

Item 10.**Development Application: 816 George Street, Chippendale and 5220 George Street, Haymarket**

File No.: D/2018/1418

Summary**Date of Submission:** 23 November 2018**Applicant:** Sharetea Australia Pty Ltd**Designer:** Interior Life**Owner:** City of Sydney**Cost of Works:** \$150,000.00

Zoning: The subject building is located in the B8 Metropolitan Centre zone and the SP2 Infrastructure zone. The proposed use is a food and drink premises which is permitted in the B8 Metropolitan Centre zone but prohibited in the SP2 Infrastructure zone. See discussion under the heading 'Zoning' in the Issues section.

Proposal Summary: Development application for the use of the existing building (former transport ticketing kiosk) as a takeaway food and drink premises. The proposed works include the installation of a serving counter, awnings, internal fit out, installation of signage and outdoor seating.

The application is referred to Local Planning Panel for determination as the land owner is the Council.

Following an assessment of the application by Council Officers, requests for further information and amendments were sent in December 2018 and February 2019.

As part of the building is located within the SP2 Infrastructure zone, the applicant submitted evidence to demonstrate that the site benefits from existing use rights (Attachment C). Sufficient evidence has been submitted to demonstrate that the site has established existing use rights and the proposed use is permissible.

**Proposal Summary
(continued):**

However, the outdoor dining area proposed to the north-east of the building cannot be approved as the existing use rights do not apply beyond the building boundary and because the outdoor dining area is located within the SP2 Infrastructure zone (Road Reserve) and is not associated with a 'restaurant' as defined under the Roads Act 1993.

The proposed signage does not meet the requirements of the Sydney DCP or demonstrate design excellence. The applicant was given the opportunity to revise the signage, however the revised designs did not address the issues raised. A deferred commencement condition is recommended which requires details of the signage and external façade treatment to be submitted for approval prior to the operation of the consent.

The subterranean State Heritage Item 'Railway Square Overbridge' (01232) is located below 816 George Street, approximately 20m away from the subject building. The NSW Heritage Office have confirmed that an exemption under S.57(2) of Heritage Act 1977 is not required.

The application was notified for a period of 42 days from 5 December 2018 to 16 January 2019 due to the Christmas period. No submissions were received.

The application was re-notified for a period of 14 days from 4 April 2019 to 19 April 2019 to include the '5220 George Street, Haymarket' address in the description. No submissions were received.

Subject to details of the signage and external facade treatment being submitted for approval, the proposal is permissible and is generally compliant with the relevant planning controls and is consistent with the desired future character of the area.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
- (iii) Sydney Harbour Catchment SREP 2005
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) State Environmental Planning Policy 64 - Advertising and Signage

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Letter by Plan Urbia dated 5 February 2019

Recommendation

It is resolved that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2018/1418 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) Sufficient evidence has been submitted to demonstrate that the site benefits from existing use rights. Approval can therefore be granted for the change from one type of retail premises to another. The proposal is consistent with the objectives of the B8 Metropolitan Centre zone for the reasons set out in the report.
- (B) The proposal is considered appropriate within its setting and, subject to conditions to amend the signage design, is generally compliant with the relevant planning controls contained in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) Subject to design modifications, the proposal is considered to demonstrate design excellence in accordance with Clause 6.21 of the Sydney Development Control Plan 2012.
- (D) Appropriate conditions of consent have been imposed to ensure that the development will not result in detrimental environmental impacts.
- (E) The proposal would have no impact on the significance of the heritage items within the vicinity of the site.

Background

The Site and Surrounding Development

1. A site visit was carried out on 10 January 2019 and 19 February 2019.
2. The application relates to an existing single storey building which is located on the boundary of two lots. Around two-thirds of the building is located within the Road Reserve known as 5220 George Street, Haymarket and a third is located within 816 George Street, Chippendale which has a legal description of Lot 2 DP 819366 and is commonly known as Railway Square.
3. Railway Square is a large area of public domain and a key transport interchange located between George Street and Lee Street which was redeveloped in the late 1990s. The building is located towards the north-east section of Railway Square adjacent to the George Street public footway and one of the main entrances to Central Station.
4. Since its construction, the building has been used as a bus information/ticketing kiosk for the State Transit Authority, who vacated the site in March 2018. The building is owned by the City of Sydney.
5. The surrounding land uses include retail, tourist accommodation, commercial office space and educational. Another larger building with a similar appearance to the subject building is also located in Railway Square adjacent to Lee Street. This building is the subject of a development application which is currently under assessment for the use as a convenience store (D/2018/1619).
6. The site is not located in a Heritage Conservation Area. The subterranean State Heritage Item 'Railway Square Overbridge' (01232) is located below 816 George Street, approximately 20m away from the subject building.
7. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of application sites (5220 George Street, Chippendale and 816 George Street, Haymarket) with the location of the subject building highlighted in red.



