

20 March 2024

At 5.00 pm

Local Planning Panel



Agenda

- 1. Disclosures of Interest**
- 2. Confirmation of Minutes**
- 3. Section 4.55(2) Application: 64-68 Macleay Street, Elizabeth Bay - D/2010/763/G**
- 4. Development Application: 49-51 Market Street, Sydney - D/2023/984**



As part of our democratic process, the City invites members of the community to speak directly to Members of the Local Planning Panel (LPP) about items on a meeting agenda.

Webcast

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1. Register to speak by calling Secretariat on 9265 9702 or emailing secretariat@cityofsydney.nsw.gov.au before 10.00am on the day of the meeting.
2. Check the recommendation in the LPP report before speaking, as it may address your concerns so that you just need to indicate your support for the recommendation.
3. Note that there is a three minute time limit for each speaker and prepare your presentation to cover your major points within that time.
4. Avoid repeating what previous speakers have said and focus on issues and information that the LPP may not already know.
5. If there is a large number of people interested in the same item as you, try to nominate three representatives to speak on your behalf and to indicate how many people they are representing.

At the start of each LPP meeting, the Chair may re-order agenda items so that those items with speakers can be dealt with first.

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Item 1.

Disclosures of Interest

In accordance with section 4.9 of the Code of Conduct for Local Planning Panel Members, all Panel members are required to sign a declaration of interest in relation to each matter on the agenda.

Pursuant to the provisions of Clause 15 of Schedule 4B of the Environmental Planning and Assessment Act 1979, members of the Local Planning Panel are required to disclose pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

Panel members are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

In both cases, the nature of the interest must be disclosed.

Item 2.

Confirmation of Minutes

Minutes of the following meeting of the Local Planning Panel, which have been endorsed by the Chair of that meeting, are submitted for noting:

Meeting of 28 February 2024

Item 3.**Section 4.55(2) Application: 64-68 Macleay Street, Elizabeth Bay - D/2010/763/G****File No.:** D/2010/763/G**Summary****Date of Submission:** 10 October 2023, further information was supplied 2 January 2024 and 12 February 2024.**Applicant:** Mr Stephen Choularton**Owner:** The Council of the City of Sydney**Cost of Works:** \$0.00**Zoning:** The site is located in the RE1 Public Recreation zone.
The proposal includes the continued use of a market, which is permissible with development consent in the zone.**Proposal Summary:** The application seeks to modify the consent for the market use at 64-68 Macleay Street, Elizabeth Bay to allow for its continued use for a further 5 years.

The proposed changes include modifications to condition 3(a) to continue use of Fitzroy Gardens for the Organic Food Market by an additional 5 years until 30 March 2029, operating between 7.00am and 3.30pm on Saturdays.

The application was publicly notified between 30 October 2023 and 14 November 2023. Three submissions objecting to the proposal were received. Issues raised include noise, traffic and damage to vegetation.

The application is referred to the Local Planning Panel for determination as the landowner is the City of Sydney.

Summary Recommendation: The modification application is recommended for approval.

- Development Controls:**
- (i) Sydney Local Environmental Plan 2012
 - (ii) Sydney Development Control Plan 2012
 - (iii) SEPP (Biodiversity and Conservation) 2021

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings
 - C. Plan of Management
 - D. Traffic Management Plan

Recommendation

It is resolved that consent be granted to Section 4.55 Application Number D/2010/763/G subject to the amendment of the conditions in Attachment A (with modifications shown in ***bold italics*** (additions) and ~~striketrough~~ (deletions)).

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979.
- (B) The proposal is consistent with the aims, objectives and relevant provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012 for the reasons set out in the report.
- (C) The modified development is consistent with the objectives of the RE1 Public Recreation zone.
- (D) The development, as modified, is consistent with the reasons given for the development as originally approved in accordance with Section 4.55(3) of the Environmental Planning and Assessment Act, 1979.
- (E) The development, as modified, is in the public interest as it is consistent with the objectives of the RE1 Public Recreation zone to provide a range of recreational settings, activities and compatible land uses.

Background

The Site and Surrounding Development

1. The market is located within Fitzroy Gardens which has a legal description of Lot 1 in Deposited Plan 129261, Lot 1 in Deposited Plan 447466 and Lots 1 to 10 in Deposited Plan 456564, and is known as 64-68 Macleay Street, Elizabeth Bay. Fitzroy Gardens has an area of approximately 4,296.7 square metres, and has a primary street frontage to Macleay Street, and secondary street frontages to Elizabeth Bay Road and Baroda Street.
2. Fitzroy Gardens comprises a paved plaza hosting the landmark El Alamein Fountain, an enclosed playground and landscaped gardens.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial.
4. Fitzroy Gardens is a local heritage item (I593) known as 'Fitzroy Gardens including landscaping' and the El Alamein Fountain is a state heritage item (I593A) known as 'El Alamein Fountain'. The items are located in the Potts Point (C51) heritage conservation area.
5. The site is located within the Kings Cross locality and is not identified as being subject to flooding.
6. A site visit was carried out on 10 November 2023. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site (yellow) and surrounds.



Figure 2: View of heritage listed Fitzroy Gardens and El Alamein Fountain facing south from within the site.



Figure 3: The site viewed from Macleay Street.



Figure 4: Off street parking adjacent to the site viewed from Baroda Street.

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:
 - **D/2010/763** – Development consent was granted on 16 July 2010 for use of Fitzroy Gardens for an Organic Food Market with hours of operation between 7.00am and 2.00pm, every Saturday for a period of 1 year.
 - **D/2010/763/A** – A Section 4.55(1A) modification application was approved on 25 August 2010 to amend condition 2 to extend hours from 2.00pm to 3.30pm, deletion of requirements for a waste management plan, management of sharps, and amendments to sanitary facilities.
 - **D/2010/763/B** – A Section 4.55(2) modification application was approved on 21 December 2011 to amend condition 3 to extend the use of the markets for 3 years until 21 December 2014 and amend condition 21(f) relating to provision of refrigeration for food stalls that display or sell potentially hazardous foods.

- **D/2010/763/C** - A Section 4.55 (2) modification application was approved on 29 May 2012 to amend condition 10, 11 and 12 relating to amplified noise and compliance with the City's busking policy.
- **RD/2010/763/A** - A Section 82A Review was granted on 01 August 2012 for the provision of cool rooms within every 20 metres from a stall and deleted the requirement for compliance with the Busking Policy.
- **D/2010/763/D** - A Section 4.55(1A) modification application was approved on 30 November 2012 to amend condition 2 for extended trading hours of the markets once a year to coincide with the annual Kings Cross festival.
- **D/2010/763/E** - A Section 4.55(2) modification application was approved on 14 March 2016 to extend the approved period for the markets for 3 years until March 2019.
- **D/2010/763/F** - A Section 4.55(2) modification application was approved on 12 February 2019 to continue the use of Fitzroy Gardens for an Organic Food Market by an additional 5 years until 31 March 2024, operating between 7.00am and 3.30pm on Saturdays.

Compliance Action

8. The site is not subject to any ongoing compliance action.

Amendments

9. Following a preliminary assessment of the proposed development by Council officers, a request for additional information was sent to the applicant on 13 December 2023. Further information was requested regarding updates to the Plan of Management and Site Plan.
10. The applicant responded to the request on 2 January 2024, and submitted an updated Plan of Management, Traffic Management Plan and amended Site Plan.
11. A further request for information was sent to the applicant on 31 January 2024. Further information was requested regarding updates to the Traffic Management Plan.
12. The applicant responded to the request on 12 February 2024, and submitted an updated Traffic Management Plan.

Proposed Development

13. The modification application seeks consent for the following:
 - Modification of condition 3(a) to continue the use of Fitzroy Gardens for and organic food markets for an additional 5 years until 30 March 2029.
 - Modification of condition 7 to refer to the updated Plan of Management.
14. No changes are proposed to the following operational aspects of the markets:

- Hours of operation between 7.00am and 3.30pm (including bump-in/out), every Saturday
- Location of stalls
- Nature of market use, being a primary food-based market
- No amplified music.

15. The proposed site plan for the market is shown below.

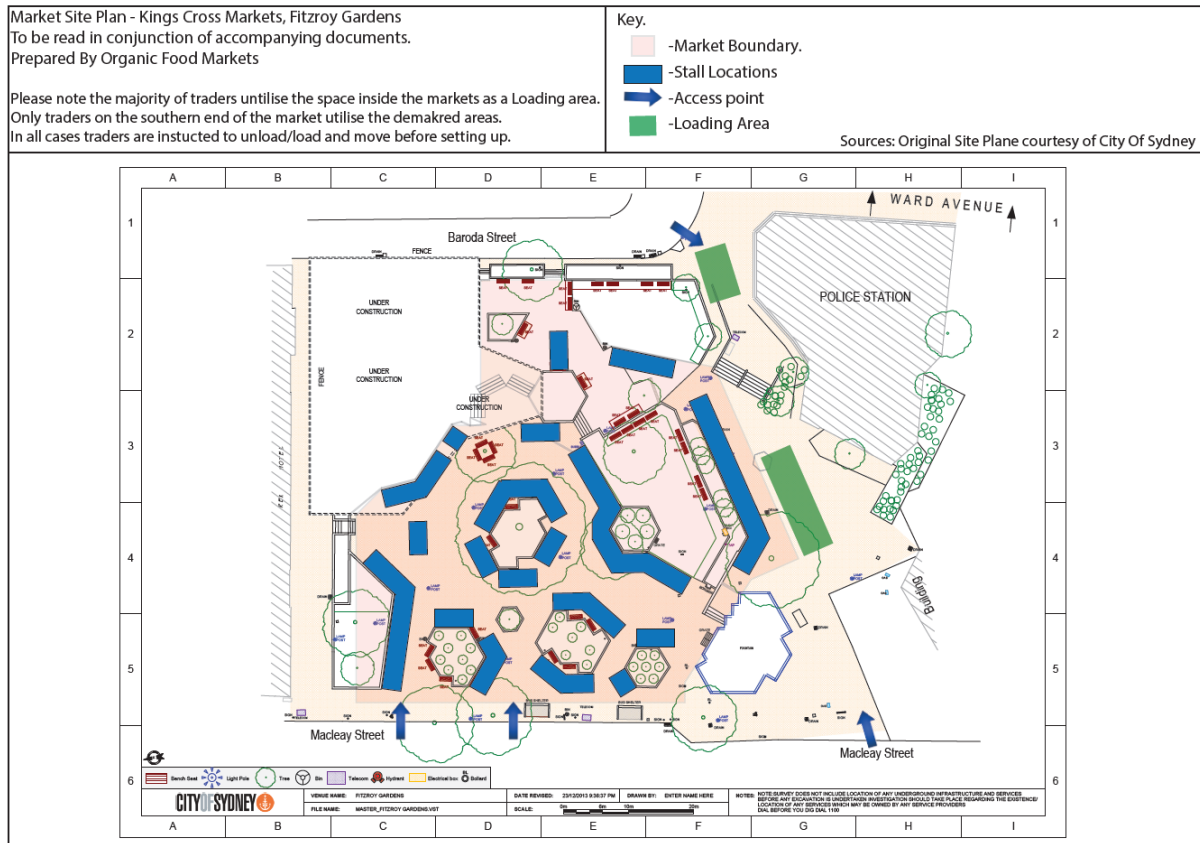


Figure 4: Proposed site plan (overview)

Assessment

16. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Heritage Act 1977

17. As The El Alamein Fountain located within Fitzroy Gardens is listed on the on the State Heritage Register (item I593A) under the Heritage Act 1977.

18. The original development application was not Integrated Development. The proposed modified development is substantially the same as the approved development as such a referral to the Heritage office is not required.

19. Further, it is noted that the proposed use of the site does not involve any works and does not involve the placement of any stalls or temporary structures on or abutting the item.

State Environmental Planning Policies

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments

20. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
21. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

22. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the RE1 Public Recreation zone. The proposal includes modifications to a market, which is permissible with development consent in the zone. The proposal generally meets the objectives of the zone.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site contains two heritage items identified as local heritage item (I593) known as 'Fitzroy Gardens including landscaping' and state heritage item (I593A) known as 'El Alamein Fountain'.

Provision	Compliance	Comment
		<p>The items are located in the Potts Point (C51) heritage conservation area.</p> <p>The market is composed of temporary non-structural stalls and the modified development does not include any permanent physical works. The modified development will not result in any detrimental impacts to the heritage significance of the heritage conservation area and heritage items.</p>

Development Control Plans

Sydney Development Control Plan 2012

23. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

24. The site is located within the Kings Cross locality. The proposed modified development is in keeping with the unique character and the design principles of the locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	Yes	Refer to assessment of LEP section 5.10 above.
3.11 Transport and Parking	Yes	<p>The modified development does not include any permanent physical works and will not result in any significant increase to traffic and parking.</p> <p>See further details under the Referral heading below in this report.</p>
3.12 Accessible Design	Yes	The subject site is a public place which provides equitable access. The modified development will not result in any permanent changes to the public domain and the market will maintain equitable access.
3.14 Waste	Yes	The modified development does not include any permanent physical works and will not result in any significant increase to waste.

Discussion

Substantially the same development

25. The proposed modified development is substantially the same as the approved development for the following reasons:
- (a) It does not give rise to any new environmental impacts compared to the approved development in terms of relevant matters for consideration at Section 4.15 of the Environmental Planning and Assessment Act, 1979.
 - (b) The modified development retains the same land use as the approved development, continuing the organic food market within the RE1 Public Recreation zone.
 - (c) The modified development does not change the layout of the organic food market.
 - (d) The modified development does not give rise to any additional unreasonable heritage impacts.
 - (e) The modified development does not alter the approved development's level of compliance with the applicable environmental planning instruments and policies.

Consideration of the reasons for the giving of the original consent

26. The proposed modified development is consistent with the original reasons given by the City of Sydney for the granting of consent to development application D/2010/763 in accordance with Section 4.55(3) of the Environmental Planning and Assessment Act, 1979:
- (a) The development, as proposed to be modified, continues to be consistent with the objectives of the RE1 Public Recreation zone as it will provide a range of recreational settings, activities and compatible land uses.
 - (b) The modified development continues to conserve the heritage significance of the heritage items on the site in accordance with clause 5.10 of the Sydney Local Environmental Plan.

Consultation

Internal Referrals

27. The application was discussed with Council's Environmental Health Unit and City Transport and Access Unit.
28. The Environmental Health Unit provided comments on 19 December 2023, and advised that the premise has successfully operated for a number of years and has not detrimentally impacted on the amenity of the surrounding area and is supported subject to updated conditions. Where appropriate, these updated conditions are included in the Notice of Determination.

29. The Council's Transport and Access Unit provided comments on 30 January 2023, and advised that subject to an additional traffic controller at the Baroda Street access point, any traffic-related issues could be addressed if all the traders adhere to the Traffic Management Plan. Transport and Access advised that the proposal is acceptable subject to conditions. A new condition is recommended requiring compliance with the submitted Traffic Management Plan.

External Referrals

NSW Police

30. The application was referred to NSW Police for comment.
31. No response was received.

Advertising and Notification

32. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 30 October 2023 and 14 November 2023.
33. A total of 657 properties were notified and three submissions were received during the notification period.
34. Submissions can be viewed at:
<https://eplanning.cityofsydney.nsw.gov.au/Common/Integration/FileDownload.ashx?id=!!YatiFjowDvcTjrP4l4hUQIFSSZxp1rfm0pMJpg%3d%3dGcfXEXgfzsA%3d&ext=PDF&filesize=138652&modified=2023-11-20T00:00:36Z>
35. The submissions raised the following issues:
- (a) **Issue:** The markets are very impactful in terms of noise on neighbours, in particular amplified music.
- Response:** The market has operated for a number of years without any significant compliance issues. Existing conditions relating to amplified music and spruiking form part of the consent and the stall holders and operator are required to comply with the conditions of consent. In an event of non-compliance with the condition, Council's Rangers can be contacted to investigate the issue.
- (b) **Issue:** The traffic associated with the market is extremely impactful to pedestrian and visitors to the area.
- Response:** The traffic and parking arrangements have been reviewed by the City's Transport Specialist, who advised that the traffic concerns are associated with the bump-in and bump-out operations, and that the issues can be addressed effectively if all the market traders adhere to the Traffic Management Plan. A Traffic Management Plan condition is recommended requiring the stall holders and operators to comply with the conditions of consent to ensure that the amenity of the public is not disrupted. In an event of non-compliance with the condition, Council's Rangers can be contacted to investigate the issue.

- (c) **Issue:** The market impacts the grass areas of Fitzroy Gardens which detrimentally impacts the enjoyment for the public outside market hours.

Response: The updated site plan identifies that no market stalls will be positioned on the grass areas within Fitzroy Gardens. Further to this, the updated Plan of Management clearly states that vehicles should not be allowed to drive on any grassed areas nor should tents or equipment/boxes encroach on these areas. Existing conditions relating to the Plan of Management form part of the consent and the stall holders and operator are required to comply with the conditions of consent.

Financial Contributions

36. The modified development is not subject to any financial contributions.

Relevant Legislation

37. Environmental Planning and Assessment Act 1979.
38. Heritage Act 1977.

Conclusion

39. The proposal seeks approval for the continued use of an organic food market for a further 5 years.
40. The proposed modification will not result in any adverse impacts on both the natural and built environment and the locality and is suitable for the site, subject to appropriate conditions of consent.
41. The development, as modified is considered to be substantially the same as that originally approved.
42. The proposed modification generally satisfies the relevant provisions of the applicable planning instruments including the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
43. The proposed modification is in the public interest and is recommended for approval, subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Emily Cartwright, Planner

Attachment A

Recommended Conditions of Consent
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CONDITIONS OF CONSENT

SCHEDULE 1A

APPROVED DEVELOPMENT/DESIGN MODIFICATIONS/COVENANTS AND CONTRIBUTIONS/USE AND OPERATION

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2010/763 dated 21 May 2010, and the site plan dated ~~3 May 2010~~ **23 December 2023**,

and as amended by the conditions of this consent:

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(as amended by D/2010/763/G dated 20 March 2024)

(2) HOURS AND DATES OF OPERATION

- (a) The hours of operation for the market, including set up, construction and dismantling of the site including the erection and dismantling of temporary structures, movement of vehicles and the loading and unloading of goods, are restricted to between 7:00am and ~~2:00pm~~ 3:30pm, every Saturday.
- (b) *Notwithstanding (a) above, the markets may operate between 7.00am and 7.00pm one Saturday per year in conjunction with the Annual Kings Cross Festival. Council must be informed in writing no later than 14 days prior to the festival of the intention of the operator to operate these extended hours.*

(Amended 25 August 2010)

(Amended 30 November 2012)

(3) CONSENT TO LAPSE

- (a) The period during which the use is approved to operate is restricted to between the date of this determination and until the ~~16 July 2011 21 December 2014 31 March 2019 2024~~ **31 March 2029**. The use must cease after that time.
- (b) A further application may be lodged to continue the operation of the markets before the end of this period for Council's consideration. Such consideration will be based on, inter alia, the performance of the operator in relation to compliance with development consent conditions and any complaints received.

(Amended 21 December 2011)

(as amended by D/2010/763/E dated 14 March 2016)

(as amended by D/2010/763/F dated 12 February 2019)

(as amended by D/2010/763/G dated 20 March 2024)

(4) MANAGEMENT AGREEMENT

- (a) The management/operator of the markets must enter into a new Management Agreement / Licence with Council for the use of the parkland and any associated footway, with all legal costs associated with the preparation of the licence being borne by the management/operator. The licence must be executed prior to the use of the space. The operation of the market and use of the park must then always be operated / managed in accordance with the Management Agreement / License.
- (b) The use of the park and any footway may be suspended to facilitate Council-approved special events, for park upgrade works, or for road and services works. No claim for compensation is entitled under such circumstances. Further, should the operator of the market change at any time, the licence is required to be renewed under the name of the new operator.
- (c) The continued operation of the market shall be managed by Council's Property Unit through a commercial leasing arrangement.
- (d) The City may at its sole and absolute discretion decide that on any particular day the Market will not open or will be relocated to another location designated by the City.

(5) NATURE OF MARKETS

The market operator is to ensure that the markets are conducted as a primarily food-based market, with the ratio of food stalls to other stalls to be set by Council under the management agreement referred to in the above condition of consent.

(6) RESPONSIBILITIES OF MARKET OPERATOR

- (a) Prior to the commencement of the use, the operator is to indemnify the City against all claims for damage or injury that may result from the activity or occupation of part of the public way during the activity. The operator must provide documentary evidence of public risk insurance cover of at least \$10,000,000 indemnifying Council;
- (b) The operator shall reimburse the City for the cost of repair of any damage caused to the public way or the parkland, or otherwise as a result of the operation of the market;
- (c) The operator shall ensure that a person designated responsible for the management of the markets is on site at all times during the operation of the markets, including setting up and shutting down, and the contact details of this person are to be provided to Council's Place Manager, City East, and Council's Health and Building Unit;

- (d) The operator shall comply with any reasonable directive of Council's Compliance Officers / Rangers;
- (e) The operator shall comply with the City's guidelines and Codes of Practice for Construction Hours and Noise;
- (f) The operator shall distribute a telephone contact number to all surrounding residents providing a contact number while the market is in operation, to respond and deal with complaints; and
- (g) The operator must ensure a suitable Occupational Health & Safety Plan is in place for all personnel.
- (h) *The operator must ensure that the stalls and any associated furniture and goods are contained within the approved shaded areas only. The stalls and/or any associated furniture must not encroach on the public way and must provide clearance to prevent any hindrance to the pedestrian flow.*

(as amended by D/2010/763/E dated 14 March 2016)

(7) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management, dated ~~3 May 2010~~ ~~20 June 2011~~ **31 December 2023** in addition to compliance with all other operational conditions of this consent.

- (7A) *In an event of change of an operator, a new Plan of Management must be submitted to and approved by Council's Area Planning Manager prior to the new operator commencing the use.*
- (7B) *If and when the City requires, an updated Plan of Management must be prepared to address all operational and management procedures to be employed, to ensure that the premises can operate without disturbance to the locality. The amended Plan of Management must be submitted to and approved by Council's Area Planning Manager.*

(as amended by D/2010/763/E dated 14 March 2016)

(as amended by D/2010/763/G dated 20 March 2024)

(8) WASTE MANAGEMENT

- (a) ~~A Waste Management Plan must be submitted and approved by the Council's Health Unit.~~
- (b) Waste associated with the event is not permitted to accumulate except in designated and pre determined waste receptacles and areas. So far as is practicable all waste should be contained within a receptacle. Arrangements for the prompt collection of litter and waste associated with the event must occur as soon as practically possible after the event in accordance with the restricted hours of site operation.
- (c) Each food stall must have an adequate number of contained waste receptacles with a suitable cover to ensure that waste does not attract pests and insects.

- (d) Arrangements must be made for the safe and legal disposal of waste oil arising from food vendors on the site.
- (e) Waste must only be collected in accordance with the permitted hours of operation for the site/event.
- (f) The structures and surrounds are to be maintained in a clean and tidy manner at all times, and all waste and general rubbish is to be cleared on a regular basis.
- (g) There are to be no glass receptacles sold on site for the provision of food and drink.

(Amended 25 August 2010)

(8A) TRAFFIC MANAGEMENT PLAN

The use must always operate in accordance with the Traffic Management Plan, dated 12 February 2024 in addition to compliance with all other operational conditions of this consent.

(Condition inserted 20 March 2024)

(9) SHARPS WASTE STORAGE

~~The premises must provide a designated storage space for sharps waste disposal equipment which contains at least:~~ The operator must ensure that sharps which are found on the premises are disposed of in the sharps facilities provided in the toilet block which is next to Fitzroy Gardens. The operator shall be equipped with the following items at every event:

- (a) 1 sharps disposal bin;
- (b) 1 set of tongs;
- (c) gloves;
- (d) safe disposal procedural information, and;
- (e) needle stick injury procedural information.

(Amended 25 August 2010)

(10) AMPLIFIED NOISE

- ~~(a) Amplified music noise is only permitted between the hours of 10:00am and 2:00pm on Saturdays. Any entertainment provided on site must be acoustic only. No amplification is to be provided.~~
- ~~(b) Amplified sound from the use of a microphone is not permitted.~~
- ~~(c) Amplified noise must remain ancillary to the use of the site as food market.~~
- ~~(d) The applicant must at all times retain ultimate control of the noise level caused by any sound amplification equipment in compliance with (a), (b) and (c) above.~~

(Amended 29 May 2012)

(Amended 1 August 2012)

(11) NO SPRUIKING/AMPLIFIED NOISE

No persons (such as those commonly known as spruikers) or recordings or other devices which have the effect of spruiking are to be located on Council owned property. ~~Furthermore, the sound level of any spruiking or amplified noise generated within the land must not be audible on Council's footpath adjoining the subject property.~~

(Amended 29 May 2012)

(Amended 1 August 2012)

(12) ~~BUSKING AND LIVE MUSIC~~

~~All buskers and live music entertainment should act in accordance with Council's Busking Policy December 2007 City of Sydney Interim Busking Policy 2011.~~

(Amended 29 May 2012)

(Amended 1 August 2012)

(13) SIGNS/GOODS IN THE PUBLIC WAY

No signs, goods or market stalls are to be placed on the public footway or roadway adjacent to the park in Macleay Street or Baroda Street at any time.

(14) SIGNS - SEPARATE DA REQUIRED

A separate development application for any proposed signs (other than exempt or complying signs under Council's exempt and complying DCPs) which are either externally fitted or applied must be submitted for the approval of Council prior to the erection or display of any such signs.

SCHEDULE 1B

PRIOR TO COMMENCEMENT OF WORK / HEALTH AND BUILDING

(15) WASTE AND RECYCLING COLLECTION CONTRACT

Prior to commencement of the use the operator must ensure that there is a contract with a licensed contractor for the removal of all trade waste. No garbage is to be placed on the public way e.g. footpaths, roadways, plazas, and reserves at any time.

(16) NOISE - GENERAL

- (a) The $L_{Aeq, 15minutes}$ noise level emitted from the use must not exceed 5dB above the background (LA_{90}) noise level in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected receiver. The background noise level must be measured in the absence of noise emitted from the use in accordance with Australian Standard AS 1055.
- (b) The use of the site shall be controlled so that any emitted noise is at a level so as not to create and "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* to any affected receiver.

