

Item 3.**Development Application: 2-4 Oxford Street, Darlinghurst - D/2019/1091**

File No.: D/2019/1091

Summary

Date of Submission:	2 October 2019 Amended by updated drawings received 3 February 2020.
Applicant:	Burdekin Hotel Group
Designer:	Century Projects Pty Ltd
Owner:	Hotville Pty Ltd
Cost of Works:	\$143,825
Zoning:	The site is located within B2 Local Centre zone. The proposal does not change the existing permissible use of the site as a food and drink premises.
Proposal Summary:	<p>Alterations to the Burdekin Hotel including a new rooftop restaurant and bar to existing rooftop level accommodating 85 patrons. Proposed hours of operation of the rooftop are 8.00am - 10.00pm Monday to Thursday, 8.00am to 12.00 midnight Fridays and Saturdays, and 10.00am - 10.00pm Sunday.</p> <p>In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development was notified and advertised for 21 days between 10 October 2019 and 1 November 2019. A total of 83 submissions were received (33 submissions in objection, a pro forma in objection submitted and signed by 42 individuals, and 8 submissions in support).</p> <p>As the application is the subject of in excess of 25 unique submissions by way of objection the application is a 'contentious development' and is required to be submitted to the Local Planning Panel for determination.</p>

The majority of objections raised concern with the potential noise impact of the proposal. In response the recommendation proposes a reduction in the base hours of operation and trial hours for the times sought by the applicant to allow ongoing monitoring by Council to assess the actual impact of the proposal, in addition to conditions to address noise.

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

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)

Attachments:

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

Recommendation

It is resolved that consent be granted to Development Application No. D/2019/1091 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 B2 Local Centre zone.
- (B) The development is consistent with the character and principles identified in the locality statement for Oxford Street Darlinghurst.
- (C) The development is respectful to the character and design of the existing heritage listed building. It supports the historic use of the site as a hotel and is satisfactory from a heritage perspective.
- (D) The development satisfies Clause 6.21 of Sydney Local Environmental Plan 2012 in that it demonstrates acceptable standard of architectural design, materials and detailing appropriate to the existing heritage item and the location.
- (E) The development is within the Late Night Management area and the hours of operation, subject to conditions of consent, are consistent with the objectives and in accordance with the recommended hours for this area for a Category A premises as identified in the Sydney Development Control Plan 2012.
- (F) Conditions of consent are recommended to ensure that the ongoing operation of the development will not create unreasonable disturbance or nuisance to surrounding properties, particularly sensitive residential uses.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 25 October 2019.
2. The site is located at the junction of Oxford Street and Liverpool Street, with Oxford Street being its primary street frontage. A licensed premises known as the 'Burdekin Hotel' is contained within the site.
3. The Burdekin Hotel currently operates under development consent D/2006/2252 (as amended) and a hotel liquor license. The Burdekin Hotel consists of the following venues:
 - (a) Dug Out Bar - basement level
 - (b) Burdekin Bar - ground floor
 - (c) The Mini Bar - Level 1
 - (d) Viper Lounge - Level 2
 - (e) Lava Lounge - Level 3
4. The site is a locally listed heritage item (I379) within the Oxford Street heritage conservation area (C17). The site has been occupied almost continuously by a hotel since the 1840s. The existing four storey federation hotel with inter-war art deco style overlay is a visual landmark at the beginning of the western end of Oxford Street.
5. Surrounding land uses are a mix of residential, commercial and retail. Multi-storey mixed use buildings with retail/commercial uses on the ground floor and residential apartments above are located across Liverpool Street and abuts the subject site to the south-east. A multi-storey commercial building is located across Oxford Street.
6. Photos of the site and surrounds are provided below:

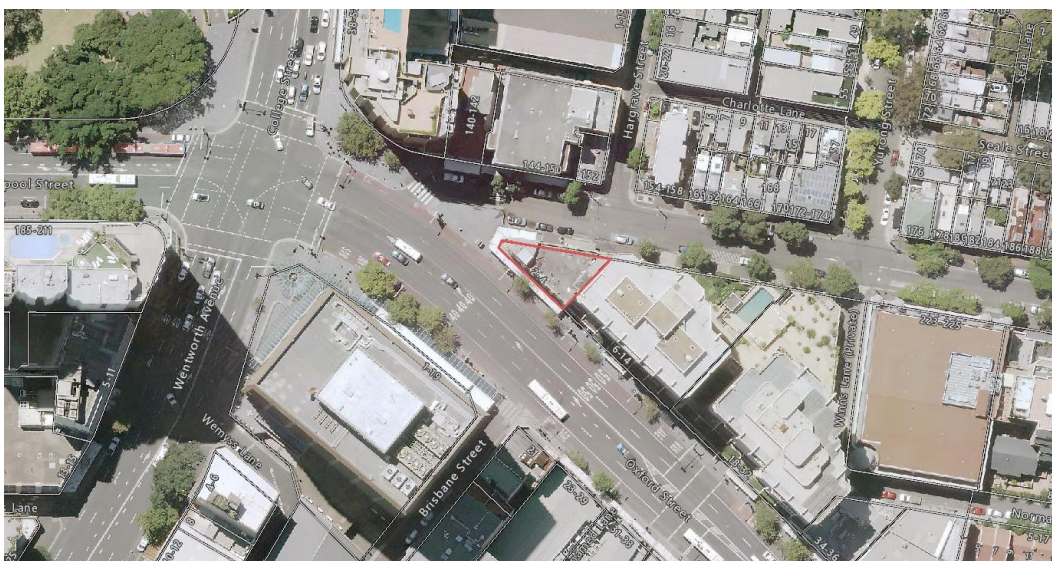


Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Site viewed from Oxford Street.



Figure 3: Site viewed from Liverpool Street.

