

Item 4.**Development Application: 108 Swanson Street, Erskineville**

File No.: D/2018/239

Summary

Date of Submission:	13 March 2018
Applicant:	Complete Package Australia
Architect:	Sydney Architecture Studio
Developer:	Eastern Property Alliance (EPA)
Owner:	Gregory Magree
Cost of Works:	\$2,905,000.00

Proposal Summary: Change of use of first floor of Swanson Hotel to residential and construction of three new levels for residential use. Alterations and additions including new residential access/lobby from Park Street, introduction of window openings to parapet, removal of roof, and construction of three new levels resulting in a five storey mixed use building comprising 10 residential units and the existing ground floor hotel.

The application is reported to the Local Planning Panel as the development exceeds both the height and FSR development standards of the Sydney Local Environmental Plan 2012 by more than 10%, and is a development to which State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies.

The proposal is considered to result in significant detrimental impacts on the existing building and its contribution to the heritage conservation area. The proposed height and form of the addition is inconsistent with the existing building and the surrounding context and results in a dominant built form and overlooking impacts to neighbouring properties. The design and configuration of the alterations and additions will result in a poor standard of residential accommodation and would not achieve design excellence. The application excludes design details and information that are essential in the assessment of the application.

Proposal Summary:
(continued)

For these reasons, it is considered that the proposal fails to satisfy the objectives and controls of the Sydney Local Environmental Plan 2012, Sydney Development Control Plan 2012 and State Environmental Planning Policy 65.

The application was advertised and notified for a period of 21 days and resulted in 1 submission of support, 134 submissions of objection, and two petitions seeking an interim heritage order on the hotel, being received. The objections raised the following concerns:

- Hotel should be preserved, heritage listed, and alterations should be prevented;
- Building height and its impact on the reserve and precedent for further development;
- Substantial changes to ground and basement levels of building not addressed and may lead to loss of the licensed hotel (pub) and the public amenity it provides.
- Impact on the character of the existing building, the streetscape and heritage conservation area. Project of this scale better suited to the nearby Ashmore Precinct.
- Poor residential amenity. Inadequate setbacks and private open space.
- Non-compliant with SEPP 65 and the Apartment Design Guide (ADG) requirements;
- Pressures on car parking;
- Pressure on stormwater and sewerage infrastructure;
- Privacy impacts;
- Acoustic impacts; and
- No provision for affordable housing;

The submission in support submitted that :

- It is tastefully planned; and
- Things must change.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012

Attachments:

- A. Proposed Plans
- B. Gross Floor Area Plans
- C. Solar Assessment Plans
- D. Clause 4.6 Variation Request - Height
- E. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that consent be refused for Development Application No. D/2018/239 for the following reasons:

(1) Contravention of Development Standard – Height

- (a) The exception sought to the Clause 4.3 building height development standard in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 is not supported, as the proposal fails to:
 - (i) Demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
 - (ii) Demonstrate there are sufficient environmental planning grounds to justify contravening the development standard.
 - (iii) Demonstrate that the proposed development is in the public interest because it is consistent with the objectives of the height development standard.
- (b) The proposal will result in a building of significantly greater height, bulk and scale than the surrounding properties that is not sympathetic to the existing building and is inconsistent with the context and desired character for the area. The non-compliant height of the building will directly result in additional adverse environmental impacts on the locality. The proposal is contrary to and fails to satisfy:
 - (i) Clause 4.3 of the Sydney Local Environmental Plan 2012.
 - (ii) Clause 6.21 Design Excellence standards under the Sydney Local Environmental Plan 2012.
 - (iii) Provision 4.2.1.1(1) of the Sydney Development Control Plan 2012, which specifies a maximum height of buildings of 3 storeys.

(2) Contravention of Development Standard – Floor Space Ratio

- (a) The exception sought to the Clause 4.4 floor space ratio development standard in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 is not supported, as the proposal fails to:
 - (i) Demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
 - (ii) Demonstrate there are sufficient environmental planning grounds to justify contravening the development standard.
 - (iii) Demonstrate that the proposed development is in the public interest because it is consistent with the objectives of the floor space ratio development standard.

(b) The proposal results in a bulk and scale that is not sympathetic to the existing building or the desired character of the locality. The non-compliance directly results in adverse impacts on the building and the amenity of the locality. The proposal is therefore contrary to and fails to satisfy:

(i) Clause 4.4 of the Sydney Local Environmental Plan 2012, including the floor space ratio objectives and standards.

(3) Demolition and Heritage Impacts

(a) The alterations and removal of significant original fabric is not supported, as the proposed works will compromise the contribution of the building to, and the heritage significance of, the heritage conservation area. The proposed addition will result in a building of height and scale that does not respond sympathetically and complement the building and the character of the heritage conservation area. Inadequate information has been provided to address the structural implications of the additions on the existing contributory building. The proposal is therefore contrary to and fails to satisfy:

(i) The heritage conservation objectives 5.10(1) (a) and (b) of the Sydney Local Environmental Plan 2012.

(ii) Clause 6.21 Design Excellence standards under the Sydney Local Environmental Plan 2012.

(iii) Clause 2.7.6 (principles for development in Erskineville Oval local character area) of Sydney Development Control Plan 2012.

(iv) Clauses 3.9.6, 3.9.7 and 3.10.3 of the Sydney DCP 2012.

(4) Residential Amenity

(a) The design of the proposed alterations and additions does not achieve desired levels of apartment amenity. The proposal fails to meet the design criteria specified in the Apartment Design Guide for building separation, natural ventilation, solar access, ceiling heights, visual and acoustic privacy, private open space, communal open space, and deep soil zones. The proposal is therefore contrary to and fails to satisfy:

(i) State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development).

(b) The proposed building separation and design will result in significant adverse amenity impacts on neighbouring properties.

(c) The proposal requires habitable room windows be closed to meet minimum acoustic standards. No design details have been provided to satisfactorily address these acoustic requirements and the provisions for natural ventilation. The proposal is therefore contrary to and fails to satisfy:

(i) State Environmental Planning Policy (Infrastructure) 2007.

(5) Lack of Information

- (a) The application has not been made in accordance with Part 6 Division 1 Clause 50(1)(a) if the Environmental Planning and Assessment Regulation 2000, as a valid BASIX Certificate has not been submitted.
- (b) The application has not provided a flood study to adequately demonstrate that the proposed development is compatible with the flood hazard of the land, and as such is contrary to 7.15 of the Sydney LEP 2012.
- (c) The proposal is not considered to have adequately demonstrated that it is capable of complying with the provisions of the BCA.

(6) Public interest

- (a) The proposal is non-compliant with the height and floor space ratio development standards and key amenity planning controls. The site and proposal are not considered to present particular circumstances that make it unreasonable or unnecessary to comply with the development standards, and the proposal has not presented sufficient environmental planning grounds to justify contravening the development standards. The proposal will result in significant adverse impacts on a building that is an important focus for the local community. Approval of the proposal would establish an undesirable precedent and is not in the public interest.