Figure 2: View of subject building within Railway Square interchange looking south-west



Figure 3: Principal elevation of subject building viewed from Railway Square looking south-west



Figure 4: View of subject building from Railway Square looking north-east. Entrance to Central Station adjacent.



Figure 5: View of subject building from entrance to Central Station looking west

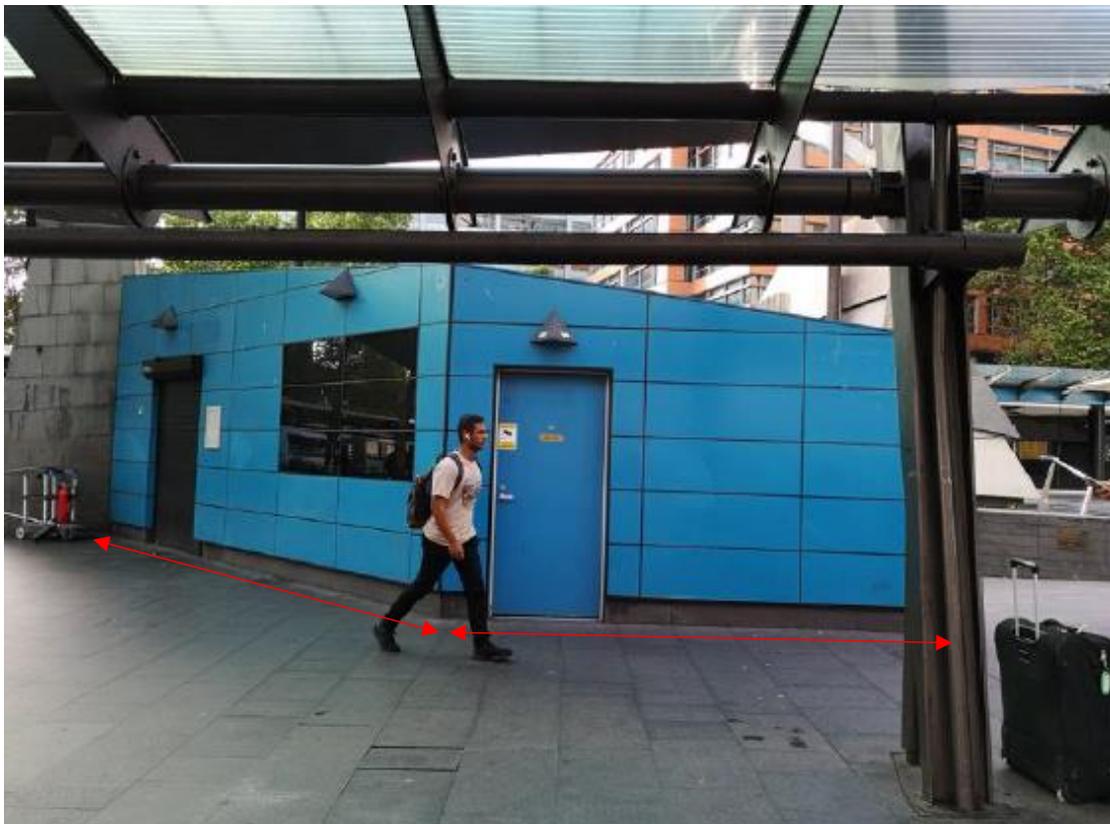


Figure 6: View of subject building looking east



Figure 7: View of subject building and Railway Square looking north-east

Proposal

8. The application seeks consent for the following:
 - (a) use of the building as a takeaway food and drink premises known as 'Sharetea';
 - (b) installation of a serving counter and roller shutter to replace the existing window;
 - (c) installation of two retractable awning structures to the principal elevation;
 - (d) painting of the external facade;
 - (e) installation of signage including:
 - (i) 2 x illuminated 'Sharetea' business identification signs on front (north-east) and rear (south-west) elevation;
 - (ii) 1 x dynamic content menu board on located on the existing roller shutter;
 - (iii) 3 x graphic vinyls comprising a 10.4sqm yellow graphic vinyl on the side (north) elevation, a 9.2sqm pink graphic vinyl on the rear (south-west) elevation and a 13.9sqm blue graphic vinyl on the side (south-east) elevation; and
 - (iv) 1 x illuminated 'The Beverage Hub' sign on internal rear wall.
 - (f) internal fit out including point of sale counter, preparation counters and installation of equipment associated with the use of the premises; and

