

Item 4.**Development Application: 255-255A Castlereagh Street, Sydney - D/2021/693****File No.: D/2021/693****Summary****Date of Submission:** 28 June 2021 as amended on 27 August 2021**Applicant/Planning Consultant:** Planning Lab**Designer:** Darren Mah Design Pty Ltd**Owner:** Teltr-L Corporation Pty Ltd**Cost of Works:** \$309,100**Zoning:** The site is zoned B8 - Metropolitan Centre under the Sydney Local Environmental Plan 2012. The proposed use is defined as a food and drinks premises, being a licensed pub. The use is permissible with development consent in the zone.**Proposal Summary:** Consent is sought for internal and external alterations for use as a Pub. The proposed capacity is 300 Patrons.

This is a relocation of the existing Hotel Downing currently occupying 249-253 Castlereagh Street which is immediately north of Dungate Lane.

Proposed hours of use are between 10.00am and 3.00am (the following morning) Monday to Sunday, inclusive.

The application was notified for 21 days between 1 July 2021 and 23 July 2021 and re-notified for a further 21 days between 6 September 2021 and 28 September 2021 in accordance with the City of Sydney Community Participation Plan 2020. A total of 825 properties were notified. No submissions were received.

Subject to conditions, the proposal is generally consistent with the objectives and applicable planning provisions in the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. The site is considered an appropriate location for the proposed use, and the use is unlikely to have adverse impacts on the surrounding locality.

The application is referred to the Local Planning Panel for determination, as the application seeks to operate a new premises with a hotel liquor licence.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (iii) Liquor Act 2007
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Plan of Management

Recommendation

It is resolved that consent be granted to Development Application No. D/2021/693 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 use is permissible with consent in the B8 Metropolitan Centre zone.
- (B) The proposal satisfies the requirement of the Design Excellence provisions.
- (C) The use is considered to be in keeping with the area, given its predominantly commercial and retail character.
- (D) The submitted Plan of Management has been assessed as acceptable. It adequately addresses the operational, safety and security requirements of the premises.
- (E) The development is consistent with the objectives of the Sydney Development Control Plan 2012.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 706240, and is known as 255-255A Castlereagh Street, Sydney. It is generally rectangular in shape with an area of approximately 394.2sqm.
2. The site is located in the north-western corner at the intersection of Castlereagh Street and Liverpool Street and has a primary street frontage to Castlereagh Street and a secondary street frontage to Liverpool Street. Dungate Lane is a public laneway which borders the site to the north.
3. The site contains a four-storey commercial building with a retail tenancy on the ground floor, which was previously occupied by a National Australian Bank branch. The application specifically relates to the ground floor tenancy and a portion of the basement level. The subject tenancy is the only tenancy on the ground floor and there is separate entry and lobby for access to the upper floors.
4. The surrounding area is characterised by a mixture of land uses, primarily being commercial. Located east from the subject site across Castlereagh Street at 281-283 Elizabeth Street is a multi-storey residential flat building formerly known as Regency Hyde Park (as identified in Figure 1 and Figure 9).
5. The site is not a heritage item and does not form part of any heritage conservation area.
6. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site (identified in blue) and surrounds (residential building at 281-283 Elizabeth Street identified in red, existing Hotel Downing at 249-253 Castlereagh Street identified in yellow)



Figure 2: View of existing Hotel Downing (identified by yellow arrow) and subject site (identified by blue arrow) on the southern side of Dungate Lane (image by Google)



Figure 3: Site viewed from Castlereagh Street (image provided by applicant)



Figure 4: Main Entry viewed from the corner of Castlereagh and Liverpool Street (image provided by applicant)



Figure 5: Liverpool Street Elevation (image provided by applicant)



Figure 6: Internal view of tenancy looking toward the entry (image provided by applicant)



Figure 7: Internal view of tenancy looking toward the rear (image provided by applicant)