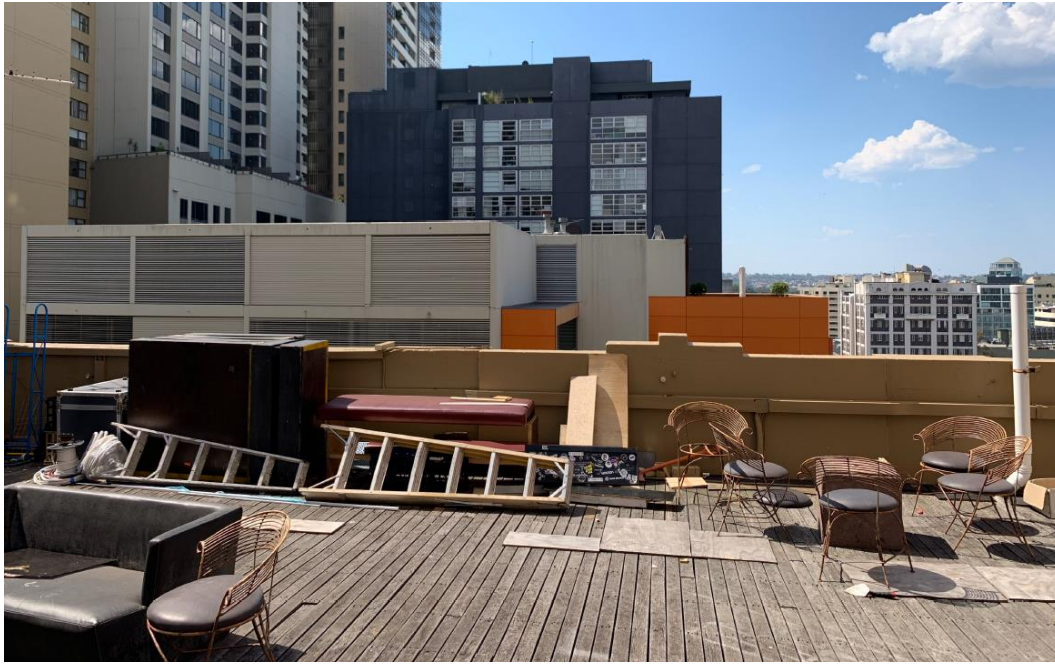


Figure 4: View from the subject rooftop facing north.

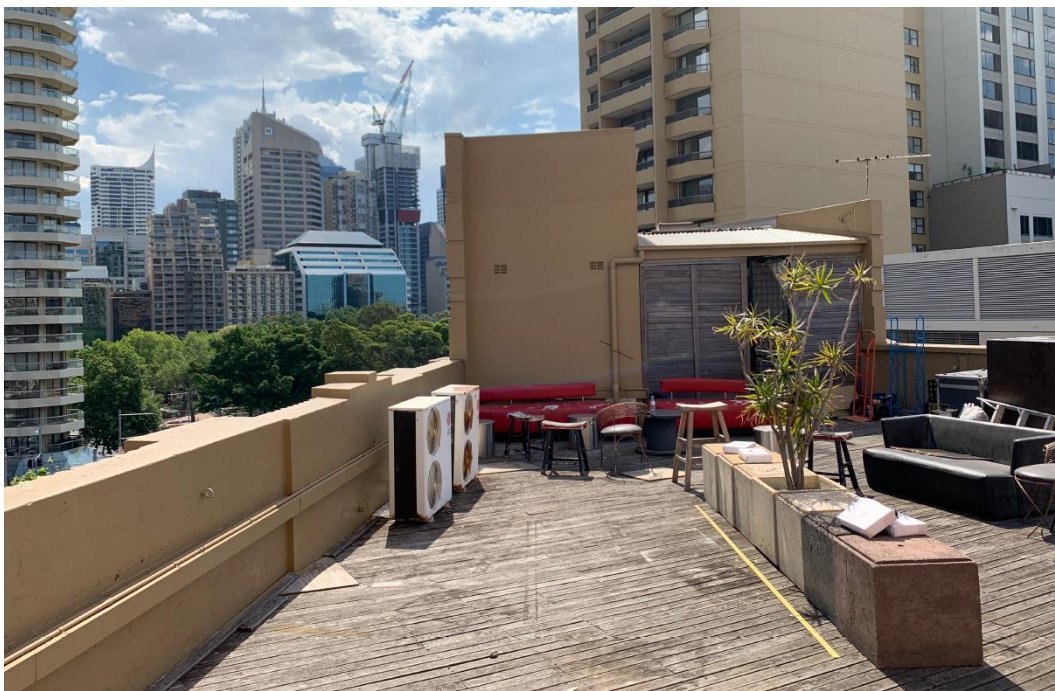


Figure 5: View from the subject rooftop facing northwest.



Figure 6: View from the subject rooftop facing east.

Proposal

7. Approval is sought for alterations to the Burdekin Hotel including a new rooftop restaurant and bar to accommodating 85 patrons.
8. Associated alterations include replacement of existing timber deck with new timber deck, installation of a new kitchen and bar area; and the erection of new aluminium light frame glass acoustic walls along the north (Liverpool Street) and south-east elevations.
9. The proposed hours of operation of the rooftop area are 8.00am - 10.00pm Monday to Thursday, 8.00am - 12.00 midnight Friday and Saturday, and 10.00am - 10.00pm Sunday.
10. The proposal requires amendments to the existing hotel liquor license to include the rooftop area.
11. The proposal will not increase the existing overall patron capacity of the hotel. Instead, it seeks redistribution of the approved patron capacity from the ground floor (Burdekin Bar) to the new rooftop area when the rooftop restaurant and bar is trading.
12. No signage is included as part of this application.