Background

The Site and Surrounding Development

1. A site visit was carried out on by Council Officers on 27 March 2018.
2. The site is generally rectangular in shape, with area of approximately 300.5m². The site is located at the north-west corner of Swanson Street and Park Street, Erskineville (refer Figure 1 below). The site address is 108 Swanson Street, Erskineville, and legally described as Lot 34 DP 1331, Lot 1 DP 772917, Lot 2 DP 924598
3. The Swanson Hotel is located on the site, which prior to 2014 was known as the Kurrajong Hotel. Two storeys in height, the original hotel exterior is very intact and is an Inter-War Functionalist hotel, with art-deco detailing. The building presents a prominent 'corner' aspect via the rounding of its facade at the junction of Park and Swanson Streets.
4. The building is of brick construction and includes decorative bands of projecting bricks, inset "corner" veranda with a modestly projecting balustrade, double-hung sash windows, and a cantilevered continuous awning. The ground floor facade is tiled in original glazed tiles to awning height.
5. Surrounding land uses are residential, commercial, and recreational. To the north along Park Street are two and single storey terrace dwellings, and further north Solander Park. To the east on the opposite side of Park Street is a multi-dwelling development (46-76 Park Street) of two to three storeys, and including a four storey mixed use on the north-east corner of Park Street and Swanson Street. To the south on the opposite side of Swanson Street is the Erskineville Oval and Harry Noble Reserve. To the west is a mixed use building with ground floor commercial tenancies, and one and two storey detached and attached dwellings.
6. The site is not a heritage item but is located within the Kingsclear Road Heritage Conservation Area (C3).
7. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Looking north-west from Swanson Street and up Park Street.



Figure 3: Looking north-east from Swanson Street.



Figure 4: Looking south-west from Park Street



Figure 5: Looking north along Park Street.



Figure 6: Existing rooftop looking south.



Figure 7: Looking north-west across rear yards of neighbouring Park Street terraces.



Figure 8: Existing ground floor bar.



Figure 9: Existing first floor looking towards northern (side) wall.

Proposal

8. The application seeks consent to convert the existing first floor level of the pub to a residential use, construct an additional three levels of residential apartments and undertake internal alterations to facilitate access to these new apartments.
9. The existing ground floor and basement level are to be retained as a pub. The application states that work to the ground floor and basement level pub falls outside the scope of this DA and that these areas will be renovated under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

10. In detail the works proposed comprise:

(a) Demolition works

- (i) Demolish existing roof behind the parapet
- (ii) Creation of openings within the upper parapet of the building to introduce new windows.
- (iii) Demolish portion of the rear wall and construct new plant room/riser
- (iv) Remove existing window, door and wall to Park Street for new residential lobby and service entries.
- (v) Remove existing staircase connecting the ground floor to the first floor in the south-west corner of building

(b) Ground Floor

- (i) New entry to northern Park Street elevation for the proposed residential units. This entry space will include access to the lift and stairs, plant and waste store room.

(c) Level 1

- (i) Conversion to 2 residential apartments (1 x 1 bed, 1 x 2 bed)
- (ii) Removal of windows to Park Street and Swanson Street facades
- (iii) Introduce planter box to western side of the building

(d) Levels 2

- (i) Additional storey comprising 4 studio apartments (1 x adaptable)
- (ii) Penetrations made in the upper brick facade for new openings
- (iii) Enclosed breezeway/balcony with penetration in the roof to the breezeway/balcony of Level 3 above.

(e) Levels 3 - 4

- (i) Additional storeys comprising 4 x 2 bed maisonette apartments
- (ii) Common breezeway and partially enclosed balconies at Level 3

11. Plans of the proposed development are included within Attachment A. The first floor (Level 1) plan, elevations and a photomontage of the proposal are also provided below in Figures 10 - 15

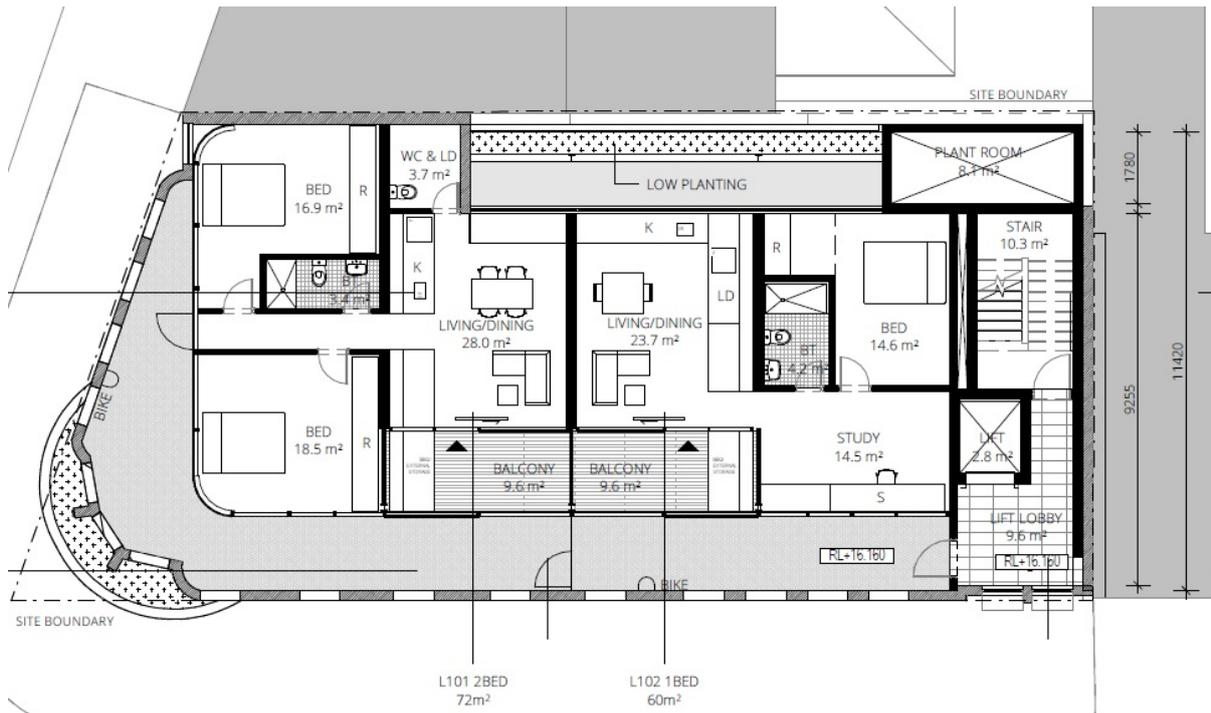


Figure 10: Level 1 Plan.

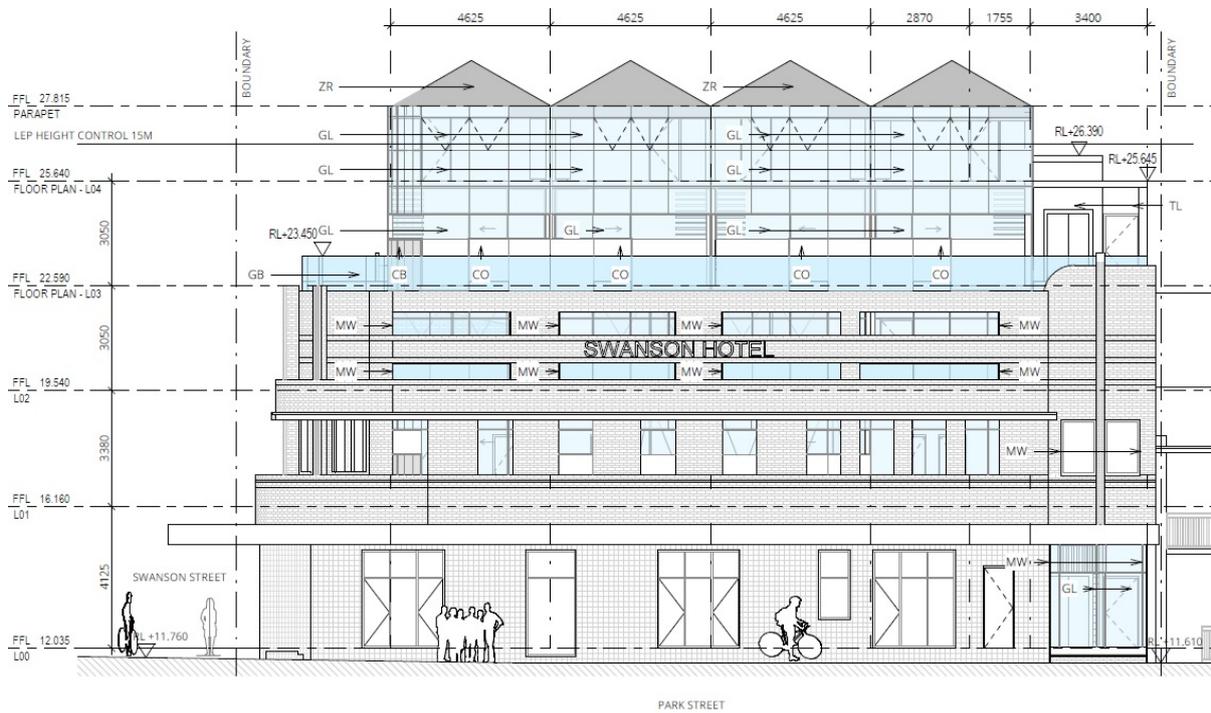


Figure 11: Park Street (east) elevation.