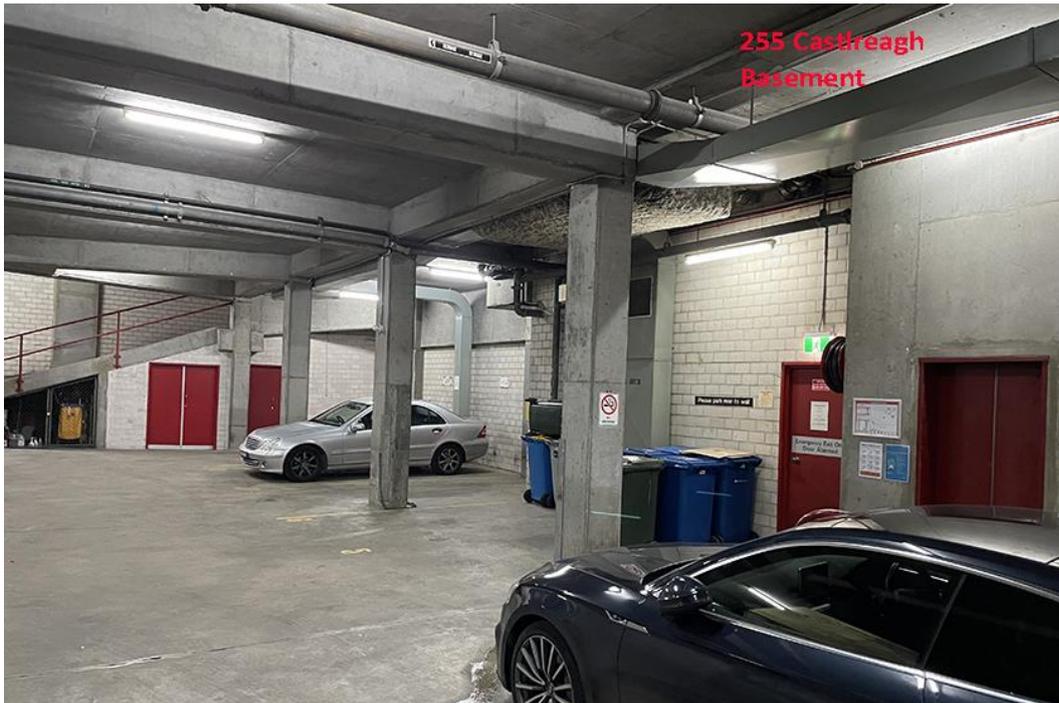


Figure 8: View of basement level (image provided by applicant)

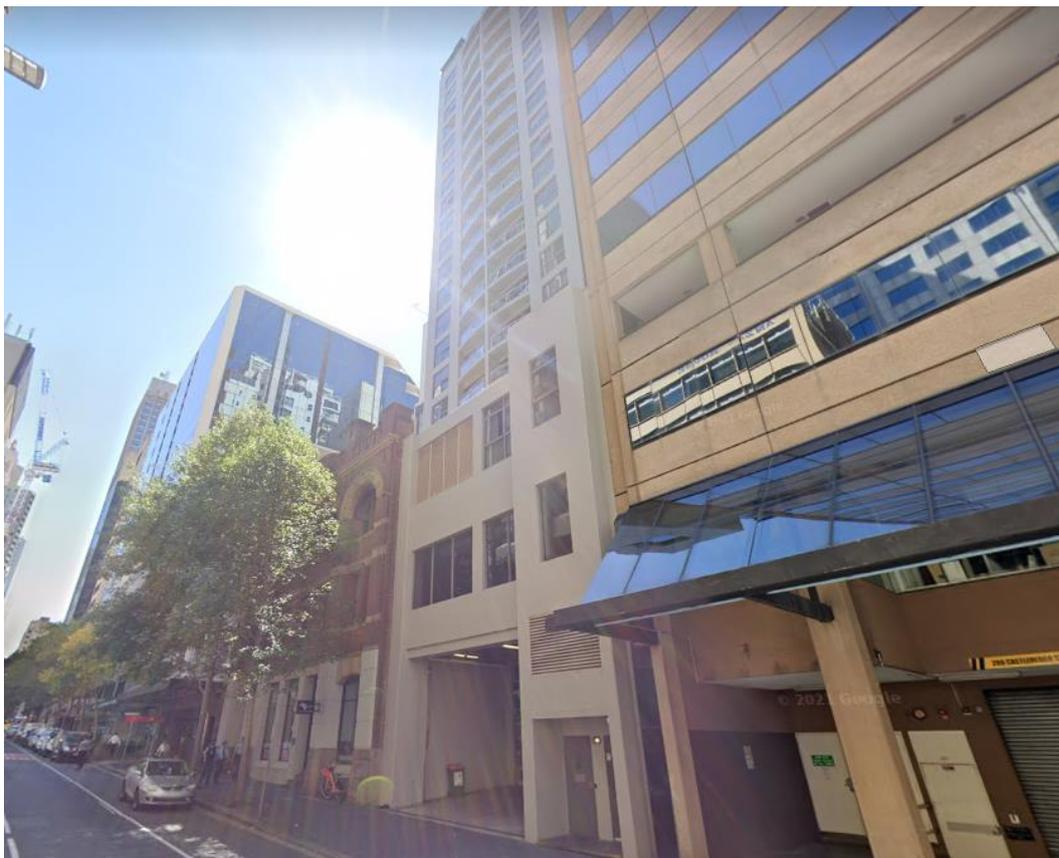


Figure 9: Residential flat building occupying 281-283 Elizabeth Street viewed from Castlreagh Street (image by Google)

