

Item 3.**D/2019/1295, 34-36 Oxford Street, Darlinghurst****File No.: D/2019/1295****Summary**

Date of Submission: 15 November 2019. Amended plans received on 14 February, 24 March, 16 April and 20 April 2020.

Applicant: Sydney Architecture Studio

Architect/Designer: Sydney Architecture Studio

Developer: Oxford Street Property Holdings Pty Ltd

Owner: Oxford Street Property Holdings Pty Ltd

Cost of Works: \$2,750,000

Zoning: B2 Local Centre. Tourist and visitor accommodation are permissible.

Proposal Summary: Approval is sought to amend development application D/2017/1293 previously approved by the Local Planning Panel (LPP) on 9 May 2018.

The approved DA was for the construction and use of a two storey contemporary addition on top of an existing heritage listed building, internal refurbishment works of existing levels to facilitate access and services. Change of use of existing levels 1 and 2 from hotel to commercial office and external heritage conservation works.

The following amendments are sought in this amending development application:

- (a) Change of use of levels 1 to 4 from commercial office to tourist and visitor accommodation (hotel).
- (b) Internal alterations for the proposed hotel use, including a foyer and site managers room on the ground floor, 30 guest rooms on levels 1 to 4 and associated back of house services on all levels of the building.

- (c) External alterations to accommodate the proposed hotel use, including reinstating original openings on the rear elevation.

With the proposed amendments approval is sought for the construction of a two storey contemporary addition on top of an existing heritage listed building, external heritage conservation works, internal refurbishment works and alterations to facilitate use of the building as a hotel.

The development application is reported to the LPP as it seeks to vary the floor space ratio control under Sydney LEP 2012 by more than 10%.

The application proposes a floor space ratio of 3.33:1 and a building height of 23.87m (to the lift overrun). Sydney LEP 2012 allows for a floor space ratio of 2.5:1 and maximum height of 22m. A request to vary the floor space ratio and building height standards under Clause 4.6 of Sydney LEP 2012 has been submitted. These requests are supported.

The proposal has a building envelope that is consistent with the approved built form under D/2017/1293. No changes are proposed to the approved height in metres, height in storeys, floor space ratio or building setbacks.

Three submissions were received in response to the proposal. Issues raised include suitability of the proposed use and potential noise impact from adjoining properties, noise and amenity impacts from outdoor terraces, garbage collection and air conditioners, general amenity impacts from the hotel use, disrepair of Winns Lane and inconsistencies within the documentation.

The proposal is recommended for deferred commencement approval to allow for further acoustic testing to verify acoustic modelling and determine the final design of attenuation measures to mitigate potential acoustic impacts from adjoining properties, should they be required.

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

Development Controls:

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

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Floor Space Ratio
- D. Clause 4.6 Variation request - Building Height
- E. Acoustic Report

Recommendation

It is resolved that:

- (A) the variation sought to Clause 4.4 Floor Space Ratio development standard in accordance with Clause 4.6 Exceptions to Development Standards of Sydney Local Environmental Plan 2012 be supported in this instance;
- (B) the variation sought to Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 Exceptions to Development Standards of Sydney Local Environmental Plan 2012 be supported in this instance;
- (C) a deferred commencement consent be granted to Development Application No. D/2019/1295 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 proposal is generally consistent with the relevant objectives and controls of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters in Clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.4 of the Sydney LEP 2012.
 - (ii) the applicant's written request has adequately addressed the matters in Clause 4.6(3) of the Sydney LEP 2012, that compliance with the building height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney LEP 2012.
 - (iii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the floor space ratio development standard and the building height development standard.
- (C) The proposal exhibits a suitable built form, design and materiality in the context of the heritage conservation area and is appropriate within the streetscape.
- (D) The proposal provides for a use that is compatible with the surrounding area and will return the building to its historic use as a hotel providing accommodation.

- (E) The proposal results in a public benefit in the form of heritage conservation as it allows for the retention and preservation of internal and external heritage fabric and restoration of the Oxford Street façade.
- (F) The proposal will not result in unacceptable amenity impacts on surrounding properties.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 16 January and 24 April 2020.
2. The site is irregular in shape, with area of approximately 282.5sqm. It has a primary street frontage to Oxford Street and a secondary, rear street frontage to Winns Lane, which is a private street. The site is located at the western end of Oxford Street, 130m from the intersection of Liverpool Street.
3. The site is located within the East Sydney Conservation Area (C13) and contains a locally listed heritage building known as 'The Exchange Hotel'. The building presents as three storeys to Oxford Street and four storeys to Winns Lane, due to the fall of the site.
4. The site has a long history of use as a pub and entertainment venue. Current approved uses include a bar and music venue at basement level, a bar/restaurant with gaming room at the ground floor and commercial office space on upper levels. Services, waste areas and storage areas exist within the basement, accessible via Winns Lane. The roof top contains mechanical plant.
5. Internal demolition works, approved under D/2017/1293 are currently underway. Scaffolding has been erected on the rooftop to facilitate construction of Levels 3 and 4, also approved under D/2017/1293.
6. Surrounding land uses are residential and commercial. Immediately to the west of the site is 'The Park Apartments' (18-32 Oxford Street) a 16 storey residential flat building with ground floor commercial uses. Immediately to the east of the subject site (38-46 Oxford Street) is a three storey locally listed heritage item of commercial use. The Oxford Arts Factory is located within the basement of this building. To the north of the site across Winns Lane (223-225 Liverpool Street) is the Former 'Winns Ltd Department Store', a locally listed heritage building. This building was recently refurbished for commercial use. Buildings on the opposite side of Oxford Street and within the immediate surrounds comprise primarily of commercial buildings of varying style and character.

7. 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: Existing ground floor facade



Figure 4: Looking north east along Oxford Street



Figure 5: Looking north west along Oxford Street



Figure 6 Looking north west along Oxford Street



Figure 7: Looking west along Oxford Street to buildings on the opposite side of the road



