



New South Wales Government  
Independent Planning Commission

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# The Star Mod 18 – Changes to MUEF (MP08\_0098 MOD 18)

## Statement of Reasons for Decision

Dianne Leeson (Chair)  
Adrian Pilton  
Dr Peter Williams

24 February 2023

## Executive Summary

The Trustee for Foundation Theatres Trust (Applicant) has sought consent for a modification to the Star Casino Complex in Pyrmont to build and operate a new 'Broadway style' theatre (1,550 patrons) and a new 'Live' theatre (1,000 patrons). The Applicant currently operates The Lyric Theatre in the Star Casino Complex.

The modification application seeks to convert the existing Multi Use Entertainment Facility in the northern part of the Star Casino Complex into two new theatres, including the construction of a new 10 metre 'fly tower', new dressing room facilities, plant and equipment areas, and internal alterations to foyer and pre-event spaces.

The NSW Independent Planning Commission is the consent authority for the application as the Applicant has disclosed a reportable political donation.

Commissioners Dianne Leeson (Chair), Dr Peter Williams and Adrian Pilton were appointed to constitute the Commission Panel in making the final decision. The Commission undertook a site inspection and met with the Department of Planning and Environment, the Applicant, City of Sydney Council and Pyrmont Action group.

Key issues which are the subject of findings in this Statement of Reasons relate to built form, design excellence, visual impact, operational noise, and construction impacts including vibration and traffic management.

After careful consideration, the Commission has determined that consent should be granted to the modification application, subject to conditions to manage and mitigate matters including noise, vibration, construction and traffic impacts.

The Commission's reasons for approval of the application are set out in this Statement of Reasons for Decision.

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## Defined Terms

ABBREVIATION	DEFINITION
<b>Applicant</b>	The Trustee for Foundation Theatres Trust
<b>Application</b>	The Star Mod 18 – Changes to MUEF (MP08_0098-Mod-18)
<b>AR</b>	The Department's Assessment Report, dated December 2022
<b>AR para</b>	Paragraph of the Department's Assessment Report
<b>Commission</b>	NSW Independent Planning Commission
<b>Council</b>	City of Sydney Council
<b>Department</b>	Department of Planning and Environment
<b>Department's AR</b>	Department's Assessment Report, dated December 2022
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EPI</b>	Environmental Planning Instrument
<b>ESD</b>	Ecologically Sustainable Development, as defined in s 1.4 of the EP&A Act
<b>LGA</b>	Local Government Area
<b>Mandatory Considerations</b>	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
<b>Material</b>	The material set out in Section 3.3 of this Statement of Reasons
<b>Minister</b>	Minister for Planning and Homes
<b>MOD 7 AR</b>	the Department's MOD 7 Assessment Report, dated May 2011 and Supplementary Report, dated July 2011
<b>MUEF</b>	Multi-use entertainment facility
<b>Original Approval</b>	The consent for MP08_0098 approved by the then Minister for Planning on 27 January 2009, as described in Schedule 1 of the consent, including all approved modifications
<b>Original AR</b>	the Department's Assessment Report for the Original Approval, dated January 2009
<b>PAC</b>	NSW Planning Assessment Commission
<b>PAC Advice Report 2009</b>	PAC's reasons for the grant of the original consent, dated 21 January 2009
<b>PAC Advice Report 2011</b>	PAC's reasons for the grant of consent to MOD 7, dated 29 July 2011
<b>PPPS</b>	Pymont Peninsula Place Strategy
<b>Regulation</b>	<i>Environmental Planning and Assessment Regulation 2021</i>
<b>RtS</b>	Applicant's <i>Response to Submissions and Amendment Report</i> , prepared by Ethos Urban, dated 28 October 2022, and Appendices
<b>SEPP Planning Systems</b>	<i>State Environmental Planning Policy (Planning Systems) 2021</i>
<b>SEPP PP Amendment</b>	<i>State Environmental Planning Policy Amendment (Pymont Peninsula)</i>
<b>Site</b>	Lot 500 DP 1161507, Lots 301 and 302 DP 873212, Lot 12 DP 870336, Lot 201 DP 867855 and Lot 1 DP 867854, known as The Star Casino, 20-80 Pymont Street Pymont
<b>SLEP 2012</b>	<i>Sydney Local Environmental Plan 2012</i>
<b>SSD</b>	State significant development
<b>The Star</b>	The Star Casino Complex and Switching Station
<b>FSR</b>	Floor Space Ratio
<b>ESD</b>	Ecologically Sustainable Development

