

**Item 4.****Development Application: 140 Commonwealth Street, Surry Hills - D/2019/623****File No.: D/2019/623****Summary****Date of Submission:** 14 June 2019**Applicant:** KDC Pty Ltd**Architect:** KDC Pty Ltd**Owner:** Nagaro Pty Ltd & Council of the City of Sydney**Cost of Works:** \$0**Zoning:** The site is located within the B4 Mixed use zone, the development is permissible with consent.**Proposal Summary:** The application proposes the change of use of the first floor to offices, with no physical works. It also proposes the use of 6.5 sq.m. of the public footway on Reservoir Street for outdoor seating in association with the 'Royal Albert Hotel'. The proposed hours of use are 10.00am - 7.00pm daily. The premises would continue to be managed by the current operators, and part of the first floor would remain in use as storage space for the public house.

An associated footway application under Section 125 of the Roads Act has been submitted (FA/2019/105) and is being assessed concurrently.

The application is referred to the Local Planning Panel for determination as the City of Sydney is the owner of the land subject to the outdoor dining proposal.

The application was notified in accordance with Council's notification policy. Two submissions have been received, which raise concern over noise and antisocial behaviour impacts on residential amenity, arising from the use of the footway for tables and chairs.

The proposal has been amended to reduce the area for outdoor seating, and additional information has been provided with regard to waste management and the operational management of the premises.

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

- Development Controls:**
- (i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
  - (ii) Sydney Local Environmental Plan 2012 (Gazetted 12 December 2012, as amended)
  - (iii) Sydney Development Control Plan 2012 (in force on 12 December 2012, as amended)
  - (iv) City of Sydney Development Contributions Plan 2015

- Attachments:**
- A. Recommended Conditions of Consent
  - B. Selected Drawings

## **Recommendation**

It is resolved that consent be granted to Development Application No. D/2019/623 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) The development, subject to conditions is consistent with the objectives of the Sydney LEP 2012, Sydney DCP 2012 and the City of Sydney Outdoor Dining Policy and Guidelines 2016; and
- (B) Subject to the recommended conditions of consent, the proposal will not have an adverse impact on the amenity of neighbouring properties.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by staff on 26 July 2019 and on 18 October 2019.
2. The site is rectangular, with area of approximately 221sqm. It is a corner plot located on the junction between Commonwealth Street and Reservoir Street, which contains a two-storey end of terrace property within a row of 8 terraces.
3. The premises is in use as a licensed hotel known as 'The Royal Albert Hotel'. The ground floor has three access points along Reservoir Street, and one secondary access onto Commonwealth Street, and operates as a public house 'pub' and 'Bamboo dumpling bar'. The first floor is accessed independently via an external staircase onto Reservoir Street, several rooms are currently vacant, and the majority are in use as back of house storage and office space for the ground floor pub.
4. The immediate surrounding area is characterised by a mix of residential terraces and apartment buildings, with commercial uses on each corner of the junction between Reservoir Street and Commonwealth Street.
5. The site is not a heritage item but is located within the Reservoir Street and Fosterville conservation area (C66) where it is identified as a contributing building.
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 junction of Reservoir Street and Commonwealth Street.



**Figure 3:** Looking north, toward the south elevation of the site - approximate location of outdoor dining area highlighted