- (g) outdoor seating comprising four tables, four chairs, two umbrellas and two barriers.
- 9. The proposed hours of operation are 7.00am to 12.00 midnight Monday to Sunday.
- 10. A maximum of three staff members will be on site at any one time.
- 11. Plans and elevations of the proposed development are provided below.

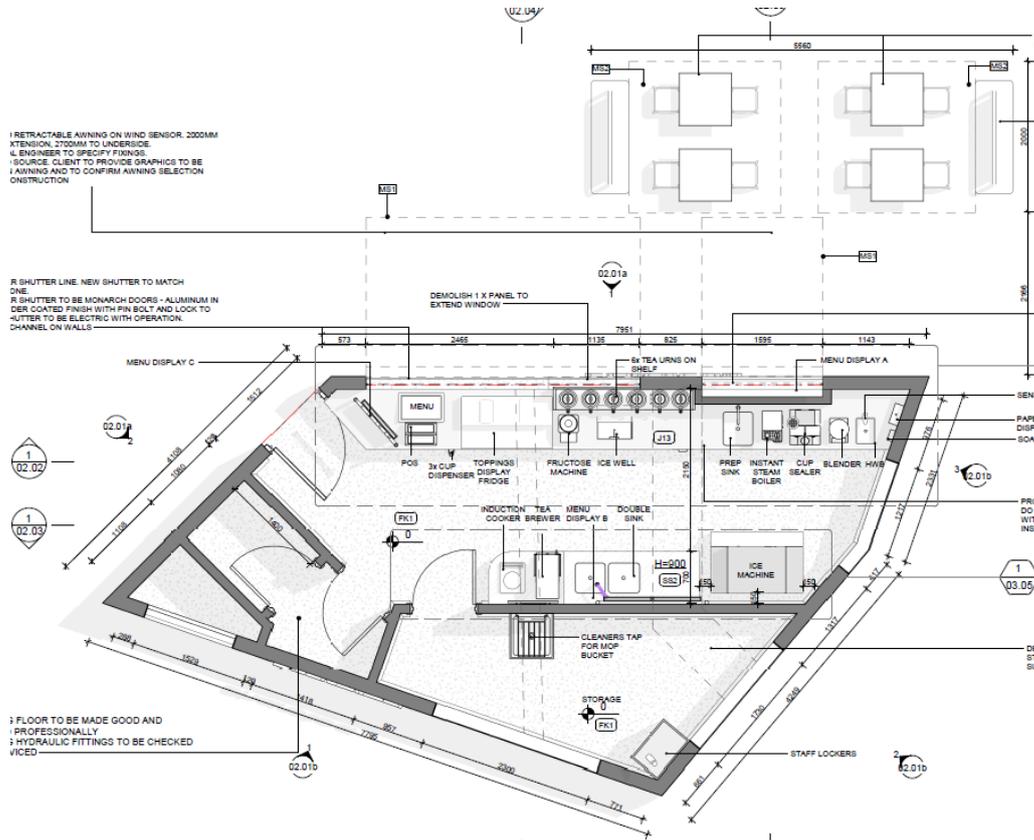


Figure 8: Proposed floor plan and outdoor seating



Figure 9: Proposed front and side elevation



Figure 10: Proposed front and side elevation - awnings shown.



Figure 11: Proposed rear elevation



Figure 12: Proposed side elevation (adjacent to the entrance to Central Station)

History Relevant to the Development Application

12. The following development application history is relevant to the application:

- **Z97-00127** - On 11 March 1997, development consent was granted for the major upgrade of pedestrian areas, including road carriageway and footpath realignment, footpath widening, paving, street lighting and street trees in Railway Square and along George Street to Circular Quay.

Whilst the approved plans for the development application could not be located, it is concluded that the documents within the file support the assumption that the subject building was constructed under this consent. Council records show that the building was leased to the State Transit Authority of NSW following its construction in 1999, which reflects the timing of the works undertaken under this consent.

