

Item 2.**Section 8.2 Review of Determination: 2 Carrington Street, Sydney - RD/2020/959/A**

File No.: RD/2020/959/A

Summary**Date of Review Application Lodgement:** 13 April 2021**Date of Original Determination:** 3 February 2021**Date by which Review Panel must determine the application:** 3 February 2022**Applicant:** Ethos Urban**Architect/Designer:** Architectus**Developer:** The Point Group**Owner:** BSREP 285 George Landowner Pty Ltd**Planning Consultant:** Ethos Urban**Heritage Consultant:** GML Heritage**Cost of Works:** \$9,401,000**Zoning:** The site is within the B8 Metropolitan Centre zone. The proposal is permissible with consent.**Proposal Summary:** A request for a review of the determination of development application D/2020/959 under the provisions of Section 8.2 (1)(a) of the Environmental Planning and Assessment Act (EP&A Act) has been lodged.

On 3 February 2021, development consent D/2020/959 was granted for alterations to use the premises as a licensed food and drink premises (pub, operating as a restaurant/bar) at ground floor and levels 9 and 10, and associated outdoor seating at levels 9 and 10. The

premises will operate as a single tenancy with one operator.

The application was approved by the Local Planning Panel (the Panel) subject to conditions. Condition 4 (Outdoor Hours of Operation - Sensitive Uses) required outdoor hours on Level 9 to be restricted between 10.00am and 10.00pm Monday to Sunday (i.e. base hours only). This condition was amended by the Panel from the original officer's recommendation to specifically address resident's concerns from the residential flat building at 2 York Street (also known as 'Portico') located approximately 60m away from the site. The original recommendation for the condition was to permit a 12 month trial period for outdoor dining hours between 9am and 10am, and 10pm and 12am midnight (that is, total hours for outdoor dining between 9am and 12am midnight), which was approved for the Level 10 outdoor dining area.

The applicant seeks review of Condition 4 of D/2020/959 to enable extended trading for a 12 month trial period for outdoor hours on Level 9 to match the Level 10 outdoor dining area i.e. between 9.00am and 12.00am midnight .

As the original DA was determined by the Local Planning Panel the Section 8.2 review is presented for determination by the Panel also.

The review application was notified and advertised for a period of 21 days between 16 April 2021 and 8 May 2021.

One (1) submission was received following the conclusion of the public notification period of the Section 8.2(1)(a) review request.

Summary Recommendation: That the Panel consider the amendments made to the proposal and approve the request to change the development consent.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Sydney Local Environmental Plan 2012
- (iii) Sydney Development Control Plan 2012
- (iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- (v) Central Sydney Development Contributions Plan 2013

Attachments:

- A. Recommended Changes to Conditions of Consent
- B. Review Statement of Environmental Effects
- C. Approved Plans
- D. Original Notice of Determination
- E. Original Planner's Report
- F. LPP Resolution - D/2020/959

Recommendation

It is resolved that consent be granted to Development Application No. RD/2020/959/A 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 amended condition for outdoor trading hours on a trial period basis will not have significant detrimental impacts on the amenity of neighbouring residential properties and complies with the provisions for Late Night Management Areas, and as such is consistent with the provisions of Sections 3.15 and 4.2.3 of the Sydney Development Control Plan 2012.
- (B) The proposal is in keeping with the desired future character of the area and the objectives of the B8 Metropolitan Zone within the Sydney Local Environmental Plan 2012 which it is situated within, and is considered to be in the public interest.
- (C) The development, as modified, is substantially the same as the development approved under D/2020/959 in accordance with Clause 8.3 (3) of the Environmental Planning and Assessment Act 1979.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 11 of DP 1214642, known as 2 Carrington Street, Sydney. It is rectangular in shape with area of approximately 5520sqm. It has a primary street frontage to Carrington Street and a secondary street frontage to Margaret Street. Wynyard Lane runs to the east of the site. The site is located adjacent to Wynyard Park to the west.
2. The site contains 'Shell House', a local heritage item listed in the Sydney Local Environmental Plan 2012 as item I1691. The site is not within a heritage conservation area.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial. The site is part of a broader scale development known as 'Wynyard Place' (or 'One Carrington St') which was approved as a State Significant Development.
4. The site is located within the Wynyard Park and Lang Park locality under the Sydney Development Control Plan 2012. Directly to the west is Wynyard Park, and Wynyard Train Station further to the west.
5. A site visit was carried out on 23 April 2021. Photos of the site and surrounds are provided below:

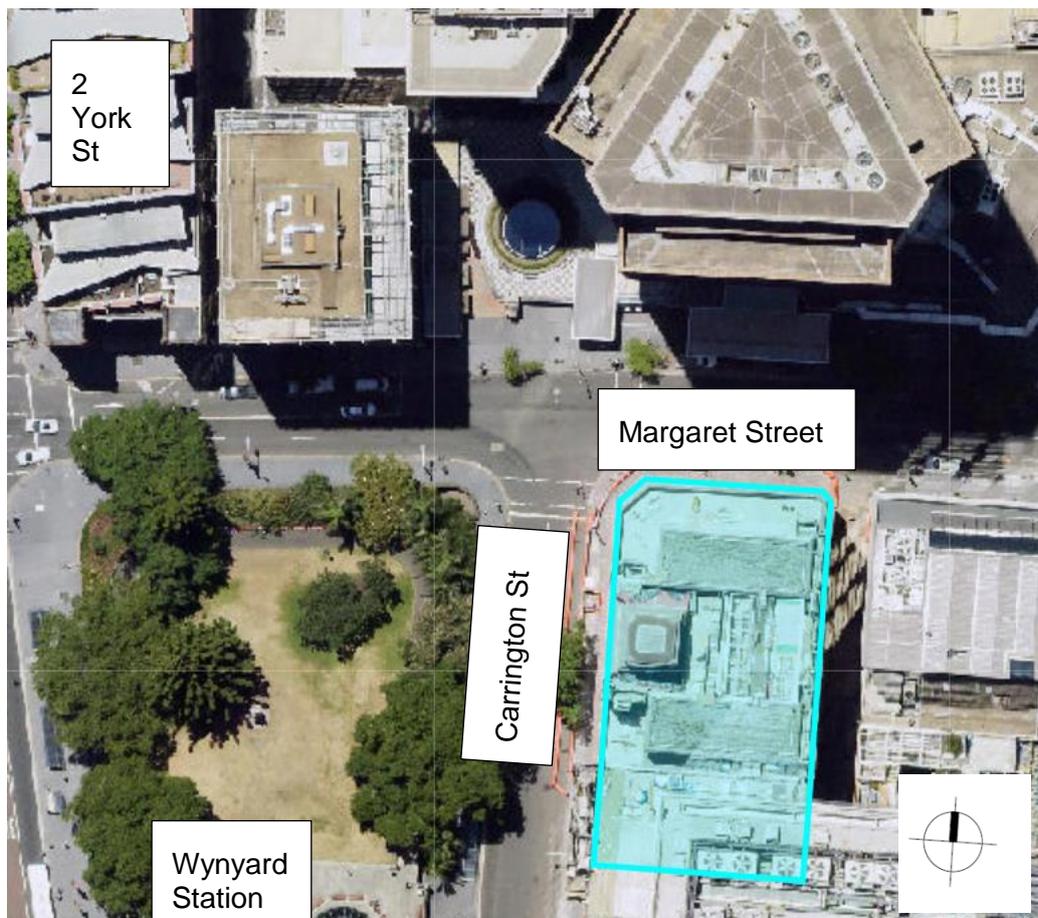


Figure 1: Aerial view of site and surrounds including proximity to 2 York St



Figure 2: Site viewed from Wynyard Park



Figure 3: Site viewed from Wynyard Park



Figure 4: Site viewed in conjunction with 2 York St facing east

History Relevant to the Development Application

Development Applications

6. The following applications are relevant to the current proposal:
- **D/2020/959** – Development consent was granted by the Local Planning Panel on 3 February 2021 for alterations to use premises as a licensed food and drink premises (pub) at ground floor and levels 9 and 10 and associated outdoor seating. The Local Planning Panel recommended that the following changes be imposed to restrict outdoor seating to Level 10 only, for the reasons below:
 - a) Condition 10 (now Condition 4) was recommitted to clarify that outdoor dining on Level 9 is restricted to the base hours, whereas Level 10 may operate until midnight for the trial period as specified.
 - b) Condition 10 (now Condition 4) was amended to restrict the outdoor operation of Level 9 to the base hours in response to concerns from nearby residents.

A copy of the Panel's Resolution may be found at Attachment F. See **Discussion** below.

