

Item 6.**Development Application: 11 Harbour Street, Sydney - D/2021/1497****File No.:** D/2021/1497**Summary**

Date of Submission:	23 December 2021 with additional information submitted on 22 March and 14 April 2022
Applicant:	Planning Lab
Designer:	Dreamtime Australia Design
Developer:	Universal Hotels
Owner:	Lend Lease Development Pty Ltd
Planning Consultant:	Planning Lab
Cost of Works:	\$409,200.00
Zoning:	The site is located within land subject to Chapter 3 Darling Harbour, State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021. The proposed development is defined as a pub which is permissible with consent in the zone.
Proposal Summary:	<p>Consent is sought for the use and fit-out of tenancies T24-T27 of 11 Harbour Street, Sydney as a pub with indoor and outdoor seating. The proposal also includes external alterations to the existing south and western shopfront. Proposed indoor hours of operation are 5.00am to 3.00am, Mondays to Sundays, and outdoor hours are 9.00am to 1.00am, Mondays to Sundays. Patron capacity of 500 (indoor) and 230 (outdoor) is sought (total 730). The premises will be operated by Universal Hotels.</p> <p>During the assessment of the proposal, a revised acoustic assessment was requested to include the identified nearest residential receiver 1 Dixon Street, Sydney. Clarification was also requested on the proposed maximum capacity as well as design amendments to the proposed pergola.</p>

The applicant responded with an Addendum Acoustic Assessment including further justification that predicted noise emissions to 1 Dixon Street are similar to that of 339 Sussex Street, Sydney, given similar proximity to the venue. Both residential receivers have a direct line of sight to the southern outdoor area of the premises. As the further justification was considered acceptable, it was not considered necessary to require renotification. In addition, the maximum capacity was reduced from 1,242 persons to 780 persons, and the proposed pergola deleted from the application.

The application was notified for 21 days from 19 January 2022 to 10 February 2022. A total of 776 properties and occupiers were notified, and no submissions were received.

Subject to conditions, the proposal is generally consistent with the objectives and applicable planning provisions in Chapter 3 Darling Harbour of State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021 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 significant adverse impacts on the surrounding locality subject to compliance with the accompanying Plan of Management and Acoustic Assessment.

As the application seeks to operate a new premises with a hotel liquor licence (sensitive premises), it is required to be reported to the Local Planning Panel for determination.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979;
- (ii) State Environmental Planning Policy (Planning Systems) 2021;
- (iii) State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021- Chapter 3 Darling Harbour;
- (iv) State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 10 Sydney Harbour Catchment;
- (v) Sydney Development Control Plan 2012.

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Addendum Noise Impact Statement
- D. Noise Impact Assessment
- E. Amended Plan of Management

Recommendation

It is resolved that consent be granted to Development Application No. D/2021/1497 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 consistent with the objectives of Chapter 3 of State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021.
- (B) The development is consistent with the objective of the Sydney Development Control Plan 2012, in particular the Late Night Management area objectives.
- (C) The proposal, subject to conditions, will not result in unacceptable amenity impacts on surrounding properties and public domain.
- (D) The proposal is in the public interest and is recommended for approval subject to conditions.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 802 DP 1164281, and is known as 11 Harbour Street, Sydney. It is irregular in shape with area of approximately 7,802sqm. It has a frontage to Harbour Street and adjoins Tumbalong Park at the rear. The site is located on the western edge of the Sydney Central Business District (CBD) within the Darling Quarter precinct. Darling Quarter is located within the greater tourist and entertainment precinct known as Darling Harbour.
2. Darling Quarter is owned and operated by Lendlease and comprises a number of elements including two 9-storey mixed-use buildings, the Civic Connector (located between the north and south buildings), a children's playground, terraced community green, pedestrian boulevard and retail terrace.
3. This application relates to the vacant ground floor tenancies known as T24-T27 (subject site) located at the south western corner of the southern building. The subject tenancies have two frontages - the main entrance to the retail terrace, pedestrian boulevard and Tumbalong Park (west elevation) and the secondary entrance to the Liverpool Street pedestrian footbridge (south elevation) which crosses Harbour Street and connects the southern part of Darling Harbour to the CBD. Existing planter boxes and pergolas are located along the perimeter of the retail terrace, which runs parallel to the primary north-south pedestrian connection known as the pedestrian boulevard. Adjacent to the north of the subject tenancy are existing sanitary facilities shared across all ground floor food and drink premises within the southern building.
4. The surrounding area is characterised by a mixture of land uses, primarily being commercial, residential, entertainment, recreational and tourist-based land uses. The International Convention Centre (ICC) is located to the west of the site across Tumbalong Park and residential and commercial towers are located to the east across Harbour Street. The site is highly accessible via public transport given its location on the western edge of the CBD.
5. The site is not a heritage item but is within proximity to the State heritage item, Chinese Garden of Friendship (SHR 02017) to the south. It is not located within a heritage conservation area.
6. The site is located within the Darling Harbour Catchment and is identified as being subject to flooding.
7. A site visit was carried out on 21 January 2022. Photos of the site and surrounds are provided below.