History Relevant to the Development Application

Development Applications

7. The site of the existing hotel is part of a redevelopment of the larger site at 338-348 Pitt Street, Sydney approved by the Central Sydney Planning Committee on 25 March 2021 for demolition, excavation and construction of two, 80-storey mixed use towers (D/2020/610).
8. There are several components to the development history, including the development history and existing licenses of the existing Hotel Downing at 249-253 Castlereagh Street.
9. The application arises because of the upcoming expiration of the lease of the Hotel Downing. The applicant seeks to transfer the Hotel to 255-255A Castlereagh Street. The existing Hotel Downing liquor licence (i.e. LIQH400100604) will be subject to an application to the Independent Liquor and Gaming Authority to transfer the licence to the proposed new venue at 255-255A Castlereagh Street through the redefinition of the licensed premises boundaries in accordance with Section 94 of the Liquor Act 2007 (the Liquor Act). Refer to image below.

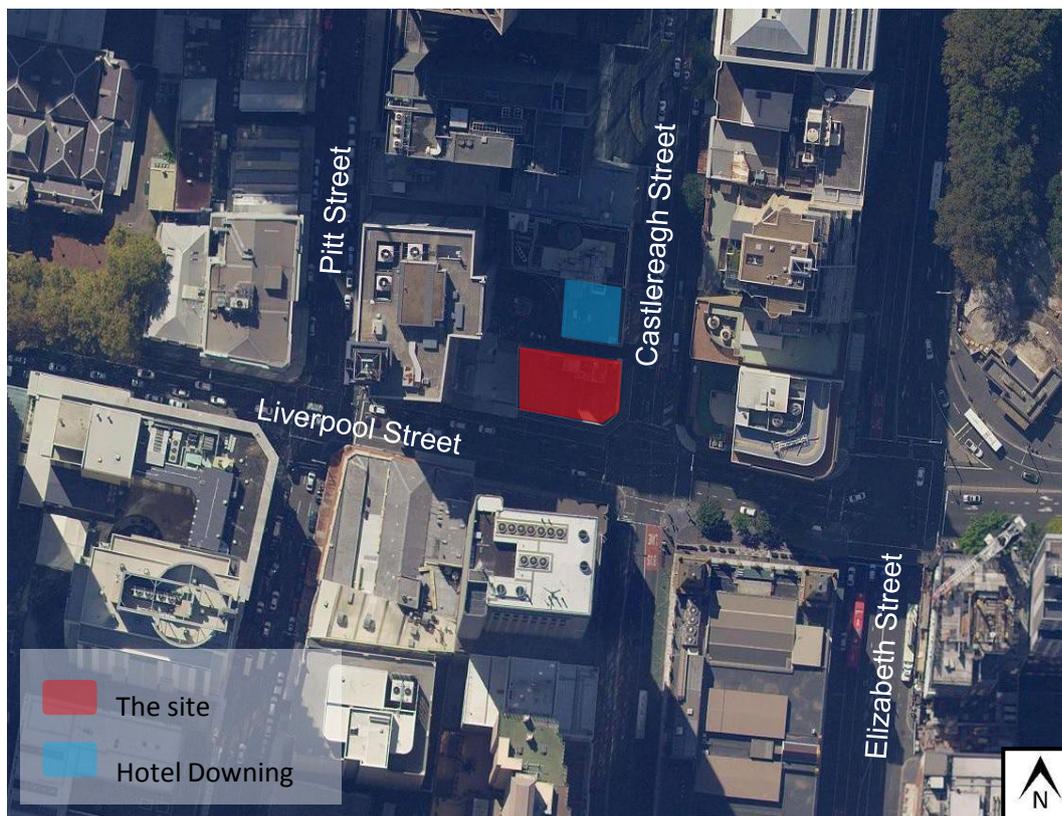


Figure 10: Location of existing Hotel Downing and subject site (image provided by applicant).

