

Item 3.

Development Application: 262 Liverpool Street, Darlinghurst

File No.: D/2018/1526

Summary

Date of Submission: 12 December 2018

Applicant: Cornerstone Property Group

Architect/Designer: SJB

Owner: Mr Mark Carnegie

Cost of Works: \$13,135,000

Zoning: R1 General Residential zone. Commercial uses are prohibited within a R1 General Residential zone. However the proposal is permissible under Clause 5.10.10 of Sydney Local Environmental Plan 2012. See discussion under the heading Issues.

Proposal Summary: Adaptive reuse of the former First Church of Christ Scientist as office premises. Alterations and additions including two storey addition to the eastern wing, new roof top terrace/breakout space, new attic area, basement car parking containing nine spaces and associated site works.

Amended plans were received on 18 April which included a further 1m setback for the proposed first and second floor addition fronting Liverpool Street, the relocation of the required substation on the Liverpool Street frontage and the retention of several windows adjoining a proposed outdoor terrace on Forbes Street.

This application is reported to LPP as the application has received over 25 submissions from the public.

The application was notified between 18 December 2018 and 5 February 2019. 80 submissions were received. The objections raised the following concerns:

- use inappropriate in the area;
- heritage fabric impacts via internal works and excavation;

**Proposal Summary
(continued):**

- impacts on character of conservation area and building;
- bulk, scale and materiality of addition;
- on-street parking concerns;
- traffic concerns – congestion, increased vehicle movements and pedestrian safety;
- residential Amenity - views, privacy to adjoining sites and increased activity in the area;
- noise from occupants and plant infrastructure; and
- precedent for commercial development within residential zones.

Proposal not permitted under 7.22 of SLEP 2012

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Location Plan
- C. Selected Drawings
- D. Cyclical Maintenance Plan
- E. Schedule of Conservation Works
- F. Conservation Management Plan
- G. Design Advisory Panel Minutes – 18 October 2018
- H. Design Advisory Panel Minutes – 14 February 2019

Recommendation

It is resolved that consent be granted to Development Application No. D/2018/1526 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:

- (A) Notwithstanding the General Residential zoning, the proposal is permitted under the provisions of 5.10 – Heritage Conservation in Sydney Local Environmental Plan 2012 and is considered to result in positive heritage conservation outcomes for the heritage listed site.
- (B) The proposal is consistent with the Sydney Development Control Plan 2012.
- (C) The proposal is not considered to result in unacceptable amenity impacts.
- (D) The proposal, subject to conditions, is considered to display Design Excellence as required by Clause 6.21 of Sydney Local Environmental Plan 2012.
- (E) The proposal is considered to be in the public interest.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 13 February 2019.
2. The site is square shaped, with an area of approximately 1548sqm. It has a primary street frontage to Liverpool Street and a secondary frontage to Forbes Street to the west. A part one part two storey sandstone Victorian building including mezzanine is contained within the site, with a lower ground floor addressing the Forbes Street frontage. The site is currently used as a single dwelling.
3. Surrounding land uses are predominantly residential. A five storey brick residential flat building neighbours the site to the immediate north, with a three storey terrace to the immediate east. Two storey Victorian dwellings with sandstone facades occupy sites to the west across Forbes Street, with the exception of a three storey Victorian terrace having its primary frontage on Liverpool Street presenting a broad exposed brick facade to Forbes Street.
4. A row of two storey Victorian terraces and a multi storey art deco residential flat building occupy sites to the immediate south across Liverpool Street.
5. The site is a local heritage item known as I357, "First Church of Christian Scientist including interior", and is located within the Oxford Street and Victoria Street Conservation Area (C12).
6. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from the primary Liverpool Street frontage.



Figure 3: Neighbouring sites to the east along Liverpool Street.



Figure 4: The site viewed from the secondary Forbes Street frontage.



Figure 5: Neighbouring sites to the north, along Forbes Street.

Proposal

7. The application seeks consent for alterations, additions and the adaptive re-use of the existing part one part two storey building as a commercial premises, with the majority of physical works resulting in a two storey rear addition, a centrally located two storey mezzanine structure and the enclosure of the parapet level of the building. The proposed trading hours are 7:00am to 10:00pm, Mondays to Sundays inclusive. The proposal consists of:
- (a) Basement
 - (i) Excavation to provide parking for nine car parking spaces and two motorcycle parking spaces, waste area and bulky goods area.
 - (b) Lower ground
 - (i) demolition including removal of room partitions, northern bathroom, glazed lightwells and plantings on the Liverpool Street elevation, external stairs leading to Forbes Street and excavation to the east;
 - (ii) commercial tenancy 1 with outdoor terrace area accessed from the western Forbes Street frontage;
 - (iii) part tenancy 2 and 4 occupying the north-western and south-western stairwells; and
 - (iv) end of trip facilities including showers, change rooms, steam room, small workout area, and 22 bicycle parking spaces with lockers.
 - (c) Ground Floor
 - (i) demolition of existing residential living, kitchen and bedroom space, and selected internal joinery;
 - (ii) demolition of northern side staircase and replacement with ramp between basement and Forbes Street;
 - (iii) ground floor segment of proposed two storey square mezzanine as part of tenancy 2; and
 - (iv) part tenancy 4 located within the south-western stairwell.
 - (d) Level 1
 - (i) demolition including removal of residential rooms on mezzanine level and sawtooth roof over eastern wing;
 - (ii) first floor segment of the proposed two storey square mezzanine as part of commercial tenancy 2 including sculpture;
 - (iii) first floor addition over existing single storey eastern wing, occupied by commercial tenancy 3;
 - (iv) part of commercial tenancy 4 within the south-western stairwell; and
 - (v) outdoor terrace with plantings on north-eastern side.