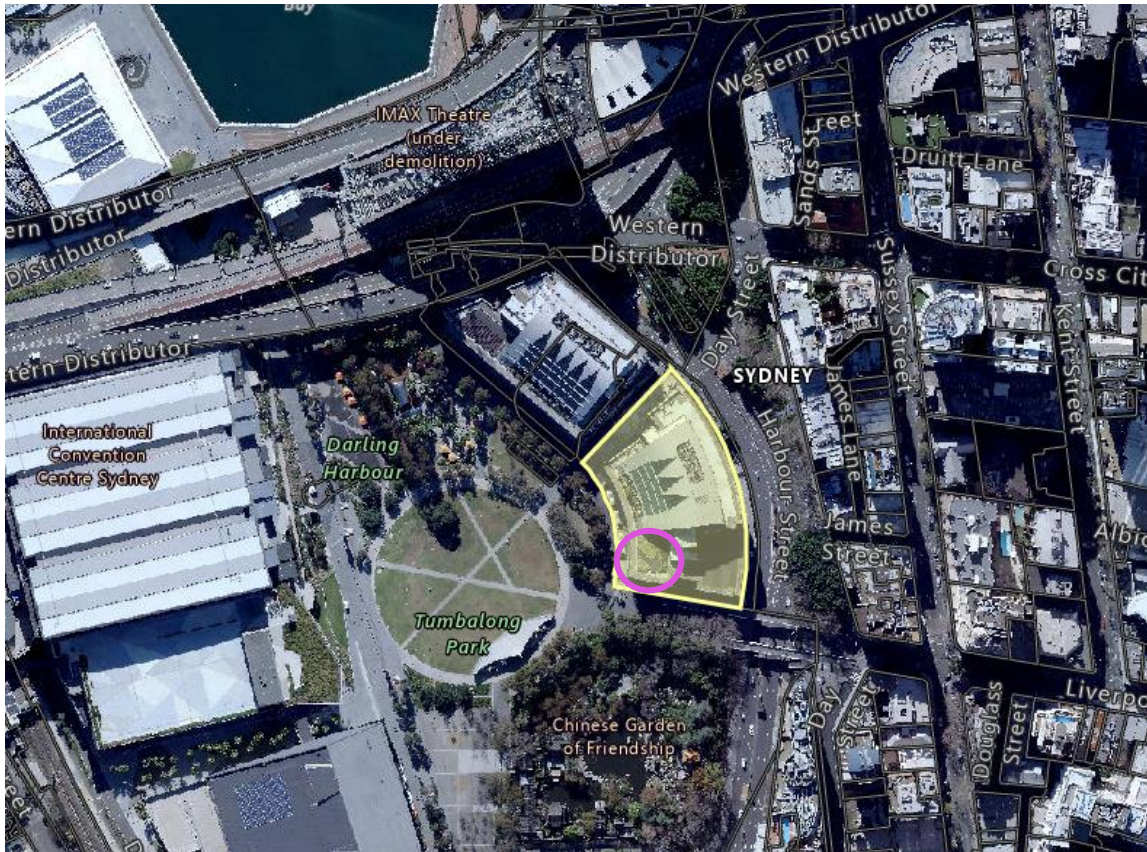


Figure 1: Aerial view of site and surrounds, subject tenancy circled in pink

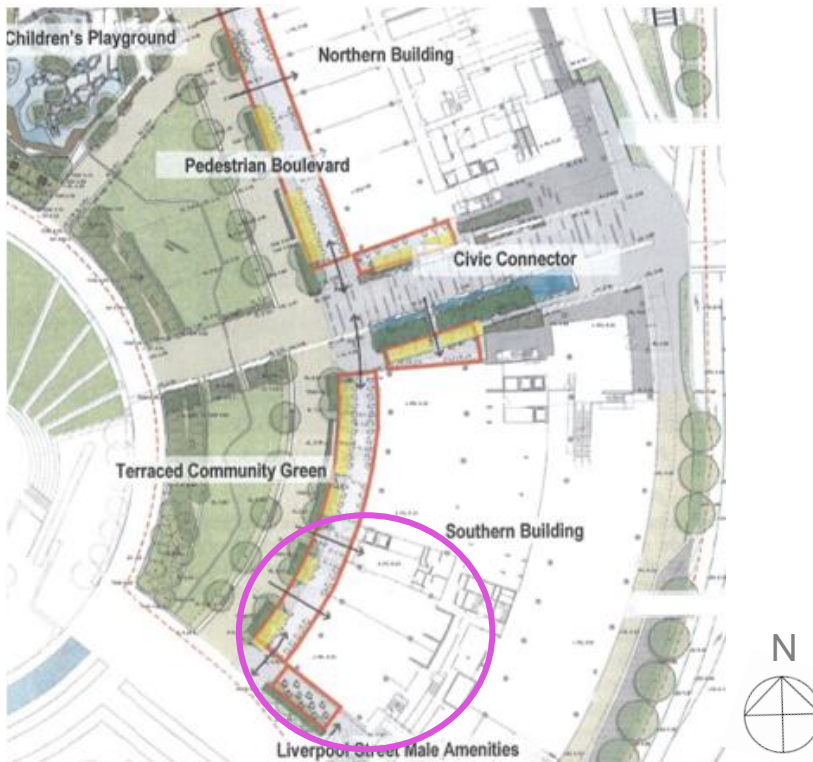


Figure 2: Darling Quarter location map, subject tenancy circled in pink (Source: MP08_0093 Director General's Environmental Assessment Report)



Figure 3: Site viewed from the pedestrian boulevard facing south towards the Chinese Garden of Friendship