Figure 8: Norman Street looking west



Figure 9: Rear of site viewed from Winns Lane



Figure 10: Rear of site viewed from Winns Lane looking south



Figure 11: Level 1 interior, looking south

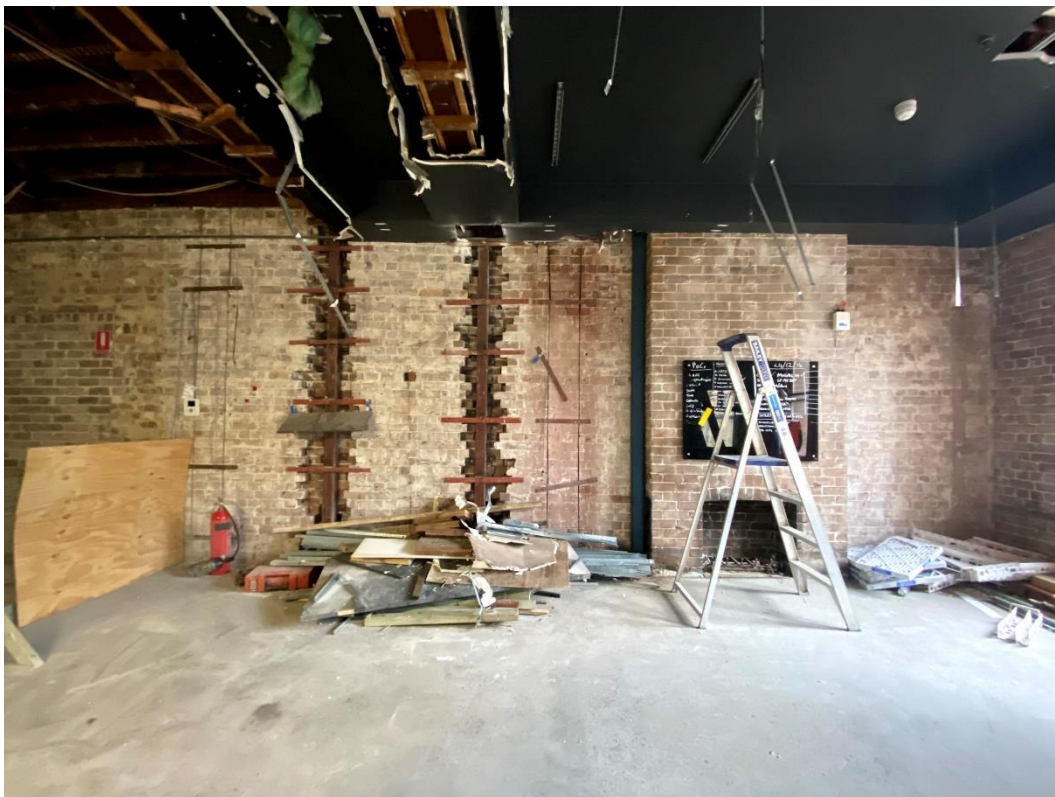


Figure 12: Level 2 interior, looking east

Proposal

8. Approval is sought to amend the existing base consent granted under D/2017/1293 as follows:
 - (a) Change of use from an approved commercial office space to tourist and visitor accommodation (hotel).
 - (b) Internal and external alterations to facilitate the change of use, including:
 - (i) Basement - demolition of internal partition walls and construction of a new waste storage room. Retention of the existing bar/music venue with fit out subject to further approval.
 - (ii) Ground floor - demolition of existing toilet facilities, staircase to level 1 and internal partition walls. Construction of a hotel foyer accessed from Oxford Street, one site managers room, toilet facilities, bicycle parking and storage. Retention of the existing bar and food and drinks premises with fit out subject to further approval. Refurbishment of the Oxford Street façade and reinstatement of original windows to the rear elevation.
 - (iii) Level 1 - demolition of existing internal partition walls and an existing staircase from ground floor. Construction of eight hotel rooms and reinstatement of original windows to the rear elevation.
 - (iv) Level 2 - demolition of internal partition walls, construction of eight hotel rooms and reinstatement of original windows to the rear elevation.
 - (v) Level 3 - demolition of internal partition walls, construction of seven hotel rooms and new windows openings to rear elevation.
 - (vi) Level 4 - demolition of internal partition walls, construction of seven hotel rooms and new windows openings to rear elevation.
 - (vii) Rooftop - extension of roof top plant area and new rooftop access hatch.
9. Considering the proposed amendments outlined above, the application seeks approval for the construction of a two storey contemporary addition on top of an existing heritage listed building, external heritage conservation works and internal refurbishment works and alterations to facilitate use of the building as a hotel with ground floor retail (shown in Figures 14 to 19 below).
10. No changes to the built form, including approved height in metres, height in storeys, FSR or setbacks are proposed as part of the amending development application.
11. The hotel accommodation is proposed to operate 24 hours a day, seven days a week. Reception will be managed within standard operating hours, with access to the premises being provided to guests via a secure pass outside of reception hours. A hotel site manager will be available 24 hours a day.

12. A photomontage, elevations and plans of the proposal are provided below. A full set of architectural plans are provided at Attachment B.



Figure 14: Proposed photomontage showing the proposed addition behind the existing parapet