Implications of the Proposal

Division 8.2 Reviews

7. In accordance with Section 8.2(1) the following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:
 - (a) The determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),
 - (b) The determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),
 - (c) The decision of a council to reject and not determine an application for development consent.
8. The Panel may review a determination in accordance with Section 8.2(1)(a) of the Environmental Planning and Assessment Act 1979 if it has notified the request for review in accordance with:
 - (a) the regulations, if the regulations so require; or
 - (b) a Community Participation Plan, if Council has made a Community Participation Plan that requires the notification or advertising of requests for the review of its determinations; and
 - (c) it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan.
9. The application has been notified in accordance with the City of Sydney Community Participation Plan 2019, which is discussed in further detail in this report.
10. In accordance with Section 8.3(5) the review of a determination or decision made by a Local Planning Panel is to be conducted by the panel.
11. In accordance with Section 8.3(3), in requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.
12. The applicant has submitted a request to review Condition 4 in the approved DA D/2020/959.
13. Justification for the review has been provided and is discussed in further detail below.
14. In considering whether or not a development is substantially the same it is appropriate to consider both quantitative and qualitative aspects of the proposal and not the merits of the changes.

15. It is considered the requested changes to the condition satisfy the requirements of the substantially the same test as it results in the same development with a minor variation to the hours of the outdoor terrace approved to Level 9.

Proposed Development

16. The application seeks a review of the decision notice for D/2020/959, specifically in relation to Condition 4 which reads:

(4) OUTDOOR HOURS OF OPERATION - SENSITIVE USES

The outdoor hours of operation are regulated as follows:

- (a) The outdoor hours of operation must be restricted to between 10.00am and 10.00pm Monday to Sunday.
 - (b) Notwithstanding (a) above, the use of Level 10 may operate (outdoors) between 9.00am and 12.00am (midnight) the following day for a trial period of 12 months from the date of issue of the first Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
 - (c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.
17. The Local Planning Panel amended Condition 4 to specifically exclude Level 9 from having the same trial period outlined in part (b).
 18. The applicant seeks a review of Condition 4 to permit outdoor hours of operation for Level 9 terrace between 9.00am and 12.00am (midnight) on a trial period for 12 months, as is expressly permitted for the Level 10 terrace, as originally recommended by the relevant planning officer in the DA Report and Recommended Conditions of Consent for D/2020/959 (see Appendix E).
 19. The approved plans under D/2020/959 are contained in Appendix C of this report, with an extract of the floor plans for Levels 9 and 10 below.