# 1. Introduction

1. On 21 December 2022, the NSW Department of Planning and Environment (**Department**) referred 'The Star Mod 18 – Changes to MUEF' (MP08\_0098-Mod-18) application (**Application**) made by The Trustee for Foundation Theatres Trust (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Application seeks consent for a modification under section 4.55(2) of the *Environmental Planning and Assessment Act* (**EP&A Act**) for development of new theatre facilities at the Star Casino Complex and Switching Station (**The Star**), located in Pyrmont, in the City of Sydney Local Government Area (**LGA**).
3. The Application includes the conversion of the approved multi-use entertainment facility (**MUEF**) to two new theatres, construction of a fly tower, construction of new dressing room and plant areas and internal alterations to the foyer and pre-event spaces.
4. In accordance with section 4.5(a) of the EP&A Act and section 2.7(3) of the *State Environmental Planning Policy (Planning Systems) 2021* (**SEPP Planning Systems**), the Commission is the consent authority as the Applicant has made a reportable political donation.
5. Professor Mary O'Kane AC, Chair of the Commission, nominated Dianne Leeson (Chair), Dr Peter Williams and Mr Adrian Pilton to constitute the Commission Panel determining the Application.

# 2. The Application

## 2.1 Site and Locality

6. The Star, as described in the Department's Assessment Report dated December 2022, (**AR**) is bound by Jones Bay Road, Pirrama Road, Union Street and Pyrmont Street, Pyrmont (the **Site**).
7. The Site comprises various lots, as described by the Department in AR paragraph (para) 1.2.2, and has an area of 39,206 square metres.
8. The existing Star Casino Complex contains: gaming areas; retail areas; restaurants and bars; hotel and serviced apartment towers; and the Lyric Theatre (AR para 1.24). The existing light rail line, bus services and multi-level basement car park provide public transport and parking at The Star.
9. The Site is owned by Place Management NSW (AR para 1.2.3), and the Commission notes that owner's consent has been provided to the Applicant for the proposed development (AR para 1.2.3).
10. The location of the existing MUEF is illustrated at Figure 1 below.



**Figure 1** – Location of the Site showing the MUEF, subject of the Application  
(Source: Department's AR, pg 2)



11. The surrounding context of the Site includes multi-storey residential apartments and terraces and commercial development. The MUEF is located at the northern end of the Site, near the intersection of Jones Bay Road and Pirrama Road, and opposite residential apartments known as the 'Watermark Tower' (2 Jones Bay Road), 'Watermark Pavilion' (24 Point Street) and 'Rockdale' (88 John Street).

## 2.2 The Application

### 2.2.1 Original Approval

12. The Application is the eighteenth modification proposal to The Star. MP08\_0098 was approved by the then Minister for Planning on 27 January 2009 under the former Part 3A of the EP&A Act (**Original Approval**). This approval allowed for further redevelopment of the casino complex, which was first approved in 1994.
13. The Department advises that MP08\_0098 was transitioned by an Order to become a State significant development (**SSD**) approval on 24 January 2020 (AR section 4.5). This allows continued modification of the original approval under section 4.55(2) of the EP&A Act.

### 2.2.2 Related Development

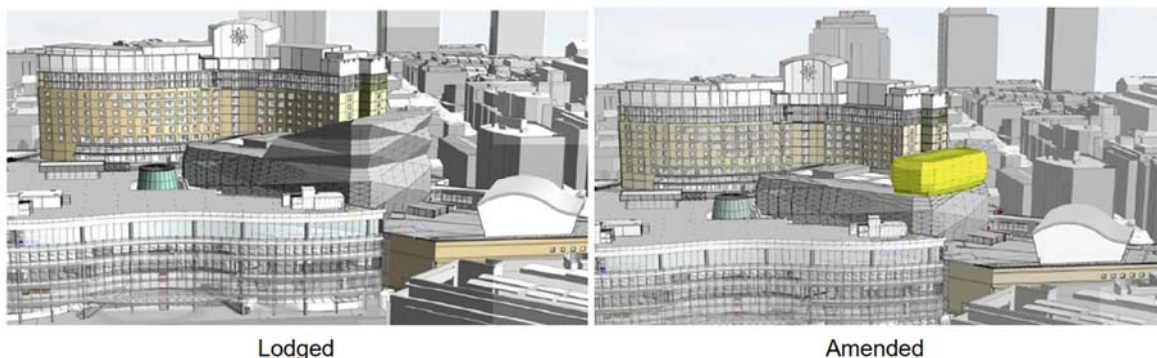
14. The Department outlines previous modification applications to The Star at AR para 1.3.2. Of these previous applications, the Commission notes that 14 modifications have been approved, and one (MOD 17) is currently under assessment by the Department.