Figure 15: Proposed front (Oxford Street) elevation



Figure 16: Proposed rear (Winns Lane) elevation

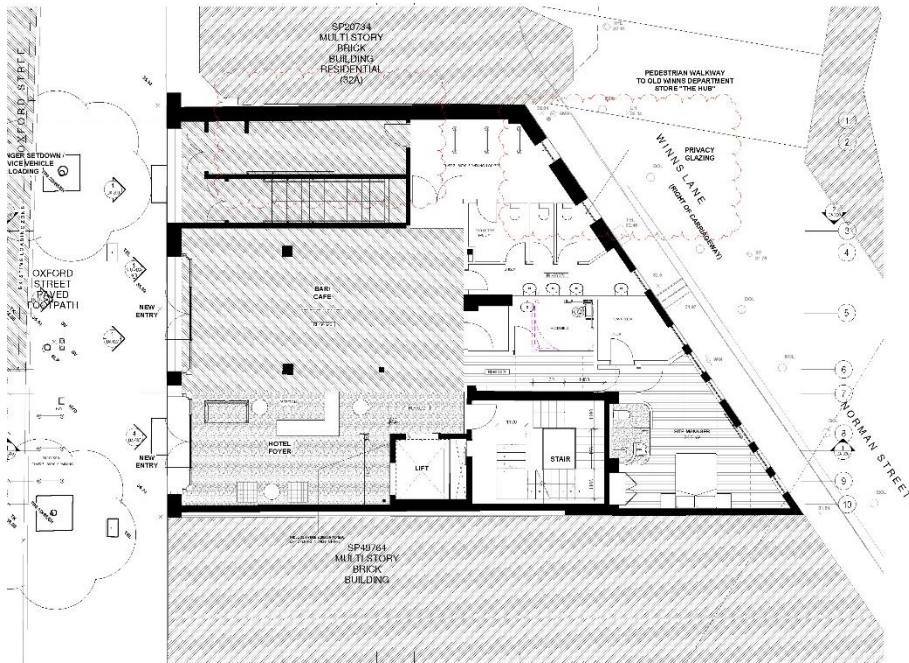


Figure 17: Proposed Ground Floor plan

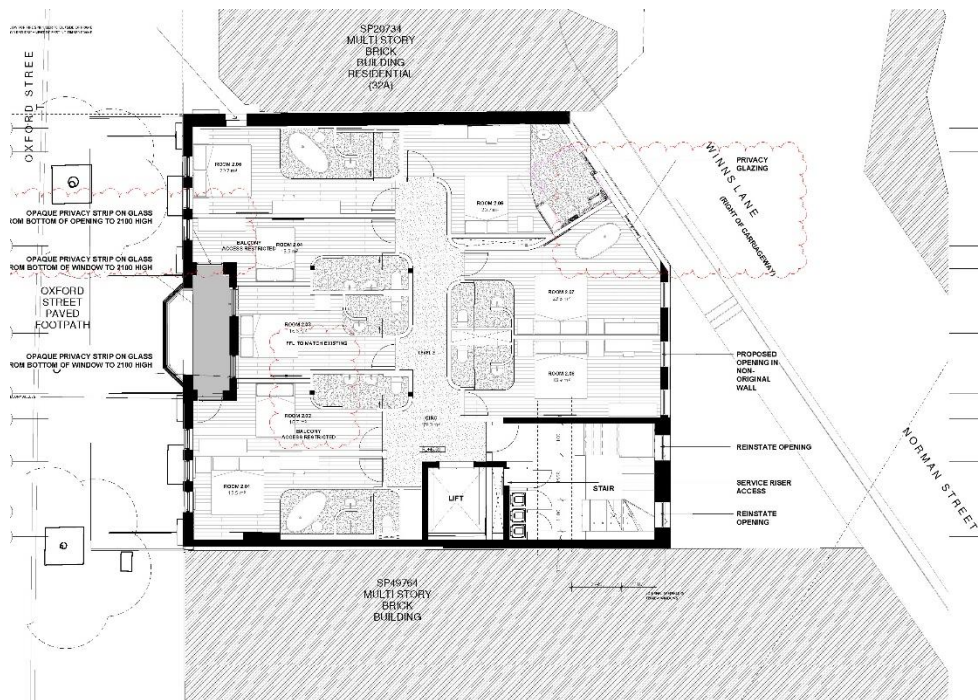


Figure 18: Proposed level 2 floor plan

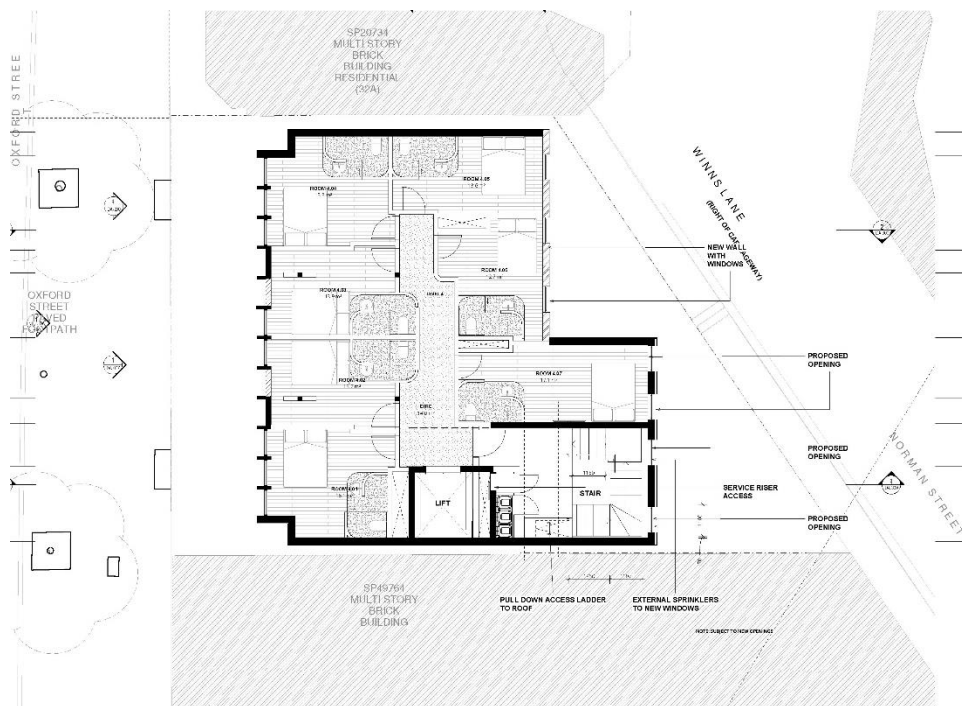


Figure 19: Proposed level 4 floor plan

History Relevant to the Development Application

D/2019/1295 (subject development application)

13. The original application was amended to address a number of issues identified by Council officers during assessment of the application. Amendments include:
 - (a) Changes to the layout of hotel rooms on levels 1 and 2 to address heritage concerns and improve functionality.
 - (b) Detailed design amendments to address impacts to heritage fabric including windows frames and flooring.
 - (c) Deletion of external terrace areas on level 3 and level 4 and redesign of access arrangement to existing balconies on levels 1 and 2 to address privacy concerns.
 - (d) Provision of bicycle parking at the ground floor.
 - (e) Amendments to rooftop to accommodate additional mechanical ventilation plant and access.
 - (f) Amendments to the Plan of Management to address site servicing and deliveries.
 - (g) Amendments to the Waste Management Plan and waste storage areas to increase storage areas.
14. Revised drawings and supporting documentation submitted to Council on the 14 February, 24 March, 16 April and 20 April 2020 satisfy the issues raised by Council.
15. The original application did not provide adequate information to assess potential acoustic impacts from existing approved uses located within adjoining properties:
 - (a) On the 19 December 2019 an Acoustic Report was requested that demonstrated compliance with noise criteria and address noise and vibration impacts from surrounding approved uses.
 - (b) Acoustic Reports were submitted to Council on 13 February and 20 March 2020; however, these reports did not satisfy the acoustic requirements outlined in Council's original request.
 - (c) Given the ongoing delay, on 14 April 2020, Council requested the applicant withdraw the application.
 - (d) On the 20 April 2020, an amended Acoustic Report was submitted that generally satisfies the issues raised by Council. However, this report relies on assumptions and modelling that have not been tested in place under normal operating conditions. The current COVID-19 pandemic conditions have impacted on the proponent's capacity to test these assumptions and with more time to liaise with surrounding approved uses this could be done. A deferred commencement condition is recommended requiring additional onsite testing be undertaken to verify modelling and to determine the final design of attenuation measures to mitigate potential acoustic impacts, should the modelling show that attenuation is required.

D/2018/1163

16. On 4 February 2019, consent was granted for internal and external alterations to the basement and ground floor of the existing licensed food and drinks premises.
17. A construction certificate has not been issued for this development consent.

D/2017/1293

18. On 9 May 2018, consent was granted by the LPP for the construction and use of a two storey contemporary addition on top of an existing heritage listed building, internal refurbishment works of existing levels to facilitate access and services, change of use of existing levels 1 and 2 from hotel to commercial office and external heritage conservation works.
19. The subject development application seeks to amend this approval, as outlined in the Proposal section above.
20. On 22 November 2018, a stage 1 construction certificate was issued for site establishment, demolition and placement of steel frame elements. These works have commenced on site.

D/2013/860

21. On 25 March 2014, deferred commencement consent was granted for the 'Consolidation of consents for the continued use of the licensed hotel known as The Exchange Hotel'. This application, which was activated on 30 January 2015 approved the following uses:
 - (a) basement - live music venue and bar;
 - (b) ground floor - hotel bar, lounge and gaming room, external smoking area;
 - (c) first floor (Level 1) - live music venue and bar;
 - (d) second floor (Level 2) - bar/nightclub.
22. Condition 2 of D/2017/1293 required that D/2013/860 be modified to reflect the newly approved commercial uses on levels 1 and 2, while allowing for the retention of the approved basement and ground floor uses.
23. On 18 December 2018, an Amended Approval Notice (D/2013/860/C) was issued under Section 4.17(5) of the Environmental Planning and Assessment Act to reflect the newly approved commercial uses on levels 1 and 2.
24. As outlined in the Proposal section above, this application seeks to retain the approved uses on the basement and ground floor.