10. The following applications are relevant to the current proposal:

249-253 Castlereagh Street - Existing Hotel Downing

- **D/2006/1939** – Development consent was granted on 7 March 2007 to extend trading hours of the hotel until 3.00am Monday to Sunday, inclusive. The base hours of 5.00am to 12.00am, Mondays to Sundays inclusive were already approved on a permanent basis. A trial period was approved for trading until 3.00am for a one-year period (Condition 2).
- **D/2006/1939/A** – A modification application was granted on 16 June 2008 to amend Condition 1 to make reference to new Plan of Management, amend Condition 2 to permit further two-year trial period, amend Condition 3 to reference security management plan, amend Condition 13 to delete reference to Section 68 of the Local Government Act and amend Condition 14 which relates to noise.
- **D/2008/408** - Development consent was granted on 23 June 2008 to continue to use a portion of the Castlereagh Street footway for the provision of outdoor seating facilities in conjunction with the hotel. The base operating hours of the footway was approved between 10.00am and 8.00pm with a trial period for trading between 5.00am and 10.00am and between 8.00pm and 12.00am (midnight) for a period of two years (Condition 3).
- **D/2006/1939/B** – A modification application was granted on 3 August 2010 to continue indoor trial hours of operation until 3.00am Monday to Sunday, inclusive for a further two-years (Condition 2).
- **D/2008/408/A** – A modification application was granted on 26 October 2011 to continue trial trading hours of outdoor seating associated with the hotel from 12.00am to 3.00am, Mondays to Sundays inclusive for a further two-years (Condition 3).
- **D/2006/1939/C** – A modification application was granted on 14 August 2015 to continue the trial period for extended indoor trading until 3.00am Mondays to Sundays, inclusive for a further five-year trial period.
- **D/2008/408/B** – A modification application was granted on 19 December 2016 to continue outdoor trial trading hours of the hotel in trading until 3.00am, Mondays to Sundays inclusive for a further five-year trial period.
- **D/2006/1939/D** - A modification application was granted on 3 September 2020 to continue the trial period for extended indoor trading until 3.00am Monday to Sunday inclusive for a further five-year period. This trial period is still active and is to lapse on 3 September 2025.

255-255A Castlereagh Street - Subject site

- **D/2006/51** – Development consent was granted on 15 February 2006 for the erection of 2 under awning signs, 3 awning fascia signs, a hamper sign and an ATM lightbox. This application related to the National Australian Bank branch which occupied the ground floor.

- **D/2010/1485** – Development consent was granted on 10 November 2010 for installation of 2D artwork on the building facade (Dungate Lane). The consent was time limited for a period of two-years from the date of installation.

Compliance Action

11. The site is subject to a current compliance action which is not directly relevant to this proposal. A complaint was received from Regency Hyde Park building at 270 Castlereagh Street, Sydney on 22 October 2021 relating to excessive noise from extractor equipment occurring once a month occurring between 4am and 5am. Although the matter is still being investigate it appears the source of the noise offense is also traced back to the fire department with-in Sydney trains who conduct their maintenance of the fans at Museum Station. Council Health Officers are conducting testing to determine whether action can be taken.

Amendments

12. Following a preliminary assessment of the proposed development by Council officers, a request for additional information and amendments was sent to the applicant on 16 July 2021. The following requests were made:
 - (a) Plan of Management:
 - update required to confirm a patron capacity of 300.
 - (b) Health: Food Preparation, Mechanical Ventilation and Acoustics
 - amended plans were required to show compliance with AS 4672-2004 (Design, construction and fit-out of food premises) including sinks and hand basins;
 - details of the mechanical ventilation and location of the kitchen exhaust;
 - an odour assessment;
 - an amended acoustic report to address noise from the mechanical plant and equipment; and
 - confirmation of louver details in the acoustic report and confirmation of the gaming area details.
 - (c) Waste:
 - an updated waste management plan to address relevant conditions required by the City of Sydney Guidelines for Waste Management in New Developments 2018.
13. The applicant responded to the request on 27 August 2021 and 6 September 2021, and submitted the following information and documents:
 - (a) Amended Plans
 - (b) Amended Operational Waste Management Plan
 - (c) A Construction Waste Management Plan

- (d) Liquor License Details
 - (e) Amended Acoustics Assessment
 - (f) Odour Report.
14. Following review of the additional information the matters were reassessed by Councils Officers, with the following additional requests made:
- (a) Environmental Health Request
 - an amended odour management plan to confirm whose responsibility it will be to maintain the enhanced filtration system;
 - submit specific details of the enhanced filtration system(s) to be installed;
 - confirmation that there is adequate ducting; and
 - a test certificate for the efficiency of the system.
 - (b) Waste Management Request
 - an amended waste management plan to show movement of bins and bulky waste to and from the waste storage area/collection point.
 - (c) Final drawing confirmation
 - clarification of proposed extent of works.
15. The applicant responded to the request on:
- (a) 11 October 2021 - submitted the following in response to the second request for additional information:
 - amended mechanical ventilation drawings;
 - a specification sheet that confirms the system is certified;
 - an amended Plan of Management (POM). The POM requires the licensee to appoint a contractor to maintain and service the equipment in accordance with the operating manual; and
 - an operating manual for the filtration system. The operating manual confirms the installation and commissioning instructions.
 - (b) 19 October 2021 - submitted an amended waste management plan and provided a solution to carting the bins to the collection point.
 - (c) 28 October 2021 - submitted amended drawings to remove a previously shown window to Dungate Lane which does not form part of the development proposal.