15. The existing MUEF was approved by the then Planning Assessment Commission (**PAC**) as part of 'MOD 7' to replace the ballroom expansion approved under the original 1994 Project Approval. The existing MUEF operates as 'The Star Event Centre' and is used for a range of events, conferences and concerts (AR para 1.3.5).

### 2.2.3 The Application

16. The Applicant submitted its Modification Report, dated 11 May 2022, to the Department for assessment (**Original Application**).
17. In response to submissions received from the community and the City of Sydney Council (**Council**) during the Department's exhibition process, the Original Application was amended by the Applicant through its Response to Submissions Report (**RtS**), dated 28 October 2022. The Application before the Commission is summarised in Table 1 below.
18. Changes to the Application made through the RtS are summarised at AR para 6.2.5 and generally comprise a reduction in bulk and scale of the fly tower development and consolidation of internal spaces. The reduced bulk and scale of the Application is illustrated at Figure 2.

*Figure 2 – Original Application and amended Application viewed from the Pirrama Road frontage (Source: Department's presentation to the Commission, dated 25 January 2023)*



19. The Commission notes the approved height of the existing MUEF is RL40.4m AHD (as approved under MOD 7). The height of the proposed development is RL50.35 AHD (to the top of the fly tower). The current MUEF space is used for events and has a stage, but has insufficient backstage infrastructure to support full theatre productions, which require a fly tower. The loading facilities for the proposed new theatres will be from the existing loading dock on Jones Bay Road.

*Table 1 – Project Summary (based on para 2.1.1 of the AR)*

Component	Description
<b>Theatre Complex</b>	Convert the existing 4,000 standing capacity MUEF into a two-theatre complex with: <ul style="list-style-type: none"> <li>• a 1,550 patron Broadway-style theatre; and</li> <li>• a 1,000 patron comedy and live entertainment theatre</li> </ul>
<b>Fly Tower</b>	Construct a 10 metre high extension on top of the northern end of the MUEF for a new fly tower and rigging loft up to RL 50.35 metres to support theatre sets

<b>Props and Backdrops</b>	Construct a new loft space for the comedy and live entertainment theatre to support props and backdrops
<b>Dressing Rooms</b>	Construct a three-storey extension for new dressing room space and supporting plant and equipment areas fronting Jones Bay Road
<b>Foyer and Pre-event Spaces</b>	Convert existing kitchen space into additional dressing rooms and support space to serve both venues and refurbish internal foyer and pre-event spaces
<b>Gross Floor Area (GFA)</b>	Increase the total gross floor (GFA) area across the Site by 931 square metres (from 139,998 square metres to 140,929 square metres)

### 3. The Commission's Consideration

#### 3.1 The Commission's Meetings

20. As part of the determination process, the Commission met with various persons as set out in Table 2. All meeting and site inspection notes have been made available on the Commission's website.

*Table 2 – Commission's Meetings*

Meeting	Date	Transcript/Notes Available on
Site Inspection	17 January 2023	20 January 2023
Department	25 January 2023	30 January 2023
Applicant	25 January 2023	31 January 2023
Council	25 January 2023	31 January 2023
Pymont Action	25 January 2023	31 January 2023

#### 3.2 Material Considered by the Commission

21. In making its determination, the Commission has considered the following material (**Material**), along with other documents referred to in this Statement of Reasons:
- the Department's Assessment Report for the Original Approval, dated January 2009 (**Original AR**);
  - the PAC's reasons for the grant of consent to the Original Approval, dated 21 January 2009 (**PAC Advice Report 2009**);
  - the Department's MOD 7 Assessment Report, dated May 2011 and Supplementary Report, dated July 2011 (**MOD 7 AR**);
  - the PAC's reasons for the grant of consent to MOD 7, dated 29 July 2011 (**PAC Advice Report 2011**);
  - the Applicant's Modification Report, dated 11 May 2022, and its accompanying appendices;



- all public submissions made to the Department during the public exhibition of the Modification Report, from 12 May 2022 to 25 May 2022;
- all Government Agency advice to the Department;
- the Applicant's RtS and Amendment Report, dated 28 October 2022, and its accompanying appendices;
- all additional information and correspondence from the Applicant to the Department;
- the Department's AR, dated December 2022;
- the Department's recommended notice of approval for MOD 18, and draft Consolidated Consent for MP08\_0098, received by the Commission on 21 December 2022;
- all comments and presentations material at the meetings with the Department, Council, Pyrmont Action and the Applicant, as referenced in Table 2;
- the Applicant's response to the Commission, dated 31 January 2023; and
- the Department's response to the Commission, dated 1 February 2023.