Economic/Social/Environmental Impacts

25. 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)

26. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
27. 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.
28. 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 Local Environmental Plan 2012

29. The site is located within the B2 Local Centre zone. The proposed use is defined as tourist and visitor accommodation and is permissible.
30. 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	No	<p>A maximum height of 22m is permitted.</p> <p>A height of 23.87m is proposed. While the proposed height exceeds the LEP control, it is consistent with the height approved under D/2017/1293.</p> <p>A Clause 4.6 request has been submitted and is supported.</p> <p>See discussion under the heading Issues.</p>

Development Control	Compliance	Comment
4.4 Floor Space Ratio	No	<p>A maximum FSR of 2.5:1 is permitted.</p> <p>An FSR of 3.33:1 is proposed. While the proposed FSR exceeds the LEP control, it is consistent with the FSR approved under D/2017/1293.</p> <p>A Clause 4.6 request has been submitted and is supported.</p> <p>See discussion under the heading Issues.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the development standard prescribed under Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio.</p> <p>See discussion under the heading Issues.</p>
5.10 Heritage conservation	Yes	<p>The subject site is a local heritage item and is located within a heritage conservation area.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions	Compliance	Comment
Division 4 Design Excellence	Yes	<p>The proposed development satisfies the requirements of this provision with a contemporary addition set behind the existing parapet with concurrent heritage restoration of the existing building.</p>

Sydney Development Control Plan 2012

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

2. Locality Statements – Oxford Street

The subject site is in the Oxford Street locality. The proposed change of use and alterations to a heritage item are in keeping with the unique character of the area and design principles in that it preserves and enhances the heritage item, retains existing entertainment and retail uses and proposes a hotel use that will support tourism needs.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	The proposal will enhance the public domain by maintaining the existing active frontage to Oxford Street, refurbishing the existing awning over the Oxford Street footpath and conservation works to the building façade.
3.9 Heritage	Yes	The existing building is located within a conservation area. See discussion under the heading Issues.
3.10 Significant Architectural Building Types	Yes	The site contains a hotel that is older than 50 years. The proposal retains the historical use of the site as a pub and reintroduces hotel accommodation on the site.
3.11 Transport and Parking	Yes	The proposal was amended to include bicycle parking on the ground floor. Given the sites existing constraints, no onsite parking is proposed. An existing loading zone is located along Oxford Street that will be utilised for deliveries. The site is situated in a high-density urban area that is well serviced by public transport.
3.12 Accessible Design	Yes	A condition is recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	The proposal has been amended to increase waste storage areas on the basement level.

3. General Provisions	Compliance	Comment
		<p>The submitted Waste Management Plan and Plan of Management has been reviewed by the City's Waste Service unit, who advised that placement of bins for collection on Winns Lane is not acceptable.</p> <p>A condition is recommended requiring amendments to these documents to ensure compliance with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.16 Signage and Advertising	Yes	<p>The proposed development seeks to retain two existing under awning signs located on the Oxford Street frontage. As these signs have development consent, approval is not required for changes to the content of these signs.</p> <p>No other signage is proposed as part of this development application.</p>
3.16.1 Signage Strategy	Yes	<p>A signage strategy for the building has previously been approved under D/2017/1293. Any future development application for signage will need to comply with the approved signage strategy.</p>
4. Development Types 4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
4.2.1 Building height	Yes	<p>A maximum height in storeys of six storeys is permitted.</p> <p>The proposal is five storeys when viewed from Oxford Street and six storeys when viewed from Winns Lane.</p> <p>The proposal provides 3.6m floor to ceiling heights for the new hotel floors (levels 3 and 4).</p>

4. Development Types 4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
4.2.2 Building setbacks	Yes	<p>The additional floors (levels 3 and 4) will be setback 3m from the front property boundary. This setback is acceptable as it is consistent with the adjoining Park Apartments building to the west and maintains the setting of the heritage item.</p> <p>The proposed setbacks are consistent with the built form approved under D/2017/1293.</p>
4.2.3 Amenity	Yes	<p>Initial visual and acoustic privacy concerns were raised as a result of the proposed level 3 terrace fronting Oxford Street and rear terraces located on levels 3 and 4 overlooking Winns Lane. These terraces have been removed and a condition is recommended restricting access.</p> <p>An acoustic report has been submitted that shows that the proposal is acceptable regarding noise and vibration impacts. See discussion under the heading Issues.</p>

Issues

Clause 4.6 request to vary a development standard - Floor Space Ratio

32. The site is subject to a maximum FSR control of 2.5:1. The proposed development has a proposed FSR of 3.33:1. The variation to the FSR control equates to approximately 234.75sqm of additional allowable gross floor area and a departure from the development standard of approximately 33%.
33. The FSR exceedance was previously approved by the LPP on 9 May 2018 under D/2017/1293. The subject amending DA does not seek to change the approved FSR, with the proposed gross floor area remaining neutral. However, as the proposal is for a change of use within a portion of the building that has not yet been constructed, the proposal is referred to the LPP for determination under Schedule 3 of the Panel directions.

34. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.
35. A copy of the applicants written request is provided at Attachment C.

Applicants Written Request - Clause 4.6(3)(a) and (b)

36. The applicant seeks to justify the contravention of the FSR development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicants statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard. A summary of the applicant's assessment against the objectives of the control are provided below:

Objective (a) - to provide sufficient floor space to meet anticipated development needs for the foreseeable future,

- i. The proposed development will return the building to its historic use as a hotel providing accommodation.
- ii. The proposal will not alter the GFA as previously approved under D/2017/1293. The proposal largely complies and is generally consistent with SLEP 2012 and SDCP 2012 development controls with the exception of FSR and height.

Objective (b) - to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,

- i. The proposal seeks 30 short-stay accommodation rooms and one site manager accommodation, located in a highly accessible area.
- ii. The proposal is 234.75sqm above the maximum GFA allowed. However, the basement contains 164sqm of GFA which does not contribute to the overall bulk and scale of the building as perceived from Oxford Street.
- iii. The site does not currently contain car parking spaces. Due to the nature of the proposed land use and the high accessibility to public transport, no car parking spaces are to be provided on-site.

- iv. The proposed will not alter the existing traffic and transport arrangements on site.

Objective (c) - to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,

- i. The proposed development would create tourist and visitor accommodation floorspace within an established mixed-use precinct, which would continue to support the ongoing operations and employment.

Objective (d) - to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

- i. The proposal is for a change of use and internal fit out to an approved building envelope pursuant to D/2017/1293.
- ii. The proposal results in a significant improvement and revitalisation of the site, including upgrades to the heritage façade and the reinstatement of the historic use as tourist and visitor accommodation. The additional floor space, as approved, creates an outcome that is viable and sustainable for the site without adversely impacting on the streetscape, heritage and conservation values or amenity.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) The proposed development will not exceed the approved FSR under D/2017/1293.
- (ii) The proposed development is entirely consistent with the underlying objective or purpose of the standard as demonstrated.
- (iii) The scale of the proposal is appropriate for the site and its operations.
- (iv) The bulk and scale of the development is limited and is consistent with the internal style and scale of development within the conservation area and streetscape.
- (v) The proposed development will not significantly impact on the amenity of adjoining properties.
- (vi) Strict compliance with the FSR controls would unreasonably restrict the potential to develop the site.
- (vii) The proposed development is internally located and will not result in significant environmental impacts.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

37. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

38. The applicants written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the objectives of the control notwithstanding the noncompliance.
39. The proposal will provide additional floor space to meet tourism needs in an area that is well serviced by existing infrastructure.
40. The proposal results in a significant upgrade and revitalisation of the building, including upgrades to the heritage facade. The additional floor space creates a built form that is suitable in the sites context without adversely impacting on streetscape, conservation values or amenity.