- (e) Level 2
 - (i) second floor addition over existing single storey eastern wing, occupied by commercial tenancy 4;
 - (ii) works to enclose areas behind existing parapet of various heights;
 - (iii) open air breakout spaces containing planters on the south-eastern, south-western and north-western corners;
 - (iv) centralised plant area; and
 - (v) outdoor terrace with plantings on north-eastern side.
 - (f) Roof
 - (i) removal of low pitched segments of roof over main building;
 - (ii) communal rooftop deck over eastern wing; and
 - (iii) 99 solar panels on north face of existing roof.
8. Amended plans were submitted following consultation with Council's Heritage, Urban Design and Landscape specialists, which included:
- (a) a further 1m setback from the primary Liverpool Street frontage for the proposed first and second floor glass addition over the eastern wing;
 - (b) relocation of the required substation and as a result a smaller extent of excavation on the southern Liverpool Street frontage, with landscaping adjacent to the Liverpool Street primary entry; and
 - (c) retention of two windows to the Forbes Street frontage adjoining the proposed lower ground outdoor terrace, as opposed to being used as doors.
9. Plans and elevations are provided in Attachment C.



Figure 6: Artist's impression of proposal, viewed from Liverpool Street.



Figure 7: Artist's impression of the proposal, viewed from Forbes Street.

History Relevant to the Development Application

10. Pre-lodgement advice was sought regarding the proposed development, and as part of this process the proposal was presented to the Design Advisory Panel on 18 October 2018. Their comments are featured in Attachment G.
11. The proposal was supported in principle "...on the basis that conservation of the heritage item, particularly the building's interior space, is facilitated by the change of use".
12. Guidance was provided on elements which required amendments, including the scale and materiality of the proposed mezzanine and its separation from the internal walls, the possibility of relocating floor space to compensate for a reduced mezzanine, and the support of reducing the visibility of the required substation as much as possible.
13. The application was again referred to the Design Advisory Panel on 14 February 2019. Their comments are featured in Attachment H.
14. The panel did not raise further issues or objections, and felt that the proposal responded to their previously raised concerns.
15. The following applications are relevant to the current proposal:
16. D/2011/378, subject site – "Adaptive re-use of First Church of Christ Scientist building for residential use, comprising construction of dwelling structure within the auditorium". This application was approved on 13 May 2011 and was implemented.
17. D/2013/515, subject site – "Adaptive reuse of the existing heritage item with alts and ads to the upper levels with 6 additional apartments new Café / Commercial Office / Artist in residences etc". This application was refused by the Land and Environment Court on 14 January 2014.

18. D/2014/1164, subject site – “Alterations and additions to the former First Church of Christ Scientist comprising a 3 storey addition containing 4 residential apartments, conversion of the lower ground floor to a commercial office space, use of the foyer and ancillary spaces on the ground floor as 2 artist studios, exhibition space and cafe seating up to 24 people, basement parking level for 11 vehicles, associated landscaping and a new substation.”. This application was approved on 26 May 2015 and is operational.

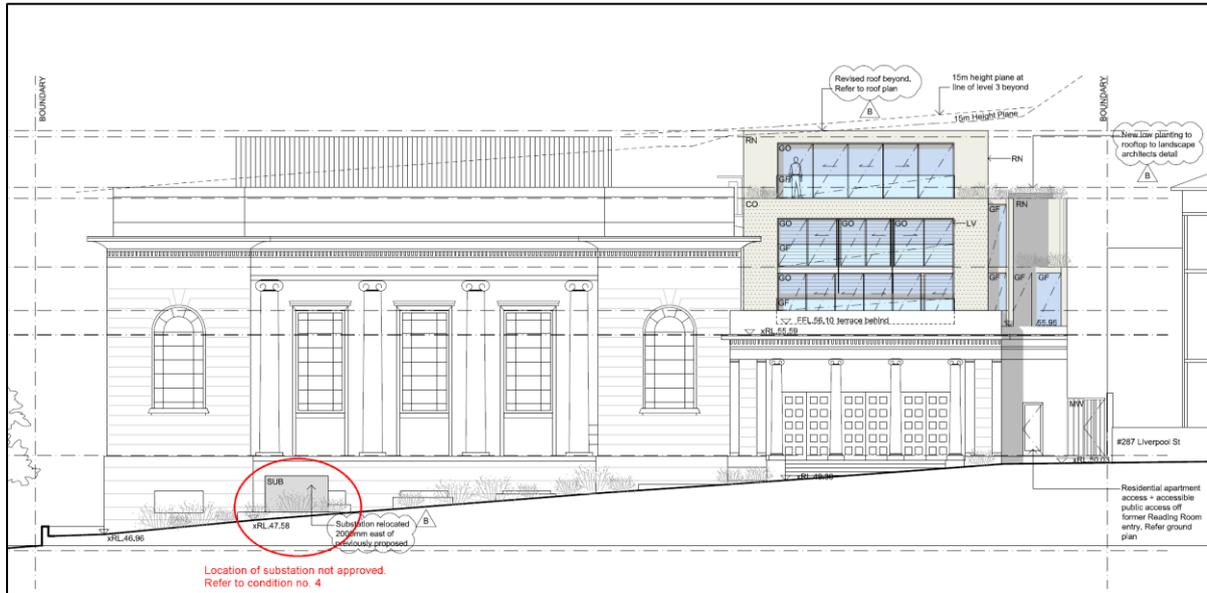


Figure 8: Excerpt of plans from the development approved under D/2014/1164 showing the approved Liverpool Street elevation.