Figure 12: Swanson Street (south) elevation.

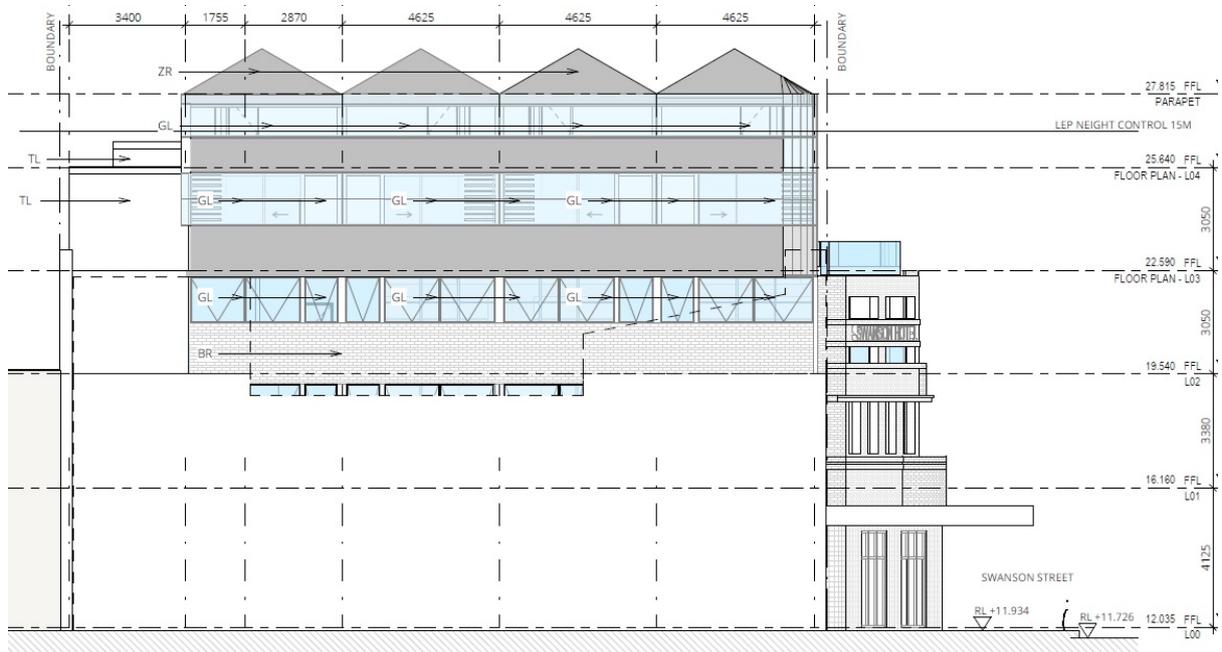


Figure 13: West elevation.

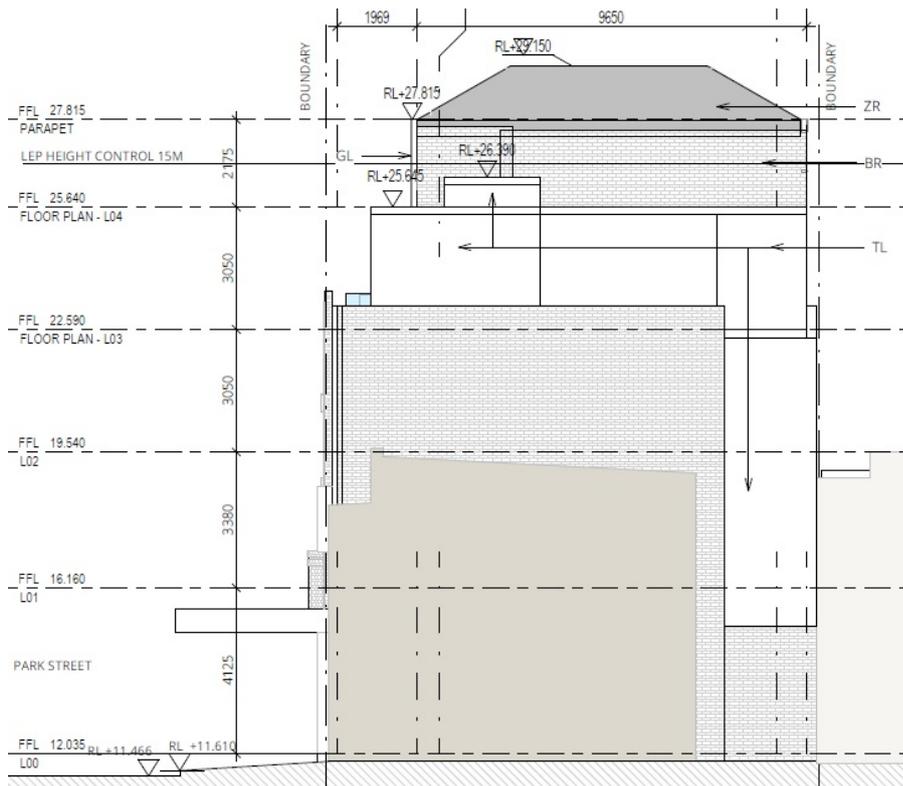


Figure 14: North elevation.



Figure 15: Photomontage of the proposed development from the intersection of Park Street and Swanson Street.

History Relevant to the Development Application

12. On 19 April 2018 a letter was forwarded to the applicant outlining significant departures from the planning controls and fundamental concerns with the proposal. The letter advised that amendments would not be accepted to the current application and recommended that the application be withdrawn and an alternate scheme be prepared for pre-application discussion.
13. On 26 April 2018 the applicant submitted amended plans. The amended plans presented failed to address the issues raised in the letter of 19 April 2018 and pursuant to clause 55 of the Environmental Planning and Assessment Regulation 2000 the amended plans were not accepted.
14. The assessment of the application is based on the plans originally lodged and publicly exhibited.

Economic/Social/Environmental Impacts

15. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

16. The application states that:

"The owner of the property intends to renovate the existing hotel/pub premises pursuant to the development standards and requirements of the Codes SEPP. This work does not therefore require development consent and as such is not included within the scope of works in this proposal."

17. However, the proposal includes a three storey addition that will have significant structural impacts on the existing building and will require work to both the ground floor and basement directly in relation to the proposal. The documents submitted with the application includes a structural feasibility report, which outlines the following recommendations and requirements to achieve the proposed architectural design:
 - Reframing ground floor and structural steel portal frame to transfer loads from the addition to new footings.
 - New centrally located 500mm x 500mm concrete column and 3m x 3m x 1.5m deep concrete footing.
 - Laterally brace masonry facade
18. These works, which are intrinsically linked to the proposal, need to be detailed and included in the application and the architectural drawings the subject of the proposal. These works have significant implications for the integrity and retention of the existing building.