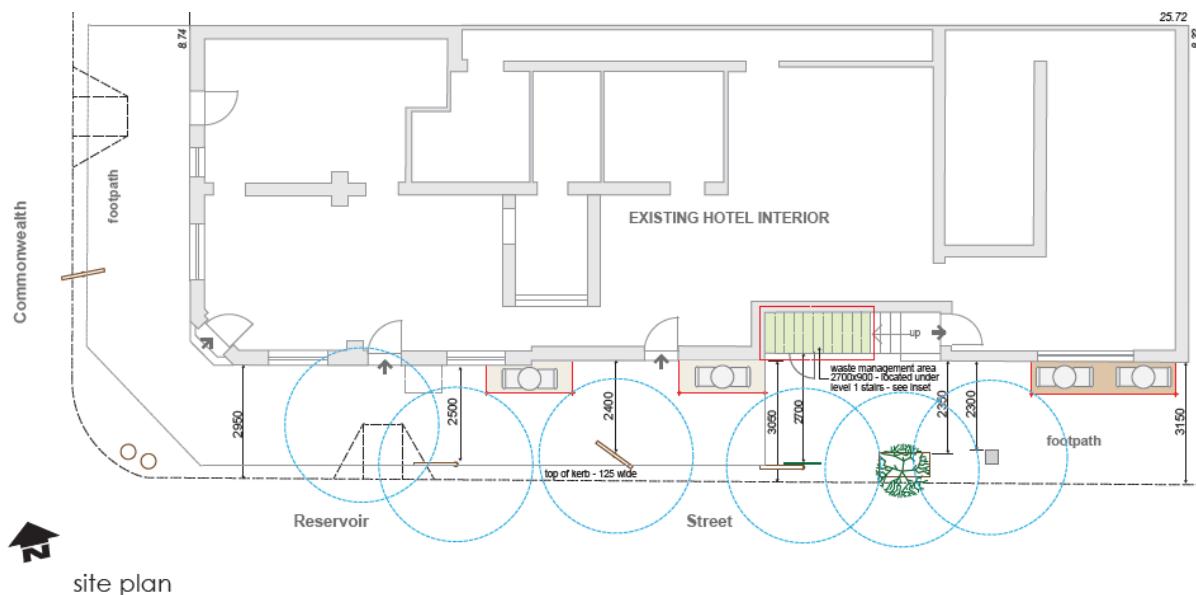
**Figure 4:** Looking west along Reservoir Street - approximate location of outdoor dining area highlighted

## Proposal

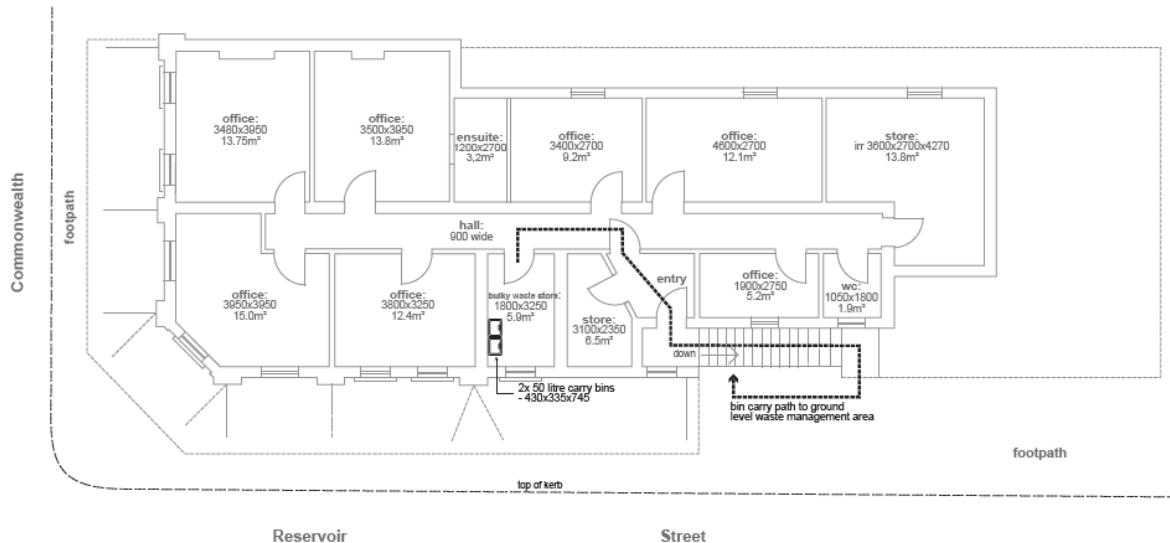
7. The application seeks consent for the change of use of the first floor to offices, with no physical works. It also proposes the use of 6.5 sq.m. of the footway for tables and chairs to provide seating for 8 patrons. The proposed hours of operation for the outdoor dining area are 10.00am - 7.00pm daily.
8. The proposed area for outdoor seating has been amended during the course of the application, to ensure a clear path of travel for pedestrians. As a result the overall area for seating has been reduced.
9. Development consent is required for the use of the footway for outdoor dining since the footway is associated with a pub.