Amendments/Additional Information

13. The following additional information was received on 3 February 2020:
 - (a) Site survey to provide additional details of the subject site and its surrounds.
 - (b) A set of amended architectural drawings to indicate RLs for all existing and proposed structures.
 - (c) Additional sections demonstrating that the new kitchen is open on two sides and will not contribute to additional gross floor area, and that the existing parapet along Oxford Street is sufficiently high to comply with the Building Code of Australia.
 - (d) Additional materials and finishes details.
 - (e) Clarification that the new kitchen area is only intended for basic food preparation and washing purposes. All cooking will rely on the existing kitchen on the levels below.
 - (f) A supplementary acoustic report clarifying that the operator has not instructed the acoustic consultant to include the use of speakers/amplified music and mechanical plant as part of the assessment. As such, the impact of such equipment does not form part of the acoustic report.
 - (g) Clarification that the amended proposal will not affect the existing floor space ratio by deleting the new storage area included in the original proposal.

14. Drawings of the amended proposal development are provided below.

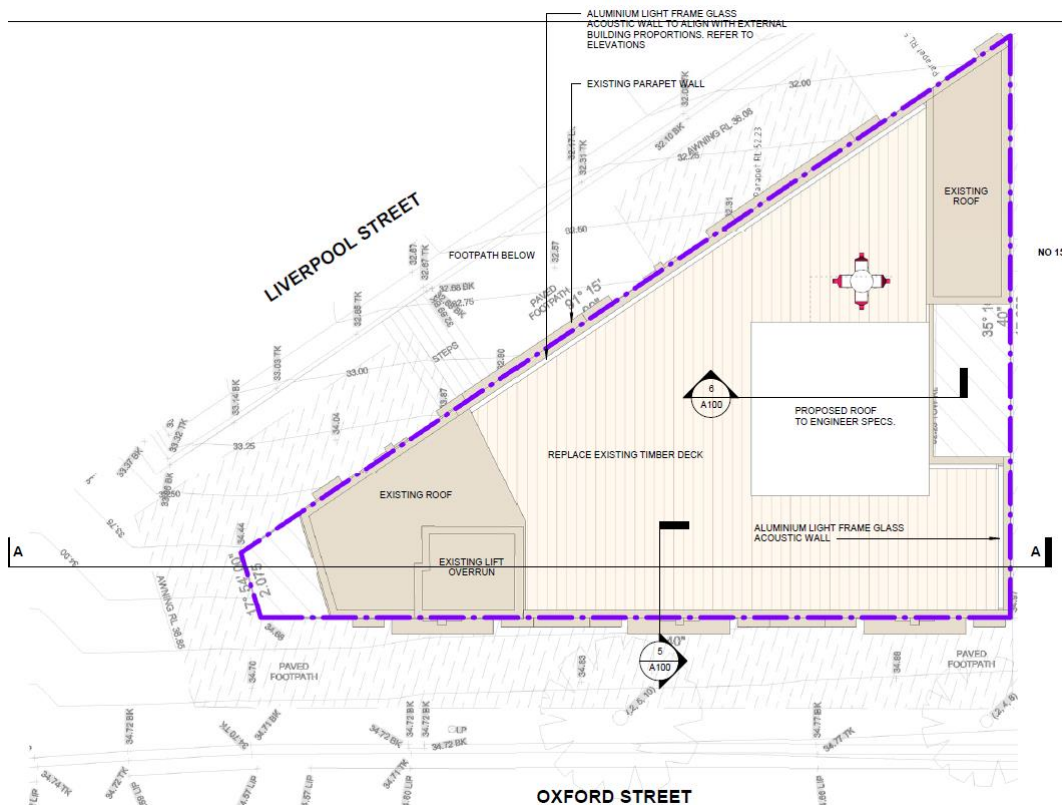


Figure 6: Roof plan.

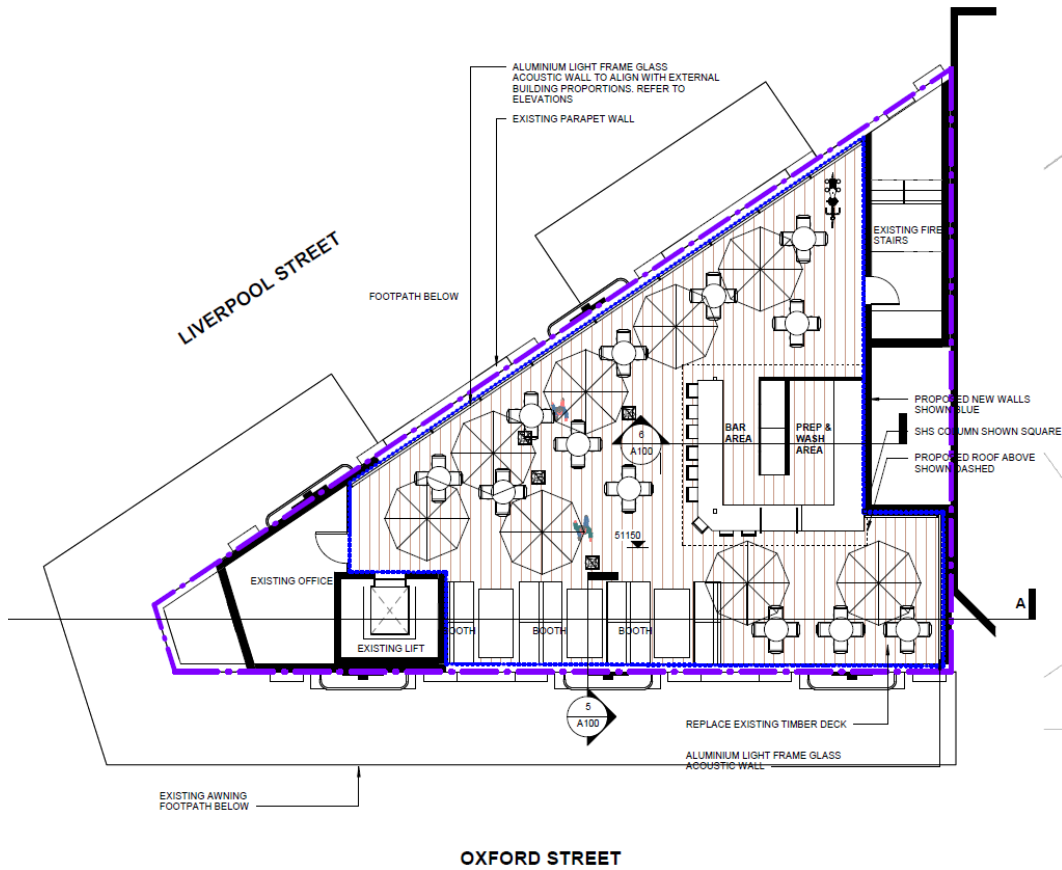


Figure 7: Floor plan.