State Environmental Planning Policy No 55—Remediation of Land

19. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
20. The application seeks only internal alterations and the construction of additional levels on the existing building, with any works to the basement and majority of the ground floor excluded from the application. The City's Health Unit is satisfied that subject to conditions, the site is suitable for the proposed use.

State Environmental Planning Policy No 64—Advertising and Signage

21. The application does not propose any additional signage.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

22. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:
 - (a) **Principle 1:** Context and Neighbourhood Character
 - (b) **Principle 2:** Built Form and Scale
 - (c) **Principle 3:** Density
 - (d) **Principle 4:** Sustainability
 - (e) **Principle 5:** Landscape
 - (f) **Principle 6:** Amenity
 - (g) **Principle 7:** Safety
 - (h) **Principle 8:** Housing Diversity and Social Interaction
 - (i) **Principle 9:** Aesthetics
23. The development is considered unacceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	The apartments range from approximately 7-10m in depth, but Levels 1 and 2 are also partially enclosed behind a 2m wide breezeway.

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	No	<p>The existing building is built to the boundaries of the site with windows a minimum of 2.4m, 1.0m and 0.3m from the western boundary on levels 1-3 respectively (see discussion under 3F below).</p> <p>A solid wall with no penetrations is proposed to the north. To the east and south, Park Street and Swanson Street provide separations in excess of 20m</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	No	<p>At Level 4 the western elevation is built 0.3m from the boundary with 104 Swanson Street and provides glazing and operable windows to bedrooms to that elevation.</p>
<p>At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m.</p>	Partial compliance	<p>A solid blank wall is provided to the northern boundary with the neighbouring R1 zone. However, no consideration has been given to an increased setback or privacy treatments on the western elevation glazing to address the proximity of windows and oblique views of proposed apartments to neighbouring rear yards. The services duct for the building is located immediately adjacent the residential boundary.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	No communal open space provided.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	No	No communal open space provided.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m.	No	No deep soil zones exist on site and no zones proposed.

Separation between windows and balconies is required to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.

3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	No	<p>To the neighbouring mixed use development to the west the following separations are provided from habitable windows to the boundary:</p> <ul style="list-style-type: none"> • 2.4m at level 1 • 1.0m at Level 2 • 0.3m at Level 3 <p>First floor windows are located at No 104 Swanson Street less than 1.0m from the shared western boundary of the site. The proposal includes new apartments with a primary outlook towards the west/side boundary. No privacy treatments are proposed on the plans. The proposal will result in overlooking of windows and private open space of properties to the west and north-west.</p>
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	No	<p>At Level 4 the western elevation is built 0.3m from the boundary with 104 Swanson Street and provides glazing and operable windows to bedrooms to that elevation. These windows will result in overlooking of windows and private open space of properties to the west and north-west</p>
<p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.</p>	No	<p>The proposal includes common breezeway/corridor access to the units on Levels 1, 2 and 3 that adversely impacts the amenity, useability and security of proposed "balcony" private open space areas and the rooms immediately adjoining this space.</p>

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No	The application states compliance of 80%. The solar diagrams illustrate a reliance on openings in the facade and voids in the floor levels to provide solar access across an internal breezeway to both private open space and living room windows. Compliant solar access is assessed on the basis of the information provided at 4 of the 10 units or 40%.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	No	On the basis of the information provided it is difficult to assess. However, as a minimum, the 2 first floor level apartments are assessed as obtaining no direct solar access (20%).

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	No	<p>The natural ventilation of habitable rooms on levels 1 and 2 relies on air movement across the breezeway corridors and the removal of existing windows in the facade and introduction of new penetrations in the parapet, which are not supported.</p> <p>The application does not address requirements in the acoustic report which require an acoustically treated alternative source of air to address traffic noise.</p>
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Partial compliance	Similar to above, the degree of cross ventilation achieved relies on air movement across the breezeway corridors and the removal of existing windows in the facade and introduction of new penetrations in the parapet, which are not supported.

4B Natural Ventilation	Compliance	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Partial compliance	A minimum floor to floor height of 3.05 is specified for Level 2. The ADG and Sydney DCP 2012 specifies that a floor to ceiling height of 2.7m requires a minimum floor to floor height of 3.1m. No details are provided to demonstrate that a 2.7 floor to ceiling will be achieved in the construction of Level 2.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	No	Level 4 exceeds 50% of the floor area of each of the Level 3/4 maisonette apartments and provides a sloping ceiling for the bedrooms and bathrooms ranging from a floor to ceiling height of 1.8m to 3.0m.
Attic spaces – 1.8m at edge of room with a 30 degree minimum ceiling slope	No	Level 4 is not defined as an attic as it is not wholly contained within a roof form.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² 	Yes	All apartments meet the minimum unit sizes. The Level 2 studios and Level 3 two bed units are at these specified minimums.

4D Apartment Size and Layout	Compliance	Comment
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	No	Habitable rooms on Levels 1 and 2 do not have direct access to windows on an external wall, but rely on openings across the common breezeway, which are not supported, or a combination of voids to upper levels. It is also noted that the new windows on the western boundary will require fire protection.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	
8m maximum depth for open plan layouts from a window.	Yes	
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	It is noted that the eastern bedrooms on Level 4 are at the minimum 3m width and have compromised floor to ceiling heights.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	
4m minimum width for cross over and cross through apartments.	Yes	The Level 3/4 maisonette apartments have a width of approximately 4.4m.

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	No	The provisions for private open space are not supported. See discussion under the heading Issues.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	Maximum of 4
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	No	The primary living rooms of all the apartments open onto enclosed or partially enclosed balconies and onto common circulation areas providing the only access to the apartments.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	However, the provision of ventilation to the common circulation areas is unclear as window details are not adequately provided of the changes to the Park and Swanson Street facades.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Studio: 4m3 • 1 bed: 6m3 • 2 bed: 8m3 • 3 bed: 10m3 <p>(Minimum 50% storage area located within unit)</p>	Yes	Areas indicated in the living room configurations and enclosed balcony areas are capable of accommodating storage to meet the minimums

4J Noise and Pollution	Compliance	Comment
<p>Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?</p>	No	<p>While habitable rooms are setback behind the existing facade in the proposed layout design, the removal of windows to provide openings within the facade is not supported and will allow noise and pollution to penetrate the building.</p> <p>The application includes an acoustic assessment report, which requires that habitable windows be closed to achieve acceptable noise standards and alternative ventilation be provided. No design details to address both acoustic and natural ventilation have been provided.</p>

State Environmental Planning Policy (Infrastructure) 2007

24. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 45

25. The application is subject to Clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development will:

(a) be carried out within 5m of an exposed overhead electricity power line?

26. The application was referred to Energy Australia for a period of 21 days and no objection was raised.

Clause 101

27. The application is subject to Clause 101 of the SEPP as the site has frontage to Swanson Street, which is a classified road.
28. The application does not provide access to the site from the classified road. However, the application does not adequately address acoustic design measures to ameliorate traffic noise from Swanson Street. The application includes an acoustic assessment, which requires habitable room windows be closed to meet minimum acoustic standards. No design details have been provided to satisfactorily address these acoustic requirements and the provisions for natural ventilation.
29. The proposal is not considered to satisfy Clause 101 of the Infrastructure SEPP.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

30. The application includes a BASIX Assessment Report, but no valid BASIX Certificate has been submitted with the development application as per the requirements of Part 6 Division 1 Clause 50(1)(a) of the Environmental Planning and Assessment Regulation 2000.
31. In addition, the BASIX report lists measures to satisfy BASIX requirements, which include external louvre/blind shading devices required to be shown on DA plans. These have not been shown on the architectural plans submitted.