Does the written request adequately address those issues at clause 4.6(3)(b)?

41. The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.
42. The proposal provides a built form that is suitable with regard to streetscape character and urban form of the area, and the FSR departure does not create any significant adverse impact by way of privacy, overshadowing, bulk or scale.

Is the development in the public interest?

43. The relevant objectives of the FSR development standard are:
- (a) To provide sufficient floor space to meet anticipated development needs for the foreseeable future,
 - (b) To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
 - (c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
 - (d) To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

44. The additional floor space is contained within a built form that largely complies and is generally consistent with LEP and DCP development controls, except for height which is discussed below.

The additional floor space is contained within a built form that is appropriate to the context of the site and its location within the conservation area and streetscape.

45. The proposal will provide for hotel accommodation in a location that is well serviced by existing infrastructure, including public transport.
46. The objectives of the B2 Local Centre zone are:
- (a) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - (b) To encourage employment opportunities in accessible locations.
 - (c) To maximise public transport patronage and encourage walking and cycling.
 - (d) To allow appropriate residential uses so as to support the vitality of local centres.
47. The proposal maintains the existing entertainment uses onsite and proposes a new accommodation use, which will continue to service the needs of residents, workers and visitors to the area. The proposal includes existing and proposed uses that will encourage employment opportunities in a location that is easily accessible and well serviced by public transport.
48. The proposal is in the public interest because it is consistent with both the objectives of the FSR development standard and the objectives of the B2 Local Centre zone.

Conclusion

49. For the reasons provided above the requested variation to the FSR development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of FSR development standard and the B2 Local Centre zone.

Clause 4.6 request to vary a development standard - Building Height

50. The site is subject to a maximum building height control of 22m. The proposed development has a building height of 23.87m to the lift overrun. The variation to the building height control equates to approximately 1.87m of additional height and a departure from the development standard of approximately 8.5%. The building height exceedance is approximately illustrated in Figure 20 below.

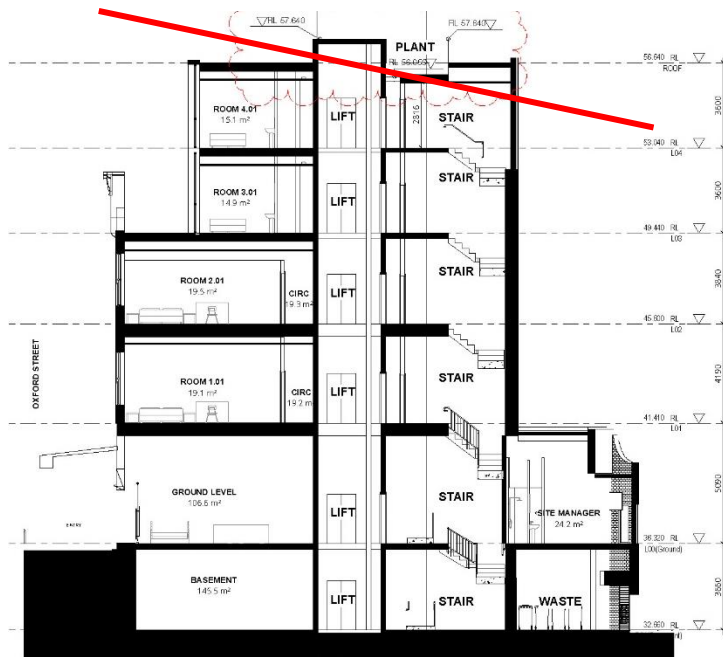


Figure 20: Approximate building height exceedance

51. The building height exceedance was previously approved by the LPP on 9 May 2018 under D/2017/1293. The subject amending DA does not change the approved building height, with the proposed height of the building and lift overrun remaining neutral. However, as the proposal is for a change of use within a portion of the building that is yet to be constructed, the proposal is referred to the LPP for determination under Schedule 3 of the Panel directions.
52. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.
53. A copy of the applicants written request is provided at Attachment D.

Applicants Written Request - Clause 4.6(3)(a) and (b)

54. The applicant seeks to justify the contravention of the building height development standard on the following basis:

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

(i) The applicants statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard. A summary of the applicant's assessment against the objectives of the control are provided below:

Objective (a) - to ensure the height of development is appropriate to the condition of the site and its context,

- i. The proposal will return the building to its historic use as a hotel providing accommodation.
- ii. The proposal will not alter the approved building height as per D/2017/1293.

Objective (b) - to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

- i. The proposal has been designed to respect the historical significance of the heritage listed building.
- ii. The variation to the height standard only applies to the lift overrun, which is located at the rear of the site and will not be discernible from Oxford Street. The proposal will comply with the building height control at the primary street frontage, resulting in an appropriate height in relation to the sites context and location with the Oxford Street Conservation Area and Oxford Street streetscape, and will therefore provide a desirable built form enhancing the streetscape character of the immediate area.
- iii. The proposal seeks 30 shortstay accommodation rooms and one site manager accommodation, located in a highly accessible area, returning the historic use of the site.

Objective (c) - to promote the sharing of views,

- i. The proposal would create tourist and visitor accommodation within an established mixed-use precinct, which would continue to support the ongoing operations and employment.
- ii. The proposal maintains a three storey street wall height and five storey height when viewed from Oxford Street with significant area of the building remaining under the height control.

Objective (d) - to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

- iii. The proposed is for a change of use and internal fit-out to an approved building envelope pursuant to D/2017/1293.
 - iv. The building height provides an appropriate height transition from the existing multi-storey building located immediately to the north-west to the existing heritage listed buildings located to the south-east of the site.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposed development will not exceed the approved building height under D/2017/1293;
 - (ii) The proposed development is entirely consistent with the underlying objective or purpose of the standard as demonstrated;
 - (iii) The scale of the proposal is appropriate for the site and its operations;
 - (iv) The bulk and scale of the development is limited and is consistent with the internal style and scale of development within the conservation area and streetscape;
 - (v) The breach in building height is a result of the existing fall of the site, with the variation to the height standard only applying to the lift overrun and rear of the building and will not be discernible from Oxford Street;
 - (vi) The proposed development will not significantly impact on the amenity of adjoining properties;
 - (vii) Strict compliance with the building controls would unreasonably restrict the potential to develop the site; and
 - (viii) The proposed development is internally located and will not result in significant environmental or amenity impacts.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

55. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

56. The applicant's written request adequately demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the objectives of the control notwithstanding the noncompliance.
57. The area of noncompliance is limited to the lift overrun, plant screening and a small portion of the building to fronting Winns Lane. The breach is a result of the existing fall of the site from front to rear.
58. The area of non-compliance is relatively minor and does not unreasonably add to the bulk and scale of the building when viewed from the public domain and surrounding buildings.
59. The proposal maintains a three storey street wall height and five storey height when viewed from Oxford Street with significant areas of the building remaining under the height control.