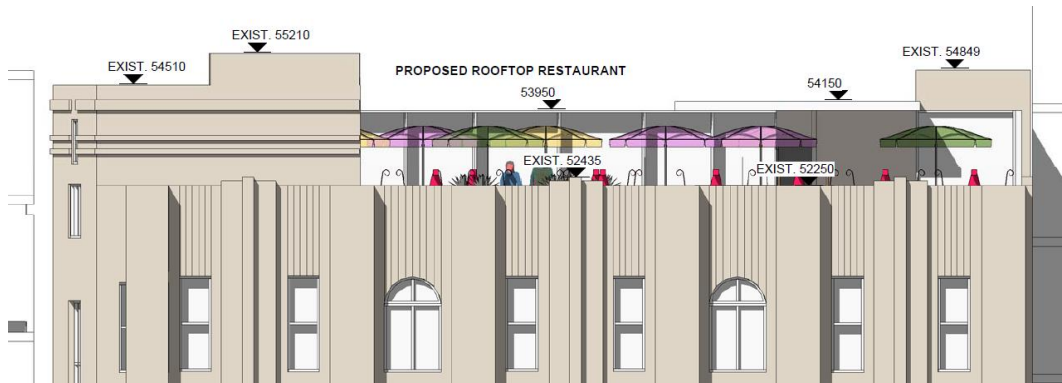


Figure 8: Oxford Street elevation.

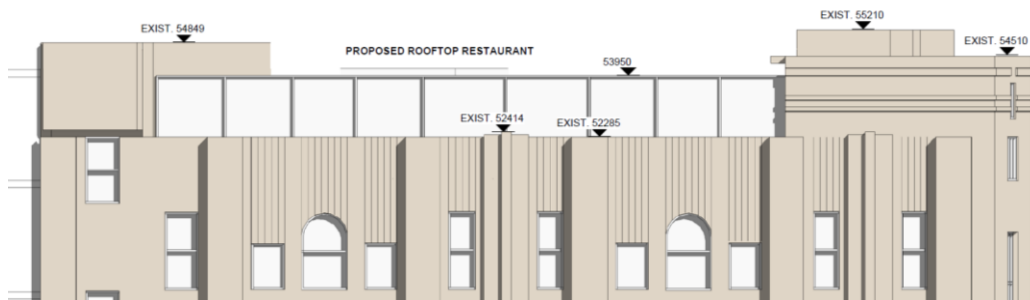


Figure 9: Liverpool Street elevation.

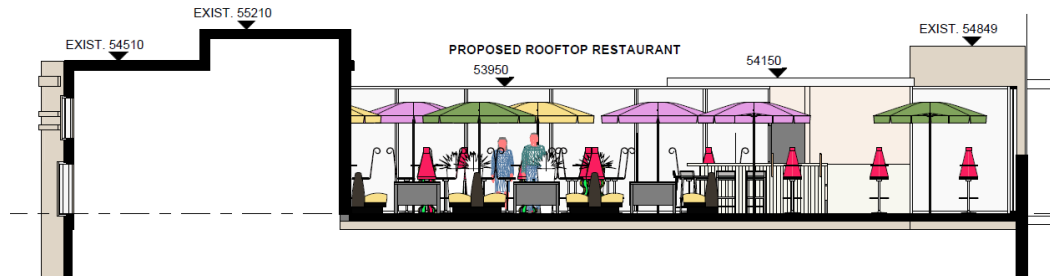


Figure 10: Long Section.

History Relevant to the Development Application

15. **U89/00101** was approved on 26 April 1989 for internal refurbishment of the basement and ground floor levels as a public bar, use of the first and second floor levels for residential and provision of a dining room/restaurant on the third floor level. The approved hours of operation for the third floor dining room/restaurant were between 12.00 midday and 12.00 midnight Monday to Saturday.
16. The above consent was modified several times, including for the relocation of restaurant to the first floor and change of use of second floor to provide offices staff rooms and storage facilities.
17. **BA/89/413** was approved on 4 May 1989 for the refurbishment of the ground, first, second, and third floor levels, and **BA/94/00807** was granted for public entertainment on the ground floor level.
18. The Licensing Court granted approval for 24-hours operation in December 1995.
19. **D/2002/780** was approved on 24 December 2003 for the use of the basement level, ground floor, Level 1 and Level 2 as a Place of Public Entertainment with base hours from 8.00am - 11.00pm Monday to Saturday, and 10.00am - 10.00pm Sunday, and extended hours from 8.00am - 2.00am (the following day) Monday to Thursday, and from 8.00am Friday continuously until 12.00 midnight Sunday for a 1 year trial period.
20. **D/2006/774** was approved on 19 December 2006 to continue to use Level 1 (Mini Bar) and Level 2 (Viper Room) as a Place of Public Entertainment and retrospective consent for noise attenuation works and internal refurbishment of the Burdekin Hotel.
21. **D/2006/2252** was refused on 19 November 2007 for the following:
 - (a) The use of the basement level (Dug Out Bar) and Level 3 (Lava Lounge) as a Place of Public Entertainment with hours of operation between 8.00am - 2.00am (the following day) Monday to Thursday, and from 8.00am Friday continuously until 12.00 midnight Sunday.
 - (b) Consolidate existing approvals for the ground floor (Burdekin Bar), Level 1 (Mini Bar) and Level 2 (Viper Bar) into a single development consent.