## Amendments

10. The size and location of the outdoor dining area was reduced during the course of the planning assessment, following a request by Council staff to improve the clear width of the footway and thereby improve safety. The outdoor dining area originally proposed 6 tables and 12 chairs in an area of 9.2 sq.m. It was reduced to 4 tables and 8 chairs in an area of 6.5 sq.m.
11. Amendments have also been made to the layout of the first floor, to clarify which rooms will be retained for use by the pub and to include provision for a bulky waste storage room which has now been included. An amended plan of management has also been submitted.
12. Plans of the proposed development are provided below.



**Figure 5:** Proposed ground floor footway layout plan



**Figure 6:** Proposed first floor plan

### History Relevant to the Development Application

13. The subject site has been operating as a pub for a number of years. There is currently no record of a development approval for the use of the ground floor as a pub. It is likely that the use pre-dates requirements for development consent. Notwithstanding this, the Liquor license permits consumption on the ground floor between 5.00am - 12.00 midnight Monday to Saturday, and 10.00am - 10.00pm Sundays.
14. On 14 March 1990 development application D/1989/718 was approved for alterations and additions to the pub.
15. On 25 February 1993, development application D/1992/1050 was approved for alterations and additions to the rear including a new external concrete stair, changes to windows and relocation of kitchen and toilet facilities.
16. On 20 October 2009, development application D/2009/1394 was approved for the installation of bi-fold windows to the ground floor south elevation of the Royal Albert Hotel. The delegated report for this consent also refers to a footway application for 3 tables and 6 chairs which was refused on 3 August 2009 due to the predominantly residential area and number of reported incidents received since the original footway usage approval dated 1 August 2006. Records could not be obtained to verify the determination of this footways application.
17. On 25 August 2010, footways application FA/2010/204 was approved for the continued use of outdoor seating, comprising 3 tables and 6 chairs, between the hours of 11am and 8pm daily. The delegated report notes that the Royal Albert Hotel had held a footway approval from 2005 although records could not be obtained.
18. On 26 September 2011, development application D/2011/608 was refused for the use of the first floor as a 75-person restaurant, installation of a new lift, and removal of courtyard roofing to for a smoking courtyard. The proposal was considered to generate adverse impacts in terms of noise, traffic and anti-social behaviour.

19. On 28 October 2011, footways application FA/2011/284 was refused for 5 tables and 20 chairs, between the hours of 11am and 10pm daily. The proposal was refused on the grounds that it would not maintain a 2m clear width, and that a number of complaints had been received during the previous 12month trial period; the proposed tables and chairs would have increased the capacity of the premises to a Category A (high impact) use, and was not supported by a Plan of Management.
20. It should be noted that the premises is within the former South Sydney Council authority area. In accordance with the South Sydney DCP 1997, premises were exempt from the need for development consent for use of the footway for outdoor dining. As such, the application site has never been granted development consent for use of the footway.
21. The Royal Albert Hotel has been operating under new management since approximately October 2011.

### **Economic/Social/Environmental Impacts**

22. 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)**
  23. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
  24. 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.
  25. 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.

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

26. Subdivision 20A Footpaths - Outdoor dining of the SEPP allows for the use of the footway or public open space by a food and drink premises as exempt development.
27. To be exempt development, the use of the footway or public open space must not be associated with a pub or small bar.
28. The use of the footway is associated with a pub, and as such development consent is required.

**Roads Act 1993**

29. The proposal is consistent with the requirements for footway restaurants under the Roads Act, 1993. Subject to conditions, the provision of outdoor dining will not result in unacceptable impacts on adjoining roadway uses or the public domain.

**Smoke Free Environment Act 2000**

30. Under the Smoke-Free Environment Act 2000 and associated regulations, smoking is not permitted in outdoor areas which are available to be used for dining. If an area is to be used for smoking, signage must be provided to indicate that no food is allowed to be consumed in that area.
31. As approvals under Section 125 of the Roads Act 1993 relate specifically to the use of footways for restaurant purposes, footways dining areas approved under that legislation must be available for dining at all times and cannot be used for smoking.