Sydney LEP 2012

32. The site is located within the B4 (Mixed Use) zone. The proposed use is defined as a residential flat building and is permissible.
33. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 15m is permitted. A height of 17.385m is proposed.
4.4 Floor Space Ratio	No	A maximum FSR of 2.5:1 is permitted. The FSR of the proposal is assessed as up to 3.38:1.
4.6 Exceptions to development standards	No	The proposal seeks to vary the height and FSR development standards. See discussion under the heading Issues.
5.9 Preservation of trees or vegetation	Yes	The proposal will have no impact on any trees.

Development Control	Compliance	Comment
5.10 Heritage conservation	No	<p>The subject site is located within a heritage conservation area. The proposal is considered to adversely impact the significance of the heritage conservation area.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	No	<p>The proposed development is not a sympathetic addition to the existing building. The proposal does not adequately address the heritage and streetscape constraints. The design will result in a poor level of amenity for residents and will result in adverse impacts on neighbouring properties. The proposed development does not exhibit design excellence.</p> <p>The proposal fails to satisfy the requirements of this provision.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	<p>A maximum of 5 resident car parking spaces and 2 visitor spaces are permitted.</p> <p>No car parking spaces are proposed.</p>
7.15 Flood planning	No	<p>The site is identified by Council as being flood prone. The application does not include a flood study.</p> <p>See discussion under the heading Issues.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.16 Airspace operations	Partial compliance	<p>The proposed development will not penetrate the 51m AHD Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport.</p> <p>The proposal is more than 50 feet in height (15.24m) above existing ground height. Approval of CASA has not been provided in respect of Section 183 of the Commonwealth Airports Act 1996. See discussion under the external referrals section.</p>
7.17 Development in areas subject to airport noise	Yes	The proposed development is located outside the ANEF Contour 2 so does not require assessment of aircraft noise intrusion.

Sydney DCP 2012

34. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – 2.7.6 Erskineville Oval

The subject site is located in the Erskineville Oval locality. The proposed three storey addition to the Swanson Hotel is considered an overdevelopment of the site that does not respond to and complement the height and massing of the contributory building. The proposal is not in-keeping with the streetscape and predominantly low-scale built form of neighbouring development within the heritage conservation area.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Yes	Any additional public domain elements can be appropriately addressed under conditions.
3.2 Defining the Public Domain	No	<p>The proposed height of the building addition results in overshadowing of the Harry Noble Reserve that would not result from a compliant scheme.</p> <p>The proposed residential entry lobby is appropriately located to the Park Street frontage, but its introduction will reduce the potential commercial activation of the ground floor.</p>
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will marginally improve local urban ecology through the introduction of planter boxes.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	No	The site is identified as being below the flood planning level. No flood study has been submitted to address the risk of flood hazard.
3.9 Heritage	No	<p>The existing building is a contributory item within the Kingsclear Road Conservation Area (C3).</p> <p>See discussion under the heading Issues.</p>
3.10 Significant Architectural Building Types	No	<p>The building is older than 50 years and a significant interwar pub. The proposal includes works that impact significant fabric and elements of the building.</p> <p>See discussion under the heading issues.</p>
3.11 Transport and Parking	No	The proposal makes no provision for bicycle parking for residents or visitors at ground level.

3. General Provisions	Compliance	Comment
		<p>Bike storage locations are annotated within the common breezeway entries to the apartments. However, these locations are impractical, not secure, and with the 1m breezeway widths on Levels 2 and 3 would impede access to units.</p> <p>See discussion under the heading issues.</p>
3.12 Accessible Design	Yes	1 unit on Level 2 is provided as being capable of being adaptable for persons with disabilities.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	No	No waste management plan has been submitted and no details to confirm capacity and who and how waste will be managed.,

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>A maximum of 3 storeys is prescribed</p> <p>A 5 storey building is proposed.</p> <p>A minimum floor to floor height of 3.05 is specified for Level 2, which does not meet the minimum 3.1m specified to achieve a floor to ceiling height of 2.7m. Level four provides floor to ceiling heights of 1.8m - 3m.</p>
4.2.2 Building setbacks	No	<p>The addition of balustrades to the parapet and the scale of the upper level additions is not supported.</p>
4.2.3 Amenity	No	<p>The proposal will result in a poor level of amenity to the residential apartments.</p> <p>Solar access, acoustic and visual privacy, outlook and landscaping with respect to the ADG and Sydney DCP 2012 as applicable are discussed under the issues section</p>
4.2.5 Types of development	No	<p>The proposal is located on Swanson Street, defined as a busy road carry between 20,000 and 40,000 vehicle per day. The proposal includes residential development above ground level, with habitable rooms setback behind the existing facade of the building through the position of common circulation areas and internal courtyards. An acoustic report has been submitted which includes measures to achieve acceptable amenity for residential use, subject to conditions. These measures include a reliance of some habitable rooms on mechanical ventilation to meet noise criteria. No details to address these requirements have been submitted.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.6 Waste minimisation	No	The proposal provides a waste storage collection room at ground floor level that is appropriately located within the development for collection. However, no waste management plan has been submitted and no details to confirm capacity and who and how waste will be managed.
4.2.7 Heating and Cooling Infrastructure	Yes	The proposal provides for a plant/service riser in the north-west corner of the building to address ventilation from the ground floor and other communal servicing of the residential units. However, details of this are not clearly depicted on the roof plan.
4.2.8 Letterboxes	No	No provision has been made in the design of the residential lobby for letterboxes for the 10 apartments.

Issues

Height - Clause 4.6 Exception to Development Standard

35. The site has a 15m maximum height limit specified in the Sydney LEP 2012 and a 3 storey height of buildings control specified in the Sydney DCP 2012. The proposal seeks a maximum height of 17.385m above the existing ground level to the apex of the roofs on Level 4 of the proposed addition (refer Figure 16).



Figure 16: North-south section depicting non-compliance with maximum 15m Sydney LEP 2012 height.

36. The application is relying on the provisions of Clause 4.6 of Sydney LEP 2012 to seek an exemption to the height development standard by up to 2.385m (or 15.9%).
37. Clause 4.6 allows Council to vary development standards in certain circumstances and provides a degree of flexibility to achieve better design outcomes.
38. Clause 4.6(3) requires that the applicant submit a written request justifying any proposed contravention of a development standard by demonstrating that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.
39. A written request has been submitted to Council seeking to justify the proposed contravention of the height development standard. The applicant contends that compliance with the development standard is unreasonable or unnecessary because:
 - (a) Due to the setbacks and the transition in height the breach is unlikely to be perceivable from the street and would result in no additional overshadowing.

40. The applicant contends that the following are sufficient environmental planning grounds to justify contravening the development standard:
 - (a) The additional third and fourth floors are required in order to provide an adequate variety of studio, one and two bedroom apartments.
 - (b) Any impacts which may occur as a result of the proposed height breach would be negligible due to the existing high parapet, the transition in height is unlikely to be perceived from the street and there would be no overshadowing impacts.
 - (c) The proposed development complies with the locality statement aims of providing a mix of uses.
41. In assessing a development consent that contravenes a development standard, the consent authority must be satisfied that the applicant's request adequately addresses the matters in 4.6(3) outlined above, and that the proposal will be in the public interest because it is consistent with the objectives of the standard and the zone.
42. The proposal will result in a building significantly higher than the neighbouring buildings and the addition will be clearly visible from neighbouring properties and the public domain. The addition does not respect the scale and features of the original hotel building, and does not respond to or complement the character of the heritage conservation area.
43. The three storey addition is unable to provide appropriate setbacks for its bulk and scale to neighbouring properties. The non-compliant portion of the addition directly results in additional overshadowing impacts of existing social housing development at 25-31 Swanson Street to the south-east and the Harry Noble Reserve.
44. The breach of the height standard is not considered to have any bearing on the ability to comply with the locality statement or to provide a variety of unit types.
45. The applicant has not adequately justified that compliance with the development standard is unreasonable or unnecessary and the development proposal is not considered to present sufficient environmental planning grounds to justify contravening the development standard.
46. In terms of addressing the objectives of the development standard and the zone, the relevant objectives of the height clause 4.3 are:
 - (a) To ensure the height of development is appropriate to the condition of the site and its context,
 - (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,
 - (c) to promote the sharing of views.