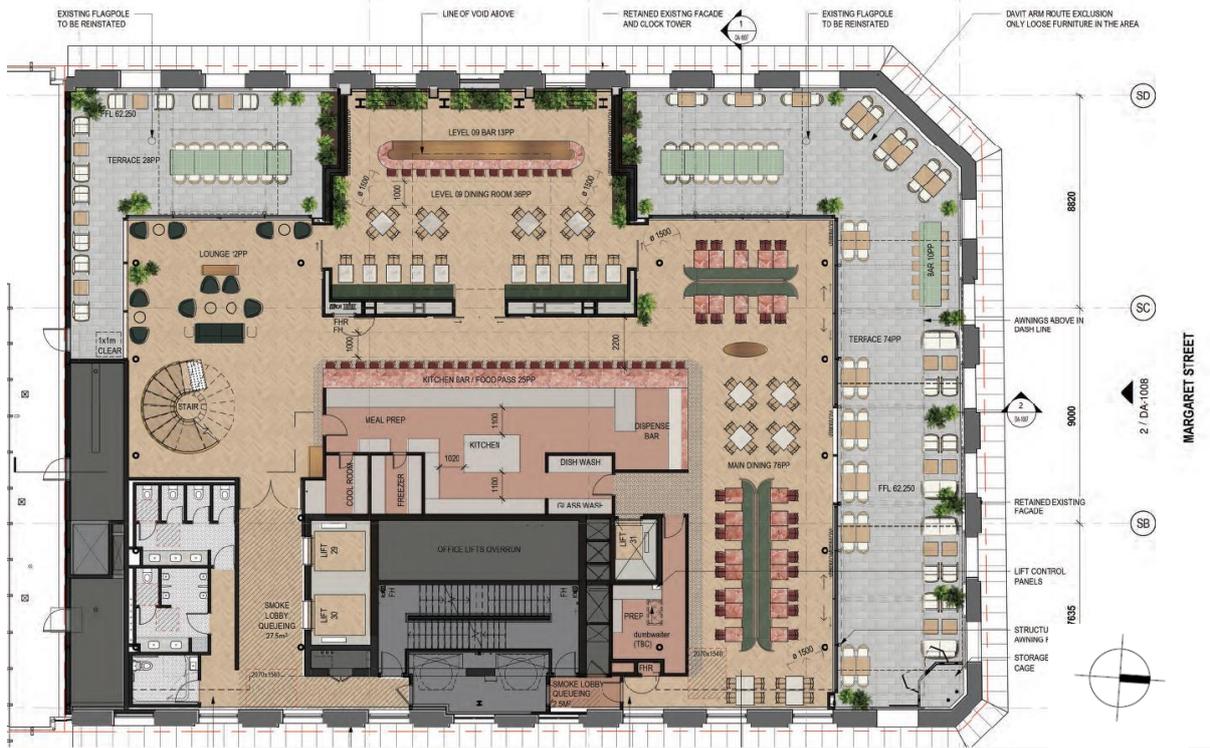


Figure 5: Approved plan of Level 9 as per D/2020/959

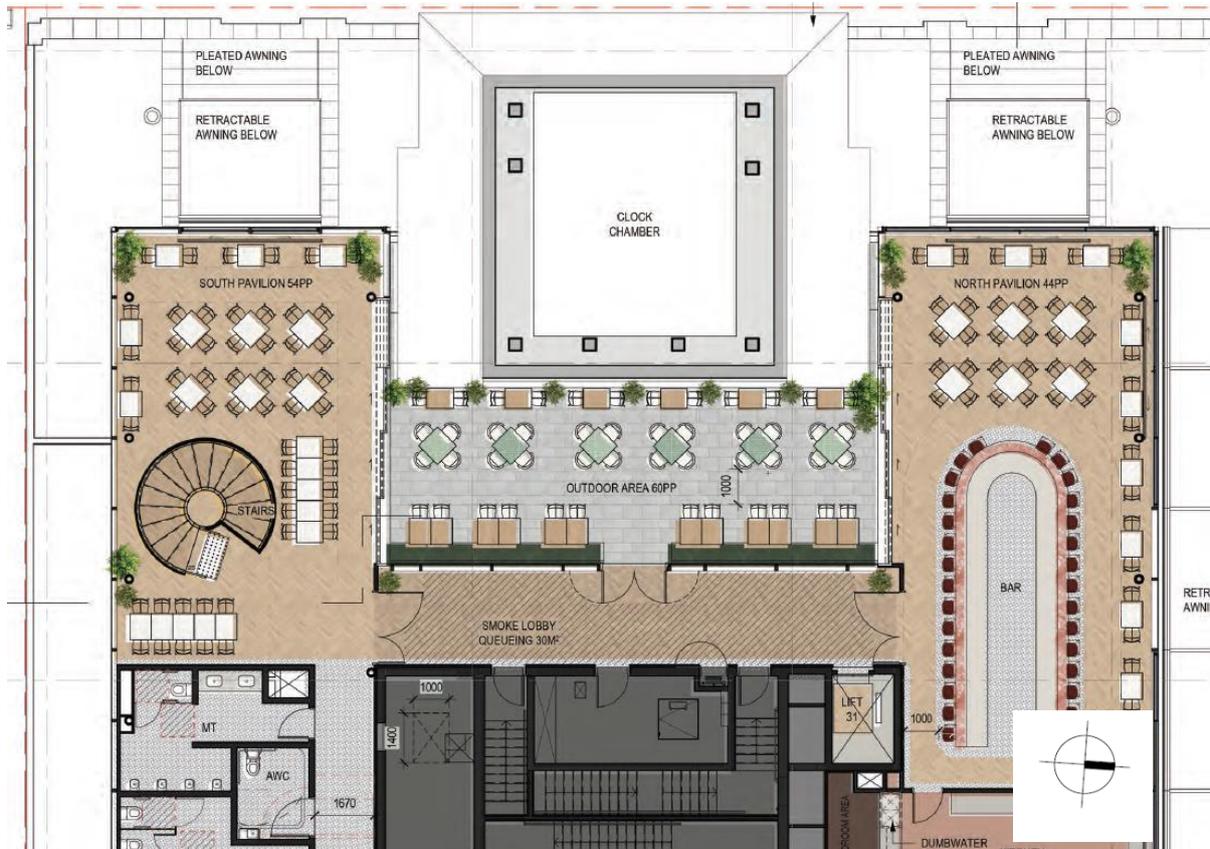


Figure 6: Approved plan of Level 10 as per D/2020/959



Figure 7: Photomontage of the L9 upper dining area approved under D/2020/959

Assessment

Section 4.15 Evaluation

20. The issues not directly related to the subject Section 8.2 review application have been previously addressed in the original Local Planning Panel report in Attachment E.
21. An assessment of the relevant issues related to the subject review application under Section 4.15 of the EP&A Act are discussed in detail below.