- **D/2002/00004** - On 5 February 2002, development consent was granted for identification signs displaying the words "Transit Shop, information and bus ticket sales, Sydney Buses' plus logo on the building.

Amendments

13. Following an assessment of the application by Council Officers, requests for further information and amendments were sent in December 2018 and February 2019. The applicant was asked to demonstrate that the site benefited from existing use rights, amend the signage design and provide a plan of management.
14. The applicant submitted options or 'mock-ups' for the signage which did not address the concerns raised or meet the signage requirements in the DCP. A deferred commencement condition is recommended which requires details of the signage and external facade treatment to be submitted for approval prior to the operation of the consent.

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 No 64—Advertising and Signage

16. The application proposes the following signage:

- 2 x illuminated 'Sharetea' business identification signs on front (north-east) and rear (south-west) elevation;
- 1 x dynamic content menu board on located on the existing roller shutter;
- 3 x graphic vinyls comprising a 10.4sqm yellow graphic vinyl on the side (north) elevation, a 9.2sqm pink graphic vinyl on the rear (south-west) elevation and a 13.9sqm blue graphic vinyl on the side (south-east) elevation; and
- 1 x illuminated 'The Beverage Hub' sign on internal rear wall.

17. SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

18. Clause 8 of SEPP64 states the following:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.

Assessment Criteria

19. The following table outlines the manner in which the proposed signage addresses the assessment criteria of SEPP64.

1. Character of the area	Comment
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	<p>The proposed illuminated 'Sharetea' business identification signs on the front and rear elevations and the internal sign are considered to be compatible with the character of the area, subject to conditions regarding illumination.</p> <p>The proposed graphic vinyls and dynamic content menu board are not considered to be compatible with the character of the area as they would result in unacceptable visual clutter and be highly visible.</p>
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no theme for outdoor advertising in the area or locality.

2. Special areas	Comment
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	<p>The proposed illuminated 'Sharetea' business identification signs and internal sign would not detract from the amenity or visual quality of the Railway Square public domain.</p> <p>The proposed graphic vinyls and dynamic content menu would detract from the amenity and visual quality of the public domain and would be a highly visible element in the streetscape.</p>
3. Views and vistas	Comment
Does the proposal obscure or compromise important views?	The signage would not obscure or compromise any important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The large graphic vinyls would be visible from long views from George and Lee Streets and would have a similar appearance to a billboard or hoarding sign which would reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	The signage would not obscure any other signage located in Railway Square and the surrounding streetscape.
4. Streetscape, setting or landscape	Comment
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	<p>The scale, proportion and form of the 2 illuminated 'Sharetea' business identification signs and internal sign are considered to be appropriate to the streetscape and setting.</p> <p>The scale, proportion and form of the 3 graphic vinyls and the dynamic content menu sign are not considered to be appropriate to the streetscape and setting.</p>
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed illuminated business identification signs contribute to the visual interest of the streetscape, however the proposed graphic vinyls and dynamic content menu sign would add visual clutter and detract from the visual interest of the streetscape.

4. Streetscape, setting or landscape	Comment
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	There is no existing advertising on the premises. However, the number of signs proposed is considered to be excessive and would add visual clutter to the site and streetscape.
Does the proposal screen unsightliness?	No, however the proposed graphic vinyls and dynamic content signs are considered to be unsightly.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage does not extend beyond the building line of the existing premises.
Does the proposal require ongoing vegetation management?	No vegetation management would be required.

5. Site and building	Comment
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	<p>The scale, proportion and form of the illuminated business identification signs are considered to be appropriate to the existing building and surrounding public domain.</p> <p>The scale, proportion and form of the 3 graphic vinyls and the dynamic content menu sign are not considered to be appropriate to the streetscape and setting. The vinyls would have a similar appearance to a billboard or hoarding sign which are not a feature of the Railway Square public domain, and not in keeping with desired future character of the locality.</p>
Does the proposal respect important features of the site or building, or both?	<p>The scale, proportion and form of the illuminated business identification signs respect the existing building and streetscape.</p> <p>The proposed graphic vinyls would cover more than half of the total facades of the building and have not been designed to respect the existing building or its setting.</p>
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No