47. The objectives of the zone (B4 Mixed Use) seek to:
- To provide a mixture of compatible uses.
 - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - To ensure uses support the viability of centres.
48. While the proposal may be consistent with aspects of the zone objectives that seek a mix of uses and to maximise public transport patronage, the proposal is considered contrary to the objectives for the height development standard. The assessment above and discussion of issues below demonstrates the proposal is not appropriate for the existing building and the context of the site, and does not provide appropriate transitions between the existing development and neighbouring properties.
49. It is considered that strict numeric compliance with the height development standard is not unreasonable and unnecessary. The proposed non-compliance will directly result in additional adverse environmental effects. The proposal will result in a building addition that is contextually inappropriate, and is not consistent with the height objectives of the Sydney LEP 2012. For these reasons it is recommended that a Clause 4.6 exception to the height development standard be refused.

Non-compliance with Sydney DCP 2012 height of building control

50. The proposed addition would result in the building clearly presenting as a 5 storey building, and non-compliance with the Sydney DCP 2012 three storey height of buildings control.
51. The Sydney DCP 2012 height in storeys controls are specified to reinforce the existing and future neighbourhood character for development within the Sydney LEP 2012 maximum height control. The additional storeys result in a building form which is inconsistent with the scale of neighbouring development and detracts from the character of the existing building. For these reasons, the scale and form of the addition is not supported.

Bulk and Scale - Clause 4.6 Exception to Floor Space Ratio Development Standard

52. The Sydney LEP 2012 specifies a maximum 2.5:1 FSR for the site. With a site area of 300.5sqm, a maximum GFA of 751.25sqm is permitted on site.
53. The application proposes a maximum GFA of 779sqm or 2.59:1 FSR. However, following assessment of the plans provided, the application excludes significant areas of enclosed breezeways on Level 1 and 2 and areas of enclosed balconies (refer Figure 17) from the floor space calculations. These areas do not meet the exemptions from the definition of GFA provided in the Sydney LEP 2012 and must be included in the calculations. In addition, the use of a large area of basement is not denoted on the plans and also excluded from the GFA calculations. The applicant's GFA plans are contained in Attachment B.
54. The GFA of the application is assessed as up to 1015sqm or an FSR of 3.38:1. This total is approximately 264sqm (or approximately 35%) over the maximum permitted Sydney LEP 2012 control.



Figure 17: Level 1 floor plan depicting the common breezeway and enclosed balcony areas excluded from GFA calculations.

55. In accordance with Clause 4.6(3), the applicant has submitted a written request seeking to justify a contravention of the FSR development standard. The applicant contends that compliance with the development standard is unreasonable or unnecessary, and there are sufficient environmental grounds to justify the contravention, because:
- (a) The exceedance of the FSR control is minimal and would result in no increase in the overall bulk and scale of development.
 - (b) There are no detrimental environmental impacts.
 - (c) The proposal expands the mix of uses on the site.
56. The proposed exclusion of areas from the GFA calculations and the breach of the standard in the order of 35% clearly results in a building of significantly greater bulk and scale. As discussed in the assessment of height, the non-compliant addition directly results in additional overshadowing of residential properties and the Harry Noble reserve, and a building form that does not complement the character of the heritage conservation area.

57. The objectives of the FSR clause 4.4 are:
- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
 - (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
 - (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
 - (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.
58. The proposed breach of the standard directly contravenes the regulation of built form and density, does not reflect the desired character of the locality, and will result in significant adverse impacts on the amenity of the locality.
59. It is considered that strict numeric compliance with the FSR development standard is not unreasonable and unnecessary. The proposed non-compliance will directly result in additional adverse environmental effects. The proposal will result in a building addition that is contextually inappropriate, and is contrary to the FSR objectives of the Sydney LEP 2012. For these reasons it is recommended that a Clause 4.6 exception to the FSR development standard be refused.

Heritage

60. The building is identified as a contributory building within the Kingsclear Road Heritage Conservation Area (C3), and is therefore subject to the heritage provisions of the Sydney DCP 2012.
61. The former Kurrajong Hotel is a striking example of an Inter- War Functionalist hotel, with art-deco detailing, on a highly prominent corner site. The strong horizontal elements of the upper storeys give the building a distinct appearance and are highly intact. The building was designed by prominent architects Copeman, Lemont and Keesing for the brewers Tooth and Co, and has, provided an important focus for the local community.
62. The proposal includes significant alterations to the building including:
- (a) Removal of existing window frames and glazing and retention of only the openings on Level 1
 - (b) Installation of twelve new horizontal openings within the upper parapet
 - (c) Changes to openings and new doors and windows
 - (d) Glass balustrade installed on top of the parapet
 - (e) Demolition of roof, internal walls and staircase
 - (f) Construction of three storey addition
 - (g) New circulation core, lift, and new internal walls

63. The proposed removal of windows and new openings to the Park Street elevation are depicted in Figure 18 below.



Figure 18: Park Street demolition elevation. The red dashed lines indicate the new rectangular openings in the upper parapet and the removal of Level 1 windows to create the "open" breezeways behind the facade. The hatched area at ground level represents the removal of original fabric to introduce the residential lobby.

64. The proposed removal of windows on Level 1, will remove original detailing and detract from the facade. Timber framed sash windows should be retained or introduced to original detailing. The introduction of 12 large openings in the upper parapet will remove significant original fabric and is uncharacteristic of the building with its vertically proportioned windows. The introduction of a glass balustrade to the upper parapet will detract from the original character of the building. At ground level the proposed lobby entry and services door do not respect the original pattern and style. The proposed external alterations are contrary to section 3.9.7 of the Sydney DCP, which seeks to respect and retain significant original built form and fabric. In addition, the BCA report submitted states that a fire hydrant system is required to service the building. The proposed location of the fire hydrant booster assemble has not been shown on the plan, and it is unclear what further implications it may have on the original facade of the building.
65. The proposed demolition works will remove the ground floor stair, which appears original, and result in a further loss of understanding of the stair, hall and room layouts on Level 1, which is contrary to section 3.10.3 of the Sydney DCP 2012.
66. The three storey addition, will visually dominate the existing building and adjoining development within the heritage conservation area. It does not respond sympathetically, and is contrary to section 3.9.6 of the Sydney DCP 2012.
67. The proposed roof form of the addition, drawing from a terrace roof typology, does not relate to the inter-war functionalist style of the building.

68. As noted earlier in the report, the application seeks to exclude any works to the hotel ground floor and basement, with the exception of the new residential lobby and service area. However, the proposed three storey addition will require substantial structural works to the existing building to support the additional loads. A preliminary structural assessment was included with the application. This assessment indicated a reframing of the first floor, with loads transferred to ground via structural steel portal framing, new concrete footings and a large central concrete column (refer Figure 19).