Proposed Development

16. The application seeks consent for internal and external alterations for use as a Pub with a patron capacity of 300. No outdoor seating is proposed.
17. Proposed trading hours are between 10.00am and 3.00am the following morning, Monday to Sunday, inclusive including the proposed gaming room which has not been identified as a smoking gaming area. Both the pub and gaming will operate in conjunction with each other however separate access to the gaming room can be achieved via Castlereagh Street.
18. The application seeks consent for the following works:

External

- Recess of the existing entry door to the common foyer to access the upper office levels. The door is to swing outwards and will be recessed so that they do not impeded the public domain.
- Removal of the existing ATM and installation of a glass panel that matches adjoining area of the shopfront.
- Installation of new frameless glass sliding door with opaque finish to match adjoining area of the shopfront.
- Alteration to Dungate Lane for the provision of a horizontal mechanical ventilation discharge.

Basement

- Creation of a cool room, a storage area, and a garbage room.

Ground Floor

- General floor reconfiguration and installation of a bar/servery counter, a kitchen with a cool room and scullery, a gaming room, and amenities.
19. By way of comparison, the new venue is reduced by 390sqm compared to the existing operation and there is no outdoor operation proposed.
 20. Plans and elevations of the proposed development are provided below.

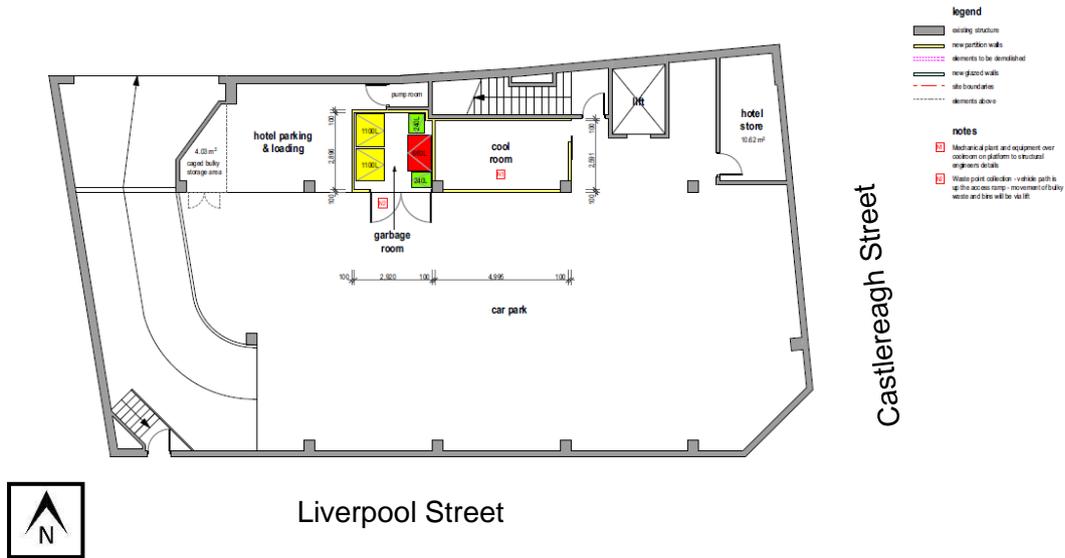


Figure 11: Proposed basement level plan

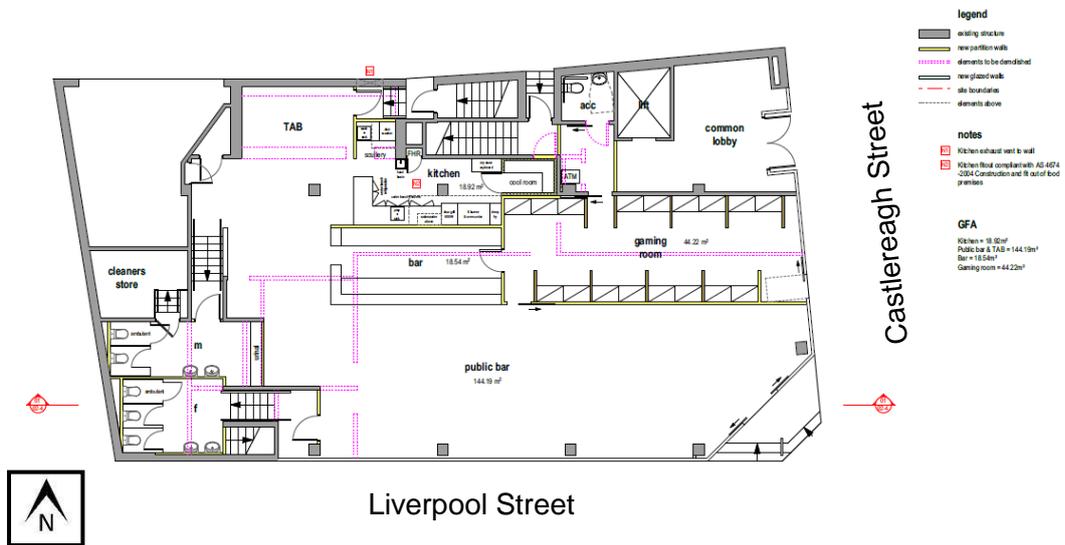


Figure 12: Proposed ground floor plan

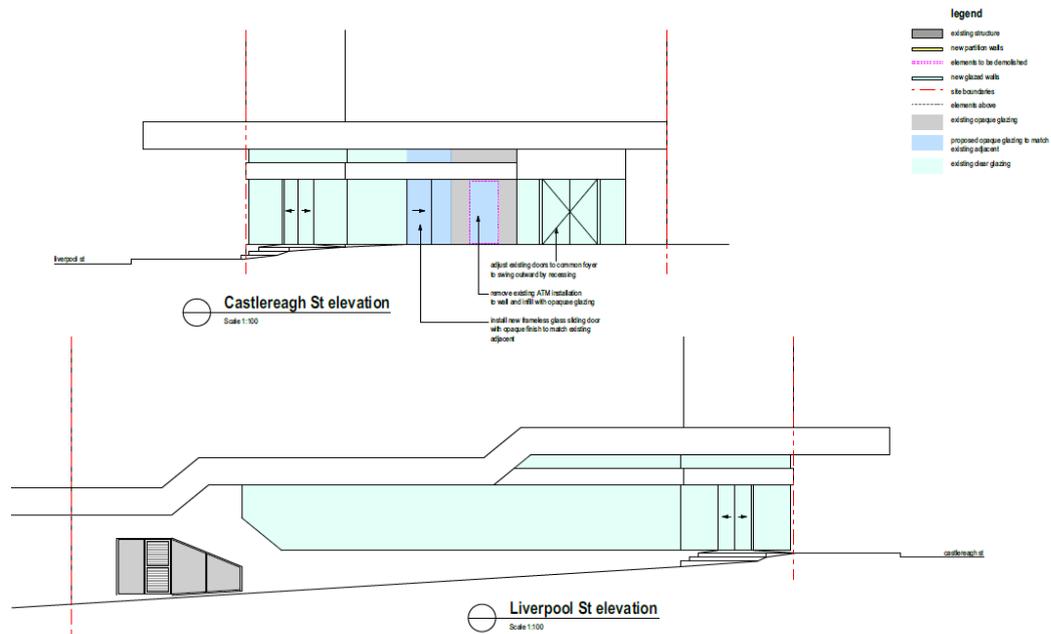


Figure 13: Castlereagh and Liverpool Street Elevations

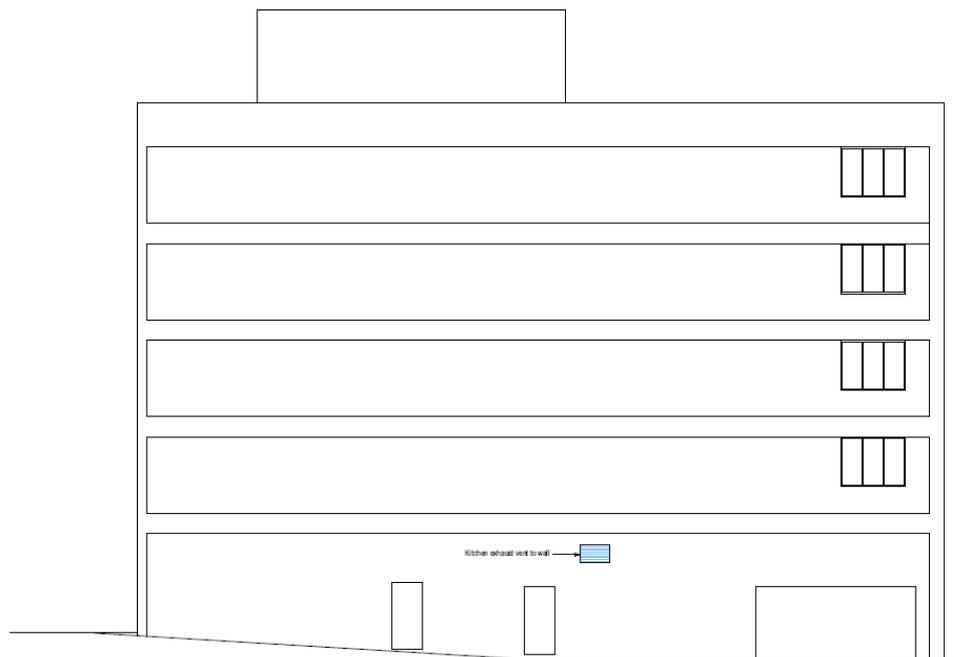


Figure 14: Dungate Lane Elevation

Assessment

21. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

22. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
23. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 within the deemed SEPP.

Liquor Act 2007

24. The applicant intends to transfer the existing hotel licence (i.e. LIQH400100604) at 249-253 Castlereagh Street to the new premises located at 255-255A Castlereagh Street. This transfer of licence and amendment of boundaries will occur via an external application to the Independent Liquor and Gaming Association.