Does the written request adequately address those issues at clause 4.6(3)(b)?

60. The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.
61. The addition tempers the abrupt scale at the boundary with the adjoining 16 storey Park Apartments tower and is contained within a built form that is appropriate to the site's context and its location within the conservation area and streetscape.
62. The proposal will not create unacceptable impacts on the amenity of surrounding properties with regard to views, solar access and visual privacy.

Is the development in the public interest?

63. The relevant objectives of the building height development standard are:
 - (a) To ensure the height of development is appropriate to the condition of the site and its context,
 - (b) To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,
 - (c) To promote the sharing of views,
 - (d) To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.
64. The proposal complies with the building height control at the front of the site, resulting in an appropriate height in relation to the sites context and located within the East Sydney Conservation Area and Oxford Street streetscape.
65. The proposal provides an appropriate height transition from the existing multi-storey building located immediately to the northwest to the existing heritage listed buildings located to the south east of the site.
66. The proposed exceedance in height will not impact on any views or result in any adverse amenity impacts to surrounding development.

67. The objectives of the B2 Local Centre zone are:
- (a) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - (b) To encourage employment opportunities in accessible locations.
 - (c) To maximise public transport patronage and encourage walking and cycling.
 - (d) To allow appropriate residential uses to support the vitality of local centres.
68. The proposal will continue to service the needs of residents, workers and visitors to the area by maintaining the existing entertainment uses onsite and incorporating a new accommodation use, which will support tourism. These existing and proposed uses that will encourage employment opportunities in a location that is easily accessible and well serviced by public transport.
69. The proposal is in the public interest because it is consistent with both the objectives of the building height development standard and the objectives of the B2 Local Centre zone.

Conclusion

70. For the reasons provided above the requested variation to the Building Height development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of building height development standard and the B2 Local Centre zone.

Heritage

Statement of heritage significance

71. The site is a heritage item and is in the East Sydney Conservation Area.
72. The site of the Exchange Hotel has been associated with hotel uses continuously since the 1870s. The building provides evidence of Council involvement in the design, construction and operation of public houses in the first half of the twentieth century and is an example of the work of the Municipal Council of Sydney's architectural branch, in particular the work of architect John Merriman. The Exchange Hotel is one of several purpose designed hotels erected on this side of the street after the resumptions of 1909 and has been a focus of social activity since it was completed in 1911.

Assessment of heritage impact

73. The proposal was amended to address several heritage concerns during assessment of the application. These amendments include the retention and reinstatement of timber framed windows, as well as detailed design amendments to protect existing heritage fabric.

74. The proposed addition of two new floors (levels 3 and 4) above the heritage item has been previously assessed under D/2017/1293. This assessment found that the addition and proposed setback from the original front facade is acceptable given the site context (immediately adjacent the higher residential tower) and the development controls for this site. The subject application is consistent with the built form approved under D/2017/1293 regarding height and setbacks and remains acceptable when assessed against the relevant heritage aims, objectives and controls of the DCP.
75. The proposed change of use will re-establish the buildings original purpose as a public hotel. The proposed changes to the Winns Lane (rear) elevation, including the re-establishment of existing windows, removal of graffiti and refurbishment of brickwork will help reinstate the building to its original appearance.
76. Façade conservation works approved under D/2017/1293 are maintained as part of this application. A detailed Schedule of Heritage Conservation Works for the building has previously been approved under D/2017/1293. Any future works for the building will need to comply with the approved schedule.

Acoustic Impacts

77. The site is located within the vicinity of existing approved uses that have the potential to create noise and vibration impacts on the proposed hotel accommodation. In this context, the proposed hotel is the 'agent of change' and the change of use application must demonstrate site suitability for the proposed hotel use.
78. Existing approved uses that have the potential to create noise and vibration impacts on the proposed hotel use include the following:
 - (a) Oxford Arts Factory - the Oxford Arts Factory (OAF) is an established cultural venue located in the basement of the building immediately adjacent to the subject site (38-46 Oxford Street). Approved forms of entertainment in this venue include live music, special events, functions and DJs. Approved hours of operation are from 11.00am to midnight, seven days a week on a permanent basis, with extended hours until 6.00am approved on a trial basis until 14 March 2023.
 - (b) The Exchange Hotel - The subject site has basement and ground floor uses that are proposed for retention. Approved uses include a bar and live music venue within the basement and hotel bar at the ground floor. Approved hours of operation are 7.00am to 4.00am, seven days a week on a permanent basis.
79. Resolution of acoustic impacts at the development application stage is critical in order to demonstrate the proposal's suitability within the local land use context, including compatibility with existing approved uses.
80. Further, as the site is a heritage item, the potential impact of any recommended acoustic attenuation works on the heritage fabric of the building must be satisfactorily resolved prior to determination.
81. The application includes an Acoustic Report that assesses the potential airborne and structure borne noise and vibration impacts of existing uses on the proposed hotel accommodation.
82. The Acoustic Report has been reviewed by the City's Health Unit and conditions are recommended requiring compliance with the Acoustic Report. A deferred commencement condition is recommended requiring additional onsite testing be

undertaken to verify modelling and to determine the final design of attenuation measures to mitigate potential acoustic impacts, should the modelling show that attenuation is required. A summary of the acoustic assessment is outlined below.

Assessment of potential acoustic impacts - Oxford Arts Factory

83. Structure borne transmission

- (a) Structure borne transmission has been assessed via a desktop study methodology and modelling. The methodology and results are outlined below:
 - (i) Assess existing construction typology. The OAF and the subject site share a common wall; however, the exact construction of the wall is unknown due to the age of the buildings and their date of construction. Based on onsite observations, the acoustic modelling assumed a worst case construction of the walls between buildings.
 - (ii) Assess potential noise transmission. As both buildings have a basement level, the noise level transmission from the OAF to the subject site's basement was predicted. The noise levels from OAF operating at maximum capacity and generating a maximum noise level of 107dBA was used to predict noise transmission into the basement level of the subject site.
 - (iii) Determine noise reduction through floors. Floor-to-floor loss values were used to predict noise levels in the proposed hotel rooms above. Predictions demonstrate that all rooms on level 2 will be compliant with noise criteria, however room 1.01 on level 1 was found to be non-compliant by a 3dBA exceedance.
- (b) In light of the one non-compliant room, the acoustic assessment recommends onsite testing be undertaken prior to the issue of a construction certificate to determine the exact level of transmission loss being achieved.
- (c) The acoustic assessment states that the above modelling methodology assumes the worst case scenario, and onsite testing may result in a higher level of transmission loss being achieved, which will result in a lower level of impact.
- (d) Due to the limitations of the modelling outlined in the Acoustic Report, a deferred commencement condition is recommended requiring onsite testing be carried out prior to the consent becoming operational. This testing will allow for clarity regarding the final design of attenuation options to mitigate potential acoustic impacts, should they be required; or that it cannot be satisfactorily achieved.

84. Potential attenuation measures

- (a) If onsite testing shows the level of transmission between the spaces is equal or even worse than modelling predictions, acoustic attenuation measures have been recommended.
- (b) As the potential for acoustic attenuation measures being required does exist, the potential impact of any recommended acoustic attenuation works on the heritage fabric of the building must be assessed.