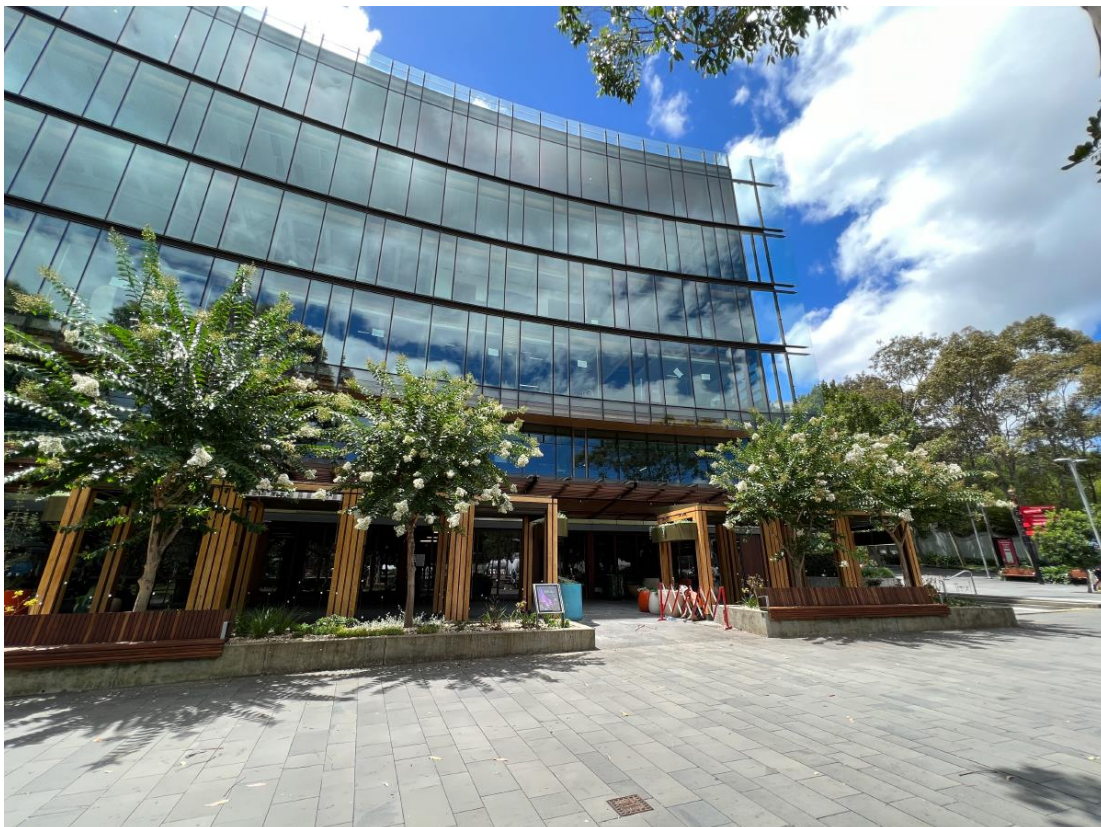


Figure 4: Site viewed from the pedestrian boulevard showing primary entrance, facing east towards Harbour Street (proposed western outdoor seating area within retail terrace adjacent to the shopfront)



Figure 5: Site and interface with the retail terrace between the shopfront and existing pergolas (proposed west and southern outdoor seating areas)