~~(17) NOISE – MECHANICAL PLANT AND EQUIPMENT~~

~~Noise associated with the use of mechanical plant and equipment must not give rise to any one or more of the following:~~

- ~~(a) Transmission of "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* to any affected receiver.~~
- ~~(b) A sound pressure level at the boundary of any affected receiver that exceeds the background ($L_{A90, 15minutes}$) noise level by more than 5dB. The background noise level must be measured in the absence of noise emitted from the use in accordance with Australian Standard AS1055.~~

(Condition deleted 20 March 2024)

(17A) NOISE – COMMERCIAL PLANT

- (a) **Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA Noise Policy for Industry 2017 (NPfl) unless agreed to by the City's Area Planning Manager. Further:**
 - (i) **Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfl unless otherwise agreed by the City's Area Planning Manager.**
 - (ii) **Commercial plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment**

- (b) ***An LAeq minute (noise level) emitted from the development must not exceed the LA90, 15 minute (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:***
- (i) ***The noise level and the background noise level must both be measured with all external doors and windows of the affected residence closed.***
 - (ii) ***Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premises.***
- (c) ***Correction in Fact Sheet C of the NPfl are applicable to relevant noise from the development measures in accordance with this condition, however duration corrections are excluded from commercial noise.***

(Condition inserted 20 March 2024)

(18) EMISSIONS

- (a) The use of the site must not give rise to the emission of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health.
- (b) Gaseous emissions from the development must comply with the requirements of the Protection of the Environment Operations Act, 1997 and Regulations. Uses that produce airborne particulate matter must incorporate a dust collection system.

(19) CONNECTION TO SEWERS OF SYDNEY WATER CORPORATION

- (a) Waste water arising from the use must be directed to the sewers of the Sydney Water Corporation (SWC) under a Trade Waste License Agreement. The pre-treatment of wastewater may be a requirement of the Corporation prior to discharge to the sewer. Details of the Corporation's requirements should be obtained prior to the commencement of construction work.
- (b) No waste water associated with the event is to be disposed of in the public sewerage system unless it is in accordance with (a) above.

(20) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES

The market shall be conducted and arranged so as to not impede equitable disabled access to the park in accordance with the *Building Code of Australia* and the *City of Sydney Access DCP 2004*.

(21) ~~TEMPORARY FOOD STALLS~~

- (a) ~~The design and operation of the temporary food stalls must comply with the fact sheet – "Requirement for the Operation of a Temporary Food Stall, City of Sydney".~~

- (b) ~~No Temporary Food Stalls are permitted on site without prior consent from Council.~~
- (c) ~~An adequate supply of water must be provided to ensure that potable water is available throughout the duration of the event. All water tanks and piped supply lines are to be suitably constructed and where appropriate disinfected to maintain water quality and safety.~~
- (d) ~~Any collection of waste material and waste water must be carried out in such a manner as not to risk contamination of any food, food preparation area or food service area.~~
- (e) ~~Cool rooms, power refrigerators or refrigerated vans must be provided within the 5-20 meters of each stall that stores, displays and / or sells potentially hazardous foods. Alternatively, any food business that handles potentially hazardous food must provide a powered refrigerator capable of maintaining food at or below 5 degree Celsius with sufficient space.~~
- (f) ~~From 1st of July 2010, each temporary food stall operator(s), must directly apply to Council's Health Department for a temporary food stall licence. Successful applicants are required, to comply with Sydney Council's policies and the Food Standards Code under the Food Act 2003 at all times to be able to operate as a temporary food stall. This licence approval shall be renewed each financial year or otherwise stated. This licensing requirements and conditions may be modified, changed or altered without prior notice. The Council reserves the right to revoke or withdraw the licence approval if a business the licensee fails to comply with the conditions and the relevant legislations.~~

~~Note: The "Requirements for the Operation of a Temporary Food Stall, City of Sydney" and the "Temporary Food Stalls Event Register" and "Details of Temporary Food Stall" forms can be obtained from the City of Sydney website <http://www.cityofsydney.nsw.gov.au/>~~

~~The completed forms may be returned to Councils' Health and Building Unit by post, Fax Number or emailed to TemporaryFood@cityofsydney.nsw.gov.au healthbuildinginfo@cityofsydney.nsw.gov.au~~

(Amended 21 December 2011)

(Amended 1 August 2012)

(Condition deleted 20 March 2024)

(21A) TEMPORARY FOOD STALL – SET UP AND OPERATION

- (a) ***Details of all temporary food stalls proposed to attend site must be submitted to the City of Sydney at least 28 days prior to the event commencing using the City of Sydney "Temporary Food Stall Event Register".***
- (b) ***All temporary food stalls at the event must be registered with the City of Sydney in accordance with the requirement of the Food Act***

2003 using the City of Sydney, 'Temporary food stall application' form.

- (c) **The set up and operation of any temporary food stall and associated equipment must comply with the NSW Food Authority Guidelines for Food Business at Temporary Events and Australian New Zealand Food Standards Code 3.2.2 – Food Safety Practises and General Requirement.**

Note: The "Temporary Food Stalls Event Register" and Temporary food stall application forms can be obtained from the City of Sydney website <http://www.cityofsydney.nsw.gov.au>.

The completed forms may be returned to Council's Health and Building Unit by post, email or in person.

Post: Health and Building, Level 16, Town Hall House, 456 Kent Street, Sydney, NSW 2000

Email: council@cityofsydney.nsw.gov.au

In Person: Town Hall House – Level 2, 456 Kent Street, Sydney

(Condition inserted 20 March 2024)

(22) ~~STALL REQUIREMENTS~~

~~The following conditions have been imposed to ensure that adequate protection and safety is afforded to the public:~~

- (a) ~~All temporary structures shall be erected/installed in accordance with manufacturer's specifications and where there is no such specifications are to be erected in accordance with standard industry practices.~~
- (b) ~~All mechanical and electrical installations including generators, electrical cabling and any mobile structures are to be surrounded or covered by appropriate physical barriers so as to prevent unauthorised access by the public at all times, and to protect ground laid cabling from being trip hazards, during public occupation of the site.~~
- (c) ~~Appropriate fire fighting equipment is to be readily available for all installations including generators, power boxes, mechanical systems cooking facilities and the like, which may be utilised on site during normal occupation times.~~
- (d) ~~Food preparation areas shall be supplied with appropriate separate hand held fire extinguishers and fire blankets which are to be available at all times during operation.~~
- (e) ~~The ground surfaces on which the structures are to be erected or located, are to be sufficiently firm to sustain the structure while it is being used and isn't dangerous because of its slope or irregularity or for any other reason.~~
- (f) ~~Electrical services serving the stage and allied structures shall meet with the requirements of AS/NZS 3000 & 3002 and be certified by a licensed electrical contractor prior the commencement of use.~~

- (g) ~~There is to be NO SMOKING in ANY of the subject structures, and appropriate signage is to be displayed in conspicuous locations throughout the site.~~

(Condition deleted 20 March 2024)

(22A) TEMPORARY STRUCTURES

- (a) **The ground surface on which the structure is to be erected is to be sufficiently firm to sustain the structure whilst it is being used and isn't dangerous because of its slope or irregularity of for any other reason.**
- (b) **The temporary structures must be erected and secured in accordance with the manufacturers structural specifications to ensure they are structurally sound and can withstand likely wind and live loadings. Modular stage sections must be adequately bolted or clamped together to ensure that the overall design stability of the stage structures is achieved and maintained**
- (c) **Separate Certification must be provided by the installers for the structures, confirming installation in accordance with the relevant design and specification(s). Note: where structures are minimal in nature such as food stalls, marquees less than 10m², platforms raised less than 300mm and the like, a copy of the manufacture's specification must be sufficient.**
- (d) **Stage structures are not to be loaded in excess of those loadings recommended by the suppliers and/or manufacturers. Appropriate signage nominating the maximum number of persons permitted on the stage must be prominently displayed.**
- (e) **Any lighting, rigging, scaffolding or the like, associated with the subject stages must be constructed and certified by a SafeWork NSW licensed rigger.**
- (f) **Electrical services serving stage(s) and allied structures must meet with the requirements of AS/NZS 3000 & 3002 and be certified by a licensed electrical contractor prior to the commencement of use.**
- (g) **Sufficient exits with designated 'Exit' signage must be provide to all temporary structures appropriate to the intended occupancy capacity for each structure.**
- (h) **All structures to which members of the public may be allowed access must be supervised by appointed responsible persons at all times when accessible to the public.**
- (i) **There must be NO SMOKING inside any of the subject structures. Appropriate signage must be displayed at the entrance to the structure and all security personnel made aware of this requirement.**
- (j) **Erection and dismantling (packing up) must be done quietly and orderly to minimise disturbance to the surrounding locality.**

(Condition inserted 20 March 2024)

(23) TRAFFIC AND PARKING ARRANGEMENTS

The following requirements apply for the operation of the markets:

- (a) Market vehicles are permitted to use the eastern kerbside lane of Macleay Street south of Greenknowe Avenue up to point immediately north of Fitzroy Garden for unloading goods and moving them into stalls.
- (b) The use for the loading and unloading of vehicles on Fitzroy Gardens shall be reduced to the absolute minimum necessary, by use of kerbside spaces, barricades, monitoring/staffing, and the like. Loading shall occur between 7.00am and 10.30am and a plan shall be submitted to the satisfaction of the Director City Planning indicating a loading plan. The loading activities shall be reviewed and a report submitted after three months of operation. Loading arrangements may be varied where required by Council.
- (c) Any vehicle movements across the footpath area adjacent to Fitzroy Garden from Macleay Street are to be kept to a minimum and are to comply with (b) above.
- (d) The operator is to liaise with State Transit Authority and Taxi Council NSW regarding the impact of the use on the Macleay Street Bus Zone and Taxi Rank adjacent to Fitzroy Gardens, and undertake any measures required by these bodies.
- (e) Any proposals for alterations to the public road, involving traffic and parking arrangements, must be designed in accordance with RTA Technical Directives and must be referred to the Sydney Traffic Committee for approval prior to any work commencing on site.
- (f) Any lane closure must be in accordance with the AS1742.3, unless otherwise directed by Police or the City's Law Enforcement officers.
- (g) The operator is to provide and maintain appropriate and adequate traffic measures (barricades) along the eastern side of Macleay Street adjacent to Fitzroy Gardens for the safe movements of traffic and pedestrians if necessary on safety grounds, and if so directed by Council.
- (h) The operator must maintain Emergency Services access at all times.

(24) SANITARY FACILITIES

- (a) Adequate sanitary facilities, including specialised facilities for use by persons with a disability, shall be provided on the site if required to cater for the maximum number of patrons attending the event at one time. In this regard, usage demand shall be monitored and appropriately managed throughout the event to ensure that public convenience is maintained, and be provided with adequate directional and way finding signage displayed throughout the site.
- (b) The organiser must provide at least three (3) toilets on-site to service as one (1) female toilet, one (1) male toilet and one (1) disable toilet, available and operational at all times during the market if required.
- (c) Sanitary facilities shall be appropriately cited so as not to cause a nuisance to permanent residents or members of public. In addition they

should not be cited with any significant proximity to the service of food and beverages and clearly marked by various signs to ensure they can be found easily from all areas within the market.

(Amended 25 August 2010)

SCHEDULE 1C

DURING OPERATION OF THE MARKET

(25) CARE TO BE TAKEN WITH PARKLANDS AND LANDSCAPING

The operator shall ensure that the operation of the markets, including vehicular access and loading or unloading does not cause damage to any trees within or surrounding the park, any fabric of the park, garden beds, and other structures or features.

(26) PARKLANDS TO BE LEFT IN A CLEAN AND TIDY STATE

The operator or designated on-site manager of the markets is to ensure that the parkland is left in a clean and tidy state at the close of the market.

(27) NO OBSTRUCTION OF PUBLIC WAY

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to cease activity on site.

(28) COMPLAINTS

Should noise complaint be received by Council from a place of different occupancy (including commercial premises) and the complaint being substantiated by a Council Officer, the use of area concerned shall cease operation until "attenuation works" are carried out so as that the premises complies with the relevant "Noise Control" condition.

SCHEDULE 2

PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* apply:

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>

Attachment B

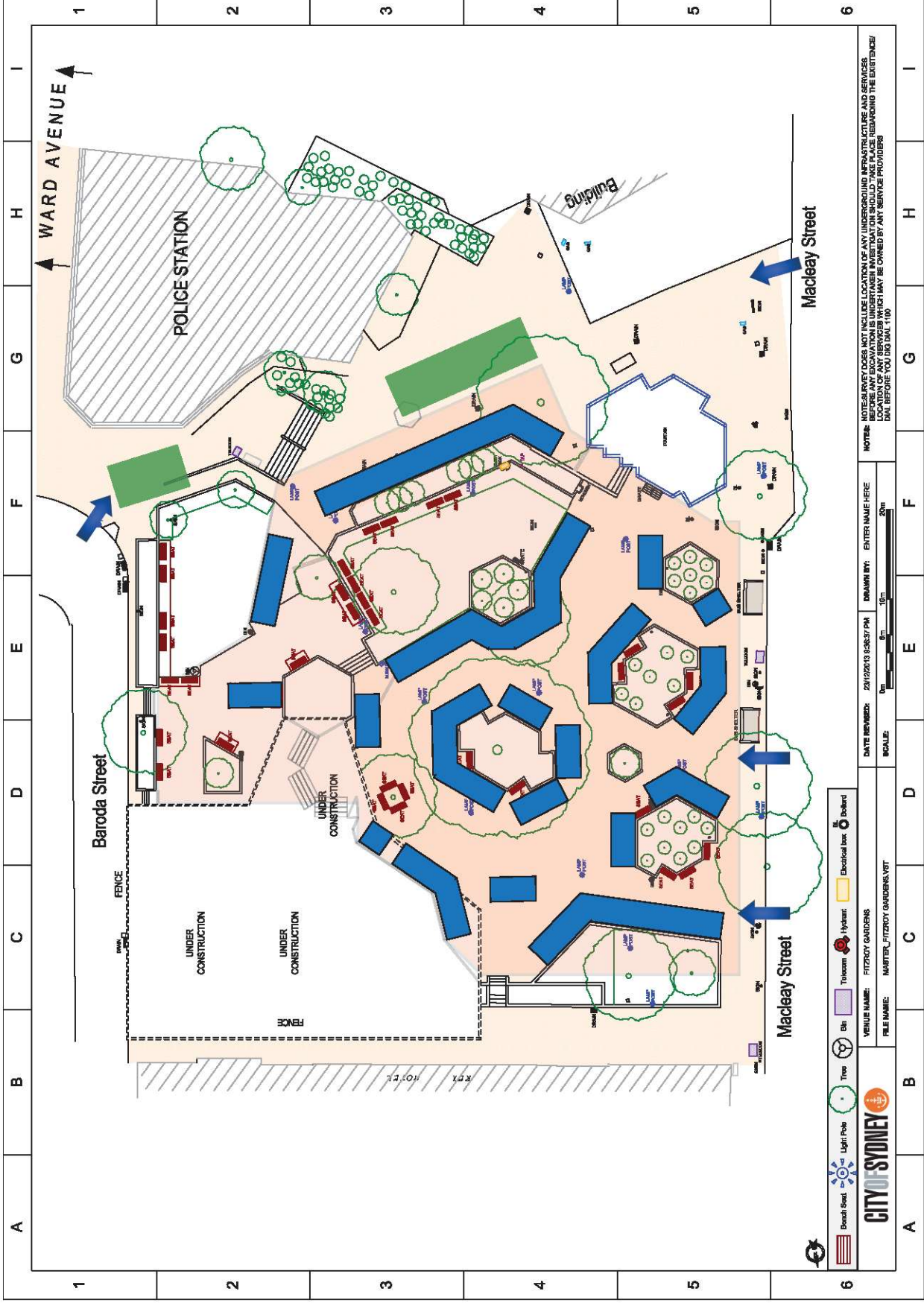
Selected Drawings

**Market Site Plan - Kings Cross Markets, Fitzroy Gardens
To be read in conjunction of accompanying documents.
Prepared By Organic Food Markets**

Please note the majority of traders utilise the space inside the markets as a loading area.
Only traders on the southern end of the market utilise the demarked areas.
In all cases traders are instructed to unload/load and move before setting up.

- Key.**
- Market Boundary.
 - Stall Locations
 - Access point
 - Loading Area

Sources: Original Site Plane courtesy of City Of Sydney



Attachment C

Plan of Management

PLAN OF MANAGEMENT - Kings Cross Market (Reviewed - 31/12/2023)

This plan incorporates our Safe Work Method Statements

This plan of management is arranged in process steps – tasks. Where there are associated hazards they are listed, then the hazard control measures are specified.

The current senior manager on site is John Moyle assisted by Marcus Whippy and Harry Fester.

Please note you are not employed to move heavy weights, handle electric leads or climb ladders. Do not pick up weights in excess of 15 kilos, do not string electric wires for traders and do not climb step ladders or otherwise adopt positions that can lead to you falling and hurting yourself.

Each Saturday:

1. Target to arrive for 6:50 so you are **NEVER** later than 7:00 am.
2. Wear your high vis jacket, either the wastecost or rainproof jacket dependent on the weather.
3. Check site for hazards. The major hazards on site at this time are trip and cut hazards in the form of rubbish and broken glass. Clear them. Use your pick-up stick to clear these items. If you see needles dispose of them in the sharps container whilst employing appropriate procedures.
4. **No traders are allowed in the market area before 7 am.** From 7:00 am allow traders to start setting up. Set up warning signs in accordance with our traffic management plan and allow access in accordance with its instructions. The major hazards during set up are vehicle movements. We have published a traffic code asking all traders to drive at under 5 kilometers per hour, keep the front windows down, radio off and use hazard lights. Remind any drivers who are not complying to do so.
5. Concentrate on the traffic movement but once the traders are largely in place:
 - a. Put out bins.
 - b. Check over our Emergency Station which includes our first aid kit.
 - c. Deploy the Emergency Station.
6. **Do not allow vehicles to drive on any grassed areas nor to allow tents or equipment/boxes to encroach on such area.**
7. Once set up patrol – check for:
 - a. Food hygiene – carry out the early morning checks that food vendors are complying with food safety requirements.
 - b. Trip hazards – this includes stallholder rubbish and electric wires. Electric wires can be a particular hazard. Make sure they are either strung overhead or covered with a mat/carpet (which is not itself a trip hazard).
 - c. Fire – those who use combustion generated heat to cook present a clear hazard. Ensure that they have no more than two gas bottles, one in use and one in reserve at their stall. Also ensure that the cooking is taking

place so that members of the public cannot fall onto the fire, for example a bbq can be at the rear of a stall away from the public. Check that any food stalls that are cooking have a fire extinguisher and blanket.

- d. Untidiness – loose boxes cause a clear trip and isle blocking hazard. Tell stallholders to be neat and to remove their own rubbish.
 - e. Blocked corridors – the blocking of corridors can impede emergency vehicle access. Make sure you advise traders to set up in a manner that leaves them clear and no to leave rubbish in them.
 - f. Dogs. Loose dogs are an obvious hazard. Ask the owner to keep them on a leash.
 - g. Amplified sound – our DA excludes musicians performing with amplified sound. There are buskers in the area who are outside our control but if a musician is paid by us and you see them using amplified sound you must ask them to stop.
8. At around 10am start to call at each stall and collect the rents. Give a receipt to everyone who pays you. NO EXCEPTIONS. Where your records indicate it check for insurance renewal and a copy of our signed traders agreement. Check that and our own 'organic' signage is displayed and that the trader is registered with the Council. Check that any food stalls that are cooking have a fire extinguisher and blanket. Note any breaches in compliance in your receipt book and report them to the office.
9. At 2:00 pm commence packing up. Once traffic movements have reduced replace the bins in their pick up location and check for rubbish and place it in bins. Use pick up sticks. Place sharps in the sharps receptical.

IN THE EVENT OF AN EMERGENCY DIAL 000

and phone the office 9999 2226, or Stephen 0413 545 182 or Elizabeth 0413 545 183 or Michael 0422 716 353.

Put these numbers in your mobile phone

Emergency Scenarios:

We can envisage the following types of emergencies. Read and understand the responses required.

1. Bomb threat

No matter how ridiculous the threat sounds, phone the emergency services and then ask everyone to leave the site owing to a bomb threat. Only re-enter when allowed by the emergency services.

2. Lost Children

You should keep a lost child with you or leave him/her with a suitable stallholder. Walk around the market shouting the name of the child, etc. if you cannot find a carer take the child to the police station.

3. Collapse of a Gazebo

While these structures are not heavy (under 30 kilo's) they may cause concern if they collapse. Go to the gazebo and offer any assistance that the people there may require.

4. Crowd Panic

In the unlikely event of crowd panic do not try and retain people. The site is without any confining barriers so the crowd should rapidly run out of the area. Go and help anyone who may have been hurt in the heat of the moment.

5. Assault

In the event that an assault occurs at the market, try and calm the parties down. Do not try to restrain any person or join in the matter. Phone the police immediately. Take down any details you can obtain in writing: names, addresses, brief detail of the incident, etc. If video can be captured then do but this is only if practical and not at the risk of injury of yourself or the public.

6. Theft

In the event of any theft at the market you should phone the police if the person stolen from asks you to. You should ask the offending party to remain until the police come, but do not try to restrain them. Take down any details you can obtain in writing: names, addresses, brief detail of the incident, etc

7. Evacuation

This is an open site. We do not have useful lists of the persons on site at any particular time. However, you can see the entire site almost at one glance and there are no restraining boundaries. Therefore ask (shout) for people to leave the site owing to an emergency and simply remind anyone still on site to go.

8. Cooking Fire

If the fire is contained use the fire blanket to smother it. If it is larger use the fire extinguisher at the stall and send for the second one from the store room. Even if the fire appears to be extinguished throw the fire blanket over it and leave it for an extended period to cool down.

If the fire is large simply call the fire brigade, and ask everyone to move away from the area.

9. Storms

The major risk here is high winds. Gazebos should be weighed down with 20 kilos of weight on each corner. In the event that the wind goes over 40 k an hour you should ask traders to take their tents down.

10. Medical Emergency

Call the nearest trained person and let them handle the matter. Dial 000 for Ambulance.

Attachment D

Traffic Management Plan



Organic Food Markets, Potts Point, NSW, Traffic Management Plan

Traffic Management Plan Review

P1820

Prepared for
Organic Food Markets

12 February 2024

Contact Information

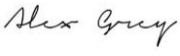
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003	07.11.2018	Final Report	DA	AG
004	11.07.2019	Final Report	AG	AG
005	09.02.2019	Final Report	AG	AG
006	12.02.2024	Final Report	AG	AG

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Appendix A Proposed Traffic Management Plan

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1 Introduction

Greys Consulting has been engaged by Organic Food Markets to develop a Traffic Management Plan (TMP) for their weekly markets located at Fitzroy Gardens in MacLeay Street, Potts Point NSW. Figure 1-1 shows the location of the markets.



Figure 1-1 Site Location

1.2 Scope of Work

The purpose of this TMP is to safely manage stall holders and patron arrivals and departures to/from the site on event days through the recommended implementation of specific traffic management strategies, signage as well as managing the internal flows of stall holders' vehicles during bump-in/bump-out periods. Specifically, this TMP recommends to:

- > Onsite hazard identification of the trafficable area during bump-in/bump-out periods through observation and consultation;
- > safely manage the traffic entering the Fitzroy Gardens site via MacLeay Street during the bump-in (event preparation);
- > safely manage the traffic departing the Fitzroy Gardens during the bump-out (event dismantling);
- > minimise the risk of local traffic disturbance before and after events;
- > safely manage pedestrian movements on-site (i.e. non-patron pedestrian movements during bump-in and pedestrian movements within the site during bump-out).
- > Evaluation of the effectiveness of current traffic control measures;
- > Assessment of the risks associated with identified traffic management hazards;
- > Develop a Traffic Management Plan (marked on aerial photo) of any mitigation measures identified; and;
- > Document the investigation, consultation, risk assessment and recommended mitigation measures.

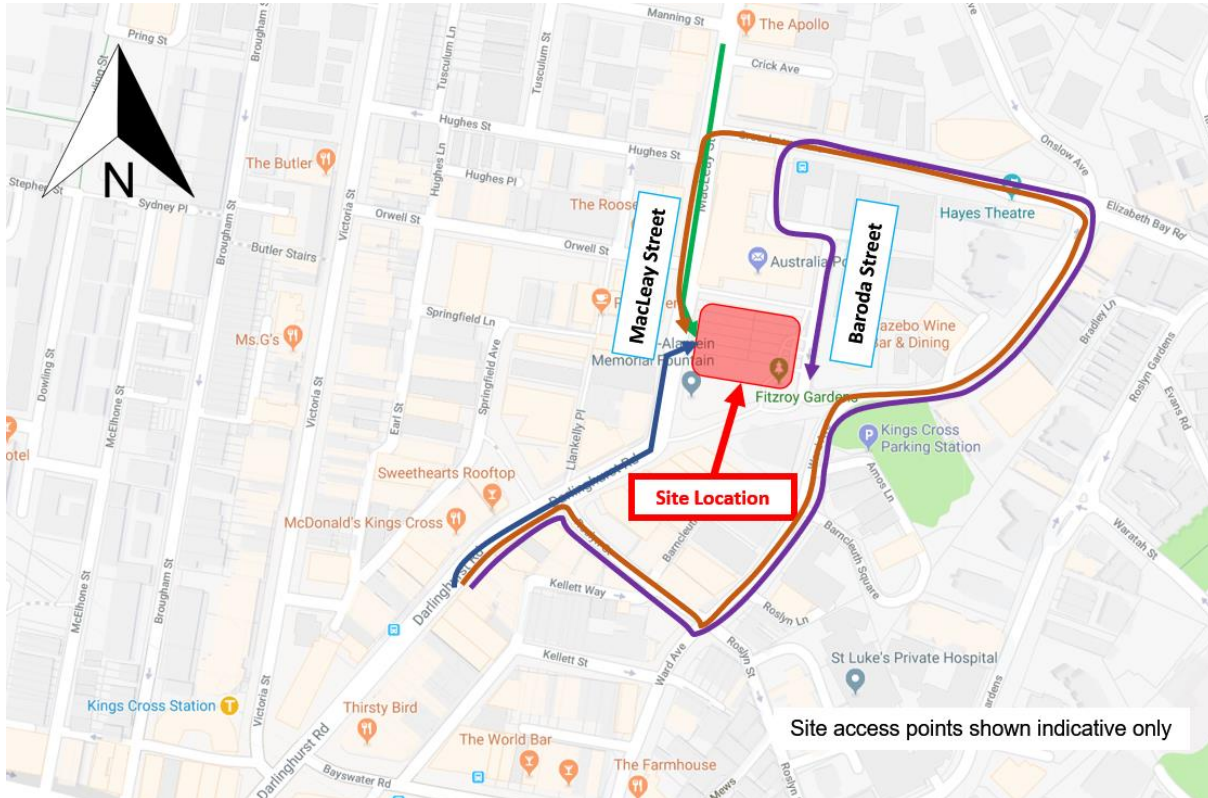
1.3 EVENT DESCRIPTION

The main purpose of this event is the operation of a market area which includes a number of temporary food, fruit and vegetable stalls predominantly offering a range of street food, beverages, fresh meat, vegetable and fruit. Up to 60 stall holders are expected to attend the market. The following are the event details of Kings Cross Organic Food Markets:

- > Markets (stalls) are expected to open every Saturday morning on permanent basis;
- > the typical operating hours and bump-in/bump-out times for the Saturday events include:
 - typical operating hours are between 9:00am – 2:00pm on Saturdays; and
 - typical bump-in/bump-out hours are 7.00am-8.00am and 2:00pm-3.00pm accordingly on Saturdays.
- > The vehicles accessing the site were predominantly observed to be vans, wagons and a few small trucks.