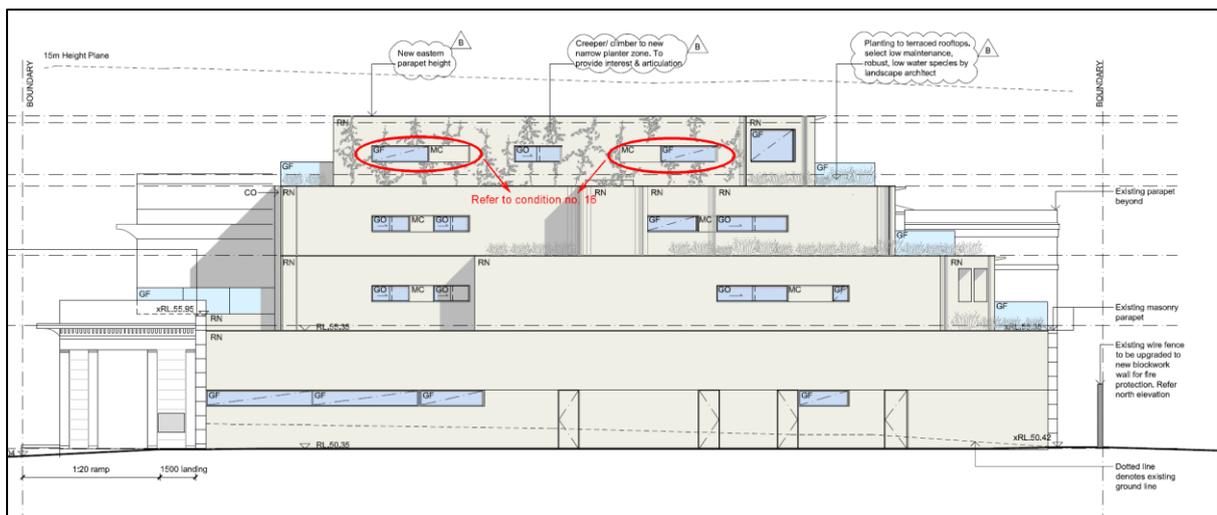


Figure 9: Excerpt of plans from the development approved under D/2014/1164 showing the approved eastern elevation.

Economic/Social/Environmental Impacts

19. 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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

20. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.

21. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:

- (a) protect and improve hydrological, ecological and geomorphologic processes;
- (b) consider cumulative impacts of development within the catchment;
- (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
- (d) protect and rehabilitate riparian corridors and remnant vegetation.

22. The site is within the Sydney Harbour Catchment and eventually drains into the 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 SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

23. The site is located within the R1 General Residential zone. Commercial uses are prohibited within the R1 General Residential zone, however the proposal is permissible under Clause 5.10.10 of Sydney Local Environmental Plan 2012 providing that certain conservation matters are met. See discussion under the heading Issues.

24. 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	Yes	A maximum height of 15m is permitted. A height of 13.68m is proposed.
4.4 Floor Space Ratio	Yes	A maximum FSR of 1.75:1 is permitted. A FSR of 1.59:1 is proposed.

Development Control	Compliance	Comment
5.9 Preservation of trees or vegetation	Yes	The proposal is acceptable in terms of tree preservation as the proposal will have a minimal impact on trees adjacent to the site subject to conditions.
5.10 Heritage conservation	Yes	The subject site is a heritage item and is located within a heritage conservation area. The proposal includes a use prohibited in the R1 General Residential zone. See discussion under the heading Issues.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 6.21 Design excellence	Yes	The proposed development satisfies the requirements of this provision subject to conditions as it is considered that the proposal reaches a high standard of architectural design and appropriately addresses the heritage status of the subject building and surrounds.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 7.6 Car parking ancillary to other development	Yes	A maximum of 41 car parking spaces are permitted. 9 car parking spaces are proposed.

Sydney DCP 2012

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

2. Locality Statements – East Sydney

The subject site is located in the East Sydney locality. The proposed adaptive re-use and associated works are considered to be in keeping with the unique character of the area and design principles in that the modern form responds to and complements the existing heritage item both in the adaptive re-use of the site but also in the juxtaposition of the existing heritage listed building with the modern and high quality internal modifications and additions over the single storey eastern wing, subject to conditions.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology.
3.9 Heritage	Yes	The existing building is a local heritage item, is a contributory building and is within a conservation area. See discussion under the heading Issues.
3.12 Accessible Design	Yes	The proposal shows several measures to facilitate accessible design such as ramps, appropriate site entries and elevators. Nonetheless, a condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.14 Waste	Yes	Council's Waste Management specialists supported the proposal subject to conditions.
3.15 Late Night Trading Management	Yes	The proposal is not a licensed premises, does not propose to trade past 10:00pm, and is not considered to have adverse impacts on the amenity or safety of the community. Therefore, the proposal is not subject to the provisions of this part of the DCP.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	Yes	The subject site has a maximum height in storeys of four storeys. The proposal includes three storeys within the eastern wing consisting of the existing single storey form and two storey addition, and four storeys within the main segment of the building including an internal mezzanine and enclosed roof section.
4.2.2 Building setbacks	Yes	The setback of the proposed two storey addition over the eastern wing aligns with the front wall of the building addressing the Liverpool Street frontage and is considered acceptable.
4.2.3 Amenity	Yes	The proposal is not considered to result in adverse levels of amenity impacts within an existing urban context, as discussed below.
4.2.6 Waste minimisation	Yes	Council's Waste Management specialists supported the proposal subject to conditions.

Issues

Commercial use within R1 General Residential zone

26. The proposal includes the use of the building as a commercial premises. The site is within a R1 General Residential zone, in which the Commercial Premises use is prohibited.
27. However, as the subject site is a heritage item known as I357, "First Church of Christian Scientist including interior", Clause 5.10.10 of Sydney Local Environmental Plan 2012 is applicable.
28. This clause states that *"the consent authority may grant consent to development for any purpose of a building that is a heritage item ... even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:*
 - (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*

- (b) *the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
 - (c) *the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
 - (d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
 - (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.”*
29. The subject application was submitted with a comprehensive Conservation Management Plan, Schedule of Conservation Works and Maintenance Plan (see Attachments D, E and F), supplemented by the submitted plans, finishes schedule, Heritage Impact Statement and Heritage Interpretation Strategy. These management documents are attached as Attachments D, E and F.
30. The following is an assessment of the proposal against these requirements:
- (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*

Comment: The documents submitted including the Maintenance Plan, Schedule of Conservation Works, Conservation Management Plan and the works shown in the proposed plans, informed by the submitted Heritage Impact Statement, have been reviewed by Council staff and it is considered that the proposal facilitates the conservation of the heritage item.

These works include but are not limited to general repair, cleaning and making good external elements, such as the removal of disused external services, repair and use of render to match existing colour finish and profile where there are structural cracks, retention and cleaning of significant elements such as sign marking above the main entry door on Liverpool Street, retention and repair of timber entrance doors and the retention of three existing external carriage lamps.

Internally, conservation works include but are not limited to the retention, repair, cleaning and making good for ceilings, cornices, walls, wall signs/lettering, doors and floors, repair of structural cracks with render to match existing colours and profile, retention and repair of all original joinery, panelling, window frames and furniture in order to be used in existing locations or in alternate locations if not possible, salvage and re-use of materials in useable condition where demolition is approved, and where walls are removed interpretive elements are to be used to discern the location of these walls.