**Liquor Freeze**

32. The site is not located within a liquor freeze area.

**Sydney Local Environmental Plan 2012**

33. The site is located within the B4 mixed use zone. The proposed use of the first floor as offices is permissible with consent. The proposed outdoor dining area is associated with a food and drink premises which is permissible with consent.
34. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	Yes	A maximum of 12m is permitted.  The proposal does not include any physical works, and will not change or exceed the height of the existing building.
4.4 Floor Space Ratio	Yes	A maximum FSR of 1:1 is permitted.  The proposal does not include any physical works, there would be no change to the existing FSR.
5.10 Heritage conservation	Yes	The subject site is identified as a contributory item within the Reservoir Street & Fosterville heritage conservation area.  The proposal does not include any physical works, and will therefore not result in any adverse impact on the significance of the heritage conservation area.

**Sydney Development Control Plan 2012**

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

<b>2. Locality Statements – Riley</b>
The subject site is located in the Riley locality area. The proposed change of use of the upper floor, and use of the footway for outdoor dining, is considered to be in keeping with the unique character of the area and design principles in that it would respond to the streetscape and heritage conservation area.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.2 Defining the Public Domain	Yes	The proposed outdoor dining area will contribute to the activity and will not obstruct access or egress to the host building.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.5 Urban Ecology	Yes	The proposal will not impact on any trees and will not adversely impact on the local urban ecology.
3.9 Heritage	Yes	<p>The subject site is identified as a contributory item within the Reservoir Street &amp; Fosterville heritage conservation area.</p> <p>The proposal does not include any physical works, and will therefore not result in any adverse impact on the significance of the heritage conservation area.</p>
3.10 Significant Architectural Building Types  3.10.3 Pubs and hotels older than 50 years	Yes	<p>The application relates to a pub which is more than 50 years old.</p> <p>The proposed change of use of the first floor to offices does not require any physical works to be carried out, and will therefore not impact on the historic fabric of the building. The proposed office use will be run and managed by the current operators of the Royal Albert Hotel.</p> <p>It is considered that the use of the site would remain primarily as a pub, which is in accordance with 3.10.3 of the DCP.</p>
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.
3.15 Late Night Trading Management	Yes	See discussion under the heading 'Late Night Trading' in the Issues section.

## Issues

### Late night trading

36. The site is not located in a late night trading area.
37. The outdoor dining area is associated with a pub which is defined as a Category A - High impact premises.

38. The DCP sets out that the base hours for outdoor trading associated with Category A premises not located in a late night trading area are: 10.00am - 8.00pm with potential extended hours of 10.00am - 10.00pm.
39. A review of Council records indicates that historically, there have been a substantial number of complaints in relation to previous outdoor dining areas at the premises. Since new management in October 2011, The City has received 2 unsubstantiated noise complaints, and 2 noise complaints which were verified by rangers in 2015, and which related to amplified music, and noise transmission through walls.
40. The application was referred to NSW Police. No response has been received.
41. Having regard to the history of the site, a time limited consent for one year is recommended, this will enable the Council flexibility to review and assess the ongoing management and any potential impacts on neighbouring amenity. It is acknowledged that the proposed hours for outdoor dining, being 10.00am - 7.00pm, are within the permissible base hours for outdoor trading for this premises.
42. The revised plan of management sets out measures that will be undertaken to ensure that the outdoor dining area does not have a detrimental impact on amenity. The plan of management has been reviewed by the Council and is considered to be acceptable.

### **Pedestrian Safety**

43. The City of Sydney Outdoor Dining Guidelines set out the requirements for outdoor dining areas, and seeks to ensure there would be no harm to pedestrian and vehicle circulation, safety or convenience.
44. The guidelines specify that a minimum clear path of travel of 2.0m is required for streets in order to maximise pedestrian useability; provide clearance from existing streetscape elements and accommodate for those with various levels of mobility.
45. A 2m wide clear path of travel is provided although given the location of a number of street signage poles and tree pits which are variously set in from the edge of the kerb, it is noted that this path is not entirely straight.

### **Other Impacts of the Development**

46. The proposed development is capable of complying with the BCA.
47. 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**

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

### **Internal Referrals**

49. The conditions of other sections of Council have been included in the proposed conditions.

50. The application was discussed with the Building Services Unit, Environmental Health, Licenced Premises, and Waste Management units who advised that the amended proposal is acceptable subject to the recommended conditions.

## External Referrals

### NSW Police

51. The application was referred to NSW Police. No response has been received.

### Notification, Advertising and Delegation

52. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. The application was notified for a period of 14 days between 14 August 2019 and 28 August 2019. As a result of this notification there were 2 submissions received which raised the following concerns solely in relation to the use of the footway for outdoor dining:

- (a) Historically patrons have gathered around outdoor dining areas obstructing the footpath, creating noise and damaging parked cars.