2 ACCESS LOCATION

The entry/exit to the Fitzroy Gardens is located off MacLeay Street which can be accessed via north and south routes. Alternative routes to/from the event have been identified in Figure 2.1 below showing the potential for spreading stall holders traffic and alleviating the pressure placed on MacLeay Street.



SOURCE: Google Maps

Figure 2-1 Fitzroy Gardens Access Routes

It is expected that majority of the stall holders arrive from New South Head Road and William Street from south; However, many stall holders opt to turn onto Roslyn Street and take Ward Avenue to enter from the northern kerb crossing entry to Fitzroy Gardens.

The event organisers are to further promote alternative access routes from Darlinghurst Road south and Macleay Street north to aid in alleviating the traffic congestion and pressure placed on MacLeay Street during the market bump-in and bump-out times.

These alternative routes are to be provided as information to stall holders via market operations manual.

3 Parking Provisions

3.1 Patrons Car Park

Surveys have shown that over 80% of patrons are locals and therefore most of them walk to the market. All on-street kerbside parking spots in the surrounding roads are restricted, however, those patrons arriving by car can find a space in Ward Avenue public car park.

3.2 Stall Holders Parking

No kerbside parking along Baroda Street or Macleay Street is encouraged by the event organisers. Stall holders enter Fitzroy Gardens through three kerb crossing points at MacLeay Street during the AM bump-in and PM bump-out for loading and unloading purposes. These three entrance points generally accommodate access requirements for central, western and southern stall holders.

Two entries via MacLeay Street are currently promoted and managed by the event organisers. Some stall holders who install their gazebos along southern edge of Fitzroy Gardens opt to enter via a third entry point (right next to the fountain) which is normally used for police and emergency vehicles access. Application of further traffic management by the event organisers would be desirable at this location. Some other stall holders choose Baroda Street for stopping their vans/truck for loading and unloading purposes.

The sections of the Fitzroy Gardens adjacent to Baroda Street cannot be accessed by car, therefore stall holders park their vans/trucks on Baroda Street during loading and unloading times.

Stall holders are instructed to park their vehicles in Kings Cross public car park located at Ward Avenue during market operation hours. Plenty of parking spaces were available in Kings Cross public car park on the day of survey at the rate of \$15 per day which is constant during the year.

4 Kings Cross Organic Food Market Traffic Management Plan

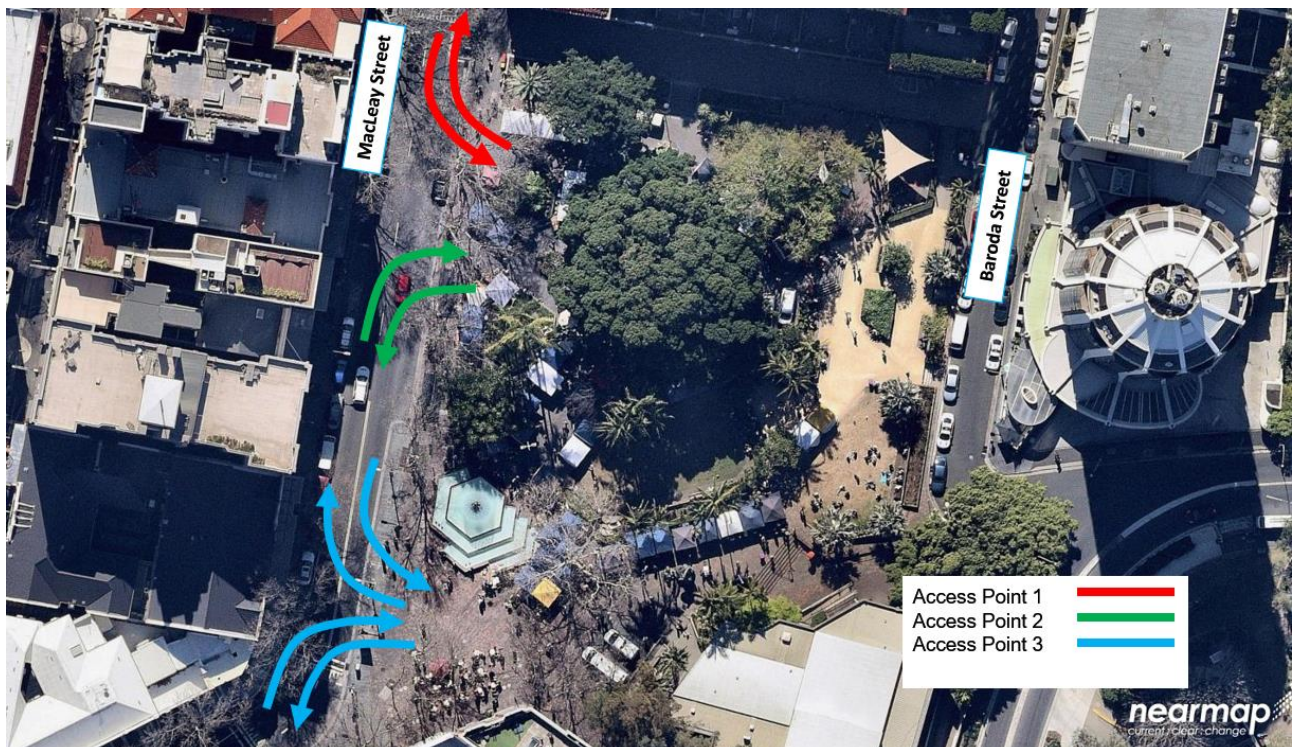
4.1 Statement of Commitment

The operators of the Kings Cross Organic Food Market are committed to providing a Traffic Management Plan (TMP) that is effective and review periodically to ensure it is appropriate and is being implemented effectively. The operators will continue to consult with Council and other government agencies at regular intervals and as necessary to ensure the following tasks will be followed:

- > ensure that each event is properly planned, organised, directed and controlled;
- > ensure that each event is resourced with people, equipment and facilities;
- > TMP is achieving its objectives;
- > TMP is periodically reviewed to ensure the continuing suitability and effectiveness of the TMP;
- > ensure that the requirements of the TMP are properly implemented;
- > maintaining positive community relations including assisting Council with addressing complaints; and
- > ensuring that processes and systems needed for an event are established, implemented and maintained.

4.2 TRAFFIC MANAGEMENT

The event has been observed to increase right turn and left traffic movements in and out of Fitzroy Gardens at the kerb crossing points specified in Figure 4-1.



SOURCE: Nearmap

Figure 4-1 Fitzroy Gardens Kerb Crossing Access Points

Queueing along MacLeay Street during bump-in and bump-out periods could occasionally impact the operational capacity of the Macleay Street and the adjacent signalised intersection 100m north of access point 1 for a few seconds (less than 30 seconds).

Whilst no event traffic count data was available at the time of writing this TMP, site observations indicated that left turn movements to access Fitzroy Gardens during the AM bump-in and PM bump-out, occasionally block back and affect MacLeay Street southbound through traffic. This issue will likely not be improved without providing pedestrian detour during bump-in and bump-out periods and providing short term waiting bays for the stall holders' vehicles. In addition, a staggered access arrangement (for stall holders who bring their vehicle inside Fitzroy Gardens for loading/unloading) is proposed to divide the market into two zones (primary and secondary) whereby the stall holders attending the primary (yellow) zone will set up in the first half hour (7.00am-7.30am) and dismantle in the last half hour of dismantling (2.30pm-3.00pm).

It is also recommended to restrict access/ingress to Fitzroy Gardens to left-in/left-out manoeuvres.

The remaining stall holders (secondary red zone) will setup and dismantle in the other half hour of these phases (i.e. 7.30am-8.00am and 2.00pm-2.30pm accordingly). This will facilitate the proposed staggered entry and exit arrangement to minimise congestion during bump-in and bump-out periods.



Figure 4-2 Kings Cross Organic Food Market Staggered Loading/Unloading Scheme

Providing detailed information to stall holders on alternative access routes and proposed loading/unloading scheme arrangements ahead of time – as outlined within this TMP– will aid in ‘spreading the load’ of traffic to surrounding streets rather than generating increased impacts on MacLeay Street and at the MacLeay Street/Greenknowe Avenue intersection.

Traffic movements, queues and issues should be monitored by the event organisers during each event and recorded into a log sheet, including any remedial action for reference and future TMP revisions. Providing stall holders with sufficient information on alternative routes and staggered loading/unloading scheme (as identified within this TMP) should be maintained to alleviate any potential congestion throughout the bump-in and bump-out periods.

4.2.2 Bump-in Queueing at 7.00 AM

Stall holders should be strictly advised to avoid queuing along MacLeay Street when loading zones or other on-street parking spaces are already occupied before the bump-in kicks off. Stall holders should be instructed to stay clear of surrounding roads and avoid blocking MacLeay Street at all times unless instructed by traffic controllers. Primary zone stall holders should particularly consider this matter as event organisers do not permit vehicle entry to Fitzroy Gardens before 7.00am and before 2.00pm.

4.2.3 Pedestrian Access

Signs will be placed to the North and South Western footpath of Macleay Street advising pedestrians that market vehicles may cross the footpath during bump-in/bump-out periods (7.00 am-8.00 am and 2.00 pm to 3.00 pm) to ensure they are aware of the possible hazard.

A traffic controller onsite must ensure pedestrian safety and stop incoming and outgoing vehicles to let the pedestrians walk safely to the bus shelter. Full closure of Fitzroy Gardens for pedestrian access throughout bump-in/bump-out is almost impossible; however full closure of Fitzroy Gardens to pedestrian (Stall holders excepted) would be desirable. Two traffic controllers should be responsible for pedestrian safety during this period. A Traffic Control Plan is proposed due to observed reversing onto the footpath or driving over the footpath during the site visit. Current on-site hazards and risk assessment has been separately undertaken in Section 5.

4.2.4 Traffic Control

Market organisers should implement traffic control measures to manage stall holders' traffic arriving to the site and exiting the site and provide direction to stall holders, patrons and pedestrians and constantly monitor hazardous movements to prevent incidents during bump-in and bump-out periods. Traffic controllers should enforce the proposed left-in/left-out access arrangement. Stall holders trying to turn onto the site from MacLeay Street northbound should be instructed to access via southbound. Also, right turn out of Fitzroy Gardens should be discouraged by traffic controllers.

The process of managing the traffic arriving to the site and exiting the site during the bump-in and bump-out will be implemented using a Traffic Control Plan (TCP). Three (3) staff are proposed to implement the measures outlined as follows:

- > Proposed signs for work sites will be positioned prior to kerb crossing entry points at MacLeay Street providing early indication to vehicles of the access locations. The signs should be positioned in accordance with the TCP included in Appendix A;
- > one licensed / qualified traffic controller positioned at MacLeay Street (adjacent to Fitzroy Gardens entrance) to assist with the safe flow of pedestrians and vehicles entering and exiting the market;
- > one licensed/ qualified traffic controller and one internal attendant within the site, safely directing vehicles to ensure designated spaces for loading/unloading are safely utilised to their full potential and to ensure vehicles leave sufficient room for the movement of other vehicles within the site during bump-in/bump-out periods and to attend to the four/five traders who enter from Baroda Street as they arrive and/or leave.

The traffic controllers / site attendants will remain at the entrance points and internal to the site and continue to direct traffic to any spaces that become available internally during bump-in unloading and bump out loading.

Site attendants should provide instructions to vehicles leaving the site in reverse gear so that they enter MacLeay Street safely. Providing instruction to vehicles leaving the site in forward direction should be as important; however, there will be no need to stop MacLeay Street traffic flow as these vehicles can enter MacLeay Street once they find an appropriate gap.

In the event that spaces are not available internal to the site, or if there is conflict between an incoming and an outgoing vehicle, the attendant should instruct the incoming vehicle to stop within a safe distance to provide enough space for the outgoing vehicle to leave the site.

Traffic Control Plan and locations of the traffic controllers / attendants are shown indicatively in 0

In addition, stall holders who temporarily park their vehicles south of the fountains for loading/unloading, should be instructed to keep the access to the police station clear for the emergency vehicles at all times.



Figure 4-3 Schematic TCP for controlling pedestrian and vehicle conflicts and movements during Bump-in/Bump-out

4.3 TMP SUCCESS AND LEARNING'S

It is likely that the proposed TMP will require further enhancement following review of the first few events. Previous experience in the management of similar events suggests that through data capture of key performance measures, undertaking of event debriefs as well as knowledge sharing forums of key learnings, the TMPs can be continually improved upon and validated with the behavioural aspects of the local community.

The main intent of this TMP is to establish a process that will enable continual improvement to occur.

5 Site Investigation, Hazard Identification & Risk Assessment

A site investigation was undertaken on Saturday 13 October 2018 during AM bump-in and PM bump-out periods between the hours of 06:50 AM – 03:00 PM. The vehicles observed on site were:

- > Light trucks
- > Vans
- > Wagons

The issues identified during the site visit along with suggested mitigation methods are described in Table 5-5

This Risk Assessment adopts the framework as described in Austroads: Guide to Road Safety: Part 6: Road Safety Audit. A summary of the Austroads' Risk matrices are reproduced below.

Table 5-1 Frequency

Frequency	Description
Frequent	Once or more per week
Probable	Once or more per year
Occasional	Once every five to ten years
Improbable	Less than once every ten years

Table 5-2 Severity

Severity	Description	Examples
Catastrophic	Likely multiple deaths	High Speed, multi-vehicle crash on freeway Car runs into a crowded bus stop. Bus and petrol tanker collide. Collapse of a bridge or tunnel.
Serious	Likely death or serious injury	High or medium speed vehicle-vehicle collision. High or medium speed collision with fixed object. Pedestrian or cyclist struck by car.
Minor	Likely minor injury	Some low speed vehicle collisions. Cyclist falls from bicycle at low speed. Left turn rear end crash in slip lane.
Limited	Likely trivial injury or property damage	Some low speed vehicle collisions. Pedestrian walks into object (no head injury). Car reverses into post.

Table 5-3 Risk level matrix

	Frequent	Probable	Occasional	Improbable
Catastrophic	Intolerable	Intolerable	Intolerable	High
Serious	Intolerable	Intolerable	High	Medium
Minor	Intolerable	High	Medium	Low
Limited	High	Medium	Low	Low

Table 5-4 Suggested treatment approach

Risk	Suggested Action
Intolerable	Must be corrected
High	Should be corrected or the risk significantly reduced, even if the treatment cost is high.
Medium	Should be corrected or the risk significantly reduced, even if the treatment cost is moderate, but not high.
Low	Should be corrected or the risk reduced, if the treatment cost is low.

Table 5-5 Risk Assessment

Item	Initial Risk				Residual Risk			
	Description	Likelihood	Severity	Risk	Mitigation	Likelihood	Severity	Risk
1	<p>Speeding</p> <p>Stall holders may rush into the site at a travel speed higher than 5km/hr during bump-in period. They may collide with a pedestrian.</p>	Occasional	Serious	High	Provide a copy of traffic management plan and remind the strict maximum speed limit at access and within the Fitzroy Gardens to stall holders at all times.	Improbable	Serious	Medium
2	<p>Pedestrian Movements</p> <p>Pedestrians may enter Fitzroy Gardens by disregarding “Footpath Closed” sign or by illegally crossing MacLeay St during bump-in/bump-out.</p>	Probable	Minor	High	Traffic controllers to stop entering/exiting vehicles and instruct the pedestrian to stay off from vehicular movement path.	Probable	Limited	Medium
3	<p>Reversing</p> <p>Vehicles reverse within the market and along MacLeay Street kerb crossing without being instructed by traffic controllers/attendants.</p>	Frequent	Serious	Intolerable	All stall holders should be instructed to leave the site in forward direction. Otherwise the must seek assistance from one of traffic controllers/attendants.	Occasional	Minor	Low

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Item	Initial Risk				Residual Risk			
	Description	Likelihood	Severity	Risk	Mitigation	Likelihood	Severity	Risk
4	Traffic Controller/attendants stop MacLeay Street traffic during bum-in/bump-out with no protection equipment. The may get injured by passing vehicles particularly during wet weather conditions.	Occasional	Minor	Medium	All traffic controllers/attendants must wear reflective vests and carry a stop/slow bat with them while assisting reversing vehicles.	Improbable	Minor	Low
5	Traffic heading south along Macleay Street should be stopped for the vehicles exiting the market in reverse gear. Vehicles along MacLeay Street may not give way to exiting vehicles and collide with them.	Occasional	Minor	Medium	One traffic controller/attendant equipped with stop/slow bat, stop the traffic along MacLeay Street southbound while vehicles exiting the market in reverse gear and provide instructions to traffic.	Improbable	Limited	Low

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Item	Initial Risk				Residual Risk			
	Description	Likelihood	Severity	Risk	Mitigation	Likelihood	Severity	Risk
6	<p>Kerb crossing occupied by vehicles parked in the “Taxi Zone” in front of the northern entrance.</p> <p>Exiting vehicles may opt to use the footpath and pedestrian crossing to the north to exit the site and may collide with a pedestrian.</p>	Occasional	Serious	High	<p>Implement footpath closure as advised in the TMP. Traffic controllers to ask parked vehicles to leave the taxi zone during bump-in and bump out periods.</p> <p>Stall holders should be instructed to not use the footpath for entering and existing the market at anytime.</p>	Improbable	Serious	Medium

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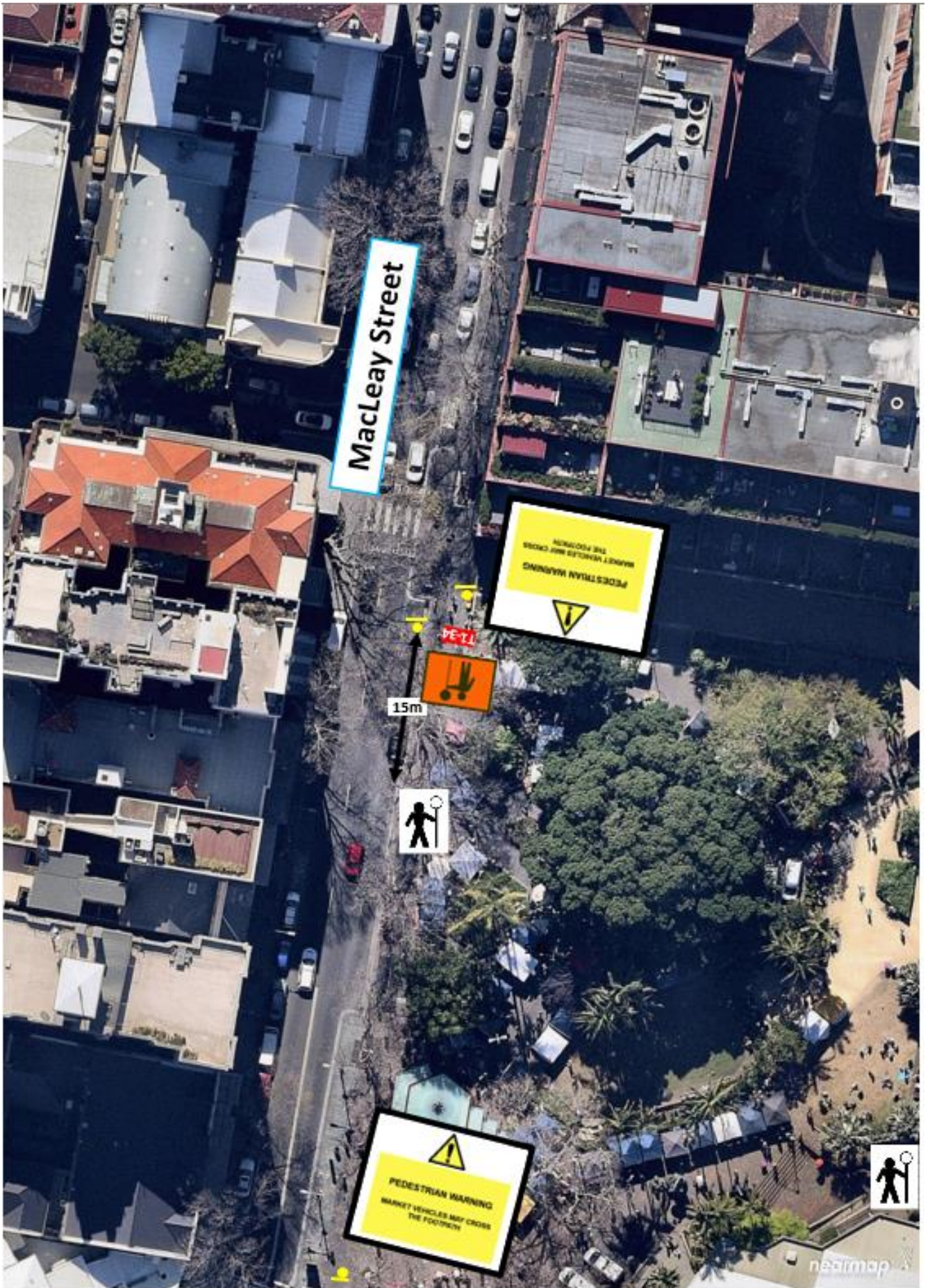
6 Summary and Conclusions

Greys was engaged by Organic Food Markets to provide Traffic Management Plan for the Saturday Organic Food Market at Fitzroy Gardens, Potts Point. The scope of the advice was to prepare a Traffic Management Plan and identify any traffic management hazards for the operation of the market particularly during bump-in and bump-out periods. A risk assessment was undertaken with mitigation measures recommended and resulting residual risks identified.

The residual risks must be understood and be assigned to the relevant person or persons to monitor and manage on an ongoing basis.

In addition to implementing the recommended Traffic Management Plan signage, delineation and traffic management devices (as illustrated in Appendix A), key risks and mitigation measures should be included in operational guidelines and communicated to all personnel and stall holders through work method statements, regular toolbox talks and included in any site rules or similar.

Appendix A – Proposed Traffic Management Arrangements and Mitigation Measures (TCP 77)



Item 4.**Development Application: 49-51 Market Street, Sydney - D/2023/984**

File No.: D/2023/984

Summary

Date of Submission:	27 October 2023
Date of Amendments	30 October 2023, 13 November 2023, 20 December 2023, 2 February 2024
Applicant:	Planning Lab
Architect/Designer:	Techne
Owner:	The Greater Union Organisation Pty Ltd
Planning Consultant:	Planning Lab
Heritage Consultant:	Urbis
Cost of Works:	\$3,226,474
Zoning:	SP5 Metropolitan Centre. The proposed use, being a bar with entertainment, is defined as a 'food and drink premises' in the Sydney LEP 2012 and is permissible with consent in the SP5 zone.
Proposal Summary:	<p>The proposal is for alterations to the State Theatre building for the change of use of the lower ground floor to a bar with entertainment and for use of the basement level for staff offices and back of house areas. The proposed trading hours for the bar are between 10.00am to 3.00am (the following day), Monday to Sunday.</p> <p>The application was notified for 28 days between 7 November 2023 and 6 December 2023. A total of 234 properties were notified. No submissions were received.</p> <p>The application is referred to the Local Planning Panel for determination as the proposal is identified as a sensitive development, being development for the purposes of a new licensed premises proposing to operate under a hotel (general bar) licence.</p>

The subject site is a State Heritage item. The subject application is not an Integrated Development Application as the proposed works fall within the site-specific exemptions under Section 57(2) of the Heritage Act 1977. The proposed works will not adversely impact significant fabric and appropriate heritage conditions are recommended.

The proposed hours of operation are supported on a permanent basis between 10.00am and 12.00 midnight, Monday to Friday. Hours of operation between 12.00 midnight and 3.00am are supported on a one-year trial period basis.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Environmental Planning and Assessment Regulation 2021
- (iii) Heritage Act 1977
- (iv) SEPP (Transport and Infrastructure) 2021
- (v) SEPP (Biodiversity and Conservation) 2021
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012
- (viii) Central Sydney Development Contribution Plan 2020
- (ix) City of Sydney Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings

Recommendation

It is resolved that consent be granted to Development Application Number D/2023/984 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (B) The proposed development, subject to recommended conditions, is consistent with the objectives of the SP5 Metropolitan Centre zone.
- (C) The development is located within the Late Night Management area. The recommended hours of operation, subject to the imposition of a trial period, are consistent with the objectives and in accordance with the permitted hours for a Category A premises in a Late Night Management Area as identified in the Sydney DCP 2012.
- (D) The development, subject to recommended conditions, is able to operate without unreasonable disturbance or nuisance to surrounding properties.
- (E) Appropriate conditions have been imposed to ensure the development does not detrimentally impact on the heritage significance of the site.
- (F) The development accords with objectives of relevant planning controls.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 667918 and Lot 11 DP 1210715, known as 49-51 Market Street, Sydney. It is irregular in shape with area of approximately 3,310 square metres. It has a primary frontage to Market Street to the north, and a secondary frontage to George Street to the west.
2. The site contains The State Theatre and former State Shopping Block which is a 12-storey building with two below ground/basement levels. The building contains the State Theatre and its associated lobbies, ticketing and back of house areas within its lower levels, and the upper levels are occupied by the QT hotel which is accessed from a ground floor level lobby and adjacent café fronting Market Street. The subject application relates to the two below ground/basement levels, known as the lower ground level and basement level.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial and retail. The Swissotel hotel and the Myer/Westfield shopping centre are located directly opposite the site on the northern side of Market Street. The Queen Victoria Building is located on the western side of George Street. Pitt Street Mall is located to the north-east of the site.