In conjunction with the submitted Maintenance Plan, the proposed works are considered to retain the heritage value of the property via the retention, repair and re-use of existing original fabric.

- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and

Comment: Based on the works shown in the submitted plans, and recommended conditions to follow and comply with the submitted heritage management documents discussed above, the proposed development will be in accordance with the heritage management documents which have been approved as part of this consent.

In addition to the works described in the Schedule of Conservation Works discussed above, the Conservation Management Plan (CMP) sets out policies for the ongoing management of the property and to direct future development “so as to enable the quality, character and significance of the place to be retained and, where possible, recovered, while maintaining the usefulness and long-term viability of the place”.

In general, the CMP directs future development to:

- retain the significant character and quality of the building and its various elements;
- permit alterations, adaptations and new works which are compatible with the above and which will make the place more effective in its principal intended use;
- identify elements which adversely affect the place and which are in need of modification or removal;
- provide an approach to the replacement of deteriorated fabric; and
- draw attention to the need for coordination of the conservation needs of the place both in the short term and over the longer life of the building with other functional and technical aspects and requirements for the place.

The Conservation management Plan has been reviewed by Council’s Heritage specialists and is considered acceptable, and as such a condition of consent is recommended to adopt this Plan.

(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and

Comment: A condition of consent is recommended which requires the owner of the property to submit a revised Schedule of Conservation Works prior to the issue of a Construction Certificate, purely to update the document to reflect changes made to the works during the assessment process. This document is otherwise supported.

The submitted Schedule of Conservation Works, Conservation Management Plan and Maintenance Plan are also supported and are included as approved documents in the recommended conditions.

(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and

Comment: Subject to conditions, the proposal is not considered to adversely affect the heritage significance of the heritage item or its setting. The development is considered to have positive heritage conservation outcomes, and the proposed physical works constitute a high quality modern juxtaposition which highlights the architectural qualities of both the new and existing forms.

- (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Comment: It is considered that the development will not result in significant adverse effects on the amenity of the surrounding area as:

- (i) Traffic - Multiple public transport links exist via bus routes along Oxford Street, Darlinghurst Road and by rail via Kings Cross station to the north. Council controls emphasise use of non-vehicular based transport, which is further reinforced by the number of parking spaces provided within the basement area and the abundance of bicycle storage and end of trip facilities.

On-street parking spaces are available for use by the general public and are useable on a 'first come first serve' basis. On-street parking is also time limited, and for stays of longer than 1 hour in the majority of on-street parking locations in the vicinity a resident parking permit is required. Users of the development will not be eligible for a resident parking permit.

Council's Traffic and Transport specialists in addition to Council's Road Safety Officer supported the development in terms of pedestrian safety, stating that only 1 accident involving a car and a bicycle had been recorded since a new roundabout on the corner of Liverpool Street and Forbes Street had been constructed between February and April 2014. No accidents involving a pedestrian have occurred since, with the latest being in 2010 prior to the installation of the roundabout, and it was also observed that the speed limit in the vicinity is only 40km/h.

In addition, the relocation of the traffic island in front of the proposed vehicle entry on Forbes Street is not approved as part of this consent, and is required to be assessed by Council's City Infrastructure and Traffic Operations Team as well as Council's Local Pedestrian, Cycling and Traffic Calming Committee. It is noted that the traffic island was removed in 2018 as required by Sydney Water but has since been reinstated.

- (ii) Overshadowing - The development includes two additional storeys which go no higher than other parts of the existing building. Shadow diagrams submitted with this application show that, due to the orientation of the site, shadows cast will for the most part fall onto Liverpool Street and will be a result of the existing building on the site and neighbouring buildings. Overshadowing to neighbouring properties will mostly occur from 1:00pm onwards however the overshadowing created is not unreasonably greater than existing conditions.
- (iii) Noise - Conditions are recommended in terms of noise impacts related to plant equipment on the roof of the building.

Several outdoor areas within the site at first second and third/roof levels are not considered likely to result in adverse levels of acoustic impacts as the occupancy would be limited by the size of the areas and due to the office/commercial use of the site, the number of occupants present past normal business hours would be limited and therefore the potential volume of use would be limited and/or infrequent. As the proposed trading hours only extend to 10:00pm, the use of these areas would not extend to hours which would be detrimental or unreasonable when compared to the use of outdoor areas in a residential context.

Noise associated with the operational use itself in terms of patrons within the building are not expected to be excessive within a dense urban environment, and as is conventional with commercial premises noise associated with workers and general office activity will be predominantly internal.

- (iv) Privacy - The eastern side of the proposed addition uses fibre cement cladding and as such no views are available through this material to adjoining 278 Liverpool Street to the east. Visual privacy to neighbouring residential sites to the east including 278 Liverpool Street and 1B Darley Street are considered acceptable from the proposed first and second floor open spaces on the north-eastern side of the building, as the landscaped areas create a visual buffer in terms of downward viewing angles to private open space and the majority of the area of the respective decking with a functional width is set back further from the eastern boundary.

Privacy impacts to properties to the south across Liverpool Street are considered acceptable as the views are taken across the public domain, and the two sites are separated enough that details are not discernible from this distance.

31. The original use of the building was redundant following the sale of the property in 2010, and was approved for use as a single dwelling before approval was given for a mixed use development. In order to facilitate the retention and continued conservation of such a large building with intact significant fabric without unacceptable intrusion into significant features, the proposed commercial use was considered the most appropriate use for the site.
32. Amenity impacts to the locality have also been assessed as being acceptable in the context of the use.
33. As per the discussion above, it is considered that the content of these documents in terms of the extent of conservation works, and the conclusion of the assessment of the extent of amenity impacts to the locality, satisfies the provisions of 5.10.10 subject to conditions.

Solar Access

34. As discussed above, the majority of shadows cast from the site on June 21 fall to Liverpool Street to the south, and do not affect neighbouring properties until 1:00pm.