6. Associated devices & logos with advertisements & advertising structures	Comment
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No
7. Illumination	Comment
Would illumination result in unacceptable glare?	A condition of consent can be imposed to ensure the illumination would not result in unacceptable glare.
Would illumination affect safety for pedestrians, vehicles or aircraft?	<p>The proposal was referred to the NSW Roads and Maritime Service (RMS) as the signage is located within 250m of two classified roads (George Street and Lee Street). RMS advised that they had no objection to the proposal subject to conditions of consent which require the signage to not be animated, flashing, electronically changeable or complex displays so that it does not have an impact on safety.</p> <p>The menu sign would be electronically changeable and the large billboard style graphic vinyls could affect the safety of pedestrians and vehicles by distraction. Appropriate conditions of consent are therefore recommended which require the graphic vinyls and dynamic content sign to be removed.</p>
Would illumination detract from the amenity of any residence or other form of accommodation?	The premises is located in a commercial area within a transport interchange hub. The nearest accommodation is the Mecure Hotel at 6-10 Little Regent Street which has rooms that are approximately 35m away. Due to the separation distance and levels, the illumination would not detract from the amenity of the hotel accommodation.
<p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p>	A condition of consent is recommended which requires the signs to only be operative during trading hours.

8. Safety	Comment
<p>Would the proposal reduce the safety for any public road?</p> <p>Would the proposal reduce the safety for pedestrians or bicyclists?</p> <p>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</p>	<p>The proposal was referred to the NSW Roads and Maritime Service (RMS) as the signage is located within 250m of two classified roads (George Street and Lee Street). RMS advised that they had no objection to the proposal subject to conditions of consent which require the signage to not be animated, flashing, electronically changeable or complex displays so that it does not have an impact on safety.</p> <p>The menu sign would be electronically changeable and the large billboard style graphic vinyls could affect the safety of pedestrians and vehicles by distraction. Appropriate conditions of consent are therefore recommended which require the graphic vinyls and dynamic content sign to be removed.</p> <p>The signage would not obscure sightlines from public areas.</p>

20. The proposed illuminated business identification signs (2 x external 'Sharetea' signs and 1 x internal 'The Beverage Hub' sign) located on the front (north-east) and rear (south-west) elevation are considered to be consistent with the aims and objectives of Clause 3 of SEPP 64 and is supported.
21. The proposed dynamic content menu board (x1) located on the existing roller shutter and the proposed graphic vinyls to the side (south-east and north-west) and rear (south-west) elevations (x3) are not considered to be consistent with the aims and objective of Clause 3 of SEPP 64 and are not supported.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 101

23. The application is subject to Clause 101 of the SEPP as the site has frontage to George Street and Lee Street which are both State classified roads. The application is considered to satisfy Clause 101 of the Infrastructure SEPP subject to conditions of consent, as the development would not be accessed by vehicles, would not adversely affect the safety, efficiency and ongoing operation of the roads and is not a development type that is sensitive to noise or vehicle emissions

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

24. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
25. 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.
26. 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

27. The site is located in the B8 Metropolitan Centre and the SP2 Infrastructure zones. The proposed use is defined as a food and drink premises which is permissible with consent in the B8 Metropolitan Centre zone but is prohibited in the SP2 Infrastructure zone. The proposal relies on existing use rights as a result. See discussion under the heading Issues.
28. 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
5.4 Controls relating to miscellaneous permissible uses	N/A	<p>Clause 5.4(6) requires development for the purposes of a kiosk to not exceed 20sqm. The proposed GFA would be approximately 34sqm, however the proposed use is not considered to be a 'kiosk' as defined in the Standard Instrument. The definition of a kiosk in the Standard Instrument is '<i>premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.</i>'.</p> <p>As such, this provision does not apply to the proposed development.</p>

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not located in a Heritage Conservation Area. The 'Railway Square Overbridge' which is a subterranean State Heritage Item (01232) is located below 816 George Street, approximately 20m away from the building. Local heritage items are located in the vicinity of the site, approximately 40m away.</p> <p>The application was referred to the NSW Heritage Office who advised that a Section 57 (2) Exemption was not required as the development does not encroach onto the State Heritage Item.</p> <p>Due to the separation distances and minor nature of the development, the proposal would not have a detrimental impact on the significance of the State or local heritage items.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	No	<p>In its current form, the external appearance of the proposed development does not improve the quality and amenity of the public domain and does therefore not satisfy the requirements of this provision. These matters are considered to be capable of being addressed by way of a deferred commencement condition of consent.</p> <p>See discussion under the heading 'Signage' in the Issues section.</p>