22. The refusal was appealed and the Land and Environment Court (LEC Appeal No 11294 of 2007 and 21293 of 2007) overturned the refusal on 25 July 2008. The Court approved the following trading hours:
- (a) Base: 8.00am - 11.00pm Monday to Saturday, and 10.00am -10.00pm Sunday
 - (b) Extended: 11.00pm - 2.00am (the following) Monday to Thursday, and 24 hours from 11.00am Friday until 12.00 midnight Sunday for a 3 year trial period.

The trial period occurred between 25 July 2008 and 25 July 2011.

23. **D/2009/273** was approved on 27 April 2009 to retain and continue to use existing lift as built (Overrun is unauthorised works); increase the height of existing lift tower and parapet; reinstate the corner window to 1938 detail, and use rooftop room as an office and restrict use of the top roof area.
24. **D/2006/2252/A** was approved on 7 June 2012 to remove references to Place of Public Entertainment requirements and allow the continuation of trial extended trading hours for a further 3 years.
25. **D/2006/2252/B** was refused on 24 April 2013 to allow extension of trading hours on a Sunday from 12.00 midnight to 4.00am Monday before any public holiday due to the adverse amenity impacts and restrictions on granting extended trading authorisations in the Oxford Street Liquor Freeze.
26. **D/2006/2252/C** was approved on 6 October 2015 to allow the continuation of trial extended trading hours for a further 5 years.

The trial period will lapse on 6 October 2020.

Liquor Act 2007 - Liquor Freeze

27. The site is located within the Sydney CBD Entertainment Precinct Liquor Freeze area.
28. Part 4 Division 1A Clause 47G of the Liquor Act 2007 states that the Office of Liquor, Gaming and Racing (OLGR) cannot approve any extension to liquor license boundaries for hotel licences within a liquor freeze precinct if it is likely to result in an increase to the patron capacity of that premises.
29. The applicant confirmed in writing that no increase to the overall capacity of the venue is sought. This is consistent with the intent of the liquor freeze.
30. Conditions of consent are recommended to make it clear that that no increase in patron capacity is facilitated by this application.

Economic/Social/Environmental Impacts

31. The application is 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 55 - Remediation of Land

32. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed. The site has a history of use as a food and drink premises since the 1840s. No change to this use is proposed. As such, the site is suitable for the proposed development without the need for further investigation.

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

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

34. 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.

35. 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.

36. The development is consistent with the controls contained with the deemed SEPP.

Sydney Local Environmental Plan 2012

37. The site is located within the B2 Local Centre zone. The proposed use is defined as food and drink premises (pub) and is permissible.

38. The relevant matters 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 22m is permitted, and the proposed additions have a maximum height of 21.7m.
4.4 Floor Space Ratio	Yes	No change is proposed.
5.10 Heritage conservation	Yes	<p>The subject site is a heritage item listed as 'Burdekin Hotel including interior' (I378), and is located within the Oxford Street heritage conservation area (C17).</p> <p>The amended proposal has been reviewed by the City's Heritage Specialist, who raised no objections to the proposal.</p> <p>Refer to Sections 3.9 and 3.10 of Sydney DCP 2012 for further discussion.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	<p>The development is not subject to a competitive design process as it is not a development type identified under Clause 6.21(5).</p> <p>The amended proposal is respectful of the heritage significance of the Burdekin Hotel with new additions of acceptable standard of architectural design, materials and detailing. The primary Oxford Street facade is unaltered and the significant view corridors towards that facade are maintained with minimal impacts. The new acoustic panels will read as subservient modern elements while minimising environmental impacts to neighbouring properties. Overall, the amended proposal is suitable for the site, and will support the existing use of the site and the character of the locality. On these basis, the requirements of Clause 6.21(4) are satisfied.</p>

Sydney Development Control Plan 2012

39. The relevant matters under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Oxford Street Darlinghurst

The subject site is located in the Oxford Street Darlinghurst locality. The proposal is in keeping with the unique character of the area and design principles in that it will support the existing use of the site to support the entertainment use of Oxford Street while ensuring that the proposed additions respect the heritage item and the streetscape of the Oxford Street heritage conservation area.

3. General Provisions	Compliance	Comment
<p>3.9 Heritage</p> <p>3.10 Significant Architectural Building Types</p>	<p>Yes</p>	<p>The subject site is a heritage item listed as 'Burdekin Hotel including interior' (I379). It is also located in the Oxford Street heritage conservation area (C17).</p> <p>The existing building was reconstructed circa 1914 as a public bar, therefore Section 3.10 also applies.</p> <p>A heritage impact statement has been submitted. The amended proposal has been reviewed by the City's Heritage Specialist and is acceptable for the following reasons:</p> <ul style="list-style-type: none"> • The principal Oxford Street facade is unaltered to maintain its contribution to the public domain and the streetscape of the heritage conservation area. • New kitchen and bar is set back from the existing parapet to minimise impact on significant view corridors towards the site. • The outdoor umbrellas are set back from the parapet and removable to avoid any lasting impact.

3. General Provisions	Compliance	Comment
		<ul style="list-style-type: none"> • New acoustic panels are restricted to the secondary Liverpool Street and south-east elevations. Being transparent, will not block or reduce view corridors towards and from the site, and will read as subservient modern elements. • Replacement of timber-deck is on a like-for-like basis to minimise heritage impact. • The proposal will support the ongoing use of the building as a hotel.
3.13 Social and Environmental Responsibilities	Yes	<p>The application has been considered by the NSW Police and the City's Licensed Premises Unit. NSW Police support the hours of operation between 8.00am to 10.00pm only.</p> <p>Refer to further discussion under the heading <i>Issues</i>.</p>
3.14 Waste	Yes	<p>A condition is recommended for the proposal to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	Yes	<p>The proposal generally accords with the late night trading provisions.</p> <p>Refer to further discussion under the heading <i>Issues</i>.</p>

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.1 Building height	Yes	Number of storeys remain unchanged.
4.2.2 Building setbacks	Yes	Building setbacks remain unchanged.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.3 Amenity	Yes	Acoustic and visual privacy concerns raised in the submissions received are discussed under the heading <i>Issues</i> .