Local Environmental Plans

Sydney Local Environmental Plan 2012

22. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B8 Metropolitan Centre zone. The proposed development is defined as food and drink premises (pub operating as a restaurant/bar) and is permissible with consent in the zone. The proposal generally meets the objectives of the zone as it provides for the pre-eminent role of entertainment premises in Australia's participation in the global economy, provides an opportunity for an intensity of land uses commensurate with Sydney's global status, and permits a diversity of compatible land uses to serve the workforce, visitors and wider community

Development Control Plans**Sydney Development Control Plan 2012**

23. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

24. The site is located within the Wynyard Park and Lang Park Special Character Area. The proposed development is in keeping with the unique character and the design principles of the Wynyard Park and Lang Park Special Character Area as the proposal is consistent with the strong commercial uses of the area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.15 Late Night Trading Management	Yes	The premises is located in a Late Night Management Area and the use is defined as a category A premises. Condition 8 of D/2020/959 outlines that the outdoor terrace to Level 9 is permitted a maximum capacity of 156 patrons.

Provision	Compliance	Comment
		<p>Base hours permitted under Table 3.7 of the SDCP 2012 for outdoor areas for Category A premises are 10am to 10pm, and extended hours permitted are 9am to 1am (the following day).</p> <p>It is proposed to permit 3 extra hours of outdoor trading (being 9am to 12am midnight) on a 12 month trial period to Level 9. An additional hour than that prescribed by Clause 3.15.4(8) of the SDCP 2012 being the extra hour between 9am to 10am is not considered to have any adverse amenity impacts. Clause 3.15.4(6) of the SDCP 2012 permits additional operating hours at initial application can be granted where Council has determined that the premises have been or will be well managed, including compliance with an approved Plan of Management.</p> <p>No objections were raised by the City's Licensed Premises or Environmental Health teams in regards to the Plan of Management submitted in D/2020/959, in which a condition to require compliance with the Plan of Management was imposed, with additional requirements recommended by the Local Planning Panel also included.</p> <p>The proposal is generally consistent with the objectives of Clause 3.15 of the SDCP 2012 as it proposes appropriate hours for the outdoor trading, does not operate exclusively during late night hours, and has demonstrated that a commitment is made to good management through the submission of a robust plan of management.</p> <p>See <i>Discussion</i></p>

Provision	Compliance	Comment
3.15.3 Matters for consideration	Yes	The proposed trading hours have been assessed against the matters of consideration within the SDCP 2012, including proximity to residential, the likely impacts arising from the closing times and patron dispersal, and the existing hours of operation of surrounding business uses.
3.15.4 Trading hours and trial periods	Yes	<p>Clause 3.15.4 identifies base and extended trading hours and notes approval for late night trading premises will be limited in time to enable Council to assess the ongoing management performance of a premise and its impacts on neighbourhood amenity. As discussed above under 3.15 the proposal for an extended trial period of 1 hour before 10am and 2 hours after 10pm is consistent with the SDCP 2012 in particular Clause 3.15.4(6) which notes that extended trading hours beyond base hours may be permitted at the initial application stage.</p> <p>The hours will be subsequently reviewed by Council at the lapsing of each trial period. In this regard, a 12 month trial period for the extended hours of 9am to 12am midnight, is acceptable, as it is consistent with the provisions of the SDCP 2012, the trial period granted for the indoor trading hours and the outdoor trading hours for the Level 10 outdoor terrace.</p> <p>See <i>Discussion</i></p>