Sydney DCP 2012

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

2. Locality Statements – Railway Square/Central Station Special Character Area

<p>The subject site is located in the Railway Square/Central Station Special Character Area. Railway Square is a major visual and functional gateway to the city from west to south.</p> <p>The proposed use of the existing vacant building as a food and drink premises is considered to be consistent with the enhancement of the public domain of Railway Square and maintains vistas to Central Railway Station. However, the proposed graphic vinyl and dynamic content signs do not enhance the pedestrian amenity of Railway Square and environs. A deferred commencement design modification condition is recommended which requires the proposed signage and façade treatments to be amended so that it is consistent with the aims of the special character area.</p>
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3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Partial compliance	<p>The proposed use of the vacant building as a food and drink premises will enhance the Railway Square public space by providing an active frontage which will positively contribute to the public domain.</p> <p>However, the proposed graphic vinyl signs are not considered to be of an appropriate scale and design to enhance the public domain. See discussion under the heading 'Signage' in the Issues section.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development would activate the site, would provide passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

3. General Provisions	Compliance	Comment
3.15 Late Night Trading Management	Partial compliance	<p>The proposed food and drink premises is considered to be a category B premises as defined by the DCP. The premises is located in the City Living Area which has permitted base indoor trading hours from 7.00am to 1.00am and permitted base outdoor hours from 9.00am to 8.00pm.</p> <p>See discussion under the heading 'Late night trading' in the Issues section.</p>
3.16 Signage and Advertising	Partial compliance	The proposed development includes signage. See discussion under the heading 'Signage' in the Issues section.
3.16.1 Signage Strategy	Yes	The site does not require a signage strategy as it is not located within a heritage conservation area, does not involve a heritage item, is not strata titled and does not contain more than four business premises.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.6 Waste and recycling management	Yes	<p>The submitted floor plan shows that there is adequate room within the building to store waste. A waste management plan was submitted for the construction.</p> <p>A condition of consent is recommended which requires the development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2018</p>

Issues

Zoning and existing use rights

30. The subject building is located on the boundary of two lots which is also the boundary between the SP2 Infrastructure zone and the B8 Metropolitan Centre zone. Around two-thirds of the structure is located within the Road Reserve known as 5220 George Street, Haymarket (SP2 Infrastructure zone) and around one-third is located within 816 George Street, Chippendale (B8 Metropolitan Centre zone). The site location and zoning is shown in Figure 13 below.



Figure 13: Extract from Sydney LEP Land Zoning Map with approximate location of subject building (labelled as kiosk)

31. The proposed food and drink use is permitted in the B8 Metropolitan Centre zone, however it is prohibited in the SP2 Infrastructure zone. Whilst the objective of Clause 5.3 (Development near zone boundaries) of the Sydney LEP allows for flexibility to be applied for sites near zone boundaries, the *Botany Bay Apartments P/L vs CoS* Judgement found that the relevant 6m distance only applies to land that is 6m from the zone boundary with the SP2 Infrastructure zone and not vice-versa. The provisions of Clause 5.3 cannot be relied upon in this instance.

32. The applicant has provided a letter which provides evidence that the building has the benefit of existing use rights under sections 4.65 (a) and (b), 4.68 and 4.70 of the Environmental Planning and Assessment Act 1979 (EPA). Refer to Attachment C.
33. The 'existing uses' include:
- Those arising from the continued lawful use of the premises under section 4.65(a) of the EPA (for the use of the premises as an information/ticket kiosk before the zone boundaries changed under the SLEP 2012); and
 - Those arising under the consent granted under section 4.65(b) (i) of the EPA being **Z97-00127** granted on 11 March 1997 for the major upgrade of pedestrian areas, including road carriageway and footpath realignment, footpath widening, paving, street lighting, and street trees in Railway square and along George Street to Circular Quay and minor works to York Street in the QVB precinct.
34. Clause 41(1)(e) of the EPA Regulation permits an existing use to change from one commercial use to another subject to Clause 41 (2) (a) - (e). In Clause 41(1)(e) of the EPA Regulation, commercial use means the *"use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the Standard Instrument)."*
35. In the Dictionary of the Standard Instrument, commercial premises means any of the following:
- (a) business premises,
 - (b) office premises, and
 - (c) retail premises.
36. Retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes, relevantly, any of the following:
- (c) food and drink premises,
 - (f) kiosks, and
 - (l) shops.
37. The approved use under the consent which has been identified as a ticket/information kiosk would not be categorised as being for the purpose of a 'kiosk' as defined in the Standard Instrument which is a *'premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.'*
38. It is considered that existing/previous use would be better characterised as being for the purpose of a 'retail premises' due to the regular use of the premises for the sale of bus tickets. The building appears to have been used as a ticketing kiosk since it was constructed and was vacated in March 2018.