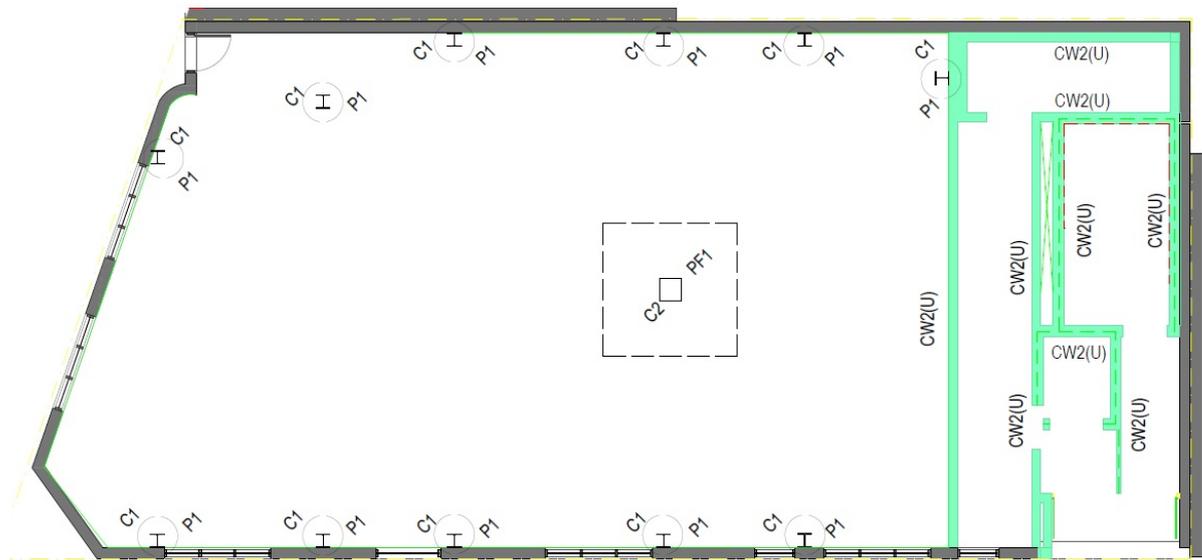


Figure 19: Feasibility ground slab and footing plan depicting steel perimeter beams and central concrete column and footing.

69. None of these works have been depicted on the architectural plans submitted, or assessed in terms of their potential impact on the original fabric of the building. These works are intrinsically linked to the proposed addition and must form part of the application.
70. The proposal does not comply with the relevant aims, objectives and controls of the Sydney DCP 2012. The proposal will not conserve the heritage significance of the building or the heritage conservation area and is contrary to section 5.10 of the Sydney LEP 2012.

Residential Amenity

Natural Cross Ventilation

71. The natural ventilation and cross ventilation of habitable rooms on levels 1 and 2 relies on combinations of air movement across the common breezeways, the removal of existing windows in the facade, introduction of new penetrations in the parapet, and the creation of voids within the Level 3 floor (Figure 20). The removal of these windows and new penetrations within the upper parapet are not supported on heritage grounds. In the absence of these openings, natural ventilation of a number of habitable rooms cannot be achieved and natural cross ventilation cannot be achieved.

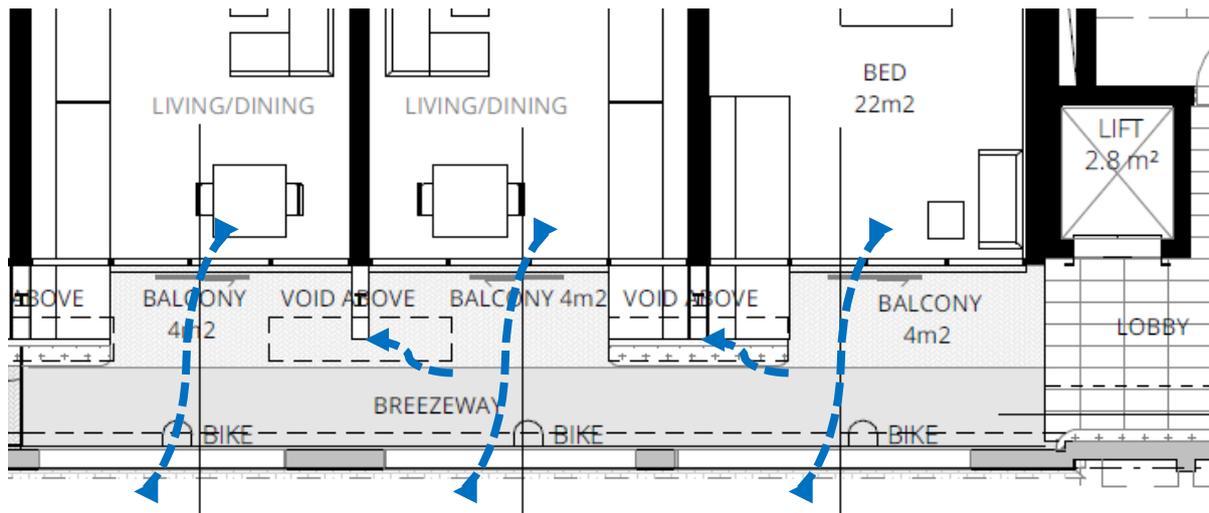


Figure 20: On Level 2, reliance on new penetrations in the principal facade and air movement across the common breezeway and through voids to Level 3 for natural ventilation and cross ventilation.

72. In addition to the above, the application includes an acoustic assessment report, which requires an acoustically treated alternative source of air to address traffic noise on Swanson Street. No details to address this have been incorporated within the application.

Private Open Space

73. The plans annotate "balcony" areas on levels 1, 2 and 3. However, the "balconies" on Level 1 and 2 are enclosed indoor spaces and do not meet the definition of private open space. These "balconies" rely on openings across breezeways and/or relatively small voids providing access through the level above, to access any direct solar access and natural ventilation in order to achieve any level of "openness" (Figure 19 above). On Level 3 the balcony areas are entirely cantilevered by Level 4 and appear partially enclosed by screen walls.
74. The private open space arrangements are not supported and contrary to section 4E and 4F of the Apartment Design Guide. The poor level of amenity of these "private open space" areas is not offset in any way through the proposal of a reduced density, generous floor area apartments, or communal open space.

Solar Access

75. The applicant's solar assessment states that 80% of apartments receive 2 hours direct sunlight between 9am and 3pm on June 21 to the living room and private open space, which complies with the 70% ADG minimum requirement.
76. However, the application documentation omitted diagrams depicting hours between 12pm and 3pm, and provided no views from the sun or area calculations. The applicant's solar assessment diagrams are included in Attachment C.
77. As with ventilation, direct solar access is reliant on the proposed openings and penetrations within the exterior facade, limited to the rays crossing the common breezeway, or passing through voids in the floor above. A combination which is not supported. In addition to these shortcomings, a maximum of 4 of the 10 apartments 40% are assessed as being able to achieve compliance with the solar access provisions of the ADG. The proposal is considered contrary to section 4A of the ADG.

Building Separation, Visual and Acoustic Privacy

78. Visual and acoustic privacy is an issue both to neighbouring properties and within the proposed development.
79. The western side of the building includes extensive glazing (refer Figure 13) and habitable rooms with separations to the boundary of 2.4m at level 1, 1.0m at Level 2, and 0.3m at Levels 3 and 4. First floor windows are located at No 104 Swanson Street less than 1.0m from the shared western boundary of the site. No privacy treatments are proposed on the plans. The proposal will result in overlooking of windows and private open space of properties to the west and north-west (refer Figure 7).
80. The proposal is contrary to and does not comply with section 3F of the ADG, which seeks that *Adequate building separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy.*
81. Within the proposed development, the adoption of common breezeway access on Levels 1, 2 and 3, compromises both the enclosed "balcony" areas and living room windows of all but the southernmost unit on each level (Figure 21). The access arrangements would require further enclosure of "balconies" or use of blinds to achieve any degree of privacy.
82. The proposal is contrary to and does not comply with section 4F of the ADG, which seeks that 'Primary living room or bedroom windows should not open directly onto common circulation spaces'.