The State Theatre is a state heritage item (00446) identified on the State Heritage Register. Schedule 5 of the Sydney LEP 2012 identifies the site as an item of state heritage significance (I1887) with its listing including the 'State Theatre and former State Shopping Block including interiors'.

4. A site visit was carried out on 21 December 2023. Photos of the site and surrounds are provided below:

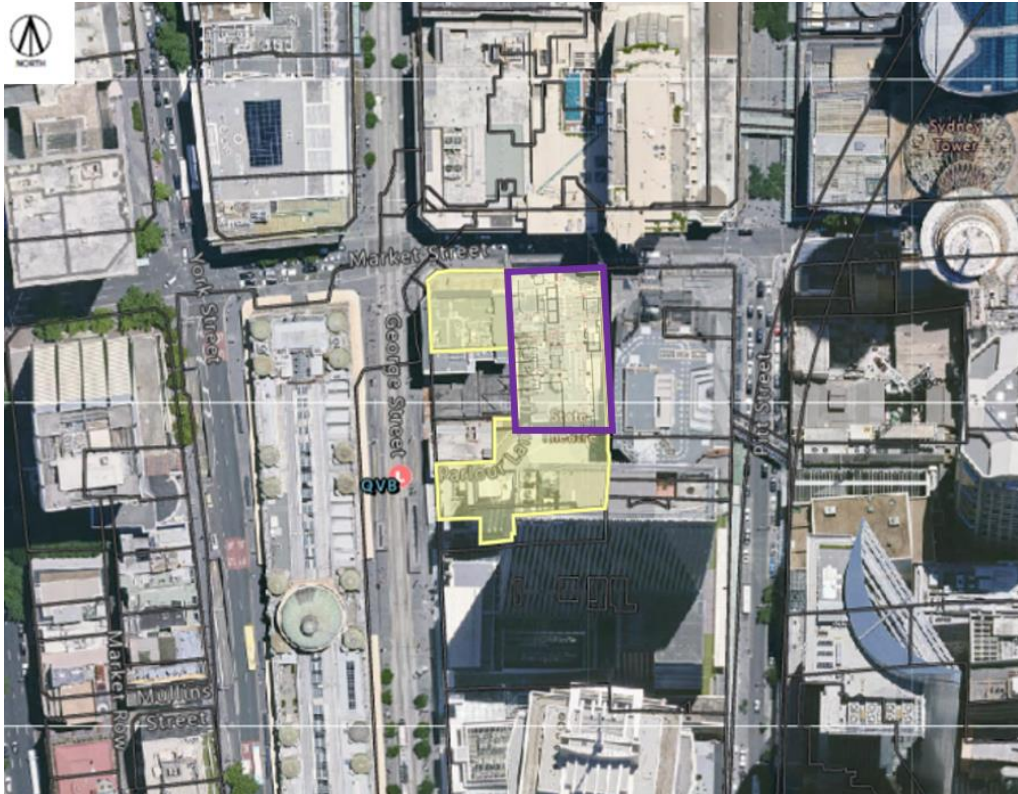


Figure 1: Aerial view of site and surrounds (site boundaries in blue | location of works in blue)



Figure 2: Site viewed from Market Street facing west (easterly entrance to the proposed bar shown directly left)



Figure 3: Site viewed from Market Street facing east (westerly entrance to proposed bar directly right)

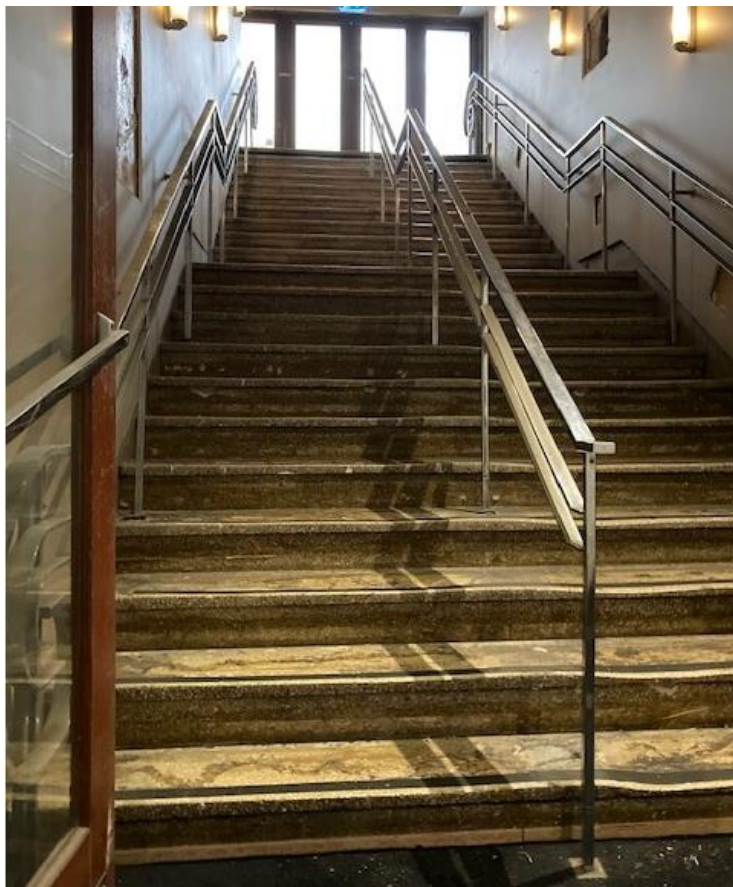


Figure 4: Staircase adjoining easterly entrance from Market Street



Figure 5: Screening room (Lower Ground Floor) proposed to be demolished



Figure 6: Stage fronting the above screening room (Lower Ground Floor) proposed to be demolished



Figure 7: Lower ground floor existing seating area



Figure 8: Lower ground floor existing seating area adjoining staircase to westerly entrance



Figure 9: Staircase to westerly entrance from Market Street

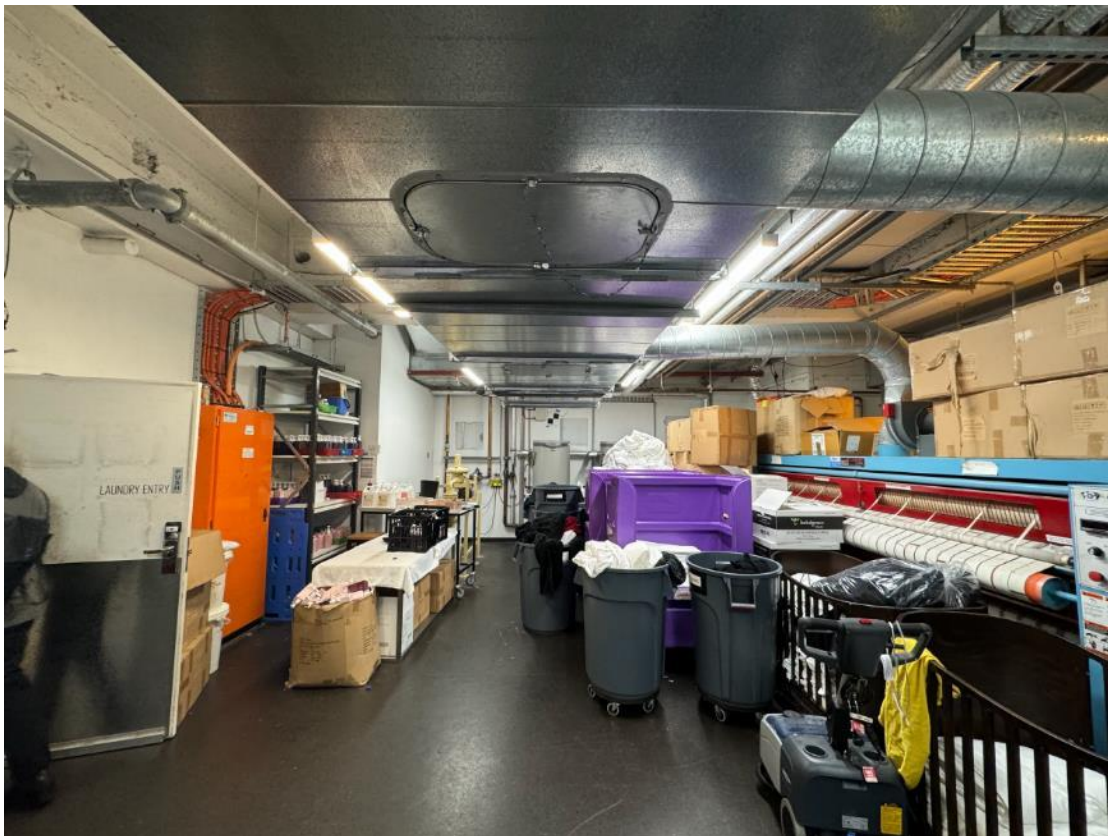


Figure 10: Laundry room on lower ground floor facing north



Figure 11: Laundry room on lower ground floor facing south

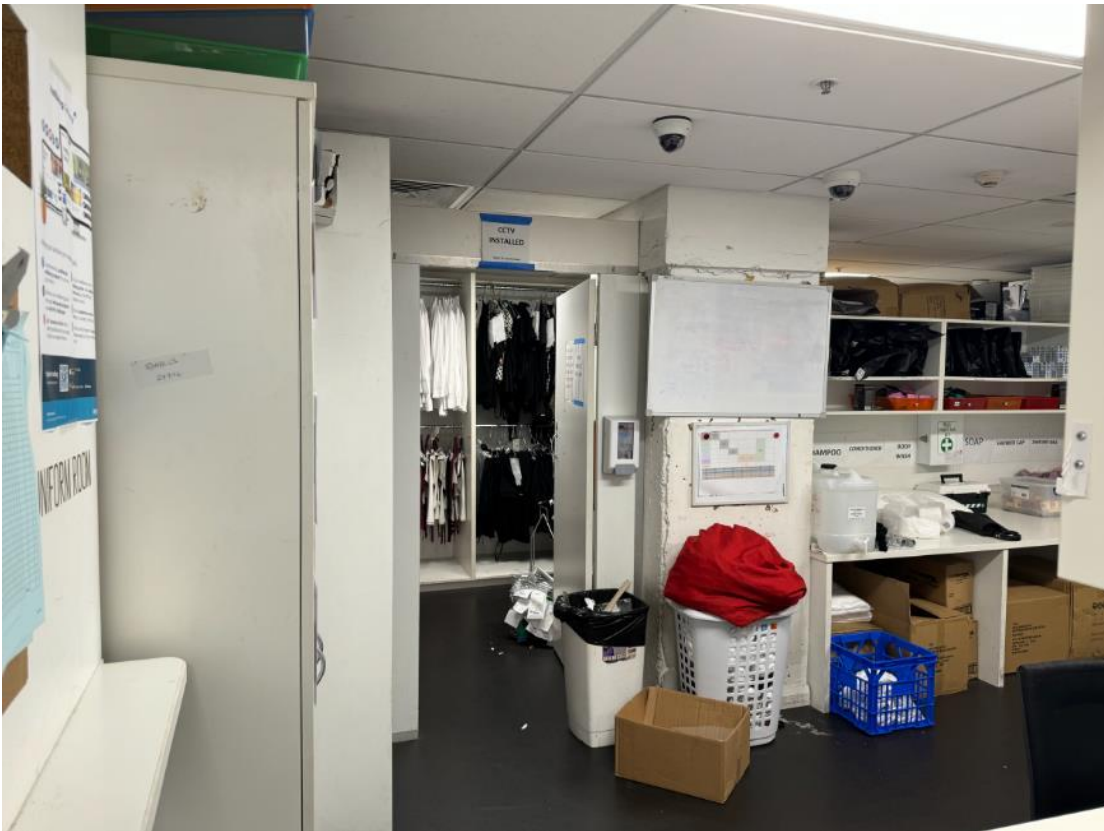


Figure 12: Staff changing room on basement level



Figure 13: Staff office space on basement floor

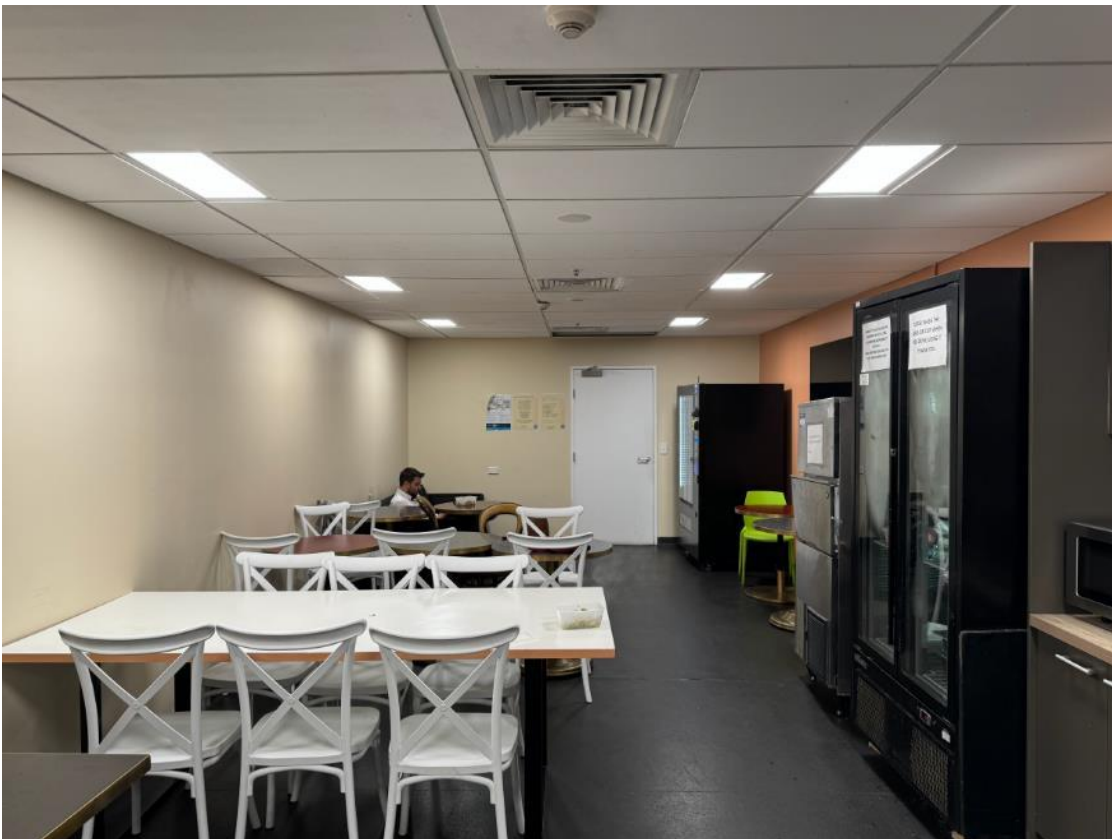


Figure 14: Staff break room on basement floor



Figure 15: Lift with access to lower levels adjoining Parlour Lane



Figure 16: Parlour Lane along the western side of the State Theatre, including waste storage



Figure 17: Waste room adjoining service lane, glass crusher and bins

History Relevant to the Development Application

Development Applications

5. The following applications are relevant to the current proposal:

- **D/2010/267** – Development consent was granted 9 September 2010 for conversion of the upper levels of the State Theatre & Gowings buildings to a heritage hotel including a restaurant and bar at level 2 of the Gowings building and a day spa at the mezzanine level of the State Theatre.

This application has been modified several times through A - H. The relevant modifications have been listed below.

- **D/2010/267/F** – A Section 96(2) Modification application (now known as a Section 4.55 modification) was granted on 14 March 2012 for the inclusion of a licensed function bar on the lower ground level ancillary to the theatrette. The hours of operation are between 6.00am to 12.00am (midnight), Monday to Sunday with a 1-year trial period for hours between 12.00am (midnight) and 2.00am (the following day). This included a maximum patron capacity of 115.

Compliance Action

6. The site is not subject to any relevant compliance action.

Amendments

7. The application was lodged as an Integrated Development Application requiring approval under the Heritage Act 1977 and was notified for 28 days.
8. In correspondence, dated 30 October 2023, clarification was sought regarding the intended liquor licence.
9. The applicant responded on 30 October 2023, and submitted a revised Plan of Management (POM) and copy of the existing on-premises liquor licence associated with the State Theatre. The applicant advised the proposal intended to utilise this existing on-premises license.
10. A request for additional information was sent on 18 December 2023 seeking details on the proposed kitchen and food preparation arrangements and further clarity on the licence type, as an on-premises licence as previously stated by the applicant does not correlate with the intended use/function.
11. On 20 December 2023, a revised POM and a copy of the existing Hotel Liquor License associated with the QT Sydney Hotel was submitted. The applicant advised that the proposal intends to utilise the QT Sydney Hotel Liquor Licence.
12. On 4 January 2024, amended architectural plans, information on materials and identification of waste management areas was requested. This information was submitted on 2 February 2024.

Proposed Development

13. The application seeks consent for the change of use of the lower ground floor to a pub and restaurant with entertainment (this pub is to be known as the Basement Bar) and the use of the basement level as staff offices and staff facilities.
14. In detail, the proposal seeks consent for the following works to the State heritage listed building:
 - Demolition of the existing internal fit out, including removal of doors, windows, walls, existing floor finish (retaining existing structure), redundant services, tiered raised floor structure, staircase/balustrade and railing, lightweight ceiling to expose concealed ceilings, sanitary fixtures (retain plumbing for new fixtures),
 - Relocate existing fire extinguisher to suit new works and carpet over existing stairs without damaging treads under.
 - New internal fit out works to the Lower Ground Floor to include a new bar, stage, seating, toilets, preparatory kitchen (no cooking facilities), store and cool rooms, plant, lifts, and stairs.

- New internal fit out works on the basement level to facilitate staff offices, housekeeping back of house, storerooms and cool rooms and staff canteen.
15. Consent is sought for the proposed lower ground floor level pub is to operate on a permanent basis between 10.00am and 2.00am (the following day), Monday to Sunday. Extended operating hours for trading between 2.00am and 3.00am, Monday to Sunday is sought on a trial period basis.
 16. A patron capacity of 300 is proposed within the lower ground floor bar.
 17. The patron entry to the bar will be off two separate ground level locations on the Market Street frontage, with the primary entry adjoining the pedestrian laneway to the east of the site. Lift access is also available from ground floor/street level of the QT hotel lobby. The provided Plan of Management and Statement of Environmental Effects states that the bar will also be available for use by private functions. See further details in the "discussion" section below. Plans of the proposed development are provided below.

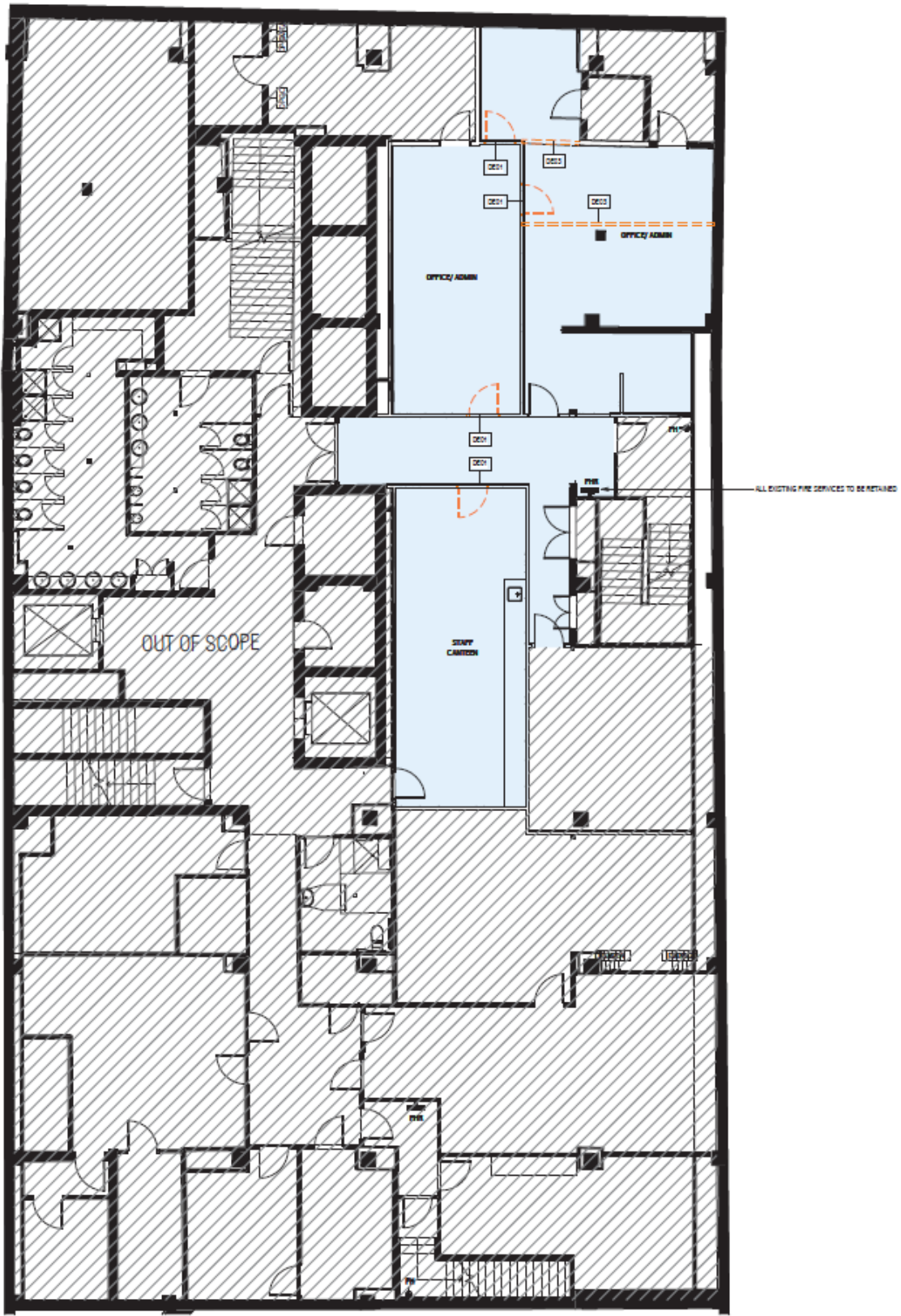


Figure 18: Extract of proposed basement demolition floorplan (left)

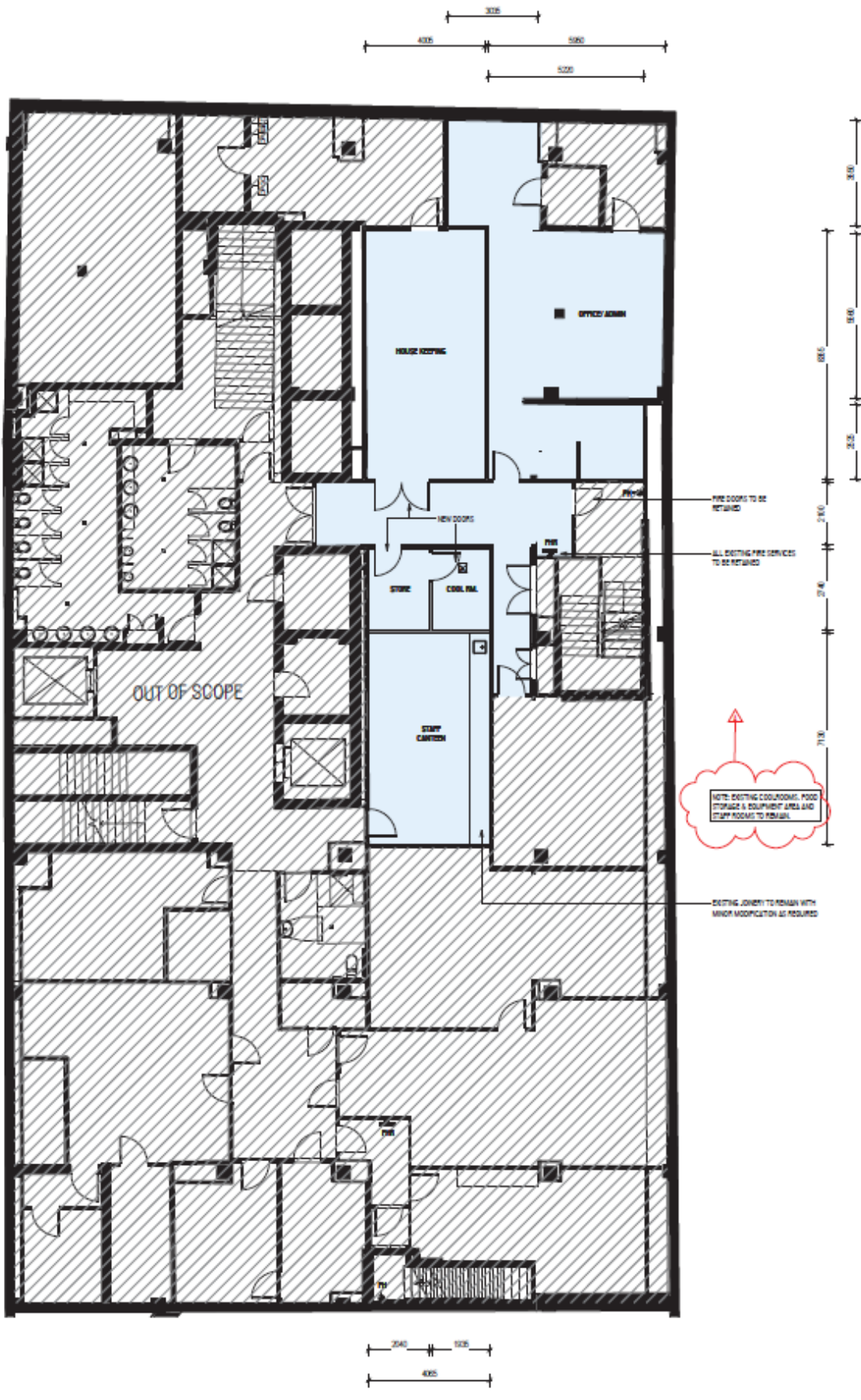


Figure 19: Extract of proposed basement floorplan (left)