Issues

Acoustic Impacts

40. The application is supported by an acoustic report, which acknowledges the noise criteria of Liquor and Gaming NSW. The acoustic assessment is based on the maximum patron capacity of 85 people, the hours of operation proposed as part of this application, and the submitted drawings with glass acoustic walls along the Liverpool Street and the south-east boundary.
41. As confirmed in the supplementary report lodged on 3 February 2020, the use of speakers and mechanical plant is not included as part of the assessment.
42. The acoustic report has been reviewed by the City's Environmental Health Unit. It is considered that the acoustic report is sufficient to demonstrate that the proposal can comply with the relevant noise criteria.
43. However, the City's Environmental Health Unit has concerns that the rooftop area may have actual impact on the neighbouring sensitive residential uses considering that the acoustic assessment does not consider the use of speakers and mechanical plant.
44. As a result, the unit recommends conditions of consent to ensure the operation of the rooftop area will reflect the assessment of the acoustic report, that is, no amplified music, music, additional or relocated plant will be part of this development. The recommended conditions are as follows:
 - (a) Speakers and/or amplification equipment must not be installed and music must not be played in the rooftop area.
 - (b) No new mechanical ventilation plant and equipment are approved to be installed to the rooftop area.
 - (c) All relevant performance parameters must comply with the Acoustic Report prior to the commencement of use, and be certified by an Acoustic Verification Report.
 - (d) Compliance with the relevant standard noise criteria of the City.

Hours of Operation

Background

- 45. The subject site is located within a Late Night Management Area. The Burdekin Hotel is identified as a Category A premises.
- 46. There are a number of consents for various uses on different levels of the Burdekin Hotel. These various consents were consolidated by development consent D/2006/2252 (as amended), which the Burdekin Hotel is currently operating under. As per D/2006/2252, the approved hours of operation for all the indoor areas are detailed in the table below.

	Approved Hours for the Inside the Hotel
Base:	8.00am – 11.00pm Monday to Saturday 10.00am – 10.00pm Sunday
Extended:	8.00am – 2.00am Monday to Thursday 8.00am Friday continuous until 12.00 midnight Sunday

- 47. The permissible and proposed hours of operation of the roof top bar are detailed in the table below.

	Permissible Hours for Category A Premises - Outdoor Area	Proposed Hours for Rooftop Area
Base:	10.00am – 10.00pm	8.00am – 10.00pm Monday to Saturday 10.00am – 10.00pm Sunday
Extended:	9.00am – 1.00am	8.00am – 12.00 midnight Friday and Saturday

- 48. The proposed hours are generally consistent with the permissible base and extended hours recommended by Sydney DCP 2012 except the period between 8.00am and 9.00am Monday to Saturday.

Considerations

- 49. Council's records show that the Burdekin Hotel was well managed when D/2006/2252/C was approved in 2015 to continue the extended hours of operation for a further 5 years.
- 50. Council's records show no noise complaints for the Burdekin Hotel since April 2017.
- 51. The City's Licensed Premises Unit finds the operational performance of the Burdekin Hotel satisfactory. The unit raised no objections to the proposal and considers the proposal acceptable subject to recommended standard conditions.

52. The application was also referred to the NSW Police who recommended that the hours of operation be restricted to 10.00pm.
53. Notwithstanding, considerations are also given to the submissions received as part of this application, and the following factors that will determine the actual impact of the proposal:
- (a) Compliance with the acoustic report, including any performance criteria and noise attenuation measures, such as the glass acoustic walls.
 - (b) Compliance with Council's noise criteria.
 - (c) Good management performance to ensure compliance with conditions of consent, compliance with the approved plan of management, and management of patron behaviours.

Conclusion and Recommendation

54. The Burdekin Hotel has a record of good management according to Council's records and the NSW Police. Therefore, extended trading hours beyond the permissible base hours can be considered on a trial basis as per Section 3.15.4(6) of Sydney DCP 2012, and that restricting the overall hours of operation is unreasonable.
55. However, in view of paragraph 53 above, it is considered more prudent to reduce the base hours to 8pm, which is the permissible base hours for sites located outside a Late Night Management area, and allow a 1 year trial period for the extended hours before 10am Monday to Saturday, and after 8pm Monday to Sunday, which are as follows:

	Monday – Thursday	Friday – Saturday	Sunday
Base:	10.00am – 8.00pm	10.00am – 8.00pm	10.00am – 8.00pm
Extended:	8.00am – 10.00pm	8.00am – 12.00 midnight	10.00am – 10.00pm

56. The restricted base hours will provide incentives for the operator to demonstrate good management performance. It will also restrict the use of the rooftop to minimise impact to neighbouring residential uses should there be future management issues.
57. On the other hand, the trial period will allow the operator the opportunity to demonstrate good management performance; the neighbouring residents to observe and report any nuisances; and Council to assess and monitor the actual impact.
58. It is recommended that the trial period commences on the day the Liquor License is amended to include the rooftop area within its boundary.

Visual Privacy

59. Submissions received from the neighbouring property to the north at 144-150 Liverpool Street raised visual privacy concerns to the living room, bedroom and balconies of upper floor units, and to the outdoor terrace of the eastern unit on the first floor.