Figure 21: Proposed common circulation breezeway impacts on privacy to units and "private open space".

Ceiling Height

83. A minimum floor to floor height of 3.05 is specified for Level 2, which does not meet the minimum 3.1m specified in the ADG and Sydney DCP 2012 to achieve a floor to ceiling height of 2.7m. Level four provides floor to ceiling heights of 1.8m - 3m, as well as providing in excess of 50% of the areas of the Level 3/4 apartments. This non-compliance will result in a further deficiency in the levels of residential amenity.
84. The proposal does not demonstrate compliance with, and is contrary to section 4C of the ADG.

Transport and parking

85. The site currently provides no car parking and none is proposed, which is acceptable under the provisions of the Sydney LEP 2012.
86. Provision should be made for one bicycle parking space for each of the residential units. The proposal locates bicycle rings within the common breezeways on Levels 1, 2 and 3. However, these rings within the breezeways do not meet the requirements of a Class 1 facility, and on Levels 2 and 3 the breezeways are a minimum 1m wide. The parking of bicycles in these areas will impeded egress to the units and is non-compliant with the BCA. The provisions for bicycle parking is unacceptable and contrary to section 3.11.3 of the Sydney DCP 2012.

Flooding

87. The site is identified as in an area subject to flooding. The application has not provided a flood study in accordance with the City's Interim Floodplain Management Policy. The proposed residential lobby seeks to introduce a new door and omit any entry threshold step, which is currently a feature of existing entries into the hotel ground floor.
88. The proposal has not adequately demonstrated that the proposed development is compatible with the flood hazard of the land, and is contrary to section 7.15 of the Sydney LEP 2012.

Access

89. Access for disabled persons can be provided to the premises. An entry step threshold currently exists to all of the existing hotel entry doors. It is proposed to omit any entry step threshold in the new residential lobby and lift access is provided to one adaptable unit on Level 2.

Other Impacts of the Development

90. The BCA report has identified a number of non-compliances with the deemed-to-satisfy provisions of the BCA, for which Performance Solutions would be required. Although Performance Solutions are not uncommon, in this instance the following non-compliances are noted:
 - (i) Extended travel distances to an exit from each sole occupancy. A distance of in excess of 24m is proposed versus the deemed to satisfy provision of 6m. Given this excessive distance and further obstructions such as bicycle parking proposed within the minimum 1m unobstructed width of egress, it is unclear what solution may be offered.
 - (ii) Extensive operable windows in close proximity to western boundary. Ranging from 2.4m to 0.3m from the western boundary, no details or reference to how compliance with the BCA may be achieved has been adopted in the proposed plans.
91. The proposal is not considered to have adequately demonstrated that it is capable of complying with the provisions of the BCA.

Suitability of the site for the Development

92. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed. A mixed use development may be considered suitable for the site, but the current proposal is not supported.

Internal Referrals

93. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Surveyors; Transport and Access; and Waste Management. The comments from these internal referrals are reflected in the assessment provided in this report.

Design Advisory Panel

94. The application was referred to the Design Advisory Panel. Review by the panel recommended the following:
95. The application should be refused on the following grounds:
- Poor residential amenity in proposed apartments
 - Entries across private spaces
 - Solar access
 - Height (relative to context)
 - Impact on heritage item
 - Possible overshadowing of neighbouring properties
96. The panel also noted concerns about the impact of the proposed structure on the contributory building.

External Referrals

Notification, Advertising and Delegation (Submission(s) Received)

97. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 21 March 2018 and 12 April 2018. As a result of this notification there was one submission of support, 134 submissions of objection, and two petitions.

98. The submissions in objection raised the following matters:

Heritage:

- (a) The hotel should be preserved, heritage listed, and alteration should be prevented.
- (b) Substantial changes to ground and basement levels of building are not addressed and may lead to the loss of the pub and the public amenity it provides.
- (c) Impact on the character of the existing building, the streetscape and heritage conservation area. A project of this scale is better suited to the nearby Ashmore Precinct.

Response: Agreed - These issues are addressed in the body of the report. The proposed alterations and additions to the hotel are not supported.

Height:

- (a) The building height will adversely impact on the reserve and set a precedent for further development.

Response: Agreed - The proposed alterations and additions to the hotel are not supported.

Residential Amenity:

- (a) Poor residential amenity. Inadequate setbacks and private open space.
- (b) Non-compliant with SEPP 65 and the Apartment Design Guide (ADG) requirements.

Response: Agreed - These issues are addressed in the body of the report. The proposed alterations and additions to the hotel are not supported.

Car Parking:

- (a) Pressures on car parking.

Response - The site does not currently provide car parking. The provisions of the Sydney LEP 2012 are maximums and do not require any car parking.

Pressure on Infrastructure:

- (a) Pressure on stormwater and sewerage infrastructure.

Response - The proposed alterations and additions to the hotel are considered an overdevelopment of the site and not supported.

Privacy Impacts:

- (a) Visual Privacy.
- (b) Acoustic Privacy.

Response - These matters have been discussed in the issues section of the report. The proposed alterations and additions to the hotel are not supported.

Affordable Housing:

- (a) No provision for affordable housing.

Response - There is no requirement for development of the site to make provision for affordable housing.

Loss of public amenity:

- (a) Object to the loss of the first floor as pub

Response - Objections to the loss of original fabric are discussed in the body of the report. The current proposal is not supported. Support would be provided for a proposal to provide for the ongoing use primarily as a pub.

99. The one submission in support raised the following matters:

Things need to change:

- (a) It is larger scale than some people want but it's very tastefully planed.

Response - The proposed alterations and additions are a significant departure from core development controls, result in adverse impacts on the building and locality and are not supported.

100. Two signed petitions were received, containing 129 and 13 signatures respectively. Both petitions seek an Interim Heritage Order be issued for the existing hotel building.
101. An interim heritage order can be issued by the Minister for Heritage when a building, is considered that on further investigation it may be found to be of local significance, is under threat of harm and has no heritage protection. The Swanston Hotel is located within the Kingsclear Road Heritage Conservation Area, and is identified as a contributory building. As the Hotel is already identified as having a degree of heritage protection, the City has not sought an interim heritage order.

Sydney Airport Referral Act 1996

102. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
103. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify the subject site is subject to a prohibition of the construction of buildings more than 50 feet in height (15.24m) above existing ground height.

104. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
105. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, has not provided approval for the controlled activity. CASA approval would be required for the application if it were to be supported.

Public Interest

106. It is considered that the proposal will have a detrimental effect on the public interest and is not supported for the reasons stated in the body of the report.

S7.11 Contribution

107. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
108. A monetary contribution will need to be calculated towards the cost of public amenities if the application were to be approved.

Relevant Legislation

109. The Environmental Planning and Assessment Act 1979.

Conclusion

110. The proposal seeks alterations and additions to the existing hotel that will result in significant detrimental impacts on the existing building and its contribution to the heritage conservation area. The proposed height and form of the addition is inconsistent with the host building and the surrounding context and results in impacts of dominance and overlooking to neighbouring properties. The design and configuration of the residential accommodation will result in a poor standard of amenity and will not achieve design excellence. The application does not provide design details and information that are integral to the complete assessment of the proposal.
111. The proposal is non-compliant with the height and floor space ratio development standards and key amenity planning controls. The site and proposal are not considered to present particular circumstances that make it unreasonable or unnecessary to comply with the development standards, and the proposal has not presented sufficient environmental planning grounds to justify contravening the development standards. As such, the application is recommended for refusal.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Alistair Smith, Area Planning Coordinator