- (c) An acoustic treatment detail for room 1.01 has been submitted if attenuation measures are required following onsite testing. The detail includes a stud partition acoustic treatment to the eastern wall of room 1.01 (see Figure 21).
- (d) The acoustic treatment has been assessed by Council's Heritage Specialist, who advised that the treatment is acceptable as it will preserve the original brick work behind the stud wall and retains full visibility of the fireplace and chimney breast.
- (e) An alternative option has also been put forward that requires a reduced amount of stud partition attenuation treatment to the eastern wall. This option would allow for more of the original fabric to be visible (see Figure 22).
- (f) The recommended deferred commencement condition will allow for the abovementioned attenuation options to be determined, based on the outcomes of the onsite testing.

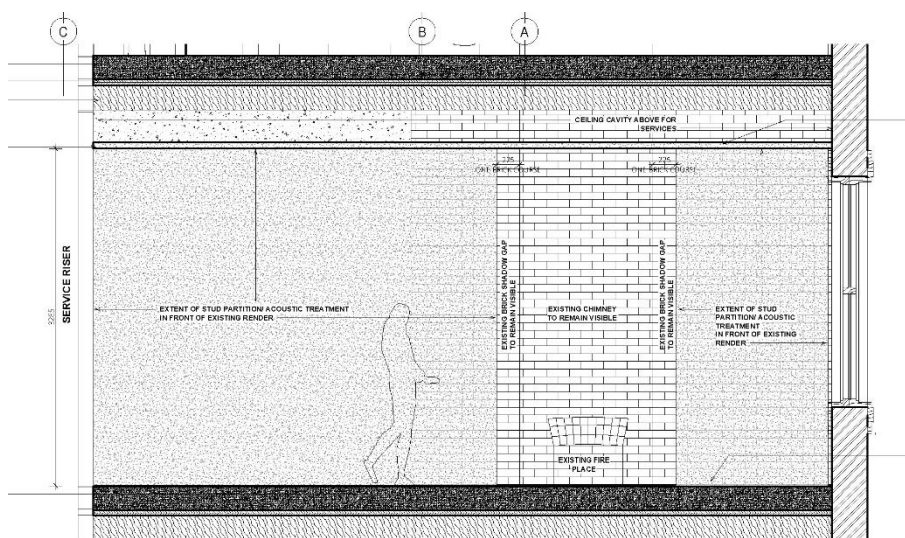


Figure 21: Proposed acoustic treatment (option 1) if acoustic testing determines that attenuation measures are required

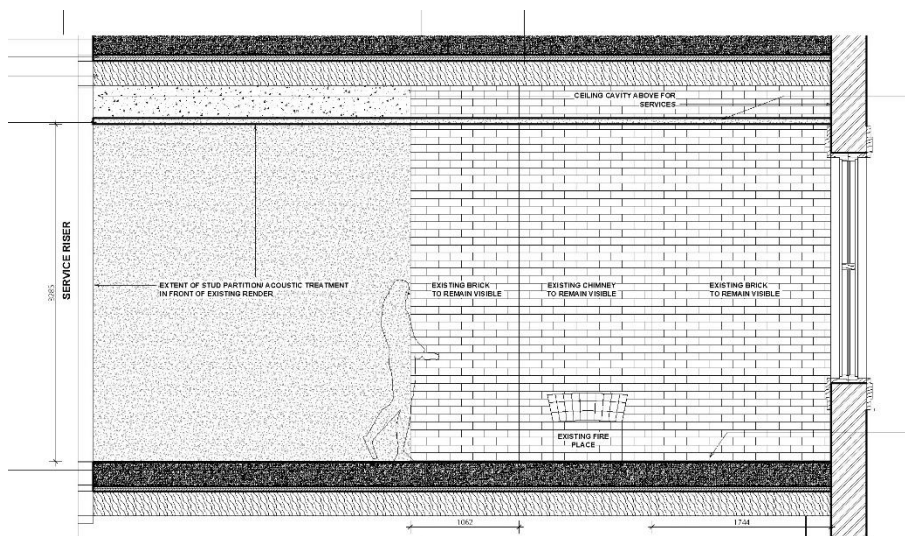


Figure 21: Proposed acoustic treatment (option 2) if acoustic testing determines that attenuation measures are required

85. Airborne transmission

- (a) Breakout noise impacts from airborne noise was assessed along the northern and southern facade and ground level of the subject site. The assessment assumes OAF compliance with their own acoustic parameters (maximum approved capacity and maximum permitted noise levels), together with the proposed building refurbishment works for the site. Results show the proposal would be compliant with the relevant noise criteria.

Assessment of potential acoustic impacts - existing internal uses

86. Structure borne transmission

- (a) Potential structure borne noise impacts were predicted using the same methodology for the OAF assessment. Assumptions were made about the common floor slab and a predicted noise level within the basement and ground floor, together with assumed noise reduction due to floor-to-floor loss.
- (b) The assessment concludes that there are no concerns for structure borne noise impacts to occur from the ground floor, given the predicted noise levels of the use, however the predicted noise levels from the basement may result in potential transfer into the structure and up the building.
- (c) In light of the above, the assessment recommends acoustic treatments in the form of a suspended ceiling with insulation and false studwork walls constructed around columns and lift cores.
- (d) The basement level music venue has been in operation for some time, and the applicant has advised that all recommended attenuation works are already installed. As shown in Figure 22, the basement ceiling and columns have been previously treated. The assessment, therefore, recommends that all installed attenuation work be made good during construction.
- (e) Based on the modelling parameters and the recommended attenuation works, the assessment concludes that all hotel rooms would comply with relevant noise criteria.



Figure 22: Existing basement venue

87. Airborne transmission

- (a) The assessment of breakout noise from the existing venues facades was also assessed. The assessment concluded compliance with the relevant noise criteria would be achieved following building refurbishment upgrades proposed as part of this application. Further, potential for airborne noise transfer between the ground floor and level 1 is limited given the concrete slab thickness of approximately 250mm.

D/2013/860 - retention of existing uses

- 88. As outlined in the Proposal section and discussed above, this application seeks to retain the approved uses on the basement and ground floor.
- 89. Condition 2 of D/2017/1293 required that D/2013/860 be modified to reflect the newly approved commercial uses on levels 1 and 2, while allowing for the retention of the approved basement and ground floor uses.
- 90. On 18 December 2018, an Amended Approval Notice (D/2013/860/C) was issued under Section 4.17(5) of the Environmental Planning and Assessment Act to reflect the newly approved commercial uses on levels 1 and 2.
- 91. This amending application further amends the approved basement and ground floor plans, including the construction of additional waste storage rooms within the basement and a new lobby, site managers room and bicycle parking facility at the ground floor.
- 92. A condition has been recommended requiring D/2013/860 be modified to reflect the change of use for the ground floor, level 1 and level 2 and amended basement, ground floor, level 1 and level 2 floor plans.

Other Impacts of the Development

93. The proposed development can comply with the BCA.
94. 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

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

Internal Referrals

96. The application was discussed with the Heritage and Urban Design Specialists, Building Services Unit, Environmental Health, Transport and Access and Waste Management Unit who advised that the proposal is generally acceptable subject to the recommended conditions.
97. The conditions of other sections of Council have been included in the proposed conditions.