Provision	Compliance	Comment
3.15.5 Plans of management requirements	Yes	<p>As a new Category A premises a Plan of Management has been prepared. The premises will operate as a single tenancy with one operator, the 'Point Group' who currently operate Bondi Icebergs and Bar in Bondi as well as five other Sydney venues. However, the premises will provide three 'outlets' to patrons over the three levels. Though no issues were identified in the Plan of Management the LPP recommended additional text to outline concerns from objectors. The LPP changes to the Plan of Management are not the subject of this review application. As such, Condition 10 of D/2020/959 requires an amended Plan of Management to be submitted to address the LPP's recommendations as per the below text:</p> <ul style="list-style-type: none"> - The provision of a means of directly contacting management and security, for the use of nearby residents, with which to lodge noise complaints; - a mechanism for the monitoring and reviewing of complaints, to also be made available to Council; and - quarterly meetings of venue operators and representatives of residents of 2 York St Sydney. <p>The amended PoM is to be submitted to Council prior to issue of Occupation Certificate. Compliance with this condition will ameliorate potential adverse residential amenity impacts accordingly. It is considered an adequate Plan of Management has been prepared, that addresses the SDCP 2012 and does not raise any concerns that warrant a refusal of a trial period for extended hours.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.11 Acoustic privacy	Yes	<p>An Acoustic Assessment prepared by Acoustic Logic (dated 23/11/2020) was submitted with D/2020/959.</p> <p>The Acoustic Assessment confirms that noise emissions have been predicted and assessed against the requirements adopted by the City of Sydney for the proposed restaurant/bars at the ground floor, Level 9 and Level 10. It further states that subject to the implementation of the acoustic mitigations in Section 7 of this report being adopted, there is no unacceptable noise impact associated with the proposed development, and all noise emissions will comply with relevant legislation.</p> <p>The City's Environmental Health team reviewed the Acoustic Report and confirmed they were satisfied that, subject to compliance with conditions, the development would not result in adverse acoustic impacts to apartments including 2 York Street. Objections largely came from residents from 2 York Street during the assessment of the original DA (D/2020/959). Recommended conditions of consent were applied to D/2020/959. It is noted that this review application was publicly notified and that one submission was received (refer discussion further below).</p> <p>The Section 8.2 has been referred to the City's Environmental Health Officer (EHO) for comment. No objection was raised by the Environmental Health Officer to the proposed modification.</p>

Discussion

Precedents

25. As noted above Clause 3.15.4(3) of the SDCP 2012 outlines extended hours of operation can be permitted for premises on a trial basis only.
26. Clause 3.15.4(6) notes that extended trading hours beyond base hours may be permitted at the initial application stage, but only where Council has determined that the premises have been or will be well managed, including compliance with the Plan of Management.
27. Recent Development Applications for new late night uses are generally granted extended trial periods on initial application in the City of Sydney area where no potential significant impacts will arise, these include:
 - (a) **D/2020/1232 and D/2020/1234** - 19-29 Martin Place - Two new pubs with outdoor seating granted a trial period until 12am midnight for one year by the LPP at its meeting of 24 February 2021;
 - (b) **D/2021/75** - 37-41 O'Riordan St, Alexandria - On 28 April 2021 consent was granted for the fit out of new licensed recreation centre (mini-golf) with a trial period until 11pm granted on first application;
 - (c) **D/2020/196** - 246-250 Cleveland St, Surry Hills - On 10 June 2020 consent was granted for a new kebab shop, in a 'white zone' permitted (on initial application) a trial period until 2am on Friday and Saturdays for one year;
 - (d) **RD/2020/261/A** - 162 Flinders St, Paddington - New trading hours sought for the Captain Cook Hotel. A Section 8.2A Review was lodged seeking review of the Hours of Operation condition, to obtain approval for a trial period between 11.00pm to 1.00am the following day.

The Section 8.2A Panel supported the request on 21 April 2021 and as such the new venue received an extended trial period, on initial application. In the minutes from the meeting, it states "the Panel considered that it was appropriate for the applicant to be given an opportunity to provide further demonstrable evidence of the history (and continuity) of operating hours as claimed prior to making its decision on the application".

Hours of operation for outdoor seating - Level 9

28. There are three levels in the approved pub (restaurant/bar) - ground, level 9 and level 10, with outdoor seating approved to levels 9 and 10. Under the approved conditions of D/2020/959, indoor trading hours are 6am to 12am (midnight) with a trial period between 12am and 2am (the following day). The approved trading hours for the outdoor seating is 10am to 10pm, with a trial period for 12 months between 9am and 10am and 10pm and 12am for the outdoor seating on Level 10 only.
29. The proposed trading hours to be reviewed in this report relates to the outdoor seating on Level 9 (see Figure 5 above) with an approved capacity of 156 patrons to be located outdoors.