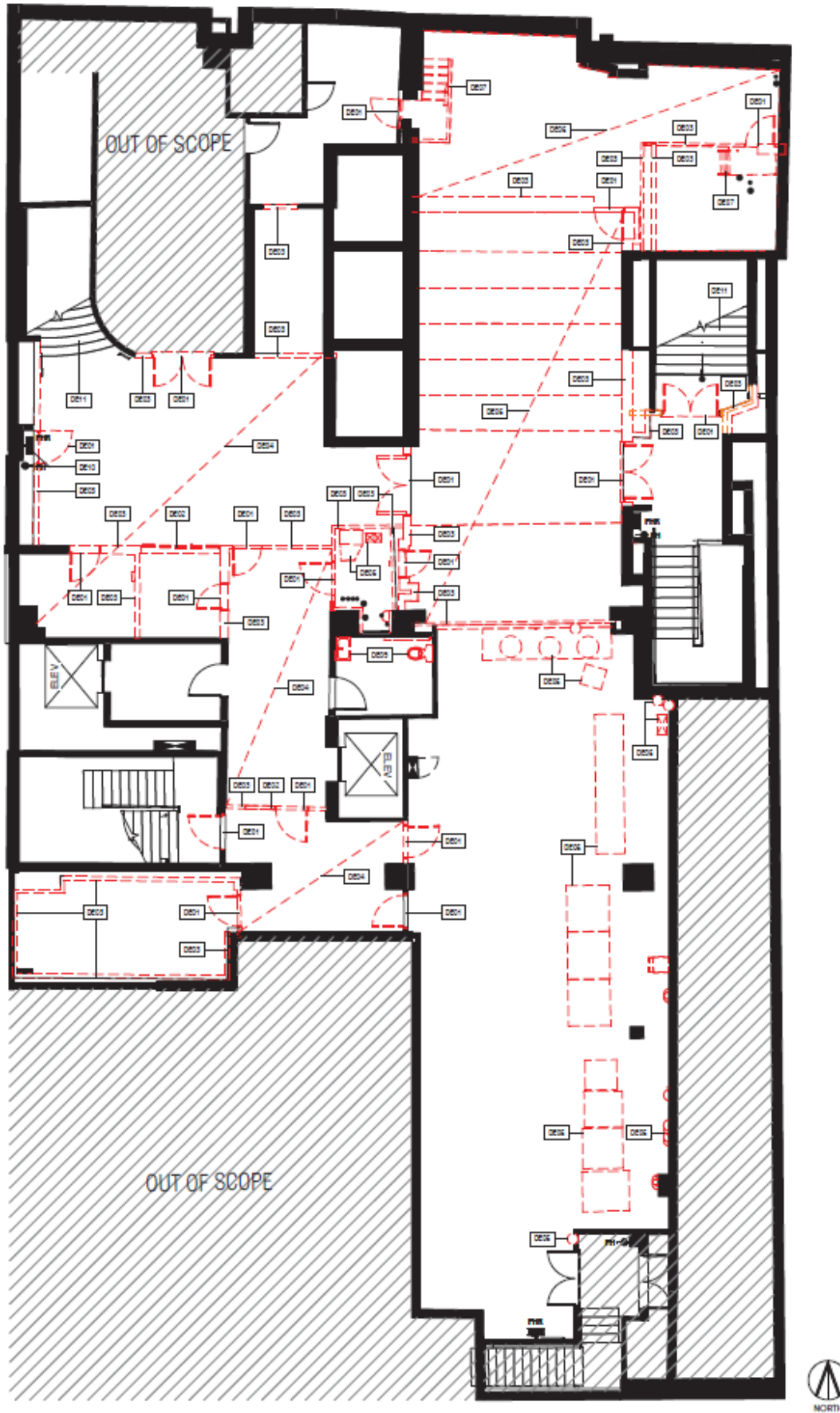


Figure 20: Extract of proposed lower ground floor demolition floorplan (left)

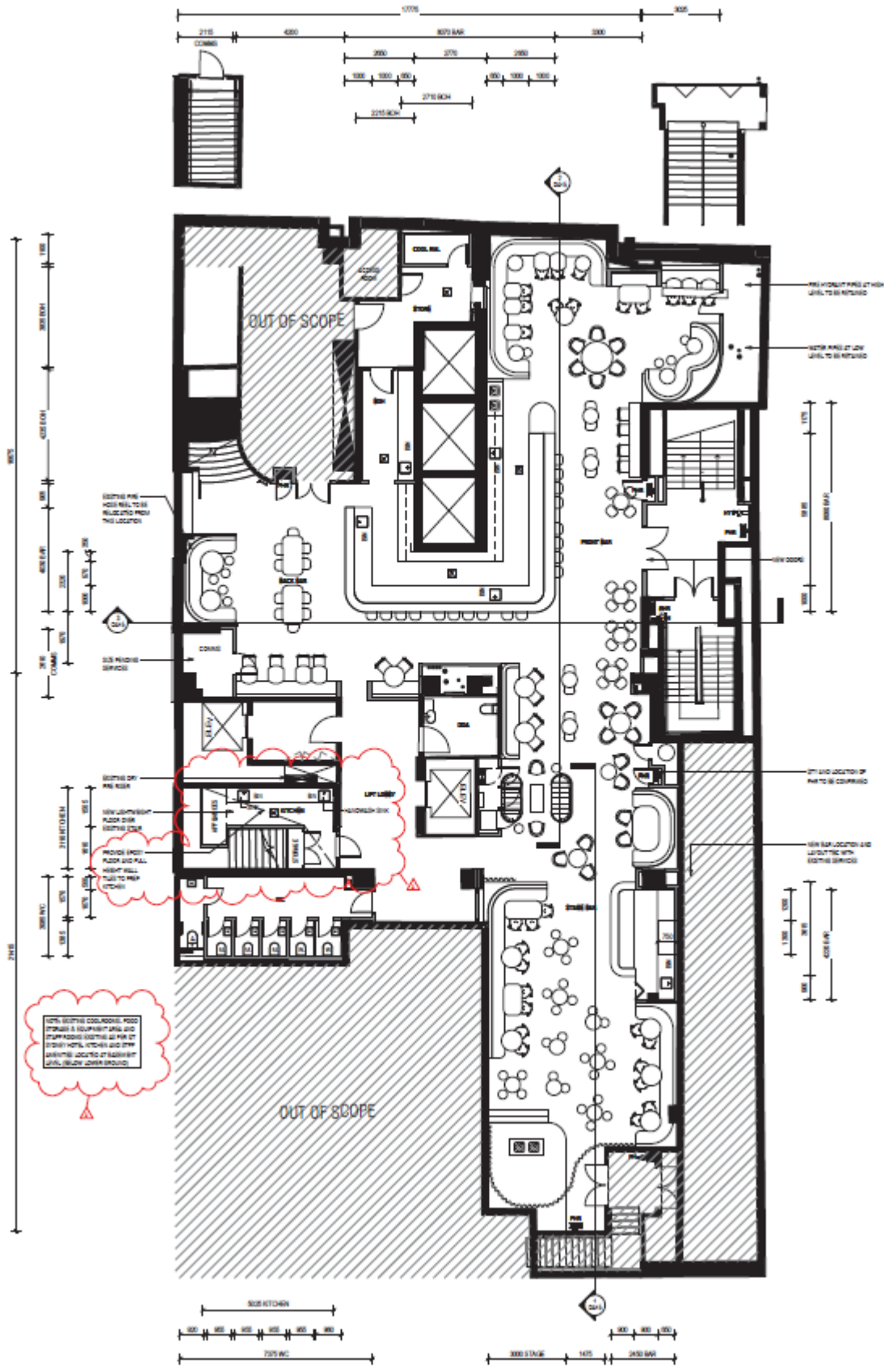


Figure 21: Extract of proposed lower ground floorplan (left)

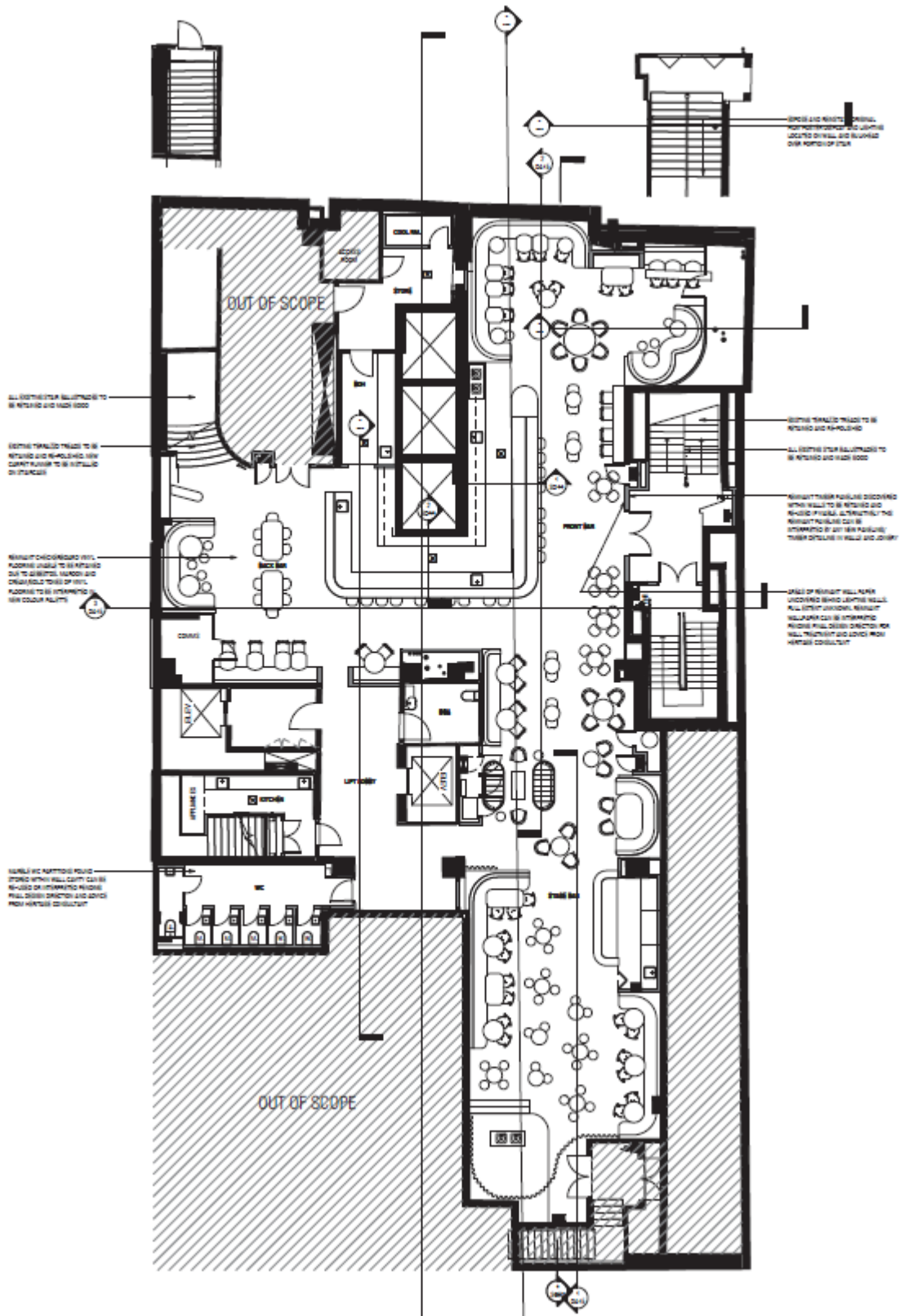


Figure 22: Extract of lower ground floor heritage direction plan (left)



Figure 23: Extract of finishes palette - note general indication only

Assessment

18. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Heritage Act 1977

19. The subject site is listed as an item known as "The State Theatre" on the State Heritage Register under the Heritage Act 1977 as #00446.
20. A Conservation Management Plan dated 2010 prepared by Graham Brooks & Associates applies to the site.
21. At the time of lodgement, the application was lodged as Integrated Development requiring approval under the Heritage Act 1977. A copy of the application was referred to the Heritage Council on 7 December 2023 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000. In correspondence dated 30 January 2024, the NSW Heritage Council was advised that the exhibition period had been completed and no submissions were received.
22. In correspondence dated 30 January 2024, the Heritage Council of NSW advised that an integrated development application approval under the Heritage Act 1977 is not required as the site is covered by the following site-specific exemptions under the Heritage Act 1977:

- (a) The alteration of the building including the interior of the ground floor coffee shop and tobacco / sweet shop, other than the theatre, foyer entrance and Market Street facade.
 - (b) Any change of use of the interior of the building including the ground floor coffee shop and tobacco / sweetshop, other than the theatre, foyer or entrance.
23. As such, Heritage NSW are of the view that the proposed works can be assessed under the provisions of Section 57(2) of the Heritage Act 1977. In their correspondence, Heritage NSW recommended that Council assess the heritage impact of the proposed works by:
- (a) Considering the impact of the proposal on the heritage significance of the subject property and any heritage items in the vicinity; and
 - (b) Taking into account the recommendations of Council's heritage adviser.
24. The application was referred to Council's Heritage Specialist who supports the application, subject to conditions.

State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

25. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Clause 2.98 – Development adjacent to rail corridors

26. The site's western boundary is located within the rail reserve of the North Shore and City Circle Train Line tunnels located below George Street. The site is also located adjacent to the George Street Light Rail corridor.
27. Whilst noting the proximity to these rail corridors, the proposed development is limited to a change of use and internal fit out below ground levels of the existing building. No further excavation or works that impact on the rail corridors is proposed. As such, the application is not required to be referred to Transport for NSW.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

28. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
29. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

30. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the SP5 Metropolitan Centre zone. The proposed development is defined as 'food and drink premises' (which includes a pub and restaurant) and is permissible with consent in the zone. The proposal generally meets the objectives of the zone. The primary purpose of the pub is for the service of alcohol and food.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 130 metres is permitted. The proposal comprises works to the lower ground and basement floor levels with no excavation. As such, the proposal will not affect the height of the existing building.
4.4 Floor space ratio 6.4 Accommodation floor space	Yes	The site has a base floor space ratio control of 8:1 (approximately 26,592 square metres). Council records show an existing GFA calculation of the relevant sites, completed as part of D/2019/883 which was approved on 12 November 2020. Based on this consent, the site has a current FSR of 5.3:1 (17,748 square metres). In this instance, the proposed use occupies existing lower ground and basement levels of the building: <ul style="list-style-type: none"> • Lower Ground Floor: Existing GFA 1,722 square metres. • Basement Level: Existing GFA 614 square metres. There will be approximately 78.5 square

Provision	Compliance	Comment
		<p>metres of additional GFA on the lower ground level and 14.6sqm on the basement level as a result of the change of use of existing space that is not calculated as floor space to uses that are calculated as floor space.</p> <p>The proposed FSR as a result of a 93.1 square metres GFA increase is 5.37:1 (17,841 square metres). In this regard, the proposal is under the site's permissible base FSR.</p> <p>Under the provisions of Clause 6.4 of the SLEP 2012, the site is located within Area 2 where different land use types are eligible for additional floor space of between 4.5:1 to 6:1 depending on the use.</p> <p>Given the above, the provisions of Clause 6.4 are not relevant.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a state heritage item identified as the 'State Theatre'. It is identified by the State Heritage Register as No. 00446.</p> <p>Schedule 5 of the Sydney LEP 2012 identifies the site as 'State Theatre and former State Shopping Block including interiors' No. I1887.</p> <p>Refer to previous discussion on use of site-specific exemptions under Heritage Act 1977.</p> <p>The proposed development has been referred to Councils Heritage Specialist who raised no objection to the proposal, subject to conditions.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
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Provision	Compliance	Comment
Division 4 Design excellence		
6.10 Heritage floor space	N/A	Council's Heritage Floor Space register shows no record of any Heritage Floor Space award for the State Theatre.
6.11 Utilisation of certain additional floor space requires allocation of heritage floor space	N/A	This clause is not applicable as the building does not exceed 55m in height and therefore no HFS is required to be allocated.
6.21C Design excellence	Yes	<p>Clause 6.21B(1) of the SLEP 2012 states that the Division 4 - Design Excellence applies to development that involves the erection of a new building or to external alterations to an existing building.</p> <p>The proposed external works under this application are limited to repair and make good works at the entrances from Market Street. These external works have been assessed as being suitable and sympathetic to the heritage significance of the building and will have a positive impact on the public domain.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development 7.7 Retail premises	N/A	<p>The site is located on land identified as Category D on the Public Transport Accessibility Level Map.</p> <p>The LEP allows for a maximum car parking spaces in association with the use. No spaces are proposed.</p>
7.13 Contribution for purposes to affordable housing	Yes	Please refer to the 'Financial Contributions' section below for further details.
7.14 Acid Sulfate Soils	Yes	The site is located on land with class Class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid

Provision	Compliance	Comment
		Sulfate Soils Management Plan.
7.20 Development requiring or authorising preparation of a development controls plan	N/A	<p>The proposal increases the gross floor area of the existing building by roughly 93 square metres. The site is in Central Sydney and has a site area greater than 1,500 square metres (3,324 square metres). The preparation of a development control plan is not required in this case as the proposal:</p> <ul style="list-style-type: none"> • only involves alterations and additions to an existing building. • does not significantly increase the height or gross floor area of the building. • does not have significant adverse impacts on adjoining buildings or the public domain, and • does not significantly alter any aspect of the building when viewed from public spaces.
7.24 Development near Cross City Tunnel ventilation stack	Yes	<p>A small portion of the site is within 500 metres of the Cross City Tunnel ventilation stack.</p> <p>The proposal relates to change of use and internal fit out works to the lower ground and basement floor levels.</p> <p>The proposal will not adversely affect the dispersal of emissions from the Cross City Tunnel ventilation stack nor will persons using those levels be affected by those emissions.</p>

Development Control Plans

Sydney Development Control Plan 2012

31. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

32. The site is not located within a locality identified by Section 2 of the Sydney DCP 2012.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.9 Heritage	Yes	See further details in the 'Discussion' section below, above under the Heritage Act 1977 and 5.10.
3.11 Transport and Parking	Yes	Currently, the site does not have any parking provisions. The proposal does not seek to increase or change parking provision.
3.12 Accessible Design	Yes	Lift access to the lower ground floor bar is available through the QT Hotel Lobby which is available at ground level from Market Street. The access points are identified in the provided plan of management.
3.13 Social and Environmental Responsibilities	Yes	The proposed development is accompanied by a Plan of Management and Acoustic Report which provides management recommendations. These documents recommend the installation of CCTV, upkeep of a complaints and incidents register, security allocations and patron management. Subject to conditions the proposal complies with the provisions of 3.13 Social and Environmental Responsibilities.
3.14 Waste	Yes	The site has existing shared waste storage and service areas that the proposed bar and office intends to utilise. This area currently services the existing uses and is located along Parlour Lane. The application was referred to Council's Cleansing Specialist who raised no objection to the proposed waste management arrangement subject to conditions. A condition is recommended to ensure the proposed development complies

Provision	Compliance	Comment
		with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Partial compliance	<p>The premises is located in a Late Night Management Area and the use is defined as a category A premises.</p> <p>The proposal seeks permanent trading hours between 10.00am and 2.00am (the following day) and is seeking extended trading hours on a 1-year trial period for the hours between 2.00am and 3.00am. The proposed patron capacity is 300. The proposal is for change of use of the lower ground floor from a function bar ancillary to the theatrette to a pub and restaurant with entertainment.</p> <p>Table 3.8 of the Sydney DCP 2012 permits base indoor hours of operation between 6.00am - 12.00am (midnight) and extended 24-hour trading.</p> <p>See further details in the 'Discussion' section below.</p>

Section 5 – Specific Areas

Provision	Compliance	Comment
5.1 Central Sydney	Yes	<p>With the exception of the works to repair and make good the entrances to the lower ground floor and basement level, the proposal does not seek for any external changes to the State Theatre. As the proposal will enhance the quality of the elements of the facade, the proposal will make a positive contribution on the streetscape.</p>

Discussion

Heritage

33. The subject site is identified as a State Heritage Item, listed as "The State Theatre" on the State Heritage Register under the Heritage Act 1977 (#00446). Schedule 5 of the Sydney LEP 2012 identifies the site as an item of state heritage significance (I1887) being the 'State Theatre and former State Shopping Block including interiors'.
34. As discussed under the heading of Heritage Act 1977 section above whilst the application was lodged as Integrated development under the Heritage Act, Heritage NSW has confirmed that the proposal falls within the site-specific exemptions and is not required to obtain a separate approval under the Heritage Act 1977.
35. The application has been assessed by the City's Heritage Specialist who has noted the response of Heritage NSW and their advice. A detailed assessment has been undertaken by the City's Heritage Specialist noting the following:
 - (a) The 2010 Conservation Management Plan (CMP) identifies the spatial qualities of the Reel Room, internal walls, and part of the lower ground level as being of high significance. See Figure 24 below:

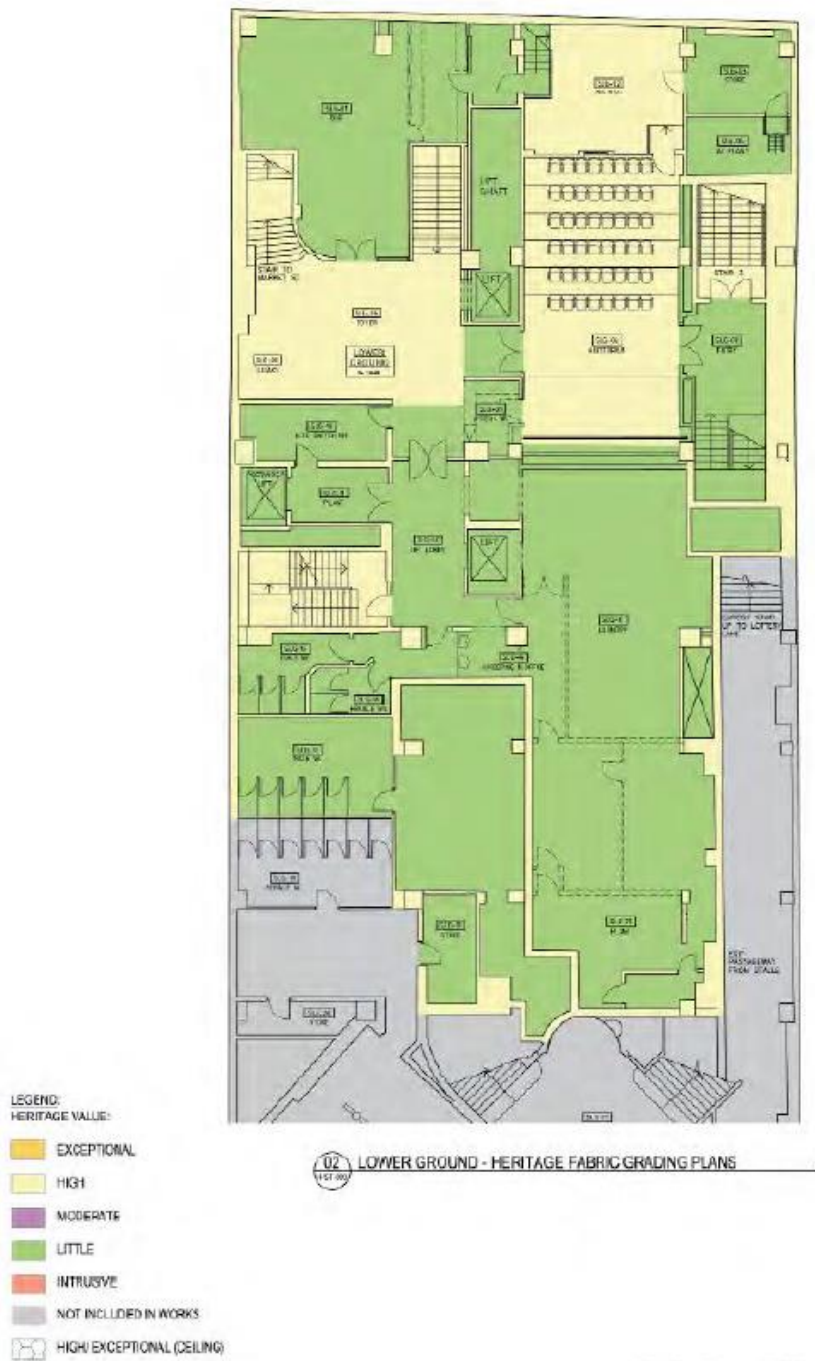


Figure 24: Extract from 2010 CMP of Lower Ground Floor Graded Heritage Fabric

It is noted the proposal will result in the loss of the Reel Room (a 1995 remodelling of the State Newsreel Theatre) and will impact on the original foyer space. Further, some existing walls located at the lower ground level (ranked as being of high significance) are to be demolished. It is also possible that works relating to the stripping out of later fit outs may reveal early wall or ceiling finishes.

- (b) To mitigate the proposed impact on the heritage significance, the application has been accompanied by a Heritage Interpretation Strategy (HIS) and Heritage Impact Assessment (HIA). The key assessments made in these documents are:

- (i) The works are located on levels where there has been substantial and repeated modifications and contain little remnant significant or original fabric.
 - (ii) There are no works to the theatre, foyer entry or Market Street façade.
 - (iii) The lower ground floor originally housed the State Newsreel Theatre and has been reconfigured for various uses as a theatre, function room and bar. Currently, this level accommodates the vacant bar space and the Reel Room (a 1995 remodelling of the State Newsreel Theatre), which is underutilised and not accessed by the public. The proposal will reactivate this level and make a positive contribution to the sustainable use of and activity in the building.
 - (iv) The CMP identifies the spatial qualities of the Reel Room and part of the lower ground floor as being of high significance. These spaces were reconfigured in 1995 and do not reflect the original spatial layout of this floor.
 - (v) The CMP identifies the area of the works in the basement level as being of little significance.
 - (vi) The proposal includes a meaningful interpretation of the lower ground floor (including spatial layout, remnant fabric and historic functions) and is outlined in the Heritage Interpretation Strategy.
 - (vii) The proposal does not impact on original fabric associated with the lower ground floor and basement (including staircases, stair lobbies and associated features).
 - (viii) The proposed fit out is lightweight and reversible. Where viable, remnant fabric from the historic uses will be retained and incorporated into the interior design.
36. Based on the site-specific exemptions under the Heritage Act 1977 and the assessment and analysis contained within the HIS and HIA, the City's Heritage Specialist raises no objections subject to the following conditions:
- (a) the preparation of a Heritage Interpretation Plan to be based on the provided strategy. The plan is to be submitted to and approved by Council prior to the issue of any construction certificate.
 - (b) photographic archival documentation be recorded of the areas/spaces affected. Maintaining a record in accordance with the guidelines provided by NSW Heritage Division guidelines ensures the ongoing conservation of the history of the site.
 - (c) A general indication of intended materials and finishes has been provided with the application, but no materials are nominated or keyed to the plans. As such conditions are recommended to ensure any new materials for making good and repairs match the existing in terms of colours, finishes, sizes, profile, and properties.