External Referrals**Notification, Advertising and Delegation (Submission(s) Received)**

98. In accordance the Community Participation Plan 2019 the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 28 days between 3 December 2019 and 21 January 2020 (extended for the holiday period) As a result of this notification a total of 934 properties were notified and three submissions were received. The following issues were raised:
 - (a) Concern over lack of acoustic assessment and site suitability. Request that an acoustic assessment be undertaken to assess potential noise or vibration impacts from the adjoining entertainment venue (Oxford Arts Factory) and late night entertainment precinct of Oxford Street. Request that any necessary recommendations to ensure an absence of impact be included in the development application.

Response - As discussed in the Issues section above, the application has been amended to address acoustic concerns. An acoustic assessment has been submitted that demonstrates that proposed hotel rooms can meet the relevant noise criteria. The deferred commencement recommendation requires that testing occur prior to activation of the consent. This will ensure that adequate attenuation measures can be designed to mitigate potential acoustic impacts from adjoining properties, should they be required.

- (b) Noise concern over proposed outdoor terrace areas and open windows on the northern elevation facing Winns Lane.

Response - The proposed outdoor terraces to Winns Lane have been removed and conditions are recommended restricting access to these areas to maintenance only. No hotel patrons are permitted in these areas. Windows on the rear elevation are operable to allow for natural ventilation to hotel rooms. Noise from individual rooms is not expected to result in unacceptable noise impacts to adjoining properties.

- (c) Concerns that additional air conditioning units will be fixed to the northern elevation facing Winns Lane creating noise impacts.

Response - Existing air conditioning units on the rear Winns Lane elevation are to be removed as part of this application. Mechanical ventilation to service the building will be located on the rooftop. Conditions are recommended ensuring mechanical ventilation will not result in unacceptable noise impacts.

- (d) Noise concerns over collection of garbage bins from Winns Lane. Concern over waste generation of hotel use and potential for bins to be left on the street resulting in health issues. Request all garbage be collected from Oxford Street.

Response - The application has been amended to increase the size of internal waste storage rooms within the basement of the building. Garbage is proposed for collection from Winns Lane, which is acceptable given the service nature of the laneway and traffic and parking limitations to collection from Oxford Street. Conditions are recommended to address concerns about the collection of waste, including storage of bins on the street.

- (e) Documentation refers to Winns Lane as Norman Lane, which is incorrect.

Response - Noted. While some documents refer to the rear as Norman Street, the plan package shows the right of carriageway as Winns Lane.

- (f) Concern over potential for odour from hotel kitchen to be vented into Winns Lane.

Response - The hotel does not currently include a kitchen. A separate development application is required to be submitted for the fitout of the approved basement and ground floor uses. Conditions are recommended that require all mechanical exhaust systems be designed to allow for the discharge of effluent air above roof level for all commercial tenancies in the building with the potential to become a food premises in future.

- (g) Concern over existing condition of Winns Lane, including disrepair of laneway, lack of trees, water runoff, illegal rubbish dumping.

Response - Noted. A condition is recommended requiring payment of a public domain damage deposit as security for repairing any damage to the public domain in the vicinity of the site during construction. Development contributions have previously been paid under D/2017/1293 towards the cost of public amenities. No further scope exists for this proposal to address areas outside of the site boundary.

- (h) Concern that unsavoury behaviour of patrons from adjoining entertainment facilities will be enhanced by the hotel use.

Response - The proposed tourist and visitor accommodation is not expected to result in unacceptable amenity impacts to the surrounding area. The proposal does not include any changes to the existing approved uses within the basement and ground floor. These spaces will continue to be managed in accordance with the conditions imposed under D/2013/860 (as amended). It is noted that the Basement plan refer to an 'existing entrance off Norman Street'. A condition is recommended requiring the Plan of Management for the existing basement use be updated to restrict patron access and egress from the basement to Winns Lane for emergencies access and egress only.

- (i) Disagreement that the refurbishment works to Winns Lane, including reinstatement of original openings, will enhance the surrounding area.

Response - Noted. As discussed in the Issues section above, the proposed changes to the Winns Lane (rear) elevation, including the re-establishment of existing windows, removal of graffiti and refurbishment of brickwork will help reinstate the building to its original appearance.

- (j) Disagreement with various statements within the documentation that support the hotel use, including that it will revitalise Oxford Street.

Response - Noted. As discussed throughout the report, the amended proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls for the site, including the DCP locality statement.

- (k) Support for the proposed hotel use as it will result in a positive enhancement to the locality and is in keeping with other improvements to the area.

Response - Noted. The proposed use is permissible in the B2 Local Centre zone and is consistent with the locality statement that provides for uses that support entertainment and tourism uses.

Public Interest

99. The proposal will have no detrimental effect on the public interest, subject to appropriate recommended conditions.

S7.11 Contribution

100. The development is not subject to a S7.11 development contribution as it is for a mid-scale hotel accommodation with an average of 45sqm or less of gross floor area per key. This is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution. A contribution is therefore not payable.

101. It is noted that development contributions have already been paid for the additional commercial floor space approved under D/2017/1293. Councils are not obligated under legislation to refund development contributions payment. Nevertheless, Section 2.3 of the City of Sydney Development Contributions Plan 2015 states Council may consider refunding a contribution in either of the below circumstances:
- (a) A consent is modified under Section 4.55 of the Environmental Planning and Assessment Act 1979 resulting in a reduction in the contribution. In this case Council may refund the difference; or
 - (b) The applicant has not commenced the development and decides not to proceed with the consent, including cases where the consent has lapsed. In this case the applicant will need to surrender the consent in accordance with section 104A of the Environmental Planning and Assessment Act 1979.
102. The proposal is not eligible for a refund as the above circumstances do not apply to the subject development application. However, the site may be eligible for a credit in any future development of the site.

Relevant Legislation

103. Environmental Planning and Assessment Act 1979.

Conclusion

104. Approval is sought to amend D/2017/1293 previously approved by the LPP on 9 May 2018. With proposed amendments, the application seeks approval for the construction of a two storey contemporary addition on top of an existing heritage listed building, external heritage conservation works, and internal refurbishment works and alterations to facilitate use of the building as a hotel.
105. The proposal has been amended to address a number of issues identified by Council during assessment of the application. These issues relate to acoustic impacts and site suitability, protection of heritage fabric and operational aspects of the hotel.
106. The applicant has submitted a request to vary the building height and floor space ratio standards under Clause 4.6 of Sydney LEP 2012. These requests are supported.
107. The proposal has a building envelope that is consistent with the approved built form under D/2017/1293. No changes are proposed to the approved height in metres, height in storeys, floor space ratio or building setbacks.

108. The amended proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls and is recommended for approval, subject to conditions.
109. It is recommended that a deferred commencement consent be granted to allow for further acoustic testing to verify acoustic modelling and to determine the final design of attenuation measures to mitigate potential acoustic impacts from adjoining properties, should they be required.

GRAHAM JAHN AM

Director City Planning, Development and Transport

Natasha Ridler, Area Coordinator