39. The proposed development is considered to be minor in nature, does not increase the floorspace and does not involve the rebuilding of the premises and the use has not been abandoned. As such, it is considered that changing the use from one type of retail premises to another would be permitted under clause 41(1)(e) of the EPA Regulation.

Late night trading

40. The proposed food and drink premises is considered to be a category B premises as defined by the DCP. The premises is located in the City Living Area which has permitted base indoor trading hours from 7.00am to 1.00am and permitted base outdoor hours from 9.00am to 8.00pm with extended hours from 9.00am to 12.00am.
41. The proposed hours of operation are 7.00am to 12.00 midnight Monday to Sunday inclusive. The premises would operate on a takeaway basis from the serving counter and so apart from the staff, there would be no indoor 'use'. Both the recommended indoor and outdoor hours in the DCP have therefore been taken into consideration.
42. In addition, the *Draft Sydney Development Control Plan: Late Night Trading 2018* was publically exhibited from 27 November 2018 to 8 February 2019 and will be considered at Committee on 6 May 2019. The proposed amendments to the Late Night Trading provisions of the DCP include the re-zoning of Railway Square to a Late Night Management Area which would have permitted base indoor trading hours from 6.00am to 2.00am and permitted base outdoor hours from 7.00am to 10.00pm with extended hours from 7.00am to 1.00am. The proposed amendments to the Late Night Trading DCP have been considered in the assessment of the subject application.
43. The proposed hours of operation comply with the permitted base indoor hours of operation but do not comply with the current and proposed base outdoor hours of operation for the locality. As the operation of the premises would primarily be an 'outdoor' use, it is recommended that the hours of operation from 7.00am to 8.00pm are approved on a permanent basis with a trial period of 1 year to operate until 12.00 midnight. The trial period will provide the Council with the flexibility to review and assess the ongoing management of the premises and any potential impact on neighbourhood amenity. A further application may be lodged to continue the trading before the end of the trial period for Council's consideration.
44. A signed plan of management was submitted with the application and conditions of consent are recommended to ensure the use is operated in accordance with the management plan so that the premises does not have a detrimental impact on neighbouring amenity.

Outdoor seating

45. As discussed above, the outdoor seating which is shown on the proposed plans is located within the SP2 Infrastructure zone. Clause 42(2)(b) of the EPA Regulation provides that an expansion or intensification of an existing use can only occur on the land on which the existing use was carried out immediately before the relevant date and therefore the outdoor seating cannot be approved as part of the development.

46. In addition, a footway application could not be granted under the Roads Act 1993. This is because a footway approval under the Roads Act may only be granted in association with a restaurant. The Roads Act defines a restaurant as “premises in which food is regularly supplied on sale to the public for consumption on the premises”. As no indoor seating is proposed, the premises is inconsistent with the Roads Act definition of a restaurant and is ineligible for outdoor dining. In addition, the proposed location of the outdoor dining would cause conflict with key pedestrian paths of travel and therefore could not be supported on merit grounds even if it were considered permissible. A condition of consent is recommended which confirms that the outdoor seating is not approved.

Awnings

47. Two fabric awnings are proposed to the primary front (north-east) elevation above the serving hatch and menu board. The awnings have a height of 2.1m to 2.4m above the public domain which does not comply with minimum height above the footpath in the DCP.
48. The proposed retractable awnings are not considered to exhibit design excellence as the material, form and external appearance does not improve the quality of the building appearance or public domain. A condition of consent is recommended which states that the proposed awnings are not approved and requires them to be removed from the plans.