60. 144-150 Liverpool Street is to the north of the subject site across Liverpool Street, providing a separation of at least 20m as shown below:

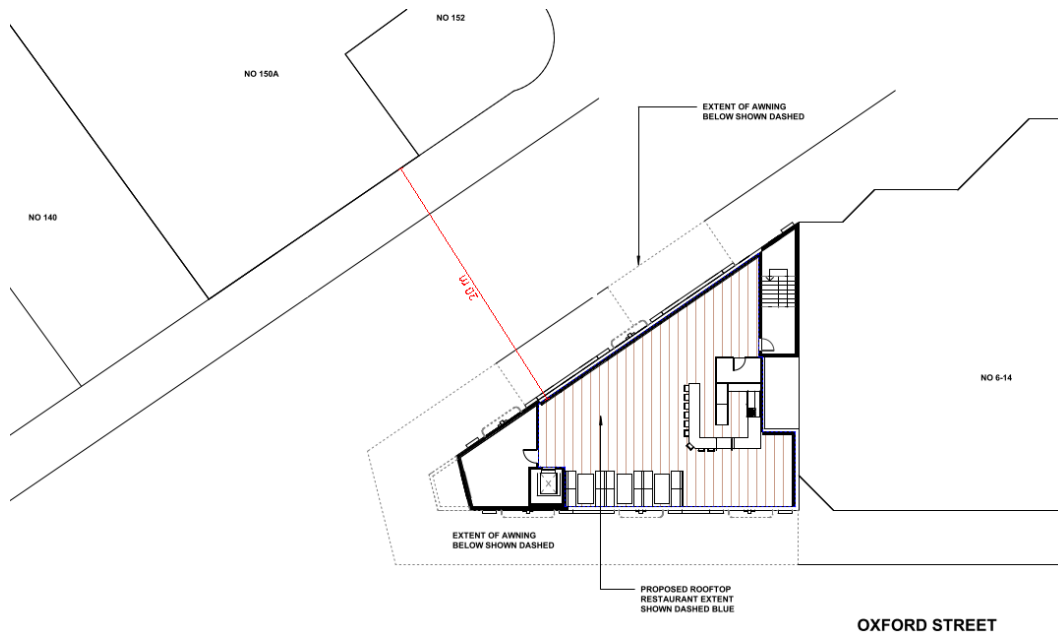


Figure 11: Separation between the subject site and the affected property.

61. The Liverpool Street facade of 144-150 Liverpool Street also features an aluminium privacy louvre system in front of recessed balconies and windows to living room/bedroom to provide privacy protection between the residential units and neighbouring commercial and residential buildings. Refer to Figure 4 above.
62. Given the minimum 20m separation in combination with the existing privacy louvres, the rooftop area will not result in an unacceptable visual privacy impact to the upper floor units of the neighbouring property to the north.
63. Similarly, the first floor outdoor terrace is approximately 13m below the finished floor level of the rooftop area and separated by 20 metres horizontally. This results in oblique rather than direct of the terrace. In this context, privacy to this terrace is acceptable.

Other Impacts of the Development

64. The proposed development is capable of complying with the BCA.
65. The proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to recommended standard and special conditions.

Suitability of the site for the Development

66. 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

67. The application was discussed with the Heritage and Urban Design Specialists, Environmental Health, and Licenced Premises. Relevant comments have been included above.
68. The conditions of other sections of Council have been included in Attachment A.

External Referrals

NSW Police

69. The application has been discussed with the NSW Police, recommend that the hours of operation be restricted to a maximum of 10.00pm.

Notification, Advertising and Delegation

70. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 10 October 2019 and 1 November 2019. As a result of this notification a total of 763 properties were notified, 33 submissions in objection, a pro forma in objection submitted and signed by 42 individuals, and 8 submissions in support were received. The issues raised are summarised below:

In Objection

Noise

- (a) The Burdekin Hotel has historically been problematic for residents living close by. The operator fails to control patrons, ending up with patrons with anti-social behaviours often in large groups shouting and screaming. The building is also old and not sound proof, resulting in noise and disturbance in the area. A rooftop bar with loud music will exacerbate these impacts and negatively impact the value of our home.

Response – Accepting the submission, however no complaints have been received in relation to nuisance and disturbance in the immediate vicinity since 2017. In this context, management of the Burdekin Hotel is considered satisfactory. Any future issues should be reported to Council or the Police, so that they can be recorded and taken into consideration when the trial trading hours of the rooftop area are due for renewal.

- (b) Concerns with the acoustic assessment. The use of traffic noise of Oxford Street as a basis for argument is not acceptable, and the assessment has no consideration to music being played. Loud music playing is expected and would result in unacceptable amenity impacts.

Response – The measurement of traffic noise is to establish the background noise levels in accordance with the NSW EPA Noise Policy for Industry 2017. As discussed above, the acoustic report was reviewed by Council's Health Officer and subject to recommended conditions, that no amplified music or music is to be played on the rooftop bar to ensure compliance with the relevant noise criteria.

- (c) The acoustic glazing barrier will only mitigate noise to areas at the same height. The extent and cost appear to indicate it as a low cost 'token gesture' to satisfy DA requirements.

Response – The acoustic barriers are included in the applicant's acoustic report and are considered acceptable to manage the noise subject to recommended conditions of consent.

Other Amenity Impacts

- (d) The proposal will have visual privacy impact on the neighbouring property at 144-150 Liverpool Street, including the first floor terrace to the eastern unit.

Response – The visual privacy concerns of the proposal is discussed above.

- (e) The proposal will result in light pollution to neighbouring properties.

Response – Any lighting installed in an open and/or public spaces are required to comply with AS4282-1997 Control of Obtrusive Effects of Outdoor Lighting to ensure the design and placement of lighting do not create a nuisance or negatively impact on the amenity of the neighbouring properties. A condition to this effect is included in the recommendation.

- (f) When food services are not taking place, the rooftop area will be used as a 'smoking lounge'. There is also concern that smoking will be allowed and result in amenity impacts to neighbouring residents.

Response – The rooftop area as a restaurant and bar will be subjected to the Smoke-free Environment Act 2000. No smoking is permitted on the roof top terrace.

- (g) Odour emission

Response - The applicant has clarified that no cooking will occur in the proposed kitchen and bar area. All cooking will rely on the existing kitchen on the levels below. No complaints have been received regarding cooking odours from the existing kitchen. Future complaints should be made to Council's Compliance Unit to enable an odour impact assessment.