### 3.3 Strategic Context

22. Section 3 of the Department's AR describes the strategic context of the Application, including the reference to the recent 'Pyrmont Peninsula Place Strategy' (December 2020) (**PPPS**).
23. The Department states that the Application "*is consistent with the PPPS as it will support the objective to create a vibrant 24-hour cultural and entertainment destination*" (AR para 3.13).
24. To implement the PPPS, the 'Pyrmont Peninsula Finalisation of Sub-precinct Master Plans and Rezoning' (DPE, July 2022) was prepared to create new planning controls – including for the Site. The following guidelines were also prepared by the Department:
  - Pyrmont Urban Design Report (29 July 2022); and
  - Pyrmont Peninsula Urban Design Guidelines (29 July 2022).
25. The new controls were implemented through *State Environmental Planning Policy Amendment (Pyrmont Peninsula)* (**SEPP PP**), which made amendments to the maximum building height and floor space ratio (**FSR**) for the Site under *Sydney Local Environmental Plan 2012* (**SLEP 2012**) on 29 July 2022.
26. In its AR, the Department addressed consistency with the City of Sydney Council's (**Council**) Strategic Plan, 'Sustainable Sydney 2030-50', and concurred that the Application:
 

*...is consistent with Directions 4 (design), 5 (connectivity and transport) and 8 (culture) of Sustainable Sydney 2030-50 as the site is well connected by public transport, will re-use a significant portion of the existing MUEF for new cultural and entertainment space and provide new built form consistent with the architectural expression of that part of The Star site (AR para 3.2.2).*
27. The Commission agrees with the Department's findings with regard to the strategic merit of the Application.

## 3.4 Statutory Context

### 3.4.1 Permissibility

28. The Site is zoned B3 Commercial Core under the SLEP 2012. Entertainment facilities are permissible with consent in this zone. The Department, in AR para 4.2.3, states that the Application meets the definition of 'entertainment facility' under the SLEP 2012. The Commission agrees with the Department that the Application is permissible with consent in zone B3 Commercial Core.

### 3.4.2 Section 4.55(2) Modification Considerations

29. The Commission is the consent authority for the purposes of section 4.55(2) of the EP&A Act, because a reportable political donation was made by the Applicant.
30. The Department states that it *"is satisfied the proposed modification is within the scope of section 4.55(2) of the EP&A Act and does not constitute a new development application"* (AR para 4.1.2). Further, the Department states that it considers the Application to be *"substantially the same as the originally approved development as it existed when it was transitioned to SSD"* from Part 3A of the EP&A Act (AR para 4.1.1). The Commission accepts this and the Department's consideration of section 4.55(2)(b), (c) and (d) as shown in Table 5 of the AR.
31. The Original Approval included significant works to the existing casino, including a new hotel, additional basement parking, redevelopment of the retail arcade, works to the exterior of the existing Casino tower buildings and an expansion to the existing ballroom and pre-function area (see AR para 1.3.2). The ballroom expansion proposed under the Original Approval was not progressed (AR para 1.3.3), and the building as seen today is as approved under MOD 7 and MOD 10 (see below).
32. The expanded ballroom was a relatively minor component of the Original Approval in terms of impacts and additional floorspace. The public benefits of the Original Approval included an enhanced entertainment and recreational facility, increased employment opportunities and an improved urban design and aesthetic outcome (page 41 Original AR). Conditions were imposed in the Original Approval to address impacts, including noise. The Commission finds that approval of the current Application would be consistent with the reasons for the Original Approval.
33. Consideration has also been given to the reasons for approval of the modifications to MP08\_0098, which are summarised in Appendix C of the Department's AR. Modifications 1 – 6, 8, 9, 11, 12 and 14 – 16 did not directly affect the subject part of The Star Complex. MOD 14 affected that part of the building near the MUEF, as noted in AR para 1.3.7. However, the works approved under MOD 14 are not part of those proposed to be amended in MOD 18. MOD 13 proposed a new hotel/apartment tower adjoining the MUEF, but this was application was refused.
34. MOD 7 is relevant as it approved the MUEF structure, the subject of MOD 18. Consideration of the reasons for approval for MOD 7 is contained in the Department's MOD 7 AR and in PAC Advice Report 2011. The relevant key issues assessed in the MOD 7 AR were the height and built form of the MUEF, including view loss from nearby apartment buildings, noise impacts, parking, traffic and loading issues. New conditions to address MUEF-specific noise, noise during construction and to require a loading dock management plan were imposed as part of the consent. As MOD 18 proposes an extension to the MUEF structure, similar issues have been considered and conditions imposed to ensure the impacts are mitigated, as outlined in this Statement of Reasons.