**Response -** It is noted that historically there have been issues with the management of outdoor dining areas in this location. The premises has not had outdoor dining since 28 October 2011, when footways application FA/2011/284 was refused for 5 tables and 20 chairs. At approximately the same time as this determination the premises came under new management and only 2 substantiated noise complaints have been received in this time.

The application has been supported by a plan of management, and it is considered that a time limited consent would be appropriate in order that the Council can monitor and review the impacts of the outdoor dining area.

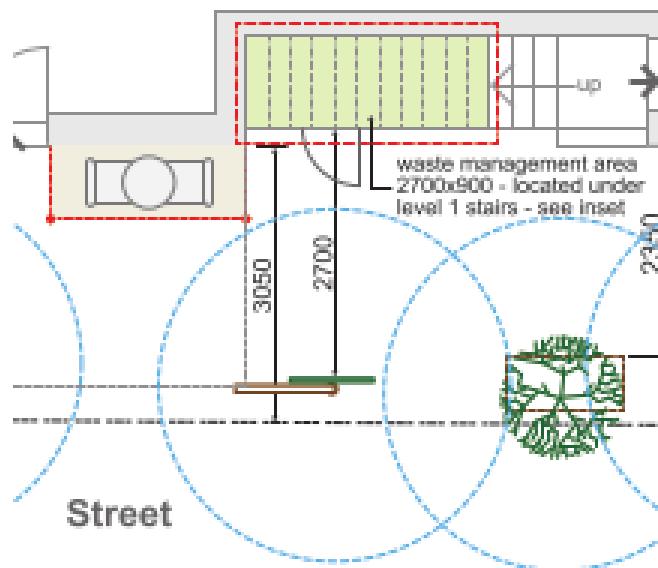
- (b) Increased noise and odour from smoke will impact on residential balconies.

**Response -** The proposed area for outdoor dining is limited in size, and it is not considered that 8 patrons on the footway would result in unacceptable noise impacts. In accordance with the Smoke Free Environment Act 2000, smoking is not allowed within the outdoor dining area as the seating is to be provided in association with a food service. Subject to conditions, it is not considered that there will be any unacceptable harm to neighbouring properties.

- (c) Location of outdoor dining will not allow a 2m clearance if the existing on street bike parking is used. There is no room for service to tables.

**Response** - The proposal has been amended to ensure 2m clear width to existing street furniture. The outdoor dining area is split into three areas, all of which are in close proximity to the access doors for the ground floor pub. Given that the outdoor dining area will only accommodate 8 patrons, it is not considered that staff serving the area will result in unacceptable obstruction of the footway.

There is one bike parking hoop attached to one of the signage poles along Reservoir Street (see figure 7). The location of the bike parking hoop is 2.7m from the face of the building and offset from one of the areas for outdoor dining. Whilst this bike parking hoop is in use, the clear width to one table and two chairs will be marginally reduced below the minimum 2m. The bike parking hoop is offset from the area for outdoor dining, and the reduction below a 2m clearance is likely to only be marginal, and limited to the times when the bike parking is in use. In this instance, given that this portion of Reservoir Street is not busy, it is considered that a clearance of less than 2m is acceptable, subject to a time limited consent for 1 year.



**Figure 8:** Location of the signage pole with bike parking hoop on Reservoir Street

## Public Interest

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

## S7.11 Contribution

54. The development is not subject to a S7.11 development contribution.

### **Relevant Legislation**

55. Environmental Planning and Assessment Act 1979.
56. Heritage Act 1977.

### **Conclusion**

57. The subject application seeks consent to change the use of the first floor to offices, and to use 6.5sq.m of the footway for outdoor dining.
58. The proposed development generally complies with the objectives and provisions in the Sydney LEP 2012 and Sydney DCP 2012 for the site. In particular, there would be no physical works carried out to facilitate the proposed office use.
59. The proposed use of the footway for outdoor dining is limited in size, and subject to conditions, would not cause unacceptable harm to neighbours' amenity.
60. The development is recommended to be approved, subject to the recommended conditions included in Attachment A.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Gemma Bassett, Planner