- (d) any early or significant fabric and finishes uncovered during the works must be retained, protected, and properly incorporated into bar design and what cannot be retained should be recorded.
- (e) a heritage consultant be commissioned throughout the design development, contract documentation and construction stages. This will ensure the best outcomes are achieved and significant heritage fabric is protected.

Compliance with the National Construction Code

- 37. As the site is a State Heritage Item, the opportunities for upgrades to meet the relevant standards may be limited due to their potential impact on any heritage significant fabric. The application is accompanied by a BCA Capability Statement which recommends performance-based solutions be adopted for sanitary facilities and height of rooms. The statement also states fire compartmentation drawings and a fire safety engineer is required to address any relevant performance requirements. In conclusion, the report confirms that the proposal is capable of achieving compliance with the Building Code of Australia 2022, subject to normal design development and assessment reviews required at the next stage of documentation and prior to the issue of the construction certificate.
- 38. A condition is recommended to ensure any works required for compliance with the NCC not specified in the submitted/approved plan must not result in damage to existing fabric and building features. The condition ensures if upgrade works are required which may impact on existing fabric and features, the details are to be submitted to and approved by Council prior to any construction certificate.

Late Night Trading/Hours of Operation

- 39. The proposal seeks permanent approval for hours of operation between 10.00am and 2.00am (the following day), Monday to Sunday and seeks consent for extended trading on a 1-year trial period for the hours between 2.00am and 3.00am.
- 40. The premises intends to operate under the existing QT Hotel Liquor Licence and is proposed to have a patron capacity of 300. As such, the premises is identified as a Category A - High Impact Premises and the Liquor Licence is considered appropriate for the intended use.
- 41. The Sydney DCP 2012 permits permanent base indoor trading hours between 6.00am and 12.00am (midnight) with extended 24-hour trading considered on a trial period basis. Whilst the overall hours sought are consistent with the DCP on a trial period basis, the proposal is seeking variation for the permanent base hours until 2.00am.
- 42. The applicant states consideration should be given to the proposed variation to the DCP's base hours on the basis of the previously approved hours under development consent D/2010/267/F, and the previous use as the State Theatre Screening Room Bar (Function Bar) which occupies the lower ground floor that is proposed to be converted into a bar. It is noted this application was approved in 2012.

43. It is noted that the approved trading hours for the function bar on the lower ground floor under development consent D/2010/267/F are between 6.00am and 12.00am (midnight), Monday to Sunday on a permanent basis with a 1-year trial period between 12.00am (midnight) and 2.00am, granted from the date of the issue of the occupation certificate being 16 August 2012 (CF10575OC01). There have been no complaints received by Council in relation to the Function Bar. Also, there was no application for the renewal or continuation of extended trading hours after its expiration period being 16 August 2023.
44. The patron capacity of the approved Function Bar is 115 whereas the proposal seeks to accommodate 300 patrons. The previous Function Bar approval required it to be ancillary to the lower ground theatre and included a stage and screening room which formed part of the use. The proposal seeks to remove the screening room to allow for the floor area to be used as part of the pub. The proposal will provide a new stage bar area for entertainment.
45. Considering the differences in scale between the two uses, it is considered the previous use does not provide sufficient justification to grant approval for permanent extended hours as requested.
46. The following considerations have been given to the recommended hours of operation:
 - (a) Council's Licensed Premises Unit raise no objection subject to conditions and to any extended hours after 12.00am midnight being subject to a trial period.
 - (b) NSW Police provided no response and is taken to be no objection to the proposal.
 - (c) The accompanying plan of management includes the following:
 - (i) All staff involved in the sale or service of alcohol must have completed an approved Responsible Service of Alcohol course and be in possession of their valid RSA certificate.
 - (ii) Limiting amplified music to play at maximum 105dB(A)L10, installing acoustic seals around the perimeter of the entry door and ensuring the entry door remain closed during the operation of the bar. Adopting the recommendations of the Acoustic report and committing to comply with Council's requirements and the Protection of the Environment (Operations) Act 1997.
 - (iii) Maintaining a complaint management and incident register which will maintain a record of all incidents associated with the Bar including details of those instances / those involved.
 - (iv) Security being provided at a ratio of 1 guard per 100 patrons from 6.00pm until close on Thursday - Sundays. Security will be appropriately licensed, and will be responsible for monitoring patron capacity, queuing and patron management.
 - (v) Installation of CCTV surveillance cameras - installed, operated and maintained with particular coverage of all principal entrance/s and exists and all areas occupied by the public (excluding toilets).

- (vi) Criteria for monitoring drugs and drink spiking including the adoption of crime scene preservation guidelines.
- (vii) Provision of a detailed site plan and training to assist in the need for evacuation / emergency closing.
- (d) The application is accompanied by an acoustic report, prepared by ADP Consulting Engineering. The report identified the nearest sensitive receivers as (see Figure 25 below):
 - (i) R1: Multi-level mixed use building to the north, opposite Market Street,
 - (ii) R2: Multi-level commercial development to the east
 - (iii) R3: Multi-level mixed-use development to the south and
 - (iv) R4: Commercial development directly to the west.

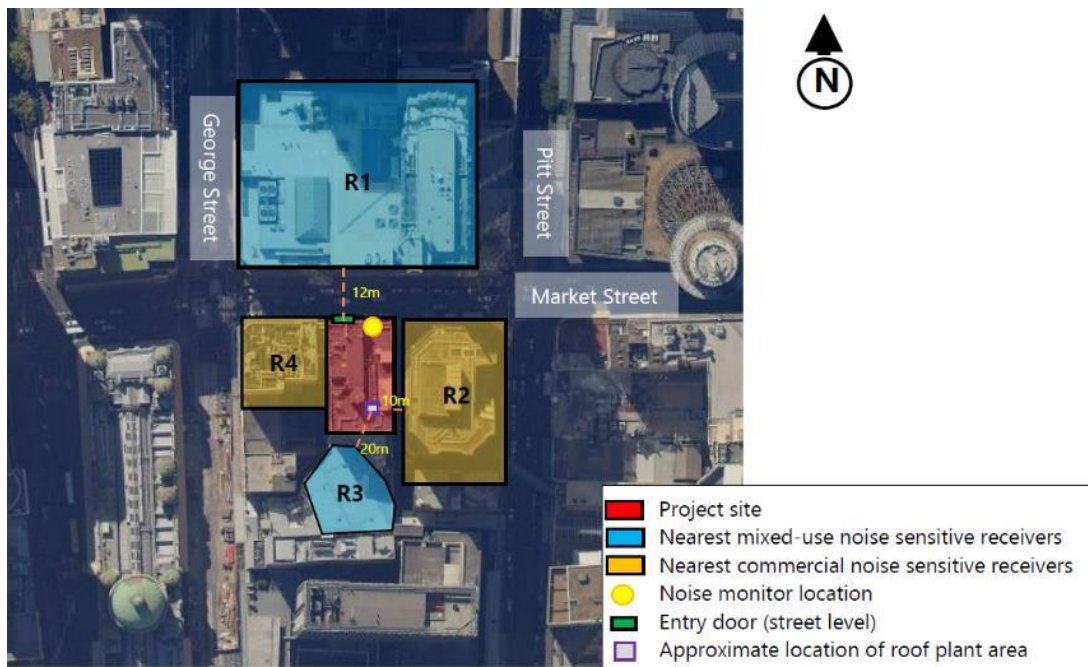


Figure 25: Extract from acoustic assessment of nearby noise receivers

- (e) The nearest receiver to the entry door of the proposed bar is the Swissotel hotel which is 12 metres to the north of the site. The acoustic assessment provides the following recommendations for managing potential noise impacts:
 - (i) That the full capacity of the bar should not exceed 300 patrons.
 - (ii) Amplified music to play as a maximum of 105dB(A)L10.
 - (iii) Install acoustic seals around the perimeter of the entry door.
 - (iv) Entry door to remain closed during the operation of the Bar (except of ingress/egress).

- (f) The Acoustic Report concludes the premises can comply with relevant noise criteria, responsible management of music and patron noise to protect the surrounding amenity and nearby sensitive noise receivers subject to compliance with the recommendations above.
 - (g) The Plan of Management and Acoustic Report have been peer reviewed by the City's Licensed Premises and Environmental Health Units. The documents are considered satisfactory, and conditions are recommended requiring the use to operate in accordance with these documents.
47. With consideration to the above, it is recommended the proposal be supported with permanent base hours of operation between 10.00am and 12.00am (midnight), Monday to Sunday and that the extended operating hours between 12.00am (midnight) and 3.00am be supported on a 2-year trial period commencing from the date of issue of an Occupation Certificate.

Land Use - Functions

48. The proposal is accompanied by a Statement of Environmental Effects and Plan of Management. These documents state the proposed bar will be for the primary purpose of alcohol consumption but will be available for private functions. No further information is provided in relation to what 'private functions' would entail.
49. The Sydney LEP 2012 defines "Function Centres" as a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.
50. Given that insufficient information has been provided to understand how the use may operate for the purpose of functions a condition is recommended requiring the plan of management be revised to address this issue. The condition is not intended to prohibit the use from allowing the reservation of tables or part of the space for the purposes of private events but is intended to clarify that the proposal has been assessed for the purposes of a pub and restaurant that offers entertainment intended to operate under a hotel licence.

Consultation

Internal Referrals

51. The application has been referred to/discussed with Councils Environmental Health, Licensed Premises, Heritage and Waste Management Unit.
52. The relevant comments are discussed elsewhere in this report and relevant conditions are included in Attachment A.

External Referrals

NSW Heritage Council

53. Pursuant to the Heritage Act 1977, the application was referred to NSW Heritage Council on 7 December 2023 for concurrence.

54. As detailed in the Heritage Act 1977 section above, the site-specific exemptions are applicable to the proposal and therefore the application is not classified as integrated development.

Advertising and Notification

55. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 7 November 2023 and 6 December 2023. A total of 234 properties were notified and no submissions were received.

Financial Contributions

Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2000

56. The cost of development is in excess of \$250,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan.
57. A condition relating to this levy is recommended and requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

58. The site is located within the Central Sydney affordable housing contribution area. As the development is not creating more than 100sqm of gross floor area and is not for the change of use to residential or visitor/tourist accommodation, the development is not subject to a Section 7.13 contribution.

Relevant Legislation

59. Environmental Planning and Assessment Act 1979.
60. Heritage Act 1977.

Conclusion

61. The proposed development, subject to recommended conditions, is consistent with the objectives of the SP5 Metropolitan Centre zone.
62. The development is located within the Late Night Management area. The recommended hours of operation are consistent with the planning controls, subject to any extended hours after 12.00am midnight being on a trial period and the imposition of management and operational controls to protect nearby amenity. The development, subject to the recommended conditions is able to operate without unreasonable disturbance or nuisance to surrounding properties.

63. The site is a State Heritage Item. Heritage NSW have advised that the proposed works and use fall within the site specific exemptions. The proposal is located in areas that have been significantly modified and hold little significance in terms of spatial quality, configuration and remaining fabric. The proposal will reactivate part of the building and provide a meaningful heritage interpretation of the space. Appropriate conditions are recommended for imposition to ensure the development to protect the heritage significance of the site.
64. The proposed development has been assessed as being consistent with the applicable planning controls and is supported subject to the imposition of conditions in Attachment A.

ANDREW THOMAS

Executive Manager Planning and Development

Isaac Toledano, Planner

Attachment A

Recommended Conditions of Consent
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Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2023/984 dated 27 October 2023 and the following drawings prepared by Techne:

Drawing Number	Drawing Name	Date
DA00 (A)	Cover Page & Location Plan	29 January 2024
DA01	Basement Existing Conditions	12 October 2023
DA02	Lower Ground Existing Conditions	12 October 2023
DA10 (A)	Basement Proposed Conditions + RCP	29 January 2024
DA11 (A)	Proposed Ground, Lower Ground Plans & RCPs	29 January 2024
DA12	Ground Proposed Conditions + RCP	12 October 2023
DA15	Proposed Elevations + Sections	19 January 2024
DA20	Lower Ground Heritage Plan	12 October 2023
DA30	Finishes Palette	12 October 2023

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the drawings will prevail.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(2) SECTION 7.12 CONTRIBUTIONS PAYABLE – SUBMITTED AND VERIFIED PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

A monetary contribution is payable to the City of Sydney pursuant to Section 7.12 of the *Environmental Planning and Assessment Act 1979* and the *Central Sydney Development Contributions Plan 2020*.

The Section 7.12 levy is determined by the development cost, as per the following table:

Development cost *	Levy
* Refer to Section 2.3 of the <i>Central Sydney Development Contributions Plan 2020</i> for information on determining the development cost.	
Up to and including \$250,000	NIL
More than \$250,000, up to and including \$500,000	1%
More than \$500,000, up to and including \$1,000,000	2%
More than \$1,000,000	3%

The Section 7.12 levy is payable to the City of Sydney in accordance with the following:

- (a) Prior to a Construction Certificate being issued, evidence must be provided of Council's written verification of the amount of the contribution as required in (b) below, and that the levy has been paid to the Council in accordance with this condition. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Direct debit, personal or company cheques will not be accepted.
- (b) The contribution must not be paid to the City of Sydney until it is accompanied by separate written verification by the City of Sydney of the specific amount payable. In order to obtain such verification, one of the following must be submitted:

- (i) **For development between \$250,000 and \$3,000,000** – the City of Sydney *Cost Summary Report* must be completed by a suitably qualified person such as the Project Architect or Project Manager and submitted to the City of Sydney together with the copies of the plans the subject of the application for the Construction Certificate. An electronic copy of the *Cost Summary Report* is available from the City's website at www.cityofsydney.nsw.gov.au; or
- (ii) **For development more than \$3,000,000** – The City of Sydney *Registered Quantity Surveyor's Detailed Cost Report* must be completed by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification and submitted to the City of Sydney together with the copies of the plans the subject of the application for the Construction Certificate. An electronic copy of the *Registered Quantity Surveyor's Detailed Cost Report* is available from the City's website at www.cityofsydney.nsw.gov.au.
- (c) The Council will consider the documentation submitted under subclause (b) and determine the cost of the proposed development having regard to the information submitted and to such other matters as it considers appropriate and will notify the Registered Certifier accordingly.
- (d) The development cost is to be determined in accordance with Section 2.3 of the Central Sydney Development Contributions Plan 2020, located in the version in force at the date of the grant of this consent.

Please contact Council's Planning Administration staff at Planningsystemsadmin@cityofsydney.nsw.gov.au to request a written Statement of Contributions Owing, prior to payment.

Reason

To ensure development contributions are paid to support the provision of public facilities, amenities, and services in Central Sydney.

(3) GENERAL HERITAGE

- (a) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- (b) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- (c) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- (d) New services are to be surface mounted rather than chased-in to existing walls to minimise impact on heritage fabric.
- (e) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.

Reason

To ensure that the development does not result in adverse heritage impacts.

(4) MATERIALS FOR MAKING GOOD

New materials for making good and repairs, are to match the existing in terms of colours, finishes, sizes, profile and properties.

Reason

To ensure appropriate materials and finishes are used.

(5) UNVEILED SIGNIFICANT FABRIC AND FINISHES

Early or significant fabric or finishes uncovered during work must be retained, protected, and properly incorporated into bar design.

In case some fabric or finishes are not able to be retained, they must be recorded by photographs and measured drawings and be properly sampled under the guidance of the project heritage consultant. The project heritage consultant must supervise and guide the demolition and stripping out work. Final resolutions to unveiled significant fabric and finishes, including their protection methodologies must be prepared and submitted to Council's Area Planning Manager for approval prior to the commencement of any new building work. **Reason**

To ensure the protection of significant fabric or finishes uncovered during work.

(6) SIGNS - SEPARATE DA REQUIRED

A separate development application for any signs (other than exempt or complying signs) must be submitted to and approved by Council prior to the erection or display of any such signs.

Reason

To require separate consent to be obtained for any additional signs.

(7) WASTE AND RECYCLING MANAGEMENT - GENERAL

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to promote the efficient storage, separation, collection and handling of waste to maximise resources recovery.

Reason

To ensure that waste and recycling is appropriately managed.

(8) COMPLIANCE WITH APPROVAL GRANTED UNDER THE HERITAGE ACT 1977

The development must be carried out in accordance with the site specific Section 57 exemptions.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(9) SIGNS/GOODS IN THE PUBLIC WAY

No signs or goods are to be placed on the footway or roadway adjacent to the property.

Reason

To ensure the public domain is kept free from physical obstructions.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

(10) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES

- (a) All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by ADP, dated 12 October 2023, ref Project No-2215- Rev-02, titled State Theatre Screening Room Bar and Event Space Development Application- Acoustic Report, Council Ref 2023/618752 must be implemented in the development prior to the commencement of its use.
- (b) Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report in (a) above, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant* (see definition below). This work will be to the satisfaction of the Registered Certifier.
- (c) Prior to the issue of any Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a written Acoustic Verification Report to the satisfaction of the Principal Certifier that the development complies with the requirements set out in the Report and in (a) and (b) above.

Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm).

- (d) All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.

Reason

To ensure all parties are aware of the supporting documentation that applies to the development.

(11) HERITAGE INTERPRETATION PLAN

- (a) An interpretation plan is to be developed on the basis of the Heritage Interpretation Strategy. The plan must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued. The plan is to be prepared by a suitably qualified and experienced heritage practitioner or historian.
- (b) The interpretation plan must detail how the themes and interpretive elements identified in the Strategy are designed.
- (c) The plan must specify the location, type, making materials and contents of the interpretation device being proposed.

- (d) Prior to an occupation certificate being issued the approved interpretation plan must be implemented to the satisfaction of Council's Area Planning Manager.

Reason

To ensure that the heritage of the site is appropriately interpreted and incorporated into the development.

(12) PHOTOGRAPHIC ARCHIVAL DOCUMENTATION (MINOR WORKS)

Prior to a Construction Certificate being issued, an archival photographic recording of the areas/spaces affected by the proposal is to be prepared to Council's satisfaction prior to the CC. A second phase of recoding of the spaces, after the existing fitouts are stripped out and before new building works, is to be prepared and submitted to Council's satisfaction prior to the OC. The recording is to be in digital form and prepared in accordance with the NSW Heritage Division guidelines titled "Photographic Recording of Heritage Items using Film or Digital Capture". One copy of the record is to be submitted to Council to be lodged with Council's Archives.

The form of the recording is to be as follows:

- (a) The Development Application number must be noted on the submitted information.
- (b) Include a summary report detailing the project description, date and authorship of the photographic record, method of documentation and limitations of the photographic record.
- (c) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.
- (d) The report is to be submitted on a USB or digital file transfer in PDF/A format, (created directly from the digital original), with the digital catalogue of images containing the following data for each location, image subject/description and date.
- (e) The electronic images are to be taken with a minimum 8 megapixel camera, saved as JPEG TIFF or PDF files with a size of approximately 4-6MB, and cross referenced to the digital catalogue sheets and base plans. Choose only images that are necessary to document the process and avoid duplicate images.

Reason

To ensure appropriate archival documentation of the building.

(13) BUILDING WORKS TO COMPLY WITH NATIONAL CONSTRUCTION CODE – HERITAGE BUILDINGS OR BUILDINGS WITHIN CONSERVATION AREA

Any building works required to ensure compliance with the NCC (previously known as BCA) or new building standards not specified in the submitted/approved plan must not damage existing fabric and building features. If such upgrading works have impact or potentially have impact on existing fabric and features, details of the works must be submitted and approved by Council's Area Planning Manager prior to issue of any Construction Certificate.

Reason

To ensure an appropriate heritage outcome.

(14) CONSTRUCTION AND FITOUT OF FOOD PREMISES

The construction, fit-out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and AS 4674 – 2004 Design, Construction and Fit-out of Food Premises.

Note: Copies of AS 4674-2004 may be obtained from the Standards Australia Customer Service on telephone 1300 65 46 46 or by visiting the website www.standards.com.au.

Copies of the Food Standards Code (Australia) may be obtained by contacting the Food Standards Australia and New Zealand Authority on telephone (02) 6271 2222, email info@foodstandards.gov.au or by visiting the website www.foodstandards.gov.au

Reason

To ensure the construction, fitout and finishes of the food premises comply with relevant standards.

(15) COOKING EQUIPMENT – NO MECHANICAL VENTILATION

- (a) Cooking must not commence until an air handling system, which complies with the requirements of Part F4.12 of the *National Construction Code (previously known as Building Code of Australia)* and *AS1668.2 - The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings* is approved, installed and operational.

Cooking is defined as the process of changing any food from raw to cooked by applying heat, and also includes the preparation of food using heat.

- (b) Use of a microwave, a sandwich press, a toaster or similar is permitted in accordance with the exemptions contained within *AS1668.2 - The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings*.
- (c) The use of such equipment in (b) of this condition must not generate heated air, smoke, fumes, steam or grease vapours that is deemed by an enforcement and/or authorised officer of Council to be:

- (i) Causing a nuisance to persons within or nearby the premises and/or building;
- (ii) Causing air pollution as defined under the *Protection of the Environment Operations Act 1997* or,
- (iii) Not effectively removed from the food premises in accordance with the requirements of the *Australia New Zealand Food Standards Code*.

Reason

To ensure the cooking equipment complies with relevant standards and does not cause a nuisance or air pollution affecting neighbouring properties.

(16) PERSONAL LOCKERS

Clothing lockers or change rooms for staff must be provided in the premises or a dedicated, separate and isolated space for personal items must be provided in a separate location to the food handling and storage areas, in accordance with *AS4674 - Design, Construction and Fit out of Food Premises*.

Reason

To ensure appropriate personal lockers are provided for staff.

(17) WASTE STORAGE AREA

(a) To ensure the adequate storage and collection of waste from the food premises, all garbage and recyclable materials emanating from the premises must be stored in a designated waste storage area. The waste storage area must be designed and constructed in accordance with *AS 4674 – Design, Construction and Fit-out of Food Premises, Australia New Zealand Food Standards Code 3.2.3 – Food Premises and Equipment* and comply with the *Council Policy for Waste Minimisation in New Developments*, and must be:

- (i) Provided with a hose tap connected to the water supply.
- (ii) Paved with impervious floor materials.
- (iii) Coved at the intersection of the floor and walls.
- (iv) Graded and drained to a waste disposal system in accordance with the requirements of the relevant regulatory authority (Sydney Water).
- (v) Adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour or air pollution as defined by the *Protection of the Environment Operations Act 1997* or a nuisance.
- (vi) Provided with the appropriate number and size of bins adequate for the storage of waste generated by the business, including recycling.
- (vii) Appropriately managed to Council's satisfaction so that it does not attract pests or create litter.

Note: Fitted with appropriate interventions to meet fire safety standards in accordance with the *Building Code of Australia*.

- (b) Detailed plans and specifications for the construction of the waste storage area must be submitted to and approved by the Registered Certifier prior to the issue of the Construction Certificate and must be constructed in accordance with such plans and specifications prior to the issuance of any Occupation Certificate.

Reason

To ensure the adequate storage and collection of waste from the food premises.

(18) COOLROOMS

Coolrooms, refrigerated chambers and strong-rooms must be constructed in accordance with G 1.2 of the *National Construction Code (previously known as Building Code of Australia)*, and:(a) The floor of the coolroom must be graded to the door and a floor trapped waste outlet must be located outside the coolroom as near as possible to the door opening.

- (b) All proposed shelving in the coolroom must be free-standing, constructed of galvanised steel angle section or other approved material with the lowest shelf at least 150mm clear of the floor.
- (c) The floor of the coolroom must be constructed of impermeable concrete or coated, topped or otherwise finished with an impervious material to a smooth even surface and coved at the intersections with the walls to a minimum radius of 25mm.
- (d) Must be fitted with a door that can be opened at all times from inside without a key.
- (e) An approved audible alarm device must be located outside the coolroom(s) but controllable only from within the coolroom(s) and must be able to achieve a sound pressure level outside the chamber or coolroom(s) of 90 dB(A) when measured 3 metres from a sounding device.

Reason

To ensure coolrooms are constructed appropriately in accordance with relevant standards.

(19) GREASE AND LIQUID WASTE TRAPS

- (a) A grease trap as required by Sydney Water must be installed in accordance with the relevant Sydney Water requirements.
- (b) Prior to the issue of a Construction Certificate, plans and details are to be submitted to and approved by the Registered Certifier showing the following:
- (c) The grease trap is not located in any kitchen, food preparation or food storage areas;
 - (i) The grease trap is constructed and installed in a location which allows it to be easily and effectively cleaned and emptied; and

- (ii) The grease trap is constructed and located as not to encourage the harbourage of pests and be effectively pest proofed.

Note: In-sink and in-floor waste bucket traps must be installed in all sinks and floor wastes in all commercial kitchens and food preparation areas. The installation of any grease traps and treatment equipment must be carried out by a suitably qualified and licensed plumber in accordance with the *Plumbing Code of Australia*.

Reason

To ensure grease and liquid waste traps are installed in accordance with relevant requirements.

(20) NATIONAL CONSTRUCTION CODE COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF THE BUILDING IS REQUIRED

Pursuant to Section 64 of the Environmental Planning and Assessment Regulation 2021, the basement, lower ground and ground levels of the building must comply with the Building Code of Australia through the prescribed compliance pathways addressing the following matter prior to the issuing of a construction certificate:

- (a) Fire resistance and stability – Part C2;
- (b) Compartmentation and separation - Part C3;
- (c) Protection of openings - Part C4;
- (d) Provision of escape - Part D2;
- (e) Construction of exits - Part D3;
- (f) Access for people with disability - Part D4;

Note: Compliance with the access provisions of Part D4 may necessitate design modifications prior to a Construction Certificate being issued.

- (g) Fire fighting equipment - Part E1;
- (h) Smoke hazard management (Performance Requirements) - Part E2;
- (i) Visibility in an emergency, exit signs and warning systems - Part E4;
- (j) Sanitary and other facilities - Part F4;

Note: For restaurants, cafes, bars and the like, sanitary facilities must be provided for patrons if the total number of persons (patrons and staff) accommodated including the number of persons (seats) for any future proposed footway dining, is more than 20.

- (k) Room heights - Part F5;
- (l) Light and ventilation - Part F6;

Reason

To ensure the works comply with relevant regulations.

(21) STRUCTURAL CERTIFICATION FOR EXISTING BUILDING – ALTERATIONS AND ADDITIONS

A qualified practising registered structural engineer must provide structural certification to the Registered Certifier verifying that the existing structure can adequately support the proposed new loads and the structural design complies with the Structural Provisions of the *Building Code of Australia* prior to a Construction Certificate being issued. The proposed additional loads and/or alterations must not cause a decrease in the existing structural performance of the building including its performance under earthquake actions (AS1170.4).