35. MOD 10 approved a change to the exterior material of the MUEF, which was approved for reasons outlined in the MOD 10 AR dated December 2011. The compatibility and suitability of proposed new materials in MOD 18 have been considered in the context of the existing finish of the MUEF, as explained on AR pages 20-21.

### 3.4.3 State Environmental Planning Policy Amendment (Pyrmont Peninsula)

36. Clause 6.23 of SLEP 2012 (as amended by the SEPP PP Amendment) provides that a maximum height of RL51.8m applies to 'Area A', as shown on the applicable map in SLEP 2012, with the proviso that this applies if the consent authority is satisfied that:
- (a) the building will—
    - (i) be used for the purposes of entertainment facilities, and
    - (ii) not be used for the purposes of residential accommodation, and
  - (b) the development is consistent with the Pyrmont Peninsula Urban Design Report.
37. The SEPP PP Amendment also amended the FSR Map under SLEP to show a maximum FSR of 4.22:1 for the Site.
38. The relevant affected controls are maximum building height and maximum FSR, as discussed as follows.

#### *Building Height and FSR*

39. The Applicant's Modification Report addresses SLEP 2012 as in force at the time and provides justification to vary the maximum height and FSR under SLEP 2012. As noted in the Applicant's Modification Report, a formal application to vary these development standards (under cl 4.6 of SLEP 2012) is not required for a modification application.
40. The Commission notes that, contemporaneous with lodgement and consideration of the Application, amendments to SLEP 2012 height and FSR controls specific to the Site were also in preparation to give effect to the PPPS. SLEP 2012 was amended on 29 July 2022 by gazettal of SEPP PP.
41. In response to Council and community objections to the proposed height (and bulk), the height and FSR were later reduced through the Applicant's RtS and Amendment Report which addressed compliance with SLEP 2012, as amended.
42. The Department's AR considers the height and FSR controls under SLEP 2012 (as amended) in Appendix B of the AR and concluded that the proposed amended height of RL50.35m complies with the maximum height limit and the Application will comply with the maximum FSR development standard.
43. Consistency with the Urban Design Report is also a prerequisite for approval of the height allowed under clause 6.23 of SLEP 2012. This is considered by the Department in Table 8, Appendix B of the AR.
44. The Commission agrees with the Department's conclusions regarding the proposed height and FSR, and is satisfied that the proposed height and FSR are compliant with the SLEP 2012.

### 3.5 Mandatory Considerations

45. Section 4.55(3) of the EP&A Act requires the consent authority to take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application in addition to the reasons given by the consent authority for the grant of the consent that is sought to be modified. In considering those reasons, the Commission was assisted by the Original AR and the PAC Advice Report 2009 (see above at 3.4.2 of this Statement of Reasons).
46. In determining this Application, the Commission has given consideration to those matters and reasons (**Mandatory Considerations**). The Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the Mandatory Considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

*Table 3 – Mandatory Considerations*

<b>Mandatory Considerations</b>	<b>Commission's Comments</b>
<b>Relevant EPIs</b>	<p>Appendix B of the Department's AR identifies relevant EPIs for consideration. The key EPIs (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> <li>• SEPP Planning Systems</li> <li>• SLEP 2012</li> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></li> <li>• <i>State Environmental Planning Policy (Industry and Employment) 2021</i></li> <li>• <i>State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021</i></li> </ul>
<b>Relevant Proposed EPIs</b>	<ul style="list-style-type: none"> <li>• <i>Draft State Environmental Planning Policy – Remediation of Land</i></li> <li>• <i>Draft State Environment Planning Policy (Environment) (Draft Environment SEPP)</i></li> </ul>
<b>Relevant DCPs</b>	Pursuant to section 2.10 of the SEPP Planning Systems, development control plans do not apply to SSD. The Commission does not consider any development control plans to be relevant to the determination of the Application.
<b>Likely impacts of the development</b>	The likely impacts of the Application have been considered in Section 5 of this Statement of Reasons.
<b>Suitability of the Site for Development</b>	The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:

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	<ul style="list-style-type: none"> <li>the Application is permissible with consent and is substantially the same as the approved development;</li> <li>the proposed height and FSR of the Application has been considered under the PPPS;</li> <li>conversion of the existing Event Centre to new theatres is an appropriate use of the existing infrastructure at The Star;</li> <li>the Site is free of significant environmental constraints; and</li> <li>impacts on surrounding land uses have been minimised and can be further managed and mitigated through conditions of consent.</li> </ul>
<b>Objects of the EP&amp;A Act</b>	<p>In this determination, the Commission has carefully considered the Objects of the EP&amp;A Act and matters under section 4.55(2) of the EP&amp;A Act.</p> <p>The Commission is satisfied with the Department's assessment of the Application against the matters under section 4.55(2) of the EP&amp;A Act provided at Appendix B of the AR.</p>
<b>Ecologically Sustainable Development (ESD)</b>	<p>The Commission has considered the principles of ESD in its determination.</p> <p>The Commission agrees with the Department's view that the Application is consistent with the principles of ESD as it will re-use and adapt a significant amount of the existing MUEF structure and include materials for adequate insulation.</p> <p>The Commission is satisfied with the Department's assessment of the Application under the ESD principles and finds the precautionary and inter-generational equity principles have been applied via a rigorous and thorough assessment of the potential environmental impacts of the Application.</p>
<b>The Public Interest</b>	<p>The Commission has considered whether approval of the Application is in the public interest. In doing so, the Commission has weighed the predicted benefits of the Application against its predicted negative impacts. The Commission's consideration of the public interest has also been informed by consideration of the principles of ESD.</p> <p>The Commission finds that, on balance, the Application is consistent with ESD principles, and that the Application would achieve an appropriate balance between relevant environmental, economic and social considerations. The likely benefits of the Application warrant the conclusion that an approval is in the public interest.</p>

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## **4. Community Participation & Public Submissions**

47. The Commission determined that a Public Meeting was not necessary for this Application given the small number of public submissions made to the Department. However, the Commission determined that it would be assisted by inviting representatives from community groups that had made submissions on the Application to meet with the Commission. The invitation to do so was accepted by the Pyrmont Action group, as noted in Table 2.

### **4.1 Public Submissions**

48. The Commission invited written submissions from all persons between 21 December 2023 and 5pm on 10 February 2023. During the Submission period, the Commission did not receive any submissions on the Application.
49. The Commission has taken into consideration the submissions received by the Department during its exhibition period. Key issues identified in submissions to the Department include: noise impacts; traffic and transport; amenity impacts (light and privacy); construction impacts, including vibration impacts on heritage buildings; height, bulk and scale; view loss; and social impacts such as anti-social behaviour.

### **4.2 Community Participation at Site Inspection**

50. On 17 January 2023, the Commission conducted an inspection of the Site, including external viewing points to the Site and internal areas of The Star subject to the Application. A representative of the Pyrmont Action group attended the Site inspection.

## 5. Key Issues

### 5.1 Built Form

51. The Department describes the changes made to the height, bulk and scale of the proposed development by the Applicant at AR para 6.2.6.
52. The Department concludes that the “*bulk and scale of the revised proposal is acceptable*” because:
- *the fly tower has a maximum height of RL 50.35 m which complies with the maximum LEP height limit of RL 51.8 m for an entertainment facility in ‘Area A’ of the site*
  - *the increase of 931 m<sup>2</sup> of GFA is a minor increase in the context of the overall site and complies with the maximum FSR development standard of 4.22:1*
  - *the reduced massing of the fly tower and plant room expansion mitigates view loss... without compromising the ability to provide the fly tower and other associated infrastructure necessary to support Broadway-style theatre productions*
  - *the revised dressing room and plant areas would not result in adverse impacts as they are designed to provide a consistent podium setback and scale with the existing plant room along Jones Bay Road*
  - *any additional shadows would fall within existing footprint of The Star and the proposal would not result in any additional off-site shadow impacts in the public domain or at private dwellings on the winter solstice (AR para 6.2.6).*
53. The Commission finds that the fly tower structure has been reduced in height, bulk and scale as far as possible and therefore the Commission agrees with the Department’s assessment.
54. After viewing the existing development during its Site inspection, the Commission finds the distant views of the proposed development, namely the fly tower structure, will be acceptable in the context of the existing skyline.

### 5.2 Design Excellence

55. The Department gave consideration to the Project’s design and finishes and the design excellence requirements under SLEP 2012 in section 6.3 of the AR.
56. Council originally objected to the Application on grounds including that design excellence was not demonstrated, but withdrew its objection after amendments were made to the Application through the RtS.
57. The Commission heard comments made by Pymont Action during its meeting with the Commission on 25 January 2023, that the new aluminium cladding on the fly tower could cause glare. The Commission notes that the Department has assessed that the fly tower will have lower reflectivity than the existing glass finish and will not be backlit. The Commission agrees with the Department’s view in this regard.
58. The Commission agrees with the Department that the amended design and materiality of the addition is acceptable (AR para 6.3.6) and that the design excellence tests under clause 6.21C of SLEP 2012 have been met.