30. The applicant requests that the Local Planning Panel (the Panel) review its decision of D/2020/959 on 3 February 2021, whereby Condition 4 for outdoor trading hours for both Levels 9 and 10 was amended by the Panel to restrict operating hours to Level 9 between 10.00am and 10.00pm Monday to Sunday with no provision for extended trading hours. Hours between 9.00am and 12.00am (midnight) were permitted on a trial basis for 12 months for the Level 10 outdoor seating area (capacity 74 outdoors).
31. The condition was modified during the Panel's determination of the DA to address objections from residents within 'Portico' at 2 York St, which is 65m away. The resultant amendment to Condition 4 varied from the relevant planning officer's recommendation, which recommended a trial period for the hour between 9am and 10am and two hours from 10pm to 12am midnight for the outdoor seating to Level 9 also.
32. A two hour trial period until midnight for the outdoor seating at Level 10, and a 9am to 10am additional hour on a trial period, was considered to be acceptable given the seating area is smaller and would be situated further from the parapet than the Level 9 seating area. The submitted Acoustic Report did not conclude that either area of outdoor seating would exceed the permitted noise limits subject to conditions and neither the City's EHO or Licensed Premises team objected to the hours of operation until midnight for either outdoor seating area, subject to conditions. An adequate Plan of Management was submitted in accordance with the SDCP 2012.
33. The applicant requests that Condition 4 is amended to permit outdoor seating on Level 9 for the same hours approved for Level 10, being 9am until 12am midnight on a trial basis as:
 - (a) The Plan of Management and Acoustic Report for the DA do not highlight any significant impacts from the proposal, and adequately outline the noise mitigation methods and broader acoustic impacts of the proposal;
 - (b) Similar proposals were approved 21 days after the subject DA determination date by the LPP (D/2020/1232, D/2020/1343 and D/2020/1234) for pubs with outdoor trading in Martin Place;
 - (c) It is not financially viable to cease outdoor dining at 10pm as it prevents a second sitting from occurring, as patrons would be required to be notified at 9pm that they would have to leave by 10pm;
 - (d) The modification is consistent with the City's broader objectives for a late night economy.
34. Development consent was granted on 24 February 2021 by the Local Planning Panel for a several late night trading uses within the Sydney CBD at 19-29 Martin Place, and this proposal is consistent with these approvals as follows:
 - (a) Consent was granted for D/2020/1232 for a change of use and D/2020/1343 (the fitout) to a pub at 19-29 Martin Place, Sydney with outdoor areas on Levels 8, 9 and 10 permitted to open until 12am midnight on a trial period of 12 months. Approved outdoor capacities being 47, 112, and 375 for each level.
 - (b) Consent was granted for D/2020/1234 for a change of use to a pub for maximum capacity of 249 patrons outdoors on Level 8). Again, operating hours until 12am midnight on a 12 month trial period was granted.

35. The proposed modification to Condition 4 is **supported** for the following reasons:
- (a) The Acoustic Assessment and Plan of Management, as amended, address noise management appropriately with no issues raised by internal Council officers or the NSW Police;
 - (b) The Plan of Management demonstrates a strong commitment to good management of the operation of the business, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, as well as the public domain;
 - (c) The conditions within D/2020/959 will ameliorate any resultant amenity impacts including conditions relating to compliance with the Acoustic Report and the Plan of Management;
 - (d) Granting of extended trading trial periods beyond base hours is consistent with Clause 3.15.4 of the SDCP 2012 in cases where it is determined that no significant residential amenity impacts are likely to arise;
 - (e) One (1) submission was received in this Section 8.2 review however it is considered that the issues raised have been addressed.
 - (f) The proposal has been assessed against the matters for consideration outlined within Clause 3.15.3 of the SDCP 2012 and complies with these provisions;
 - (g) The outdoor seating at Level 9 was approved with the SSD consent and within the Secretary's Assessment Report dated September 2015 (Section 5.5.5) it was considered that there would not be undue noise nuisance as the terrace fronting Carrington/Margaret Street is located behind the existing sandstone parapet of Shell House, which will act as a buffer to noise (see Figure 8 and 9 below);



Figure 8: Level 9 outdoor seating area in cross section



Figure 9: Outdoor seating areas viewed in cross section

- (h) The proposal is consistent with the objectives of the B8 Metropolitan Centre zone within the SLEP 2012 and the surrounding character of the Wynyard Park and Lang Park Special Character Area;
- (i) The proposal is consistent with the objectives of Clause 3.15 of the SDCP 2012 for Late Night Management Areas;
- (j) The site is extremely well located to public transport options including train, bus and light rail;
- (k) More broadly, the proposal is consistent with the City's CBD 24-hour economy objectives outlined in 'OPEN Sydney Strategy and Action Plan 2013-2030'.
- (l) It is considered the proposal, subject to conditions including compliance with the the Acoustic Assessment and Plan of Management, would not have any adverse amenity impacts, and therefore is consistent with Clause 3.15.4(6) and 3.15.4(8) of the SDCP 2012 whereby a trial period can be permitted at the initial application stage. The proposal does not demonstrate that adverse acoustic impacts will arise, particularly to residential properties at the 'Portico' tower at 2 York St.