Acoustic and Visual Privacy

35. The proposal includes three outdoor deck areas, two of which are located on the eastern side of the building at first and second floor and the third being more centrally located at roof level.

36. As discussed above, the deck areas are set back from the eastern boundary by the structure itself and the proposed landscaping, and the smaller width of the section of decking adjoining this boundary is also smaller which facilitates less trafficability and further limits opportunities for overlooking.
37. The deck located centrally within the site on roof level is not considered to result in adverse visual privacy impacts due to the distance of the area from residential sites. Regarding acoustic privacy, as discussed above the number of occupants of the building past regular trading hours is expected to be limited, and therefore the volume and frequency of use of the space would be limited and/or infrequent. Further, outdoor activity before 10:00pm can be reasonably expected within an urban context.

Views

38. The proposal includes the construction of a two storey addition on the eastern wing of the existing building, and the infill of an existing area which has a high parapet.
39. The submitted Statement of Environmental Effects includes an assessment of the proposal against the principles of view sharing as established *under Tenacity Consulting v Warringah [2004] NSWLEC140*, primarily from the views of sites to the north, east and south-east following their submission objecting to the approved development:

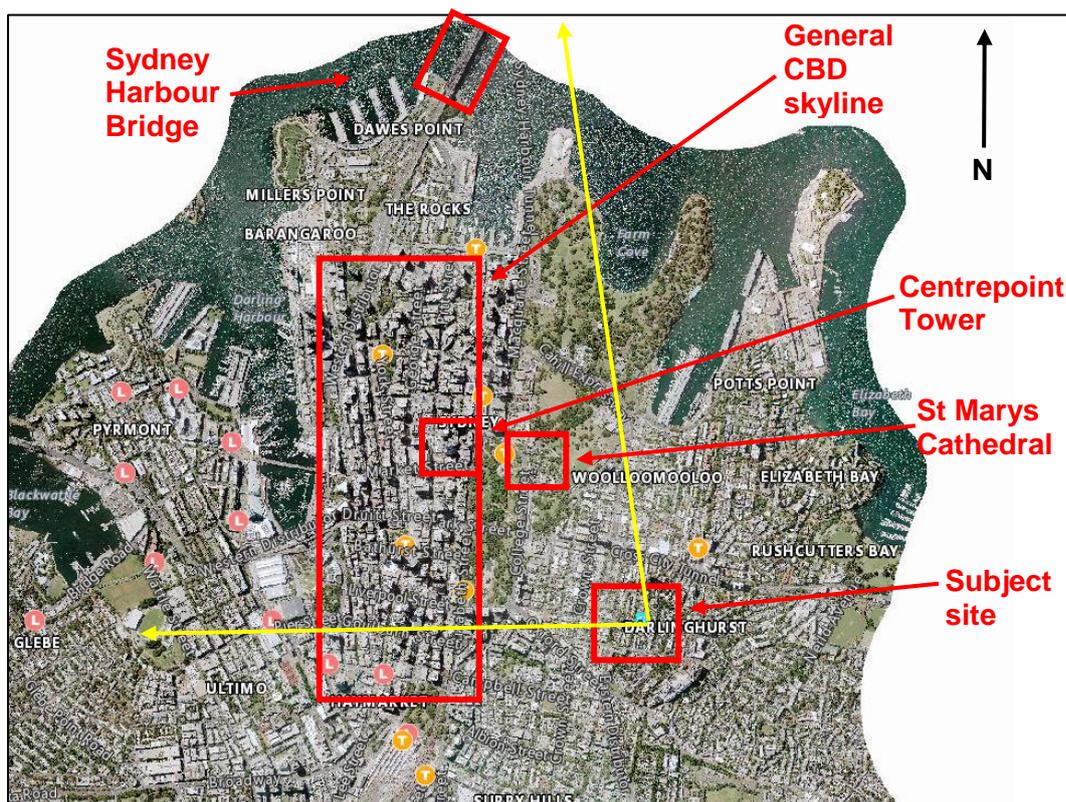


Figure 10: Approximate viewing angles of affected sites in the vicinity of the subject site.



Figure 11: Excerpt of submitted Statement of Environmental Effects indicating location of sites where view loss was assessed taken from assessment report of D/2014/1164.

- (a) 349 Liverpool Street:
- (i) Views: Partial north-western land-based view of St Marys Cathedral, Sydney City skyline and the iconic view of the Sydney Harbour Bridge.
 - (ii) Part of property viewed from: Assumed north-facing kitchen and living room windows, assumed standing, across public domain and front boundary.
 - (iii) Extent of impact: No additional view loss than previously approved scheme.
 - (iv) Reasonableness of proposal: Within envelope of approved development.
40. **Council officer's comment:** The proposed form is within the prescribed height in metres control, height in storeys control, is predominantly within the within the approved footprint in terms of the eastern addition, and these views occur across the subject site. It is also noted that views to these sites will be predominantly across the larger segment of the building and not the eastern wing, and no additional height is proposed to the larger segment.
- (a) 200 Forbes Street, Darlinghurst:
- (i) Views: Partial south-facing land-based views of the subject site and 347 Liverpool Street.

- (ii) Part of property viewed from: South-facing windows adjoining unknown rooms, assumed in standing and sitting position, across the rear boundary of subject site.
 - (iii) Extent of impact: Moderate to severe, however views are not considered to be of a high retention value.
 - (iv) Reasonableness of proposal: Predominantly within approved envelope.
41. **Council Officers Comment:** Views to the subject site and to the large multi-storey heritage listed 347 Liverpool Street are taken across the single storey segment of the subject site and are land-based views. As the proposal is within the permitted height in metres and storeys control, and is within the height of the approved development, view loss is considered acceptable and is minimal.
- (a) 278 Liverpool Street, Darlinghurst:
 - (i) Views: Partial land-based Sydney City skyline.
 - (ii) Part of property viewed from: First floor rear facing (east – north-east facing) balcony and adjoining bedroom, standing, across eastern side boundary. Not observed from a private living area.
 - (iii) Extent of impact: Moderate to severe, however the existing view is not a 'whole view' given the skyline is impeded by the existing buildings and vegetation.
 - (iv) Reasonableness of proposal: Proposal within existing footprint.