## 5.3 Visual Impact

59. The Commission acknowledges that the proposed 10-metre-high fly tower structure is an element of the proposed development that will impact the views from nearby residential dwellings – in particular, apartments within the Watermark Tower, Watermark Pavilion and Rockdale apartment building.
60. The Applicant submitted an amended Visual Impact Assessment as part of its RtS Report (Appendix C). The report finds that, by limiting the vertical extension of the development only to the fly tower component, view loss to the CBD from the affected apartments is reduced (AR Figure 14).
61. The Commission notes the Department's assessment of the view loss with regard to the 'Tenacity Test' Planning Principle established by the Land and Environment Court.
62. The Department concludes that the view impacts are acceptable for the following reasons (AR para 6.4.15):
- *the proposal is consistent with the Pyrmont Place Strategy as it would not block views to the water from any of the affected apartments*
  - *the height of the fly tower complies with the maximum LEP height control*
  - *the amended proposal strives to minimise view loss by limiting the bulk of the fly tower to the smallest extent possible while meeting the functional requirements of the facility to accommodate a Broadway-style theatre.*
63. In its meeting with the Applicant on 25 January 2023, the Commission requested further information to clarify the number of apartments that would be potentially impacted by the development with regards to view loss.
64. The Applicant in its response to the Commission, dated 31 January 2023, provided photographs and diagrams which indicated that:
- Watermark Tower – the development will be visible from 26 units (south and south-east elevations) and view loss impacts will be negligible to moderate; and
  - Watermark Pavilion – the development will be visible from six units (from Level 4 upwards on the south-eastern corner) and view loss impacts will be moderate.
65. In its meeting with the Department on 25 January 2023, the Commission also posed questions to the Department regarding view loss.
66. The Department in its response to the Commission dated 1 February 2023, advised:
- In the Watermark Tower:*
- *five, two-level 'mezzanine' apartments over levels 8 and 9 would experience moderate to severe view loss*
  - *a further 21 apartments would experience minor view loss comprising:*
    - *16 apartments on the southern elevation across levels 4 to 7*
    - *five apartments on the eastern elevation across levels 4 to 8.*
- In the Watermark Pavilion:*
- *two apartments at the south-eastern corner on levels 8 and 9 respectively would experience moderate view loss*
  - *a further three apartments at the south-eastern corner on levels 4 to 7 would experience minor to negligible view loss.*

67. The Commission notes that the Application is compliant with the height limit envisaged as part of recent strategic planning. The Commission considers that the public benefits to Sydney from the provision of a “Broadway Style” theatre and “Live” theatre, and the suitability of this Site for this use, have been balanced against the impacts. The Commission considers the view loss from the nearby apartment buildings to be reasonable and acceptable.

## 5.4 Noise

### 5.4.1 Operational Noise

#### *Theatres*

68. The Commission notes that concerns were raised through submissions to the Department about operational and construction noise impacts by members of the public.

69. The Department in AR para 6.5.2 states:

*The proposed new theatres would potentially operate up to 24 hours, 7 days, however typical hours would range from 8 AM to 11:30 PM but may vary up to 24-hour operations for short periods, depending on the performance schedule. Performances would generally start and be open to the public from 1 PM and 7 PM until 10:30 PM, depending on the day and performance schedule.*

70. The Applicant provided a Noise Impact Assessment giving consideration to the Noise Policy for Industry, NSW Liquor and Gaming requirements and the noise management framework established in condition F5 of the existing consent. The Noise Impact Assessment concluded that the Application can meet the cumulative noise management requirements when both venues are operating at the same time as a worst-case scenario (AR para 6.5.10).

71. During its meeting with the Commission on 25 January 2023, the Applicant stated:

*So we won't be operating the theatres with any of the doors open, windows open or any of that sort of stuff, we need the theatre to be absolutely quiet. So in terms of any noise from the productions escaping outside, there's zero chance that's going to happen... (Transcript page 14).*

72. The Department is satisfied that the design and operation of the new theatre spaces would not result in adverse acoustic impacts at nearby residential and commercial receivers (AR para 6.5.12).

73. The Commission agrees with the Department's views with regard to operational noise from the proposed theatres.

#### *Loading and Unloading*

74. The Applicant's Plan of Management states that The Star loading dock currently operates 7am to 6pm Monday to Friday, 7am to 1.30pm Saturday, and 7am to 11am Sunday, and services the whole of The Star complex. These arrangements are proposed to also support the new theatres.

75. The Department recommended that an 'updated' Loading Dock Management Plan be prepared for the operations (condition B10A).