Consultation

Internal Referrals

36. The application was discussed with Council's EHO and Licensed Premises Unit who raised no objection to the proposed modification to the condition.

External Referrals

37. No external referrals were required.
38. The original application, which sought 24-hour trading, D/2020/959 was referred to the NSW Police with no objection raised subject to conditions.

Advertising and Notification

39. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified for a period of 21 days between 16 April 2021 and 8 May 2021, including to the 18 objectors who made submissions within D/2020/959.
40. A total of 441 properties were notified and 1 submission was received.
41. The submission raised the following concerns:

a) Standing of Urban Ethos and/or The Point Group to seek review. The applicant for the original DA was Brookfield Properties.

Response: The application for the Section 8.2A Review is made by The Point Group, which is acceptable. The EP&A Act does not require the same applicant to make the S8.2 review application. Under Clause 49 of the EP&A Regulations anyone can apply for a Section 8.2A review subject to Owner's Consent, and relevant Owner's Consent has been provided.

b) Focus on financial impact on the Point Group at the expense of the amenity of longstanding existing residents.

Response: The assessment the subject of this review has been against the relevant provisions of the SLEP 2012 and SDCP 2012 and therefore has been based on the planning merits of the proposal, including residential amenity. The recommendation is not on the basis of financial benefit for the applicant.

c) Inadequate assessment of noise impact and effectiveness of noise mitigation measures and Plan of Management. No background noise measurements taken at the Portico. The conditions of consent increased the maximum number of persons from those sought in the DA as the capacity was based on the Acoustic Report. The L9 outdoor space is much larger than L10 and there is no barrier to the noise emissions.

Response: The Acoustic Report was discussed in D/2020/959 whereby no further monitoring was considered necessary by the City's Environmental Health Officer (EHO) as the context of the vicinity has not changed significantly since 2015, which the figures in the Acoustic Report are based on. The Section 8.2A Review was re-referred to the EHO who did not raise any objections. The capacity of each area is based on the Acoustic Report, as this is considered the appropriate number of patrons to ensure compliance with the relevant noise legislation and conditions of consent. It is agreed the L10 area is smaller than L9, however the Acoustic Report confirms that both levels can accommodate outdoor dining without significant impacts. A 'barrier' in the form of the parapet exists to the L9 area.

d) Consistency with other recent development approvals at MLC building which is in the centre of the CBD and not in close proximity and direct line of sight to an existing long term residential apartment building.

Response: Both sites are within the B8 Metropolitan Centre Zone, the Sydney CBD, and Late Night Management Areas, and do not outline any acoustic impacts in their documentation. The precedent of the trial periods being granted at MLC Building is relevant to this assessment.

Financial Contributions

Levy under Section 61 of the City of Sydney Act 1988

42. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013 which was included in the conditions of consent in D/2020/959.

Relevant Legislation

43. Environmental Planning and Assessment Act 1979.
44. Sydney Local Environmental Plan 2012.
45. State Regional Environmental Plan (Sydney Harbour Catchment) 2005.
46. Liquor Act 2007.

Conclusion

47. The application is a review of the determination of development application D/2020/959 under the provisions of Division 8.2(1)(a) of the Environmental Planning and Assessment Act, in particular a review of Condition 4 (Outdoor Hours of Operation - Sensitive Uses).
48. The proposal seeks amendments to Condition 4 to enable outdoor seating on the Level 9 terrace area from 9.00am to 10.00am and from 10.00pm until 12.00am midnight for a 12 month trial period, consistent with that permitted for the Level 10 terrace area.
49. For reasons discussed above the proposal is considered to be in the public interest and is supported. The objection received has been adequately addressed.

50. Having regard to all of the above matters, it is considered that the proposal generally satisfies the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012, is acceptable and is recommended for approval.
51. The development as modified is considered to be substantially the same development as the development approved under D/2020/959 in accordance with Clause 8.3(3) of the EP & A Act 1979.

ANDREW THOMAS

Executive Manager Planning and Development

Amy-Grace Douglas, Senior Planner