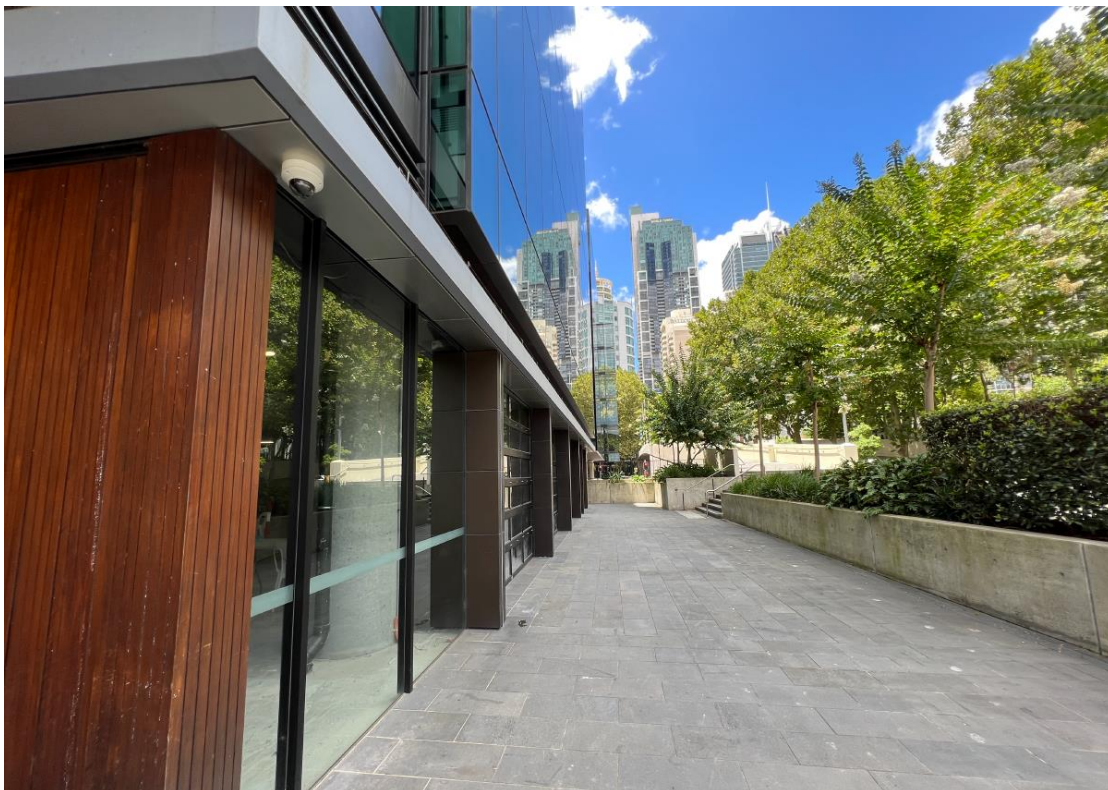


Figure 6: South elevation of site and interface with Liverpool Street pedestrian footbridge beyond (proposed southern outdoor seating area)



Figure 7: Southern part of the site showing secondary entrance (proposed southern outdoor seating area)

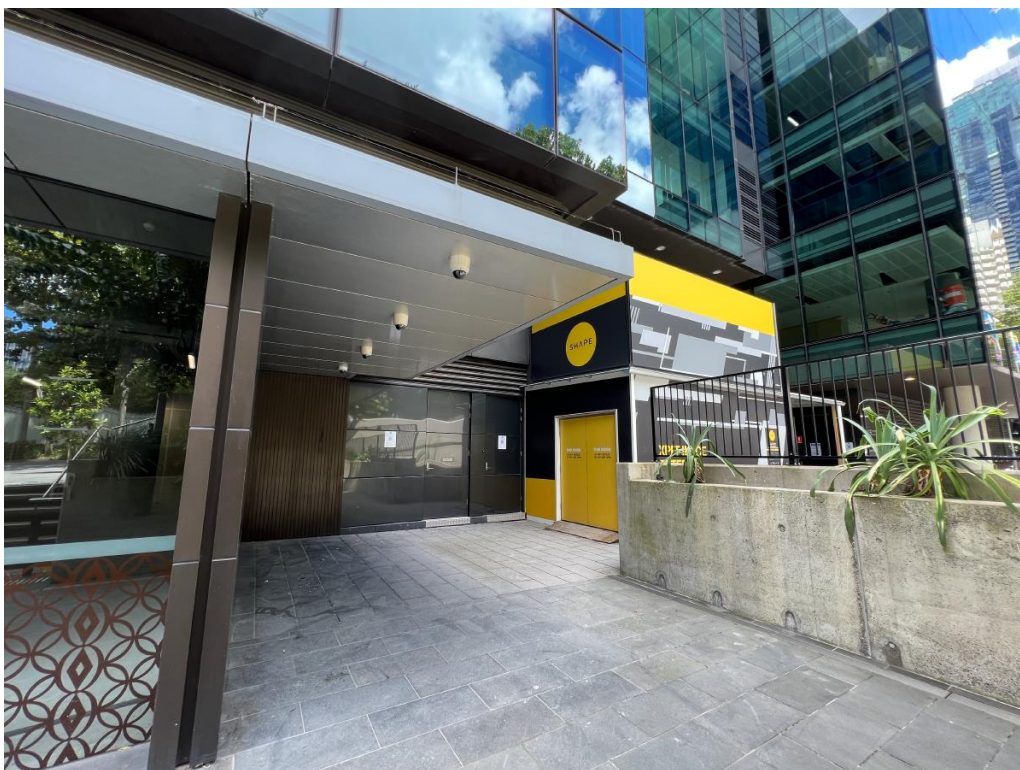


Figure 8: South east corner of the site (fire egress)