76. The Commission is satisfied that the loading aspects of the Application will be acceptable and will create no significant impacts compared to the development as approved. The Commission therefore imposes condition B10A as recommended by the Department.

#### *Noise from Patrons*

77. Noise and occasional anti-social behaviour from patrons of The Star in the surrounding streets was identified as an issue by residents and Pyrmont Action.
78. During its meeting with the Commission on 25 January 2023, the Applicant stated:  
*...if there is something happening in compliance with the outside of the building, even if it's with the theatre generally, the authorities would call The Star and The Star would call us if we're required. That's... [a] longstanding sort of approach mainly because it's a big complex... we have legal obligations to The Star to satisfy certain - certain conditions and they look after the balance (Transcript page 7).*
79. The Commission acknowledges that identifying which venue a patron may have come from when exiting The Star is challenging and notes the operational arrangements in place between The Star and the Applicant.
80. To mitigate patron noise impacts, the Commission has imposed new condition E18, requiring wayfinding signage to be provided at prominent locations inside and outside the entrances to The Star to encourage patrons to exit the site away from sensitive receivers - such as along Jones Bay Road, and towards the light rail, car park or the main taxi ranks on Pirrama Road or Pyrmont Street.
81. The Commission is satisfied that noise from patrons can be appropriately managed.

## 5.5 Construction

### *Noise and Vibration*

82. Vibration impacts to nearby heritage items was raised as a concern in public submission to the Department during exhibition. Pyrmont Action in its meeting with the Commission also raised vibration impacts as an issue of concern.
83. The Department's assessment indicates that the Noise Impact Assessment prepared for the Application addresses vibration impacts with reference to the standards for historic or heritage buildings. The Department considers that the construction noise and vibration impacts can be managed to an acceptable level (AR Table 4 page 35).
84. The Commission notes that all works are either internal within the existing building, or at the top of the existing building (the fly tower) and no excavation works are proposed. The Commission agrees there will be minimal vibration and limited construction noise exceedance, and is therefore satisfied that noise and vibration impacts can be appropriately managed.
85. The Commission has imposed Condition B21, as recommended by the Department, which includes requirements for the preparation and implementation of an updated Construction Noise and Vibration Management Plan.

### *Traffic Management*

86. The Applicant submitted a Preliminary Construction and Traffic Management Plan as part of its RtS (Appendix D). This Plan also refers to proposed works zones on Jones Bay Road which the Commission notes will require approval from Council.
87. The Department stated that it is satisfied that construction traffic would be able to access the Site efficiently and avoid two way construction movements along Jones Bay Road. The Department also noted that larger construction vehicles (20 m articulated trucks) and road closures would be considered on their merits by Council.



88. The Commission agrees with the Department and is of the view that construction traffic impacts can be managed. The Commission is of the view that existing Condition B19 satisfactorily addresses construction traffic matters, as it requires the Applicant to update the Construction Pedestrian and Traffic Management Plan prior to the issue of a Construction Certificate.

## **5.6 Other Issues**

89. The Commission is satisfied that the remaining issues, as described in Table 4 of the Department's AR, can be appropriately mitigated and managed.
90. The Commission notes that traffic generation and parking demand, as a result of the Application, will be less than that approved for the current use of the MUEF, as maximum approved patron numbers will be reduced.

## 6. The Commission's Findings and Determination

91. The Commission has carefully considered the Material before it as set out in section 3 of this Statement of Reasons report. Based on its consideration of the Material, the Commission finds that the Application should be approved for the following reasons:
- the Application falls within section 4.55(2) of the EP&A Act as a modification to the Original Approval;
  - the Application is consistent with the relevant EPIs, the Pyrmont Peninsula Place Strategy, and is compliant with the relevant controls;
  - the Application has minimised the bulk and scale of the development, and therefore any subsequent view loss from nearby residences;
  - the new theatres will expand the offering of cultural spaces in Sydney, in a location well serviced by public transport, car parking and supporting infrastructure; and
  - the impacts of the development during construction and operation have been minimised and can be further mitigated through conditions of consent.
92. For the reasons set out in paragraph 91 above, the Commission has determined that the modification application should be granted approval, subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
  - set standards and performance measures for acceptable environmental performance;
  - require regular monitoring and reporting; and
  - provide for the on-going environmental management of the development.
93. The reasons for the Decision are given in the Statement of Reasons for Decision dated 24 February 2023.



Dianne Leeson (Chair)  
Member of the Commission



Adrian Pilton  
Member of the Commission



Dr Peter Williams  
Member of the Commission



**New South Wales Government**  
Independent Planning Commission

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