Gaming Machines Act 2001 No 127

25. Pursuant to Clause 209(3) of the Gaming Machines Act 2001 No 127 a consent authority (within the meaning of the Environmental Planning and Assessment Act 1979) cannot -
 - (a) as a condition of any development consent under that Act, prohibit or otherwise regulate or restrict the installation, keeping or operation of approved gaming machines in a hotel or on the premises of a club or any other premises, or
 - (b) refuse to grant any such development consent to a hotel or club for any reason that relates to the installation, keeping or operation of approved gaming machines in a hotel or on the premises of a club.
26. This is relevant as it limits the ability of the consent authority to impose conditions relating to the gaming area which is accessible directly from Castlereagh Street with new obscure glazing to prevent visibility from the street.

Local Environmental Plans

Sydney Local Environmental Plan 2012

27. 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 use is defined as a food and drinks premises, being a licensed pub, and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 235m is permitted. The proposal does not impact the height of the existing building.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 8:1 is permitted. The proposal does increase the gross floor area on the site. A small reduction will occur due to the recess of the entry doors.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The existing development is occupying an empty tenancy previous occupied by a bank. There are large glazed windows to both Liverpool and Castlereagh Street. There are no details of the internal layouts, signage or detailing of the opaque glazing to gaming area that have been provided in this application. Council Urban Design Specialist has raised no objection to the proposal, subject to conditions. A condition requiring further design details is recommended.

Development Control Plans

Sydney Development Control Plan 2012

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

Section 3 – General Provisions

Provision	Compliance	Comment