Figure 12: Existing view from the first floor rear facing balcony of 278 Liverpool Street, submitted by applicant.



Figure 13: Approved building envelope superimposed over existing view, submitted by applicant.



Figure 14: Proposed envelope superimposed over existing view, submitted by applicant.

42. **Council Officer's Comment:** It is considered that the view loss compared to existing conditions is moderate, however from Figure 12 it is agreed that the view cannot be distinguished as a 'whole view' and is indeed a partial view. This is supported by photographs submitted by the owner of the subject site. The area being viewed is also land-based, which is considered to have a lower importance than sea-based or iconic views, and is taken from a balcony adjoining a bedroom which is considered to have lesser importance than a primary living area.
43. Multiple existing elements interrupt the scope of this view, including the parapet of the existing building, the building at 198-200 Forbes Street to the north-west, and the palm tree within the site. The view is taken across a side boundary, which is difficult to reasonably protect, and at its core exists because the eastern wing is a single storey element instead of having the same continuous height as the remainder of the building. Current planning controls also permit an envelope of 15m and four storeys subject to assessment of different factors.
44. It is also reiterated that the proposal is predominantly within the same building envelope as the previously approved development, which was considered acceptable from a view loss perspective. The perspectives provided by the applicant within Figures 13 and 14 indicate that the difference in view loss is negligible to the approved scheme.
45. Because of these factors, the view lost from this property has a lesser importance when assessed against the principles of view loss established by Tenacity Consulting vs Warringah Council and therefore the proposed form is acceptable from this perspective.
- (a) 1B Darley Street, Unit 6 (southernmost apartment):
- (i) Views: Partial view of land-based Sydney City skyline.
 - (ii) Part of property: First floor balcony of master bedroom and inside bedroom, west facing, from a standing position. First floor second bedroom, west facing, from a standing position. Ground floor rear private open space, west facing, standing. Ground floor living and dining area, west facing, standing and sitting position.
 - (iii) Extent of impact: First floor master bedroom balcony – none. Inside first floor master bedroom through glazed balcony door – none. First floor bedroom window – Ground floor private open space – none above approved envelope. Ground floor dining, standing and sitting – none above approved envelope. Ground floor living, standing – improved from approved envelope. Ground floor living, sitting – none above approved envelope.
 - (iv) Reasonableness of proposal: Predominantly within existing approved and operational envelope and rear extent, several rear elements set further back from northern boundary via un-trafficable terrace areas.

46. **Council Officer's Comment:** Through photomontages provided by the applicant which include photographs from the abovementioned areas of apartment 1B, the proposal is shown to predominantly match the view loss resulting from the approved development. To illustrate, the information below will examine views from the ground floor living area (standing), ground floor rear private open space in front of the dining area (standing) and from the balcony adjoining the first floor master bedroom (standing).
47. The view from the ground floor living area under the approved scheme is considered partial from a standing position (see Figure 15).



Figure 15: View under the approved operational development from ground floor living area (standing).

48. The view under the proposed scheme remains partial, however this improves the outlook via the setback of the built form and a non-trafficable roof segment (see Figure 16).



Figure 16: Proposed view from ground floor living area (standing). The view is improved under the proposed scheme.

49. The view from the ground floor rear private open space in front of the dining area under the approved development remains partial when standing, and is substantially obscured by vegetation (see Figure 17).



Figure 17: View under the approved development from ground floor private open space in front of dining area (standing).

50. The view under the proposed scheme is predominantly the same as the approved envelope (See Figure 18).



Figure 18: Proposed view from ground floor private open space in front of the dining area (standing). The view is not materially different from the approved development.

51. Views from the first floor balcony adjoining the master bedroom are the most intact, with the approved development only obstructing minor land-based views of the canopies of trees on Forbes Street and beyond (see Figure 19).



Figure 19: View from the first floor balcony adjoining the master bedroom, under the approved development. Sydney City skyline views are unobstructed by the approved envelope.

52. The view under the proposed scheme is predominantly the same as the approved envelope (See Figure 20).



Figure 20: Proposed view from first floor master bedroom, standing. The proposed scheme is predominantly within the existing approved envelope.

53. As shown above, the proposed envelope is predominantly within the same envelope as the development approved under D/2014/1164, which was considered to have acceptable impacts when assessed against the principles of *Tenacity vs Warringah*. Given that the view is also taken across not only a side boundary but is only possible due to the single storey eastern wing, protecting this view is unreasonable.
54. View loss resulting from the proposed development is therefore considered acceptable.

Working Hours

55. The proposed commercial premises includes trading hours of 7:00am to 10:00pm.
56. The hours are considered reasonable given that the proposed use is of a commercial/office nature instead of a use which anticipates regular activity outside of reasonable business hours.

Transport and parking

57. The proposal includes the provision of nine car parking spaces and two motorbike spaces within a new basement level located off the Forbes Street secondary frontage. The site also provides parking for 22 bicycles and end of trip facilities in a new eastern segment of the lower ground floor.
58. Under the provisions of Clause 7.6 of Sydney LEP 2012, office and business premises are permitted to contain a maximum of 41 car parking spaces. Part 3.11.3 requires the provision of 22 bicycle parking spaces for employees and eight spaces for visitors, bringing the total to 30.
59. The proposal does not comply with the relevant provision for bicycle parking and as such a condition is recommended to provide an additional eight spaces.

60. Council's Traffic and Transport specialists and Road Safety Officer also supported the proposal subject to conditions.

Substation

61. The proposal includes the use of a substation located on the Liverpool Street frontage, with the initial plans proposing excavation along the frontage from the corner of Liverpool Street and Forbes Street to the edge of the Liverpool Street entry portico.
62. This excavation also included the construction of a fence which historical documents show was designed but never built, and also facilitates access to the new end of trip facilities area on lower ground behind the existing lower ground area.
63. Concerns were raised by internal units, who preferred minimal changes in grade on this frontage and preferred the use of an underground chamber instead of an above-ground substation. Alternatives were explored regarding the use of an underground chamber however the appearance of the required access and egress staircases as well as the required size of any underground chamber did not lead to a desirable outcome.
64. The proposal was amended which reduced the depth and extent of excavation along the Liverpool Street frontage, and which located the substation further towards Forbes Street. Due to the excavation and proposed fencing in front of this excavation, the visibility of the substation is negligible from street level.
65. A contemporary fence was considered preferable, and a modern black rounded steel picket fence is now proposed. Conditions are recommended to finalise the detailed design of this fence including the submission of a materials sample which includes said fencing.