Figure 9: Western frontage of the site (proposed western outdoor seating area)



Figure 10: Retail terrace secondary pedestrian link, parallel to the pedestrian boulevard west of existing landscape planters and pergolas (proposed western outdoor seating area)



Figure 11: Pedestrian boulevard facing south east towards the Chinese Gardens of Friendship



Figure 12: Pedestrian boulevard facing south west towards Tumbalong Park and ICC

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal:
- **MP 06_0054** – Development consent was granted by the Minister for Planning on 9 July 2008 for the concept plan for a commercial, retail, cultural, recreational and entertainment complex, basement car parking and public domain improvements.
 - **MP 08_0057** – On 2 January 2009, development consent was granted by the Minister for Planning for bulk excavation, basement structure and construction of two 9-storey buildings. The application included the provision of 200 car parking spaces to serve the commercial buildings, as well as a 600-space public car parking facility.
 - **MP 08_0093** – On 8 March 2010, development consent was granted by the Minister for Planning for public domain works associated with new commercial and retail development uses. Approval included identification of outdoor seating areas associated with ground floor retail uses, as well as minor and major pedestrian access and circulation routes. The major pedestrian access route is known as the pedestrian boulevard and minor route is known as the retail terrace.

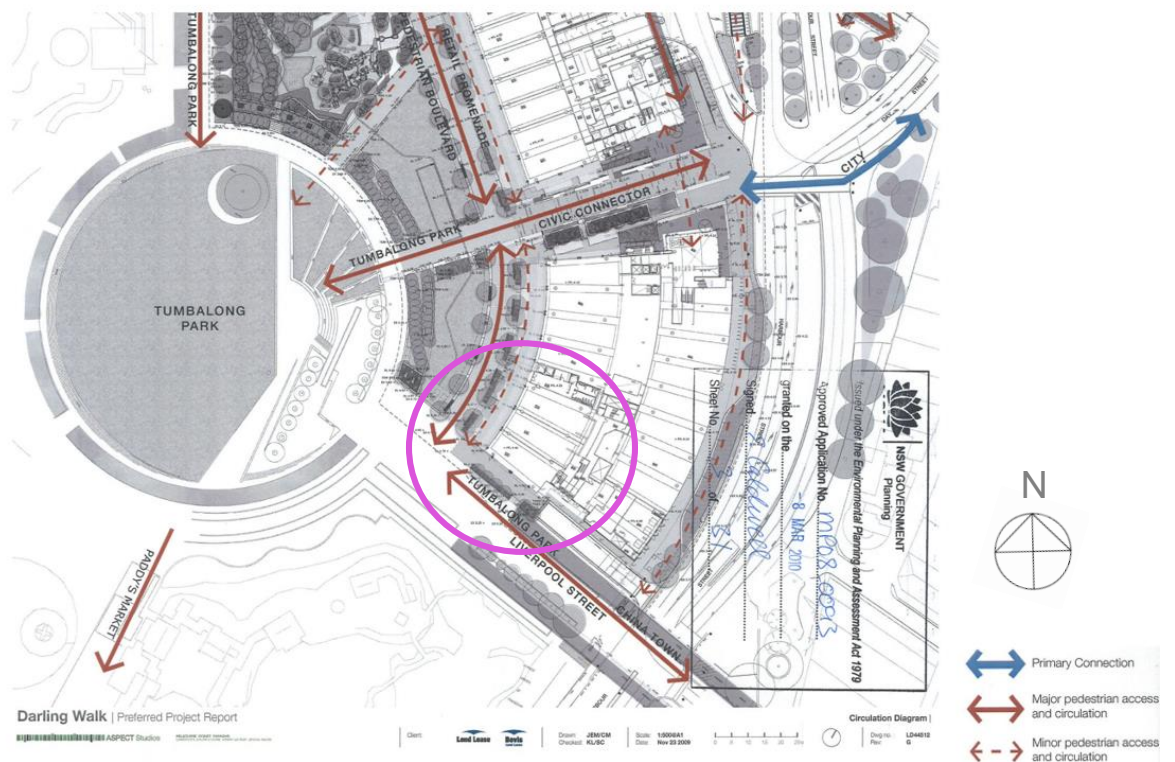


Figure 13: Subject site circled pink on stamped approved plan (MP08_0093)



Figure 14: Subject site shown circled pink on the stamped approved plan (MP08_0093). Approved retail seating zones to comprise loose tables and chairs with clear pedestrian movement is marked by arrows. Two outdoor seating zones are approved for the subject tenancy.