3.2 Defining the Public Domain 3.2.3 Active Frontages	Yes	<p>The Liverpool Street frontage is nominated on the Active Frontages Map.</p> <p>Under the proposal the ground floor elevation of the building will remain largely unaffected with visibility into the interior being largely maintained.</p> <p>Modifications to the Castlereagh Street elevation are proposed to remove an existing ATM, provide a new entry door to the proposed gaming area, and recess the entry door to the commercial lobby of the building so that it can swing outward for fire egress compliance.</p> <p>The Gaming Machines Regulations require that gaming machines are not to be seen from the public domain. The proposal, therefore, proposes the use of opaque glazing on the section of the shop front adjacent to the gaming room which is limited to the gaming room and acceptable.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p>
3.11 Transport and Parking	Yes	<p>No parking is proposed in the application. The site is well serviced by public transport, with train, light rail and bus services all within walking distance from the premises.</p> <p>The use will be able to manage transport demand in a sustainable manner.</p>

Provision	Compliance	Comment
3.12 Accessible Design	Yes	The building can provide for equitable access, as it contains lifts and adequate sanitary facilities. It is considered to be able to comply with the relevant BCA provisions. A condition of consent is recommended, requiring the development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed change of use will enable adequate passive surveillance and is generally designed in accordance with CPTED principles. The proposal has been accompanied by a Plan of Management, which adequately addresses security and management processes to minimise criminal activity.
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Partial compliance	<p>The premise is located in a Late Night Management Area and the use is defined as a category A premises.</p> <p>The proposed trading hours are between 10.00am and 3.00am the following morning Monday to Sunday, inclusive and the patron capacity is 300.</p> <p>The trading hours are one hour beyond what is permissible at initial application stage. See 'Discussion' section of this report.</p>