Signage

49. The application proposes the following signage:
- 2 x illuminated 'Sharetea' business identification signs on front (north-east) and rear (south-west) elevation;
 - 1 x dynamic content menu board on located on the existing roller shutter;
 - 3 x graphic vinyls comprising a 10.4sqm yellow graphic vinyl on the side (north) elevation, a 9.2sqm pink graphic vinyl on the rear (south-west) elevation and a 13.9sqm blue graphic vinyl on the side (south-east) elevation; and
 - 1 x illuminated 'The Beverage Hub' sign on internal rear wall.
50. Section 3.16 of the Sydney DCP 2012 aims to promote signage that demonstrates design excellence and contributes positively to the appearance and significant characteristics of buildings and the streetscape and that does not detract from a high quality pedestrian experience of streets and other public spaces.
51. The proposed flat mounted illuminated 'Sharetea' businesses identification signs and the internal sign are considered to meet the signage requirements of the Sydney DCP 2012 as they are compatible with the architecture and finishes of the building and the surrounding streetscape. It is noted that one of the business identification signs is located above the proposed fabric awnings contrary to section 3.16.6.1 (2), however a condition of consent is recommended which states that the awnings are not approved as they do not comply with the minimum height requirements under the Sydney DCP 2012.

52. Section 3.16.6.1 (5) of the Sydney DCP 2012 states that corporate colour schemes associated with business identification are only permitted where the colour scheme is compatible with the character of the streetscape and will not detract from the appearance of the building. The proposed colour scheme of the graphic vinyls is not compatible with the character of Railway Square which has a neutral palette. The scale and design of the vinyls are considered to create unacceptable visual clutter and do not exhibit design excellence.
53. Section 3.16.6.9 of the Sydney DCP 2012 refers to dynamic content signs and requires them to be entirely within a building and setback 0.3m from the glass line. The dynamic menu board is located on the front façade of the building on the existing roller door and does not comply with this provision. The sign is larger than 1.5sqm in area and occupies more than 20% of the opening to which it is to be installed contrary to section 3.16.6.9. No details of the animation have been submitted.
54. A design modification condition of consent is recommended which requires the graphic vinyl signs and dynamic content signs to be removed.

Access

55. Access for disabled persons can be provided to the premises.

Other Impacts of the Development

56. The proposed development is capable of complying with the BCA.
57. 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

58. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial surrounding and amongst similar uses to that proposed.

Internal Referrals

59. The conditions of other sections of Council have been included in the proposed conditions.
60. The application was discussed with Building Services Unit; Environmental Health and Late Night Trading who advised that the proposal is acceptable subject to the recommended conditions.
61. The application was discussed with Urban Design Specialists who objected to the proposed signage design. See discussion under the heading Signage.

External Referrals

Roads and Maritime Services (RMS)

62. The application was referred to RMS as the site has a frontage to George Street and Lee Street which are both state classified roads. RMS raised no objection to the proposal, subject to conditions of consent regarding signage, clearance and construction management. Appropriate conditions of consent are recommended.

Sydney Trains

63. The application was referred to Sydney Trains who provided no comments on the proposal as no ground works are proposed other than the cleaning of the floors.

Transport for NSW (TfNSW)

64. The application was referred to TfNSW who recommended conditions of consent including the submission of a Loading and Servicing Management Plan and a Construction Pedestrian and Traffic Management Plan. Conditions are recommended which require the plans to be submitted in consultation with TfNSW.

Notification, Advertising and Delegation (No Submissions Received)

65. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 42 days from 5 December 2018 to 16 January 2019 due to the Christmas period. No submissions were received.
66. The application was re-notified for a period of 14 days from 4 April 2019 to 19 April 2019 to include the 5220 George Street, Haymarket address in the description. No submissions were received.

Public Interest

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

S61 Contribution

68. The cost of the development is under \$200,000. The development is therefore not subject to a levy under the Central Sydney Development Contributions Plan 2013.

Relevant Legislation

69. Environmental Planning and Assessment Act 1979.
70. Environmental Planning and Assessment Regulation 2000.

Conclusion

71. The proposed use is considered appropriate within its setting and, subject to conditions of consent to amend the signage and facade design, is generally compliant with the relevant planning controls contained in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
72. Sufficient evidence has been submitted to demonstrate that the use benefits from existing use rights and the premises can therefore be changed from one type of retail premises to another under the provisions of the Environmental Planning and Assessment Act and Regulation.
73. The proposed vinyl and dynamic content signs do not comply with the relevant planning controls within the Sydney Development Control Plan 2012. Accordingly, the proposal is recommended for a deferred commencement consent to ensure that revised plans which address the issues are submitted before the consent is operative.
74. Subject to compliance with the recommended conditions of consent, the proposed development is considered capable of achieving design excellence in accordance with the requirements of Clause 6.21 of Sydney Local Environmental Plan 2012.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Sally Shepherd, Planner