Reason

To ensure the existing structure can support the new loads.

BEFORE BUILDING WORK COMMENCES

DURING BUILDING WORK

(22) USE OF HERITAGE CONSULTANT

- (a) A heritage consultant experienced in heritage restoration and renovation works is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The heritage consultant is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The heritage consultant is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of heritage issues throughout the project. Evidence and details of the above commission on the above terms are to be submitted to Council's Area Coordinator Planning Assessments / Area Planning Manager prior to commencement of work on site.
- (b) The heritage consultant must sign off the completed project and submit a final report to Council's Area Coordinator Planning Assessments / Area Planning Manager specifying how the heritage conditions are satisfied prior to the issue of any Occupation Certificate or the commencement of the use, whichever is earlier.

Reason

To ensure that the implementation of the approved development is carried out in a manner that does not have adverse heritage impacts.

(23) HOURS OF WORK AND NOISE – CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including demolition, excavation and building work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.00am and 7.00pm on Mondays to Fridays, inclusive, and 7.00am and 5.00pm on Saturdays, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the *City of Sydney Code of Practice for Construction Hours/Noise 1992* and Australian Standard 2436-2010 *Guide to Noise Control on Construction, Maintenance and Demolition Sites*.
- (c) Notwithstanding the above, the use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on-street use of mobile cranes outside of above hours can occur, subject to a separate application being submitted to and approved by Council under Section 68 of

the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Team, prior to works proceeding.

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Reason

To protect the amenity of the surrounding area.

(24) NO OBSTRUCTION OF PUBLIC WAY

Unless otherwise approved by Council, the public way must not be obstructed by any materials, vehicles, waste receptacles, skip-bins or the like. Non-compliance with this requirement may result in the issue of a notice by Council to stop all work on the site.

Reason

To protect the amenity of the public domain.

(25) ASBESTOS REMOVAL WORKS

- (a) All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Safework NSW, holding either a Friable (Class A) or a Non-Friable (Class B) Asbestos Removal Licence which ever applies.

A copy of the relevant licence must be made available to any authorised Council officer on request within 24 hours.

- (b) Five days prior to the commencement of licensed asbestos removal, Safework NSW must be formally notified of the works. All adjoining properties and those opposite the development must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification must identify the licensed asbestos removal contractor and include a contact person for the site together with telephone number and email address.
- (c) All work must be carried out in accordance with the *Work Health and Safety Regulation 2017* and the NSW Government and SafeWork NSW document entitled *How to manage and control asbestos in the work place: Code of Practice (Safework NSW) December 2011* and the *City of Sydney Managing Asbestos Policy dated 21 October 2013 and associated guidelines*.
- (d) The asbestos removalist must use signs and barricades to clearly indicate the area where the asbestos removal work is being performed. Signs must

be placed in positions so that people are aware of where the asbestos removal work area is and should remain in place until removal is completed and clearance to reoccupy has been granted. Responsibilities for the security and safety of the asbestos removal site and removal must be specified in the asbestos removal control plan (where required). This includes inaccessible areas that are likely to contain asbestos.

- (e) Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs must be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs must be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs must be in accordance with AS 1319 -1994 *Safety Signs for the Occupational Environment* for size, illumination, location and maintenance.
- (f) Asbestos waste must only be transported and disposed of at an EPA licensed waste facility.
- (g) No asbestos products are to be reused on the site (i.e. packing pieces, spacers, formwork or fill etc).
- (h) No asbestos laden skips or bins are to be left in any public place without the written approval of Council.
- (i) A site notice board must be located at the main entrance to the site in a prominent position and must have minimum dimensions of 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size.

The site notice board must include the following:

- (i) contact person for the site;
- (ii) telephone and facsimile numbers and email address; and
- (iii) site activities and time frames.

Reason

To ensure that the handling and removal of asbestos from the site is appropriately managed.

(26) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site, where possible.
- (b) If, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the

days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.

- (d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate application under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993 must be submitted to and approved by Council.

Reason

To protect the amenity of the public domain.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

(27) NO MECHANICAL VENTILATION – APPROVED EQUIPMENT LIST

Prior to the issue of an Occupation Certificate, the food business must submit to and seek written approval of Council's Health and Building Unit, a list detailing each item of cooking and food heating equipment to be used within the premises together with the corresponding units of energy for each piece of equipment in accordance with *AS1668.2 - The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings* (To be known as the Approved List). The following must also be complied with:

- (a) The Approved List must be kept on the premises and be made available to any authorised officer of Council upon request.
- (b) The use of any cooking or heating appliance not present on the Approved List is prohibited.
- (c) Amendments to the Approved List can be made subject to a written request to and approval from Council's Health and Building Unit.

Reason

To ensure an approved equipment list is established for the food business.

(28) NOTIFICATION OF CONDUCT OF FOOD BUSINESS

- (a) The use must not commence until the food business has notified Council with their food business details in accordance with the *Food Act 2003* and *The Australia New Zealand Food Standards Code – 3.2.2 – Food Safety Practices and General Requirements, Clause 4*.
- (b) An Occupation Certificate must not be issued until such notification has been received by Council in accordance with Clause (a) of this condition.

Note: Registration forms are available on Council's website www.cityofsydney.nsw.gov.au.

Reason

To ensure Council is notified of food business details.

(29) WASTE AND RECYCLING COLLECTION CONTRACT

Prior to any Occupation Certificate being issued, the building owner must ensure that there is a contract with a licensed contractor for the removal of **all waste**. Waste is to be stored and collected from within the curtilage of the site at all times.

Reason

To ensure that waste and recycling is appropriately managed.

OCCUPATION AND ONGOING USE

(30) TRADING HOURS/HOURS OF OPERATION - SENSITIVE USES

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 10.00am and 12.00am (midnight), Monday to Sunday.
- (b) Notwithstanding (a) above, the use may operate between 12.00am (midnight) and 3.00am for a trial period of 2-year from the date of the issue of the Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
- (c) Should the operator seek to continue the extended operating hours outlined in (b) above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

Reason

To ensure the premises operates within the approved hours of operation.

(31) CESSATION OF SERVICE

The premises may be open for business only between the operating hours in condition 31 above. The operator must cease providing food/alcohol/entertainment at the premises 15 minutes before the required closing time.

Reason

To ensure the development operates within the approved hours of operation.

(32) MAXIMUM CAPACITY OF PERSONS

- (a) The maximum number of patrons permitted in the premises at any one time is 300 persons.
- (b) The capacity for the lower ground floor must not exceed the maximum number at any given time.
- (c) The manager/licensee is responsible for ensuring the number of persons in the premises does not exceed that specified above.
- (d) A sign in letters not less than 25mm in height must be fixed at the main entry point to the premises alongside the Licensee's name stating the maximum number of persons, as specified in the development consent, that are permitted in the building. This is to be done with minimal penetrations and impact on heritage fabric. Details are to be provided to the satisfaction of the

Council's Area Planning Manager prior to issue of a Construction Certificate and the Principal Certifier is to confirm compliance prior to the issue of an Occupation Certificate.

Note: Clause 73 of the *Environmental Planning and Assessment Regulation 2021* requires a sign specifying maximum number of persons permitted in the building to be displayed in a prominent position for the following types of premises:

- (i) entertainment venue,
- (ii) function centre,
- (iii) pub,
- (iv) registered club,
- (v) restaurant.

Reason

To ensure the premises can safely accommodate patrons, staff and performers and safeguard the amenity of the surrounding neighbourhood.

(33) NO SPRUIKING NOISE

No persons (such as those commonly known as spruikers) or recordings or other devices which have the effect of spruiking are to be located on Council owned property. Furthermore, the sound level of any spruiking generated within privately owned land must not be audible on any adjacent property with a shared boundary.

Reason

To safeguard the amenity of the surrounding neighbourhood.

(34) NO SPEAKERS OR MUSIC OUTSIDE

Speakers and/or noise amplification equipment must not be installed and music must not be played in any of the outdoor areas associated with the premises including the public domain. Speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas associated with the premises.

Reason

To safeguard the amenity of the surrounding neighbourhood.

(35) PLAN OF MANAGEMENT

The Plan of Management, prepared by Planning Lab dated 23 October 2023 (TRIM Ref. 2024/122605) has not been approved. A revised Plan of Management must be submitted to Council for approval prior to the issue of any Occupation Certificate. The revised Plan of Management is to address and detail how the premises will host events / functions.

The use must always be operated / managed in accordance with the Plan of Management approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

Reason

To ensure all parties are aware of the approved supporting documentation that applies to the development.

(36) SURVEILLANCE CAMERAS

- (a) CCTV surveillance cameras must be strategically installed, operated and maintained throughout the premises with particular coverage to:
 - (i) principal entrance/s and exits;
 - (ii) all areas within the premise occupied by the public (excluding toilets);
 - (iii) staircases in multilevel premises; and
 - (iv) the area within a 10m radius external to the public entrance(s) to the premise.
- (b) Suitable and clearly visible signage must be displayed at the principal entrance(s) to the premise and in a prominent position on each floor accessible to the public, in lettering not less than 50mm in height with the words "Closed Circuit Television in use on these premises".
- (c) All CCTV recording equipment and cameras must be of high grade digital quality capable of establishing the population and identification of patrons, offenders and incidents within the depth of field view of the cameras. In this respect each surveillance camera must be capable of recording a minimum rate of 10 frames per second and at high resolution.
- (d) CCTV recording discs or hard drive recordings must be retained for 28 days before being re-used, destroyed or deleted. Time and date must be auto recorded on the disc or hard drive. The CCTV recording equipment must be capable of reproducing a CD, DVD, USB or other appropriate digital copy of recorded footage on demand of Council or Police Officers either immediately or within 12 hours of the request being made. Stored digital copies of CCTV recordings must be handed to Council, Police Officer or Special Inspectors as required.
- (e) All CCTV recording devices and cameras must be checked daily to ensure the equipment is operating correctly. The Licensee must record this daily checking activity in the security/incident register book that meets the standards required by the Licensing Police and Council. If it is discovered at any time that the equipment is not in full operating order all reasonable steps must be taken to repair the system as soon as practicable. Where the system will not be functioning in full operating order for a period of longer than 24 hours the manager/licensee is to notify the relevant Local Area Commander of the NSW Police.

- (f) All CCTV recording devices and cameras must be operated at all times when the premises are open to the public and, where premises do not operate 24 hours a day, continuously for at least 1 hour prior to opening and closing times of the premises.
- (g) The CCTV recording device must be secured within the premises and only be accessible to senior management personnel so as to maintain the integrity of the recorded footage. When the premises is operating there must be at least one staff member present at the premises who is authorised to access the CCTV system and able to immediately review recordings and produce copies.
- (h) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

Reason

To ensure the safety and security of staff, patrons and the surrounding neighbourhood is adequately monitored and maintained.

(37) COPIES OF CONSENTS AND MANAGEMENT PLANS

A full and current copy of all current development consents for the operation of the licensed premises, and the Plan of Management must be kept on-site and made available to Police or Council Officers, or Special Investigator upon request.

Reason

To ensure all relevant approved documents are available on-site upon request.

(38) REMOVAL OF GLASS

Patrons must be prevented from removing glasses, opened cans, bottles or alcohol from the premises (except from any approved bottle shop area) or approved outdoor dining area included in the boundaries of the licensed premises.

Reason

To reduce waste generation within the public domain and to safeguard the amenity of the surrounding neighbourhood.

(39) NOISE FROM GLASS REMOVAL

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied / transferred inside of the building on the premises and removed in containers.

Reason

To safeguard the amenity of the surrounding neighbourhood.

(40) NEIGHBOURHOOD AMENITY

- (a) Signs must be placed in clearly visible positions within the licensed premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. The signage must be in bold letters not less than 25mm in height on a contrasting background.
- (b) The management/licensee must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.

Reason

To safeguard the amenity of the surrounding neighbourhood.

(41) SECURITY AND QUEUING – CATEGORY A LICENSED PREMISES

- (a) Security guards are to be provided at the premises in accordance with the approved plan of management..
- (b) Security personnel must remain at the premises for at least 30 minutes after closing and must assist in ensuring that patrons leave quietly.
- (c) Management staff at the venue must ensure that a clear footway width of 2 metres is maintained at all times along all footpaths immediately adjoining the premises. Patrons waiting to enter the premises must queue along the immediate frontage of the premises. The queue must not obstruct any fire exit of any building or entrance to any other premises.

Reason

To ensure the safety and security of staff, patrons and the surrounding neighbourhood is adequately monitored and maintained.

(42) INCIDENTS – RECORDING AND NOTIFICATION

The manager/licensee must ensure that all incidents involving staff members (including security personnel) are recorded in the incident register maintained on site, including incidents involving physical contact between staff and patrons, physical restraint of patrons and/or the ejection of patrons from the premises.

Reason

To safeguard the amenity of staff, patrons and the surrounding neighbourhood.

(43) NOISE - ENTERTAINMENT

- (a) The $L_{Aeq, 15 \text{ minute}}$ noise level from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) by more than 5dB between 7.00am and 12.00 midnight when assessed at the boundary of any residential accommodation or tourist and visitor accommodation.

- (b) The $L_{Aeq, 15 \text{ minute}}$ noise level from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) between 12.00 midnight and 7.00am when assessed at the boundary of any residential accommodation or tourist and visitor accommodation.
- (c) Notwithstanding (a) above, the $L_{Aeq, 15 \text{ minute}}$ noise level from the use must not exceed the greater of the following levels between 7am and 12 midnight inside any habitable room of a residential accommodation or tourist and visitor accommodation, or at any time in an affected commercial premises:
 - (i) The existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive). Or,
 - (ii) If the $L_{Z90, 15 \text{ minute}}$ background level is below the hearing threshold curve (Tf - Table 1 of ISO 226 : 2003) in an above octave band, the lowest audible sound level (L_p) of the Tf curve in that octave band shall become that octave's $L_{Zeq 15 \text{ minute}}$ noise criteria level.
- (d) Notwithstanding (a) above, the $L_{A1 15 \text{ minute}}$ noise level from the use must not exceed the greater of the following sound pressure levels inside any habitable room between 12 midnight and 7am inside any habitable room of an affected residential accommodation or tourist and visitor accommodation:
 - (i) The existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) minus 10 dB in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) inside a habitable room of an affected residential accommodation or tourist and visitor accommodation. Or,
 - (ii) If the $L_{Z90, 15 \text{ minute}}$ minus 10 dB level is below the hearing threshold curve (Tf - Table 1 of ISO 226 : 2003) in an above octave band, the lowest audible sound level (L_p) of the Tf curve in that octave band shall become that octave's $L_{Z1 15 \text{ minute}}$ noise criteria level.

Note: L_{eq} , L_{01} , and L_{90} , metrics and 'A' (weightings) are as per the definitions in the standard AS1055-20148. 'Z' means unweighted noise. An internal L_{A90} level must be determined in the absence of noise emitted by the use and be sufficiently representative of the receiver in a low noise level quiet state. External L_{A90} levels for planning must be established as per the long-term methodology in Fact Sheet B of the NPfl unless otherwise agreed by the City's Area Planning Manager.

Reason

To protect the acoustic amenity of surrounding properties.

(44) NOISE – COMMERCIAL PLANT / INDUSTRIAL DEVELOPMENT

- (a) Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA [Noise Policy for Industry 2017 \(NPfl\)](#) unless agreed to by the City's Area Planning Manager. Further:

- (i) Background noise monitoring must be carried out in accordance with the long-term methodology in [Fact Sheet B](#) of the NPfl unless otherwise agreed by the City's Area Planning Manager.
 - (ii) Commercial plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment.
- (b) An $L_{Aeq,15 \text{ minute}}$ (noise level) emitted from the development must not exceed the $L_{A90, 15 \text{ minute}}$ (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:
- (i) The noise level and the background noise level must both be measured with all external doors and windows of the affected residence closed.
 - (ii) Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premises.
- (c) Corrections in [Fact Sheet C](#) of the NPfl are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

Reason

To protect the acoustic amenity of surrounding properties.

(45) WASTE/RECYCLING COLLECTION - COMMERCIAL

- (a) Waste storage and the collection of waste and recycling must only occur during the designated zone collection times as outlined in the City's Waste Policy – Local Approvals Policy for Managing Waste in Public Places 2017.
- (b) Waste and recycling bins must not be placed on the street for collection. Services must be conducted within the property boundary or as a wheel-out/wheel-back service.

Reason

To ensure that waste and recycling is appropriately managed.

(46) HOT WATER SERVICE

The capacity of the hot water service must ensure that a constant supply of hot water is provided to the premises at all times for all sinks and basins including hand wash basin/s. The temperature of the hot water provided to the sinks must be in accordance with *AS4674 – Design, Construction and Fit-out of Food Premises* and the *Australia New Zealand Food Standards Code 3.2.2 - Food Safety Practices* and general requirements.

Reason

To ensure the food premises has a constant supply of hot water in accordance with relevant standards.

(47) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

Reason

To ensure the site is authorised for occupation.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf). <https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf> The consent should be read together with the *Conditions of development consent advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means the City of Sydney.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Local planning panel means the City of Sydney Local Planning Panel.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:
the collection of stormwater,
the reuse of stormwater,
the detention of stormwater,
the controlled release of stormwater, and
connections to easements and public stormwater systems.

Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Subdivision certificate means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

Subdivision works certificate means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.

Attachment B

Selected Drawings

22053 - STATE THEATRE BASEMENT BAR REFURBISHMENT

47-51 MARKET STREET,
 SYDNEY NSW 2000

LOCATION MAP



SITE IMAGE OF TENANCY ENTRY



DRAWING INDEX		
001	COVER SHEET & LOGO DRAWING	A1
002	SECTIONAL ELEVATION OF EXTERIOR BAR	B
003	SECTIONAL ELEVATION OF INTERIOR BAR	C
004	SECTIONAL ELEVATION OF EXTERIOR BAR - RAMP	D
005	SECTIONAL ELEVATION OF EXTERIOR BAR - RAMP	E
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008	SECTIONAL ELEVATION OF EXTERIOR BAR - RAMP	H
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010	SECTIONAL ELEVATION OF EXTERIOR BAR - RAMP	J



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THE STATE THEATRE BASEMENT BAR
 PROJECT NO. 22053
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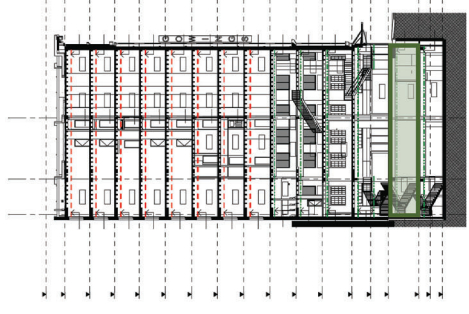
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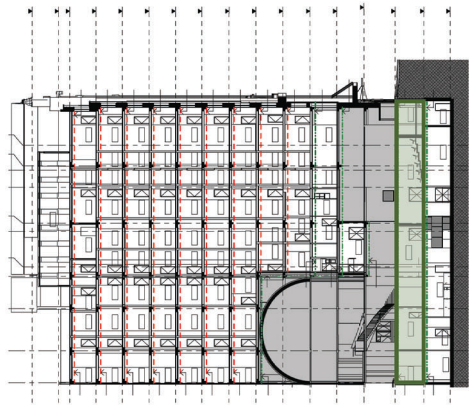
DA00 A

PRIMARY ENTRY TO LOWER GROUND TENANCY



STATE THEATRE BASEMENT BAR LOCATION

SECONDARY ENTRY TO LOWER GROUND TENANCY



SITE PLAN - LOWER GROUND LEVEL

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WALL HATCHES

[Hatch]	WALL TO BE DEMOLISHED
[Hatch]	EXISTING WALL

DEMOLITION LEGEND

[Hatch]	TYPICAL REMOVALS
[Hatch]	EXPOSED AND REMOVED EXISTING GLASS PARTITION
[Hatch]	EXPOSED AND REMOVED EXISTING WALLS
[Hatch]	EXPOSED AND REMOVED EXISTING DOORWAYS
[Hatch]	EXPOSED AND REMOVED EXISTING FLOOR FINISHES
[Hatch]	EXPOSED AND REMOVED EXISTING FLOOR FINISHES TO BE REFINISHED
[Hatch]	EXPOSED AND REMOVED EXISTING FLOOR FINISHES TO BE REFINISHED AND REPAIRED
[Hatch]	EXPOSED AND REMOVED EXISTING FLOOR FINISHES TO BE REFINISHED AND REPAIRED AND REPAIRED
[Hatch]	EXPOSED AND REMOVED EXISTING FLOOR FINISHES TO BE REFINISHED AND REPAIRED AND REPAIRED AND REPAIRED
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ITEMS SHOWN TO BE DEMOLISHED TOTALLY

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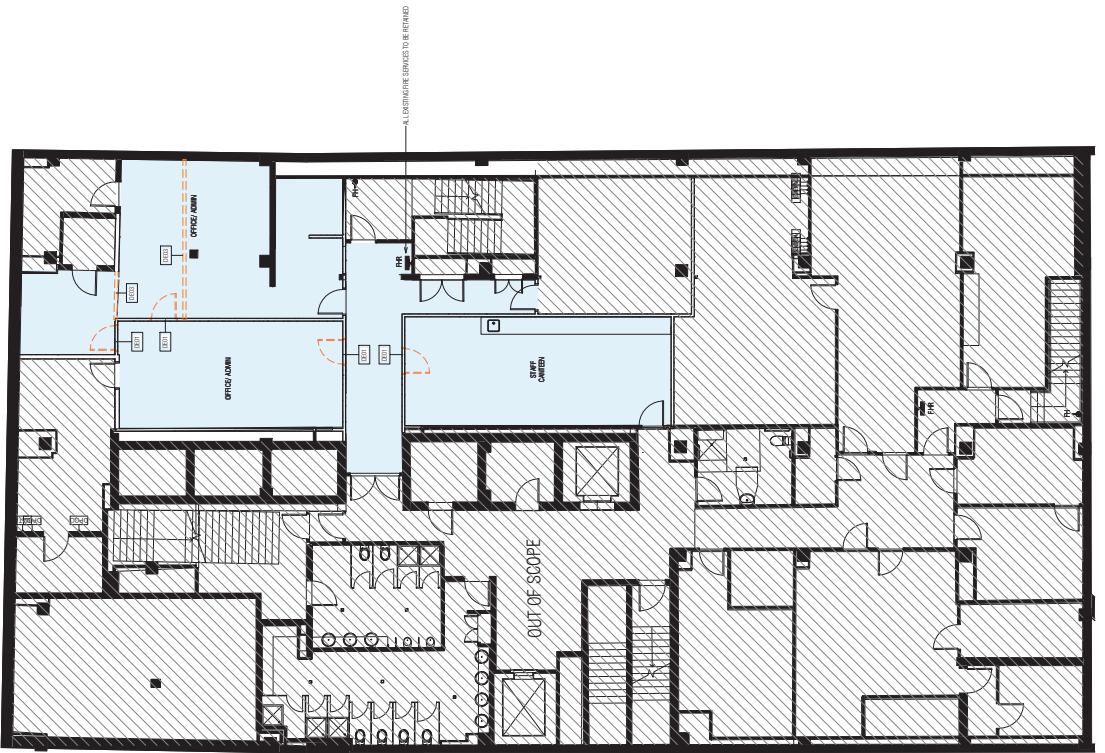
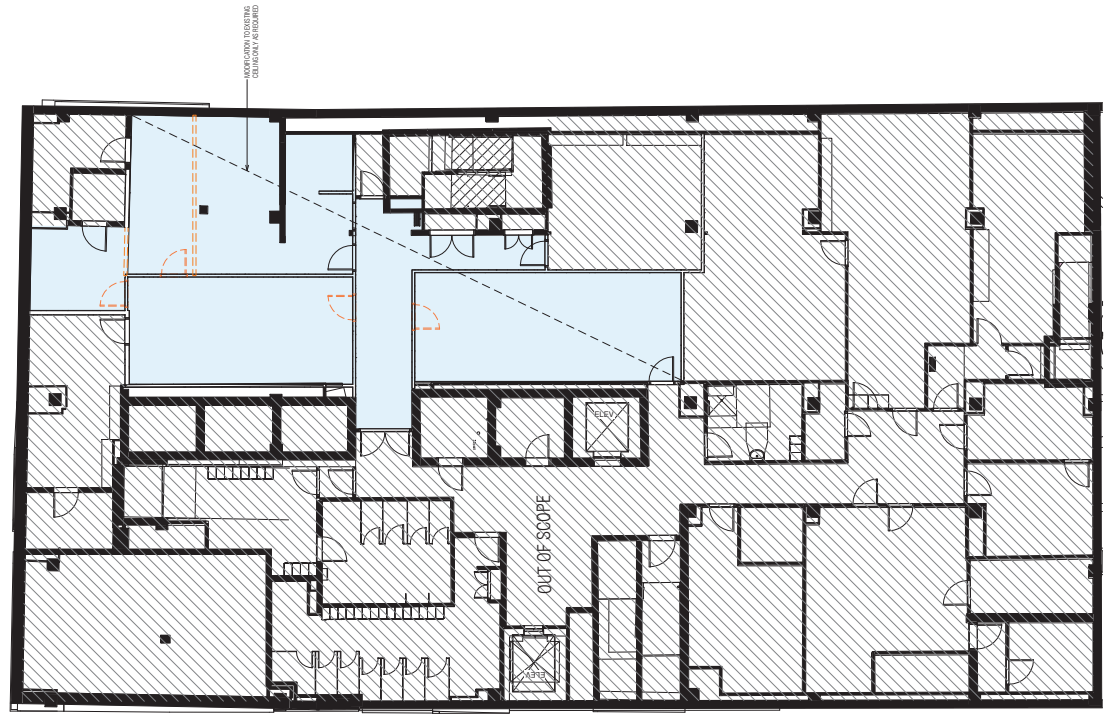
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BASEMENT EXISTING & DEMOLITION REFLECTED CEILING PLAN