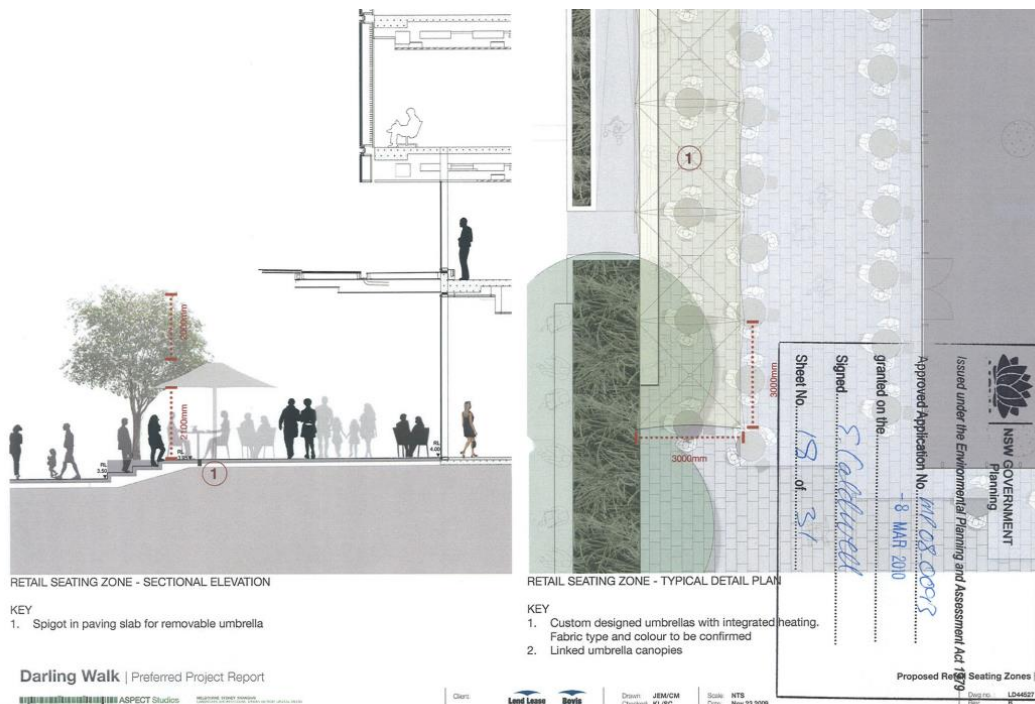


Figure 15: Stamped approved western retail seating zone sectional elevation and typical detail plan (MP08_0093)

- **D/2011/660** – Development consent was granted on 4 July 2011 for the fit out and use of a new licensed restaurant. Condition 20 of this consent restricted the number of occupants (including staff) to a maximum of 418 persons, comprising 302 persons indoors and 116 persons outdoors.
- **D/2011/660/A** – A Section 4.55(2) modification application was approved on 9 May 2013 to extend trial extended trading hours for the southern outdoor seating area until 12.00 midnight, the western outdoor seating area until 1.00am and reduce the width of the pedestrian access pathway to 2.05m.