Section 4 - Development Types

4.2 Residential Flat, Commercial and Mixed-Use Developments

Provision	Compliance	Comment
4.2.3.11 Acoustic privacy	Yes	<p>An acoustics assessment dated 25 August 2021 has been submitted with the application which outlines that the proposal will achieve the criteria stipulated in the City's standard 'Noise - Commercial Plant / Industrial Development' and 'Noise- Entertainment' conditions.</p> <p>Conditions of consent are recommended requiring the premises to comply with the measures included in the acoustic report as well as the standard 'Noise - Commercial Plant / Industrial Development' and 'Noise- Entertainment' conditions.</p> <p>The Acoustic report was reviewed by the City's Environmental Health Specialist, who supported the application.</p>
4.2.6 Waste and recycling Management	Yes	<p>The applicant has submitted a Waste Management Plan, dated 18 October 2021. A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p> <p>The Waste Management Plan was reviewed by Councils Waste Specialist who supported the application.</p>

Section 5 – Specific Areas

Provision	Compliance	Comment
5.1 Central Sydney	Yes	There are no controls applicable to this development. The proposed does not result in any change to existing setbacks or street frontage heights.

Discussion

Hours of Operation

29. In accordance with Section 3.15 of the Sydney DCP 2012, the use as a pub is classified as a Category A - High Impact Premises. The site is located within a Late-Night Management Area. Table 3.7 in Section 3.15.4 of the Sydney DCP 2012 stipulates the following trading hours for Category A Premises within Late Night Management Areas:

- Indoor base hours: 6.00am - 12.00am midnight;
- Indoor extended hours: 24 hours (on a trial basis and in 2 hour increments).

The application proposes the following hours:

- Indoor trading between 10.00am and 3.00am the following day, Monday to Sunday, inclusive.

30. The proposed hours are within the extended trading hours stipulated in the Sydney DCP 2012. Section 3.15.4 (6) of the Sydney DCP 2012 states that extended trading hours beyond base hours may be permitted at the initial application stage if Council can determine that the premises will be well managed, including compliance with an approved Plan of Management.

31. The applicant has submitted a Plan of Management with this application. The Plan of Management has been reviewed by the City's Licensed Premises Unit, who consider the proposal satisfactory.

32. Section 3.15.4 (8) of the Sydney DCP 2012 states that premises seeking extended trading hours may be permitted up to two additional operating hours per trial period. It is noted that the premise is seeking indoor trading hours between 10.00am and 3.00am, which is 3 hours beyond the permitted base hours. This is acceptable given the unique circumstance being:

- The application is for a relocation of an existing licensed venue which has approved for trading to 3.00am on an ongoing trial period basis since 2007.
- There are no objections from the police.
- Management have generally exhibited good practice in extended trading.
- The new venue is reduced in size from the existing 1330sqm to the proposed 940sqm and there is no outdoor operation ensuring that there is no intensification of the activities of the Hotel Downing.

33. As such, it is recommended that the base indoor hours between 10.00am and 12.00am (midnight) be approved on a permanent basis. The hours between 12.00am and 3.00am are recommended for approval on a 12-month trial basis.

Consultation

Internal Referrals

34. The application was discussed with:

- Building Services Unit;
- Environmental Health Unit;
- Licensed Premises Unit;
- Urban Design Unit; and
- Waste Management Unit;

who advised that the proposal is acceptable subject to conditions.

35. Where appropriate, these conditions are included in the Recommended Conditions of Consent.

External Referrals

NSW Police

36. The application was referred to NSW Police for comment.

37. A response was received on 24 August 2021 raising no objections to the proposed development, subject to the recommended conditions.

Advertising and Notification

38. In accordance with the City of Sydney Community Participation Plan 2020, the application was notified for 21 days between 1 July 2021 and 23 July 2021 and re-notified for a further 21 days between 6 September 2021 and 28 September 2021. A total of 825 properties were notified.

39. No submissions were received.

Financial Contributions

Levy under Section 61 of the City of Sydney Act 1988

40. 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.

Relevant Legislation

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

Conclusion

45. The application is for internal and external alterations for use as a Pub with 300 patrons.
46. The proposal is generally consistent with the objectives and provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. Instances where the proposal varies the DCP controls have been assessed as acceptable.
47. The premise is of a scale suitable to the B8 Metropolitan Centre zone and Late Night Management Area and subject to conditions will not cause adverse impacts on the amenity of the surrounding area.
48. The applicant has adequately addressed operational and security measures in the submitted Plan of Management. The applicant has adequately addressed noise impacts in the submitted Acoustic Report.
49. The development is therefore in the public interest and is recommended for approval subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Charbel Touma, Planner