Character and Amenity of the Locality

- (h) The Burdekin Hotel is situated in a predominantly residential area. Residents are entitled to a reasonable expectation of amenity and liveability which includes not being exposed to excessive noise pollution. There is a need to protect the character and amenity of the area.

Response – Oxford Street has historically been an entertainment, tourism and retail precinct and the site has a long history of hotel uses. The application is supported by an acceptable acoustic report, and suitable conditions have been recommended to ensure the proposal will not cause unacceptable impact on the neighbouring residential uses while supporting the mixed use character of the locality.

- (i) The proposal will be a public nuisance and will result in security concerns for neighbouring residential buildings and pedestrians.

Response – As discussed above, the operation of the existing hotel is satisfactory and the City's internal units and the NSW Police find the proposal satisfactory. The Burdekin Hotel is required to continue operations in accordance with the approved detailed Plan of Management and the operational conditions of development consent D/2006/2252 (as amended).

- (j) The proposal will require extra deliveries and waste management, and will affect pedestrian and vehicular access along Oxford Street.

Response - The proposal will not increase the overall capacity of the Burdekin Hotel. As such, the impacts on the existing operation of the premises are acceptable. The Burdekin Hotel will continue to operate in accordance with the Plan of Management and conditions of consent regarding waste management.

Patron Capacity

- (k) The proposal will result in an increase in patronage, and exacerbate existing amenity impacts and public nuisance incidents. There is also nothing stopping the applicant increasing the number of patrons when they vary their liquor license on the basis of additional area offered by the roof.

Response – As addressed above, no increase in the overall patron capacity of the Burdekin Hotel is proposed. Any future application to increase capacity will be subject to detailed acoustic and management assessment at that time.

Hours of Operation

- (l) The proposed trading hours are excessive. An 8am start on Sunday, and operating till midnight for 6 nights of the week are inappropriate. Further applications to extended hours will likely follow if this application get approved.

Response – As discussed above, the recommended hours of operation for approval are restricted with trial period to allow Council to monitor and assess the actual impacts of the proposal.

The proposal does not include an 8am start on Sunday, and only seeks to operate till midnight on Friday and Saturday on a trial basis. Council must assess the applications in accordance with the relevant planning legislation and controls.

Other Issues:

- (m) The proposal will weaken the 'lock out' laws.

Response – The proposal is consistent with the Liquor Act 2007.

- (n) The Burdekin Hotel is listed as a High Risk venue in the Liquor Regulation 2018.

The Burdekin Hotel is listed as a 'high risk' venue because, in accordance with Division 4 of Part 6 of the Liquor Act 2007, it sells liquor for consumption on the premises, is authorised to trade after midnight at least once a week on a regular basis, and has a patron capacity of more than 120 patrons.

The identification is different from the Violent Venues Scheme which was introduced in 2008 to regulate licensed premises with high levels of assault and other violent incidents. The Burdekin Hotel is never identified by the Scheme since its introduction.

- (o) The proposal is not in keeping with Council's active frontage goals.

Response - The proposal has no impact on the existing ground floor frontages of the Burdekin Hotel. The ground floor use as a food and drink premises is consistent with the requirements of Section 3.2 of Sydney DCP 2012.

- (p) The nature of the rooftop area as a restaurant is questionable. The small kitchen area is insufficient to cater for 85 people. The proposed use is more likely as a bar.

Response – The applicant has clarified that food will be prepared primarily in the existing kitchen in the levels below. The use of the rooftop area as a bar is also included in the proposal and is assessed as such.

- (q) Previous applications to utilize the roof space as a restaurant under D/2006/2252 and D/2017/675 were refused. This application should be consistently refused.

Response – D/2006/2252 relates solely to the indoor areas of the Burdekin Hotel and the original refusal was overturned by the NSW Land and Environment Court. Similarly, D/2017/675 relates to another site at 223-225 Liverpool Street, Darlinghurst. There are no previous similar applications regarding the use of the rooftop area for this site.

In Support

- (a) Oxford Street and surrounds has been an entertainment precinct, and needs rejuvenation. The proposal would be a positive contribution both to the precinct and to the city's night time economy, particularly for Worldpride 2023.

Response – As discussed above, the proposal is consistent with the locality statement for Oxford Street.

- (b) A healthy night time economy for Sydney should be supported. The proposed hours till midnight on the weekends is reasonable.

Response – As discussed above, the hours of operation have been recommended in accordance with Sydney DCP 2012, with any hours outside the permissible base hour subjected to a 1 year trial.

- (c) Given the development comply with appropriate conditions of consent, there should be no reasons why noise should be a concern.

Response – Appropriate recommended conditions are included in Attachment A to ensure the proposal will not cause unreasonable impacts to neighbouring residents.

Public Interest

71. The proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

72. The development is not subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015 as it will not result in a net increase in population. A contribution is therefore not payable.

Relevant Legislation

73. Environmental Planning and Assessment Act 1979.
74. Heritage Act 1977.
75. Liquor Act 2007.

Conclusion

76. The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone.
77. The development is consistent with the character and principles identified in the locality statement for Oxford Street Darlinghurst.
78. The development is respectful to the character and design of the existing heritage listed building. It supports the historic use of the site as a hotel and is satisfactory from a heritage perspective.
79. The development satisfies Clause 6.21 of Sydney Local Environmental Plan 2012 in that it demonstrates acceptable standard of architectural design, materials and detailing appropriate to the existing heritage item and the location.
80. The development is within the Late Night Management area. The hours of operation, subject to conditions of consent, are consistent with the objectives and in accordance with the recommended hours for this area for a Category A premises as identified in the Sydney Development Control Plan 2012.
81. The development is recommended to be approved, subject to conditions included in Attachment A which will ensure that the on-going operation of the development will not create unreasonable disturbance or nuisance to surrounding properties.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Bryan Li, Planner