

Condition 30 – Amendments to landscape plan.

The application requests that point E of the condition, relating to amending the southern boundary of the VMP to reflect the property boundary with the adjoining residence, be deleted. This is not agreed with as the Landscape Plan includes Asset Protection Zones that extends into the adjoining property, which is not supported. However, it is agreed that the wording of the condition can be refined to more specifically target the extent of the APZ.

It was also requested that the condition be altered to remove the reference to “overflow” car park. It is agreed that this condition can be amended.

Condition 31 – Amendments to Vegetation Management Plan

The application requests that the condition be reassessed to reflect the terms of the amended Vegetation Management Plan submitted with the proposed modification. It is agreed that the first two points are adequately addressed however the VMP does contain a number of inconsistencies. Figure 3.1 (Management Zones) of the VMP adequately identifies the overall VMP management zones, however there are additional areas identified in the amended VMP that should be included in the management zones.

Figure 2.3 (Native Vegetation Communities) of the VMP indicates key areas that should logically be included within the area of the VMP but haven't been. The figure includes drainage lines and areas of associated weed infestation, identified as 'cleared/weedy area' and 'drainage lines' that should be included in the management zone of the amended VMP. Figure 3.2 (Condition of Vegetation) clearly supports this approach with both noxious and environmental weeds occurring in these locations. In fact, the northern most drainage line, which is still within the Hydro site area, indicates environmental weeds located just beyond the VMP study area which should also be included in the management zone of the amended VMP.

Figure 5.2 (Overview of Actions required) must be amended to identify the extent of the mapped weed occurrences and the areas of disturbance. However, it is agreed that the condition can be reworded to specifically identify the issues raised above.

Condition 32 – Vegetation Management Plan – amendments to boundaries

The applicant requested that consideration be given to deleting this condition as the amended VMP is considered to address the issues raised. It is agreed that the VMP, in conjunction with requirements of Condition 31, adequately addresses the relevant issues and the condition can be deleted.

Condition 33 – Site contamination and remediation – Phase 1

The application requests that the condition be amended to reflect the submitted site contamination and remediation plan. It is agreed that the condition can be amended to reflect the submitted material.

Condition 35 – Sanitary facilities in gymnasium

The application requests that the condition be amended to reflect new use as Heritage Centre and retail use/provedores. It is not agreed that this condition can be changed to reflect the retail use/provedore as this element of the proposal is not considered substantially the same development. It is agreed that the condition can be amended to reflect the proposed Heritage Centre use. Refer to the *Section 96(2)(a) – Substantially the same development* section of this report for further discussion.

Condition 39 – Accessibility and adaptability design statement.

The application requests that the adaptability requirements in this condition is deleted for the reasons outlined in submitted material. It is not agreed that the condition can be deleted however it is considered appropriate to amend the conditions to reflect a balanced approach to accessibility and adaptability. Refer to the *8.0 Access Impacts* section of this report for further discussion.

Condition 40 – Access and sanitary facilities for people with disabilities.

The application requests that the condition be amended by deleting reference to the gymnasium building and replacing with the Heritage Centre use, as well as assessing the requirements against the material submitted with the application. It is agreed that the condition can be amended to reflect the Heritage Centre use.

The proposed modification includes the provision of two new small conference rooms (conference rooms 3 and 4) in the lower level of the Delmonte building. In response to this, Council proposes to amend this condition to provide appropriate access for people with a disability, however the applicant suggested this was not necessary. Refer to the *8.0 Accessibility Impact* for further discussion. It is recommended that retention of the condition is appropriate and does not inhibit the Principal Certifiers ability to implement an alternative strategy, in accordance with the requirements of the BCA.

Condition 45 – Site Management

The application requests that the condition be amended to allow Saturday work hours to be changed to commence from 7am rather than 8am. It is noted that the Industrial Noise Policy identifies this as being within the Day period. It is agreed that the condition can be changed within suitable parameters.

Condition 73 – Protection of bio-retention device during construction.

The application requests that the condition be amended to allow a transition period for the operation of the bio-retention devices, based on operational and logistical difficulties in achieving condition requirements. It is agreed that the condition can be reworded to reflect realistic objectives.

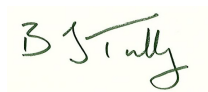
Condition 76 Stormwater Quality Treatment Devices.

The application requests that the condition be amended to reflect realistic time requirements to achieve the vegetation outcomes of this condition. It is agreed that the condition can be reworded to reflect realistic objectives.

Draft "without prejudice" conditions were forwarded on 30 September 2011 and on 2 November 2011. Meetings and discussion has occurred with the applicant which informed the character of the proposed modified conditions.

CONCLUSION

It is recommended that the development approval be modified in accordance with the submitted material, subject to revised conditions, which are contained at Attachment 1. The development satisfies the planning provisions as set out in the Environmental Planning and Assessment Act and it is considered that the modified development makes a significant contribution to the retention of an iconic tourist facility, providing for a range of accommodation units. The development also satisfies both local and tourist expectations by facilitating continued public access to the views that result from the sites escarpment location. The modification will also allow a comprehensive approach to the upgrading of facilities and the implementation of required fire safety measures. The development is considered important in terms of retaining the viability of a heritage significant item as well as building on the importance of the item to the character and identification of the area.



BYRON TULLY

Acting Executive Principal Planning

Date 3 November 2011



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LEE MORGAN

Director, Development, Health and Customer Services

Date 3 November 2011