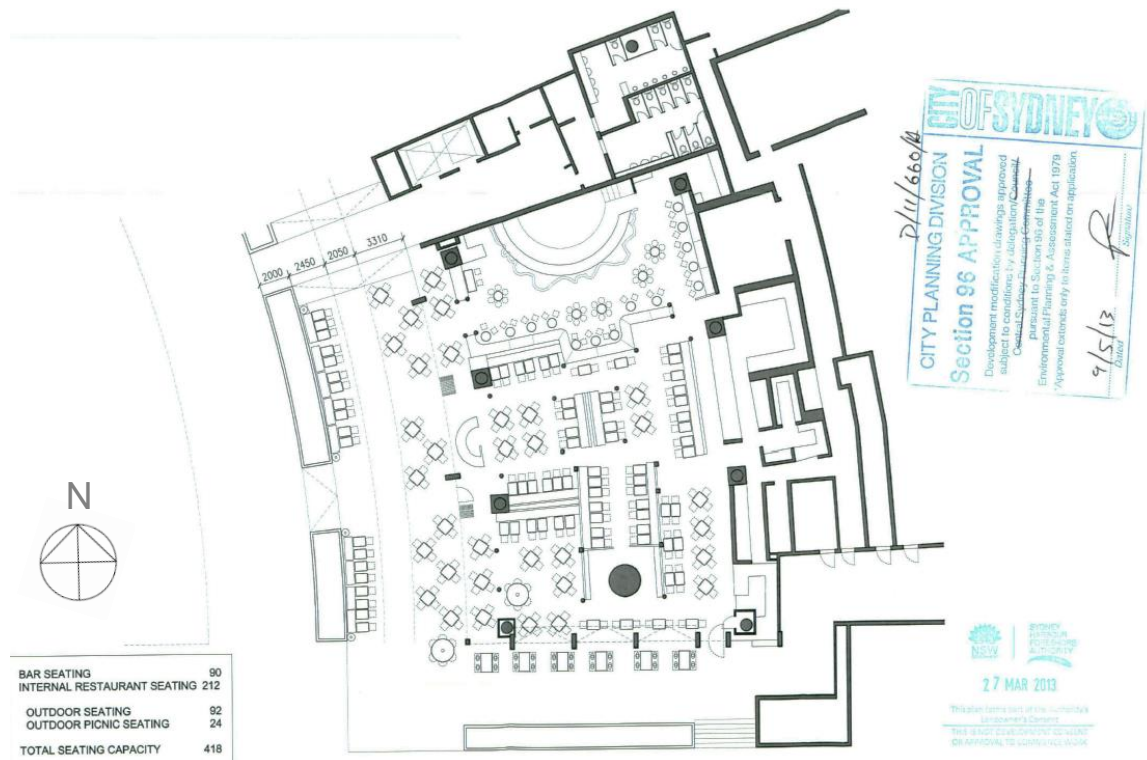


Figure 16: Stamped approved plan D/2011/660/A (AD Design Pty Ltd)

- **D/2011/660/C** – A Section 4.55(2) modification application was approved on 24 November 2014 for the continuation of the trial outdoor hours between 10.00pm and 12.00midnight (the following day) for the southern outdoor seating area for a further 2-years. (It is noted that there is no record of modification application D/2011/660/B in Council's files).
- **D/2011/660/D** – A Section 4.55(1A) modification application was approved on 3 December 2014 for music to be played outside the restaurant.
- **D/2011/660/E** – A Section 4.55(2) modification application was approved on 21 July 2015 for the continuation of trial extended trading hours for the outdoor seating along the western facade of the licensed 'Stacks Taverna'. The hours of 7.00am to 10.00pm, 7 days a week, was approved on a permanent basis with a trial period for extended trading until 1.00am for a trial period of 5-years for outdoor seating adjacent to the western facade, and a trial period of 2-years for outdoor seating adjacent to the southern facade. Approval was also granted to

correct an error relating to the trial period for the southern outdoor seating area from 1-year to 2-years.

- **D/2011/660/F** – A Section 4.55(2) modification application was approved on 14 December 2016 to modify Condition 2(bb) for the continuation of the approved trial extended trading hours for the outdoor seating adjacent to the southern facade for a further 5-years (which expired on 14 December 2021).



Figure 17: 2016 photo showing previous outdoor dining areas along west and southern elevations

- **D/2020/134** – Development consent was granted on 10 June 2020 for internal and external alterations and additions including new awnings, pergolas, landscaping, kitchen riser, plant enclosure, removal of 14 trees and reconfiguration of existing car and bike parking.
- **D/2020/134/A** – A Section 4.55(1A) modification application was partly approved on 15 September 2021. Of relevance, the approved changes included minor amendments to the location and number of pergolas on the western side of the north building.
- **D/2020/134/B** – A Section 4.55(2) modification application was lodged on 11 February 2022 proposing two additional pergolas on the south west corner of the south building, new landscaping works, planters to match existing planters and reconfiguration to the existing southern stair. These works relate to the outdoor seating area of the subject application D/2021/1497. This modification application D/2020/134/B is being assessed separate to the subject application.

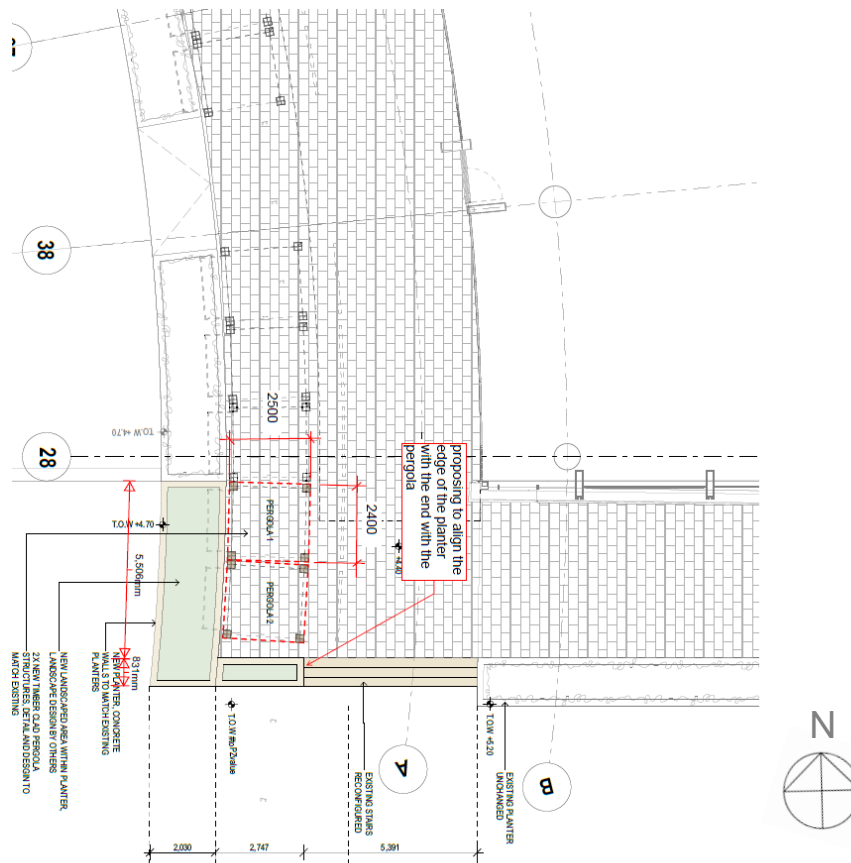


Figure 18: Proposed pergolas, landscape planter boxes and reconfigured stair under D/2020/134/B