Access

66. Access for disabled persons can be provided to the premises, and is reinforced via condition regarding disabled access provisions within the Building Code of Australia.

Other Impacts of the Development

67. The proposed development is capable of complying with the BCA.
68. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

69. The proposal is of a nature which is compatible and appropriate to the overall function of the site in terms of adaptive re-use.

Internal Referrals

70. The conditions of other sections of Council have been included in the proposed conditions.
71. The application was discussed with the Design Advisory Panel, Heritage and Urban Design Specialists, Building Services Unit, Public Domain, Surveyors, Transport and Access, Tree Management and Waste Management specialists.

72. The proposal was discussed with Council's Design Advisory Panel, as requested when this application was presented prior to lodgement. No objections were raised.
73. Council's Heritage and Urban Design specialists raised concern over the initial setback of the proposed two storey 'glass box' addition over the eastern wing, commenting that the entry portico and return to the central building is intended to be read in three dimensions and that the proposed setback does not adequately allow this. Structurally it was also considered difficult to achieve without having greater impacts on the fabric of this area, and the setback approved under D/2014/1164 was referenced as being appropriate.

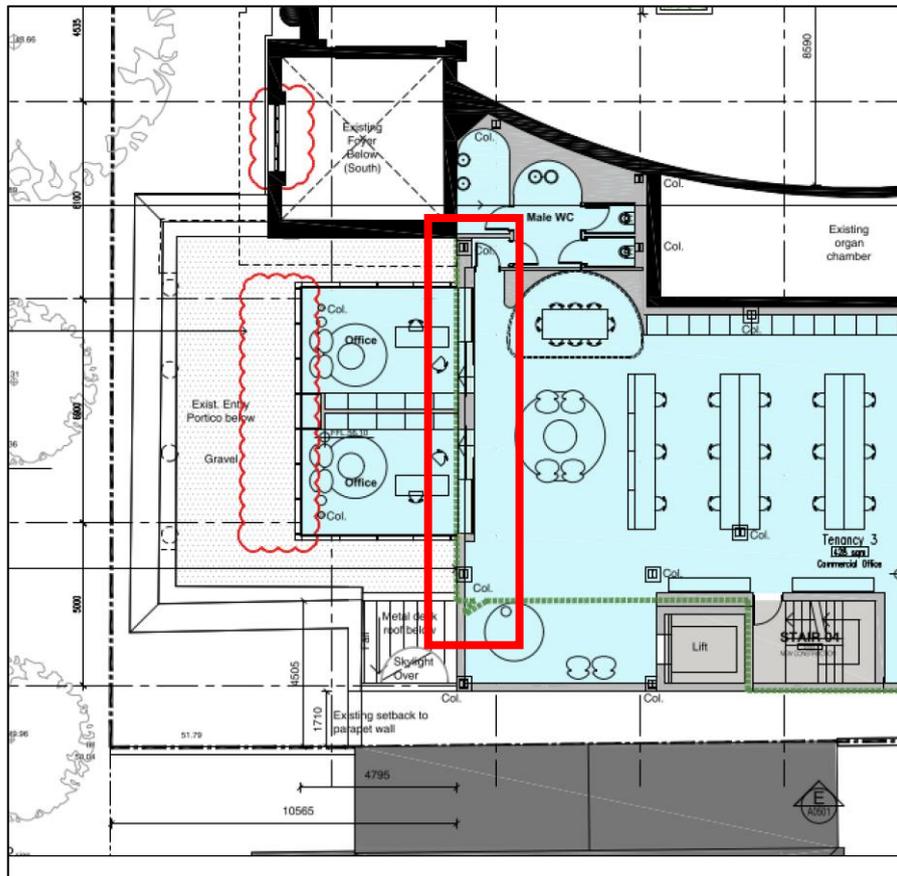


Figure 21: Excerpt of amended plans including a further 1m setback from the previous position, and the front setback of the previously approved addition marked in a green dotted line.

74. Concern was also raised regarding a proposed substation, as it required the removal of sandstone paving and lightwells on the Liverpool Street frontage, as well as fencing. The pattern of proposed cladding on the eastern side of the proposed addition was also discussed, as the 'faux masonry' appearance and arrangement was considered to be at odds with the solid materiality of the existing sandstone building
75. Amended plans were submitted which relocated the proposed substation to require less excavation along the Liverpool Street frontage, a 1m setback for the proposed addition and a new vertical panelled arrangement for the cladding was also submitted.

76. Concern was later raised over the loss of several items of fabric with high and exceptional significance which was against the recommendations of the Conservation Management Plan. Because of these factors, it was also felt that the proposal did not result in positive conservation outcomes and did not therefore meet the provisions of CI 5.10.10 of Sydney LEP 2012 unless modifications were made.
77. The application was supported subject to modifications, surrounding the setback of the proposed two storey addition an additional 1m from amended plans resulting in a setback of a further 2m from the initially submitted plans, the retention of the easternmost lightwell, alternate locations for the required substation, detailing for the required fence on the Liverpool Street elevation, and the retention of any intact parquet flooring.
78. Standard conditions were also recommended surrounding archival documentation, signage, retention of specific items of fabric, and the use of a heritage consultant throughout the project.
79. Council's Public Domain unit generally supported the proposal, and recommended conditions surrounding damage to the public domain, the submission of a public domain plan, stormwater and drainage details and lighting to the public domain.
80. A condition was also recommended that the relocation of the traffic island directly opposite the proposed Forbes Street vehicular entry was not approved, and is instead to be submitted to and approved by Council's City Infrastructure and Traffic Operations team in conjunction with Council's Local Pedestrian, Cycling and Traffic Calming Committee.
81. The proposal was discussed with Council's Tree Management specialists, who observed that the proposal had potential impacts on several trees in the vicinity. An Arborist Report was then submitted to Council's satisfaction, and conditions were recommended regarding tree protection and pruning.
82. Council's Transport and Access specialists supported the proposal, and recommended conditions surrounding works to the vehicular access to the site as well as within the adjacent roadway.