BASEMENT EXISTING & DEMOLITION PLAN

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WALL HATCHES

	WALLS TO BE DEMOLISHED
	EXISTING WALL

DEMOLITION LEGEND

E1.01	DEMOLISH EXISTING CONCRETE WALL
E1.02	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES
E1.03	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES AND CEILING
E1.04	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR
E1.05	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR AND EXTERIOR FINISHES
E1.06	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR AND EXTERIOR FINISHES AND CURB
E1.07	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR AND EXTERIOR FINISHES AND CURB AND SIDEWALK
E1.08	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR AND EXTERIOR FINISHES AND CURB AND SIDEWALK AND DRIVEWAY
E1.09	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR AND EXTERIOR FINISHES AND CURB AND SIDEWALK AND DRIVEWAY AND FENCE
E1.10	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR AND EXTERIOR FINISHES AND CURB AND SIDEWALK AND DRIVEWAY AND FENCE AND GARDEN
E1.11	DEMOLISH EXISTING CONCRETE WALL WITH INTERIOR FINISHES, CEILING AND FLOOR AND EXTERIOR FINISHES AND CURB AND SIDEWALK AND DRIVEWAY AND FENCE AND GARDEN AND DRIVEWAY

ITEMS SHOWN TO BE DEMOLISHED TOTALY

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CHECKED	CG
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LOWER GROUND EXISTING CONDITIONS	
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DA02	



LOWER GROUND EXISTING & DEMOLITION REFLECTED CEILING PLAN

LOWER GROUND EXISTING & DEMOLITION PLAN

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WALL HATCHES

[Hatch Pattern]	EXISTING WALL TO BE RETAINED
[Hatch Pattern]	PROPOSED RETAIN WALL

GENERAL NOTES

- ALL EXISTING WALLS TO BE RETAINED UNLESS OTHERWISE NOTED.
- ALL NEW WALLS AND DOOR THRESHOLS TO BE SET TO FINISH LEVEL.
- ALL NEW WALLS TO BE CONFORMANT WITH AS/NZS 2312:2008.
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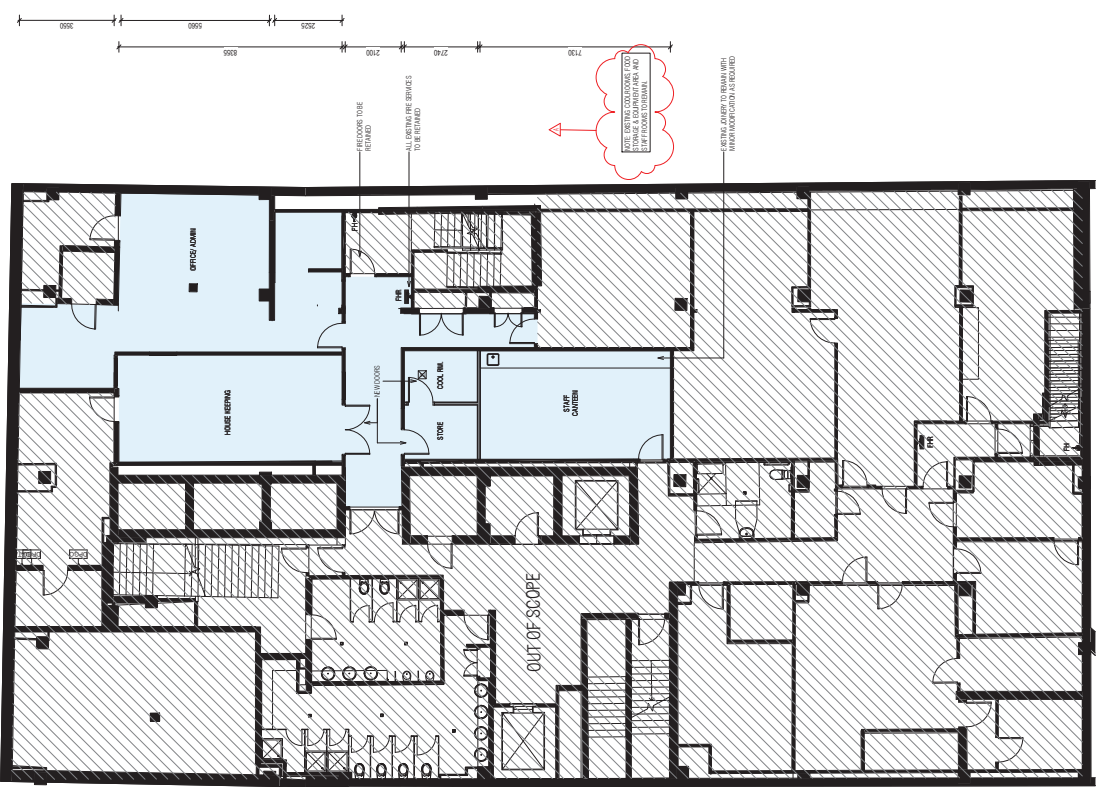
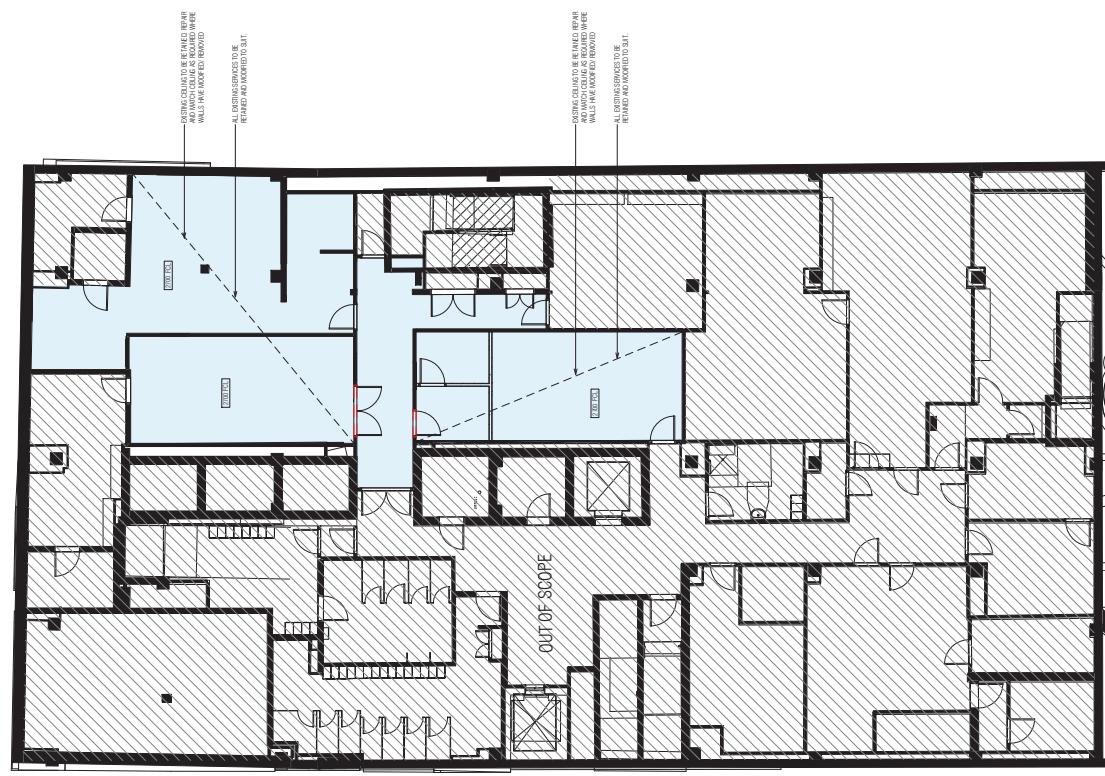
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DRAWING TITLE: **BASEMENT PROPOSED CONDITIONS + RCP**
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BASEMENT PROPOSED REFLECTED CEILING PLAN

BASEMENT PROPOSED PLAN

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WALL HATCHES
UNFINISHED WALL
FINISHED WALL

GENERAL NOTES
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. ALL WALLS SHALL BE FINISHED WITH CONCRETE WITH A FINISH TO BE DETERMINED BY THE ARCHITECT.
3. ALL FLOORING SHALL BE FINISHED WITH A FINISH TO BE DETERMINED BY THE ARCHITECT.
4. ALL CEILING SHALL BE FINISHED WITH A FINISH TO BE DETERMINED BY THE ARCHITECT.
5. ALL SERVICES SHALL BE INSTALLED IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS AND REGULATIONS.
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2 25/01/2024	DEVELOPMENT APPLICATION

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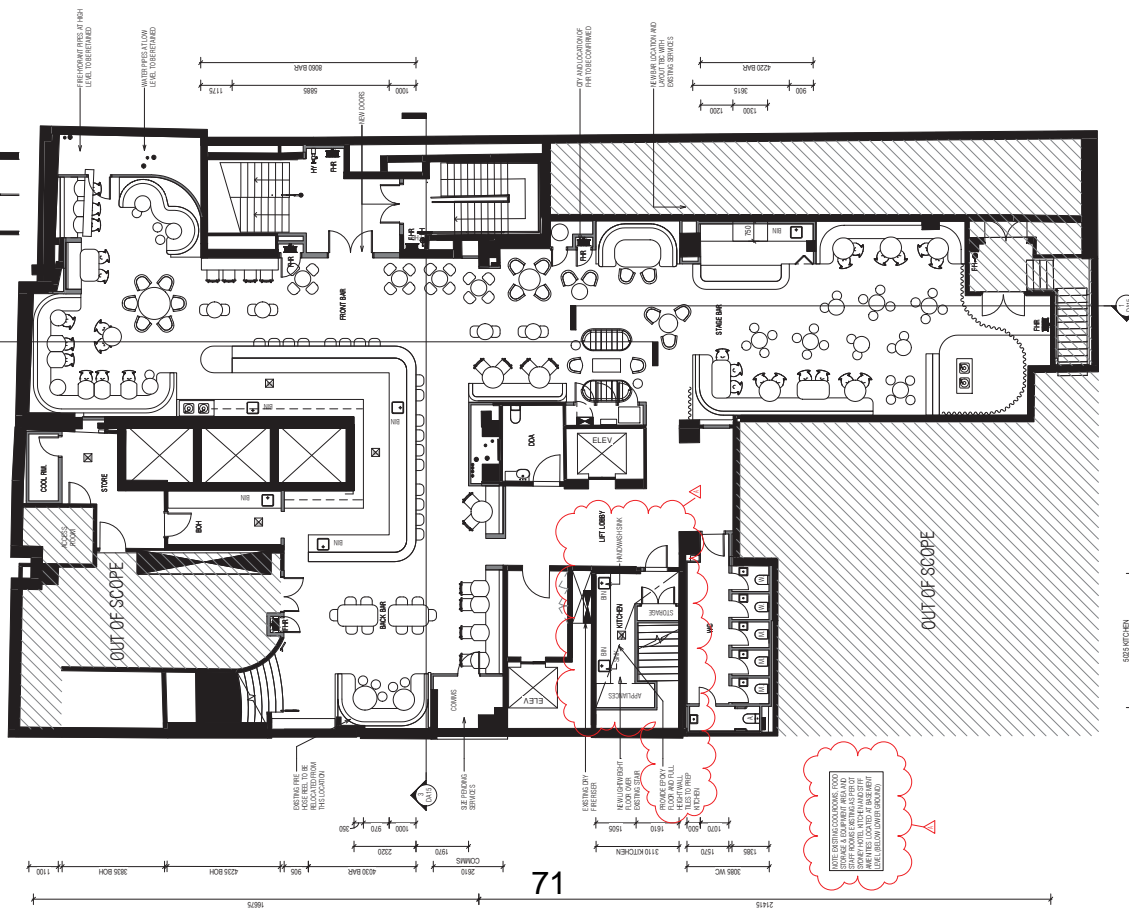
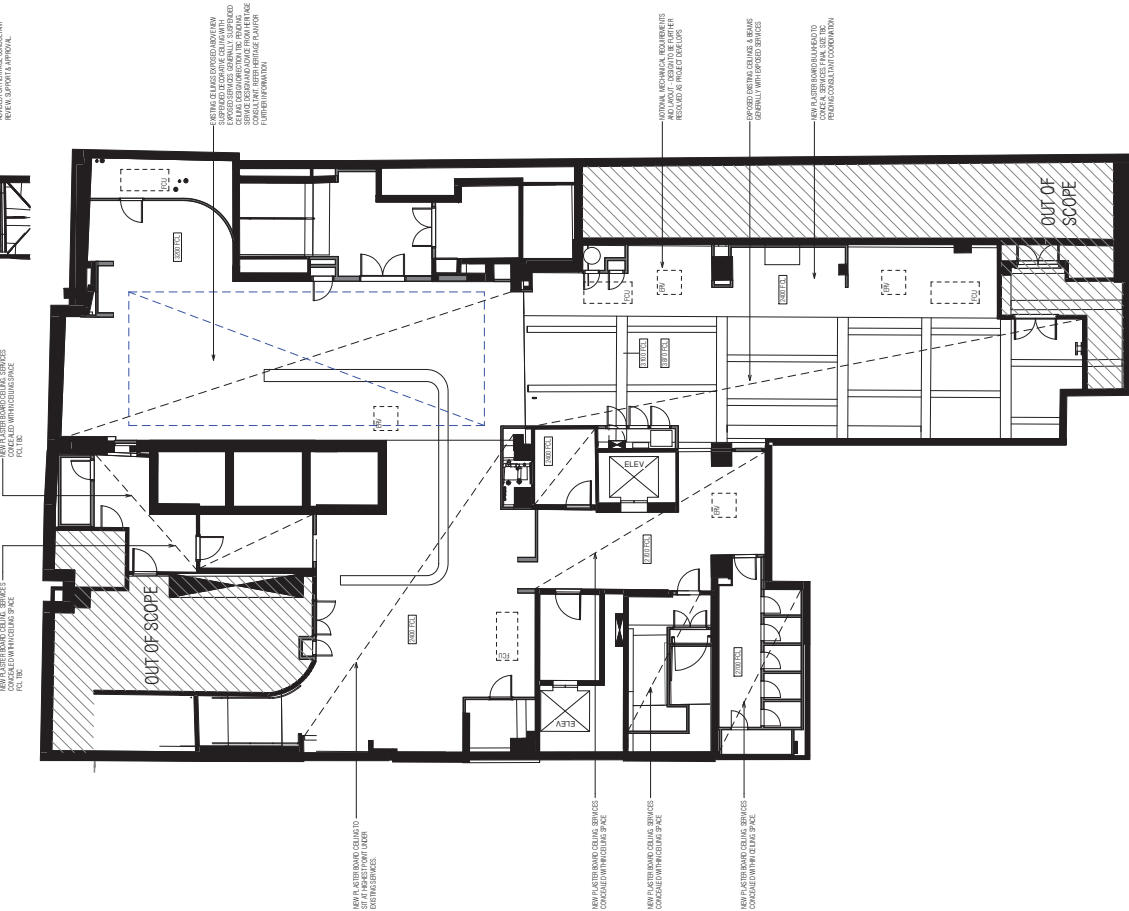
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LOWER GROUND PROPOSED REFLECTED CEILING PLAN

LOWER GROUND PROPOSED PLAN

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WALL HATCHES

 EXISTING WALL TO BE REMOVED
 PROPOSED WALL

GENERAL NOTES
 ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 ALL WALLS SHALL BE 100MM THICK UNLESS OTHERWISE NOTED.
 ALL NEW WOODWORK SHALL BE TO MATCH EXISTING UNLESS OTHERWISE NOTED.
 ALL NEW WOODWORK SHALL BE TO MATCH EXISTING UNLESS OTHERWISE NOTED.
 ALL NEW WOODWORK SHALL BE TO MATCH EXISTING UNLESS OTHERWISE NOTED.
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1	12/10/2023	ISSUED FOR RFP APPLICATION

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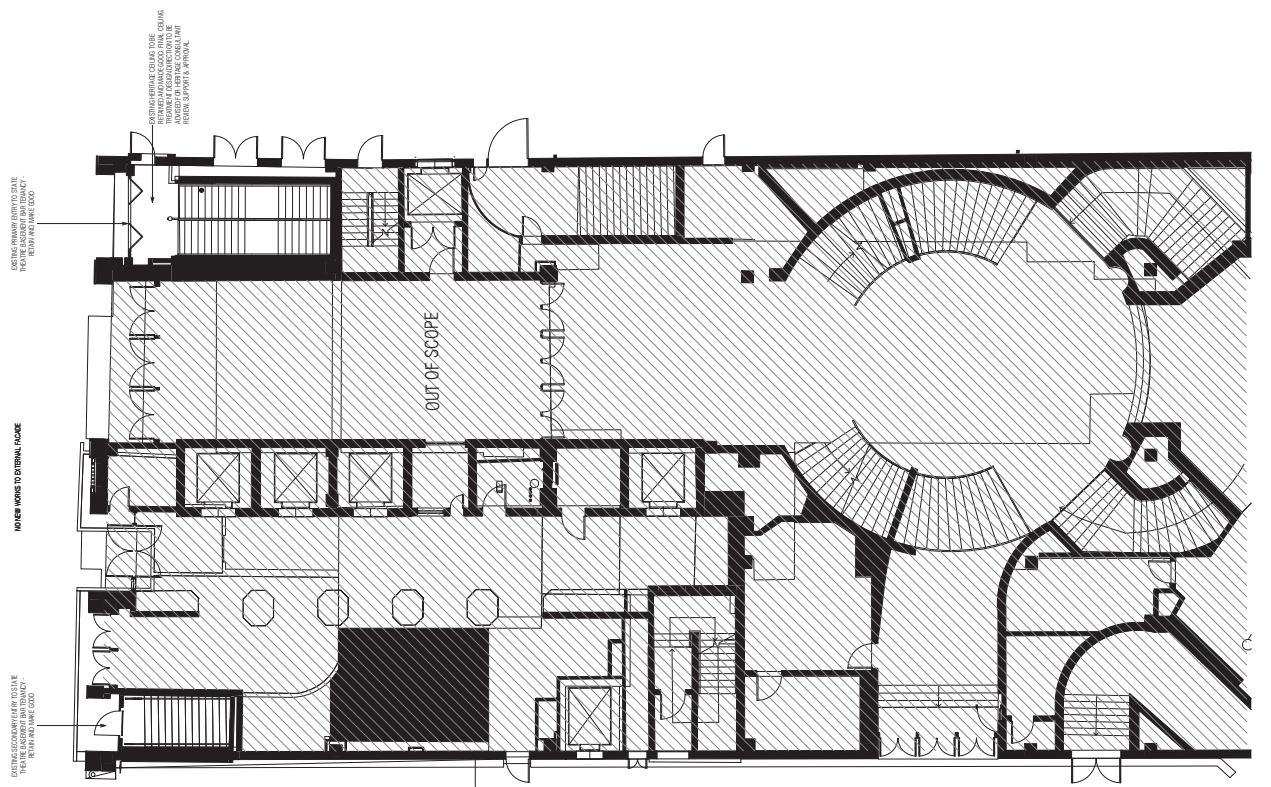
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GROUND FLOOR PROPOSED PLAN
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WALL HATCHES

[Hatch Pattern]	OPEN WALL TO BE REINFORCED
[Hatch Pattern]	PROPOSED NEW WALL

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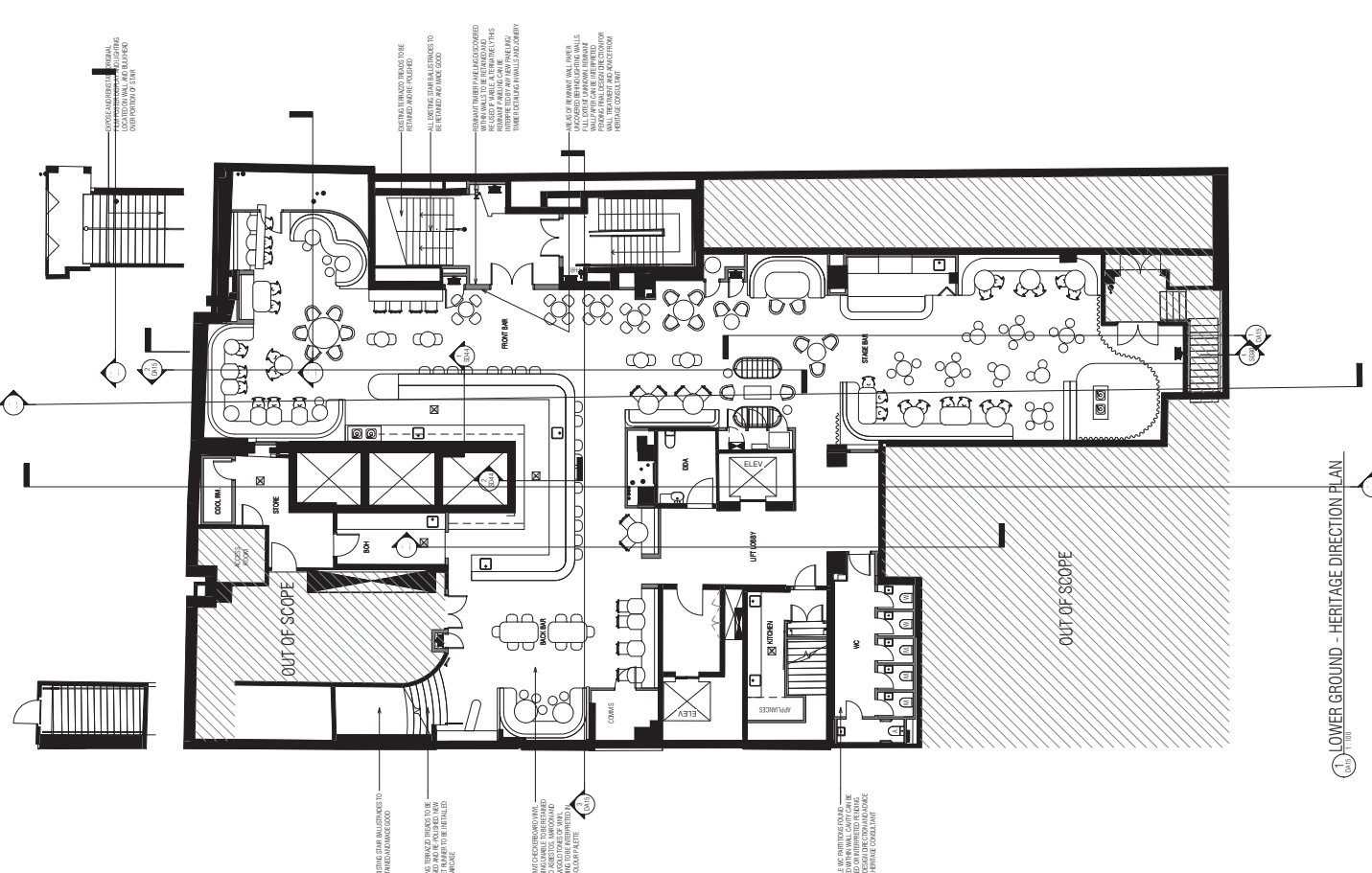
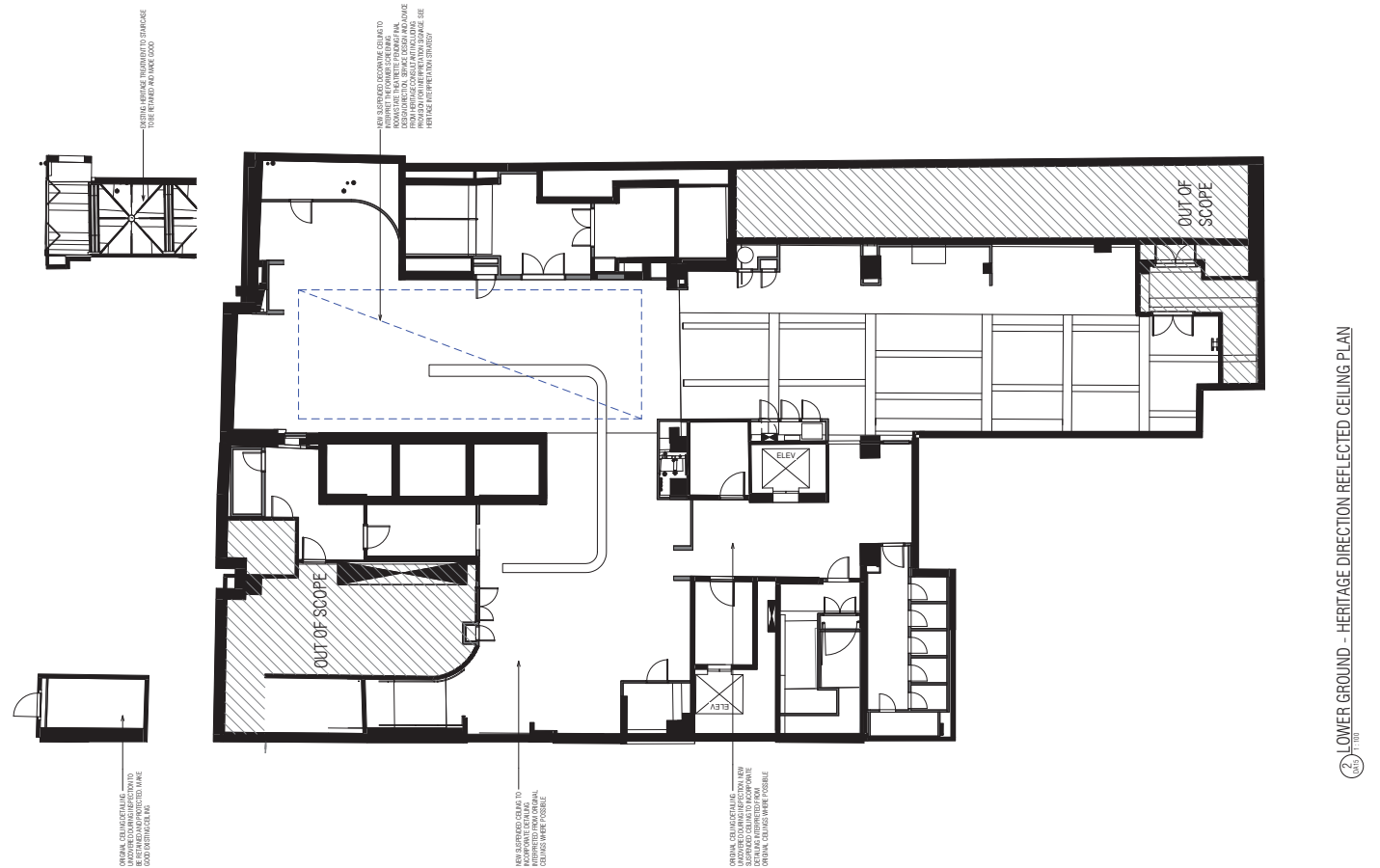
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2 LOWER GROUND - HERITAGE DIRECTION REFLECTED CEILING PLAN

1 LOWER GROUND - HERITAGE DIRECTION PLAN

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