External Referrals

Notification, Advertising and Delegation

83. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised notified and advertised. As such the application was notified and advertised notified and advertised for a period of seven weeks between 18 December 2018 18 December 2018 and 5 February 2019 5 February 2019 due to the Christmas period. In addition, several requests to accept submissions after this date were made, and were granted until 5 March. As a result of this notification there were 80 submissions received, 78 objecting to the proposal and two in support.
 - (a) Use inappropriate in the area.

Response – Though the proposed use is commercial and is within an existing residential area, under the provisions of Cl. 5.10.10 the use has been assessed as being appropriate not only from an amenity standpoint but for the sake of positive heritage outcomes and conservation of the heritage listed building moving forward.

- (b) Heritage fabric impacts via internal works and excavation.

Response – In consultation with Council's Heritage and Urban Design specialists, it is considered that the impacts on the existing fabric are acceptable. It is also noted that the previous consent permitted the removal of segments of fabric and as the consent has been activated it is Council's view that similar works within this application are acceptable as they can legally be carried out at any time under the previous consent.

- (c) Impacts on character of conservation area and building

Response – The treatment of the existing significant fabric which is capable of retention is acceptable, and the new additions to the building are designed to be a contemporary contrast which highlights and enhances the stylistic differences of both the new and existing forms.

- (d) On-street parking concerns

Response – In consultation with Council's transport and access specialists, on-street parking is and always has been accessible to the general public, on a 'first-come first-serve' basis. On-street parking in the area is also extensively time restricted except for residential or visitor permit holders.

- (e) Traffic concerns – congestion, increased vehicle movements and pedestrian safety

Response – Multiple public transport links exist via bus routes along Oxford Street, Darlinghurst Road and by rail via Kings Cross station to the north, and the number of parking spaces and the abundance of bicycle storage and end of trip facilities emphasise minimal vehicle-based movement. Vehicle movements resulting from the use will be incidental within a regular urban context, and are considered to be infrequent based on the office-based use of the site outside of commuting hours. It is also emphasised that on-street parking spaces are available for use by the general public and are useable on a 'first come first serve' basis, and are predominantly time limited in the area.

Council's Traffic and Transport specialists in addition to Council's Road Safety Officer also supported the development in terms of pedestrian safety, stating that no accidents involving a pedestrian have occurred since the installation of the roundabout on the corner of Liverpool Street and Forbes Street in 2014, and that speed limits in the vicinity are 40km/h.

- (f) Residential Amenity - views, privacy to adjoining sites and increased activity in the area.

Response – Views to the north-east are not considered to be unreasonably impacted as the works comply with the prescribed four storey envelope for the site, the enclosure of the parapet level and two storey eastern addition does not result in elements which exceed the existing roof ridge height, and the residential flat building to the north is much larger than the proposed development. In addition, any views currently seen over the existing single storey eastern wing are viewed across the site, and cannot reasonably be expected to be retained.

As discussed above, due to the solid profile of the material used on the eastern elevation, and the limited downward viewing angles from the first and second floor deck areas on the eastern side, minimal privacy impacts are envisaged to neighbouring properties.

Since planning controls discourage vehicle-based transport and several public transport opportunities exist to access the site, the majority of activity is anticipated to be a result of workers travelling to and from the site, and infrequent client movements. The area includes a high residential density, regular activity from places such as SCEGGS to the north and Burton Street to the south, and regular pedestrian movement from immediate residents and the general public throughout the day let alone during typical morning and evening commuting times. As such the activity produced in the area as a result of the development is considered acceptable.

(g) Noise from occupants and plant infrastructure

Response – As an office-based use, typically noise created from day to day operation is minimal and internalised, and may create less noise than other larger users in the area. Employees coming and going would be at a level reasonably expected in an urban environment, and conditions have been recommended regarding noise produced from plant equipment such as heating and cooling infrastructure on the roof.

(h) Precedent for commercial development within residential zones

Response – As the building is a heritage item, CI 5.10.10 of Sydney LEP 2012 permits these buildings to operate prohibited uses only if key criteria concerning conservation management are met. For properties which are not heritage listed or cannot demonstrate that they meet the criteria listed within 5.10.10, sites within residential zones will not be able to operate as commercial premises simply because this site is a commercial premises.

(i) Proposal not permitted under CI.7.22 of SLEP 2012

Response – CI 7.22A is not applicable to this site. The site is heritage listed and therefore provisions within CI 5.10.10 apply more appropriately to this situation as this clause facilitates development which has positive conservation and management outcomes for important sites, distinguished by their heritage listing.

(j) Retention of existing pipe organ

Response – Documentation submitted with this application states that the existing pipe organ is to be retained, restored and will be used periodically for public performances. A condition is recommended to integrate maintenance of said organ into the submitted Cyclical Maintenance Plan.

External Referrals

84. In order to ascertain whether the proposed substation was required, a referral was sent to Ausgrid. No objections were raised.

Public Interest

85. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

86. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the development's net increase in resident, worker and/or visitor populations.

87. The following monetary contribution is required towards the cost of public amenities:

(a)	Open Space	\$188,589.95
(b)	Community Facilities	\$183,652.25
(c)	Traffic and Transport	\$31,214.06
(d)	Stormwater Drainage	\$0.00
	Total	\$403,456.26

Relevant Legislation

88. The Environmental Planning and Assessment Act 1979.
89. Sydney Local Environmental Plan 2012.

Conclusion

90. Having regard to all of the above matters, it is considered that the proposed adaptive re-use, alterations and additions to the heritage listed building on the site satisfies the relevant strategy, objectives and provisions of Sydney LEP 2012 and Sydney DCP 2012, is acceptable and as such is recommended for approval.
91. In particular, it is considered that the works will successfully facilitate the conservation and continued activation of the site, in order to maintain the heritage significance of the building subject to conditions. Therefore, the adaptive re-use of the site as a commercial premises despite being a prohibited use within the R1 general Residential zone is supported in this case.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Nicholas Beck, Planner