Compliance Action

9. The site is not subject to any current compliance action or investigation.

Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, two requests for additional information and amendments were sent to the applicant on 4 March and 12 April 2022 to seek:
- further clarification of the proposed number of patrons including staff and breakdown between seated and standing indoor and outdoor patrons (initially a maximum of 1,242 persons was sought, comprising 992 indoors and 250 outdoors);
 - clarification on the intent of the proposed ventilation louvres to the gaming lounge;
 - the submission of an updated Noise Impact Assessment Report to assess potential impacts to the nearest identified residential receivers at 1 Dixon Street Haymarket;
 - an updated Plan of Management to include proposed management procedures to pack away outdoor furniture, and to restrict use of the outdoor tables and chairs once external trading hours have ceased; and

- design modifications to the new pergola structure proposed to the southern retail seating zone, to provide a coordinated approach and of a consistent design language to the existing building and conditions of the site.
11. The applicant responded to the above requests on 22 March and 14 April 2022 through submission of the following information:
- Response Letter clarifying the proposed maximum patron and staff numbers. This included a reduction in the proposed capacity to a maximum of 780 persons (539 indoor and 241 outdoor);
 - clarification on the proposed ventilation louvres to screen gaming machines from view whilst permit smoking within the gaming lounge, subject to compliance with the Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2016;
 - an Addendum to the Noise Impact Assessment (dated 9 September 2021) prepared by Acoustic Logic dated 18 March 2022, and an Acoustic Report prepared by Stantec dated 29 April 2020;
 - an updated Plan of Management including procedures to pack away and restrict use of outdoor furniture after hours; and
 - confirmation to delete the new proposed pergola structure and water features within the southern retail seating zone (outdoor seating to remain). The applicant advised that development consent for a redesigned pergola would be sought via a separate application if required in the future. The applicant requested that any reconfiguration of furniture within the southern retail seating zone be addressed by way of conditions of consent.

Proposed Development

12. The proposed development comprises the change of use, internal and external alterations to the existing tenancies T24 -T27.
13. Specifically, the application seeks consent for the following:
- (a) Change of use of the premises from a restaurant to a pub which will operate with a hotel liquor licence. The new pub will be operated by 'Universal Hotels' who currently operate a number of existing venues within the City of Sydney including the Civic Hotel and Oxford Hotel. The trading name of the premises is yet to be decided.
 - (b) External alterations
 - (i) demolition and replacement of the existing fixed glazing on the southern facade;
 - (ii) Installation of new ventilation louvres to the proposed gaming lounge;
 - (iii) installation of a new fire compliant door at the south west corner of the premise;

- (iv) flip the swing of the existing fire door at the south east corner of the premise;
 - (v) minor adjustments to the operability of the existing door panels on the western elevation to suit circulation requirements; and
 - (vi) new outdoor tables and chairs within the western outdoor retail seating zone and southern seating zone. The outdoor furniture within the western seating zone within the retail terrace is arranged to maintain a minimum north-south pedestrian circulation clearance of 2m. The proposed outdoor furniture in its current arrangement within the southern seating zone will provide an east-west circulation clearance of 1.2m.
- (c) Internal alterations and fit-out
- (i) minor demolition of internal partitions to create new openings;
 - (ii) installation of a new fire hose reel at the south western corner of the premises;
 - (iii) installation of new partitions to create additional sanitary facilities, kitchen bar and gaming room; and
 - (iv) new fit-out including floor, wall and ceiling finishes, fixtures, and furniture.
- (d) Operation
- (i) proposed maximum capacity of 780 persons, comprising a maximum of 730 patrons and 50 staff. Breakdown as follows:

	Internal	External	Total
Seated	300	130	430
Standing	200	100	300
Total patrons	500	230	730
Staff	39	11	50
Total including staff	539	241	780

- (ii) the proposal seeks the maximum permissible base hours and additional extended hours subject to a 1-year trial basis as follows:

	Proposed base hours	Proposed extended hours
Indoor	6.00am to 12.00midnight	5.00am to 6.00am 12.00midnight to 3.00am
Outdoor	10.00am to 10.00pm	9.00am to 10.00am 10.00pm to 1.00am

- 14. This application does not include any new signage.
- 15. Plans and elevations of the proposed development are provided below.

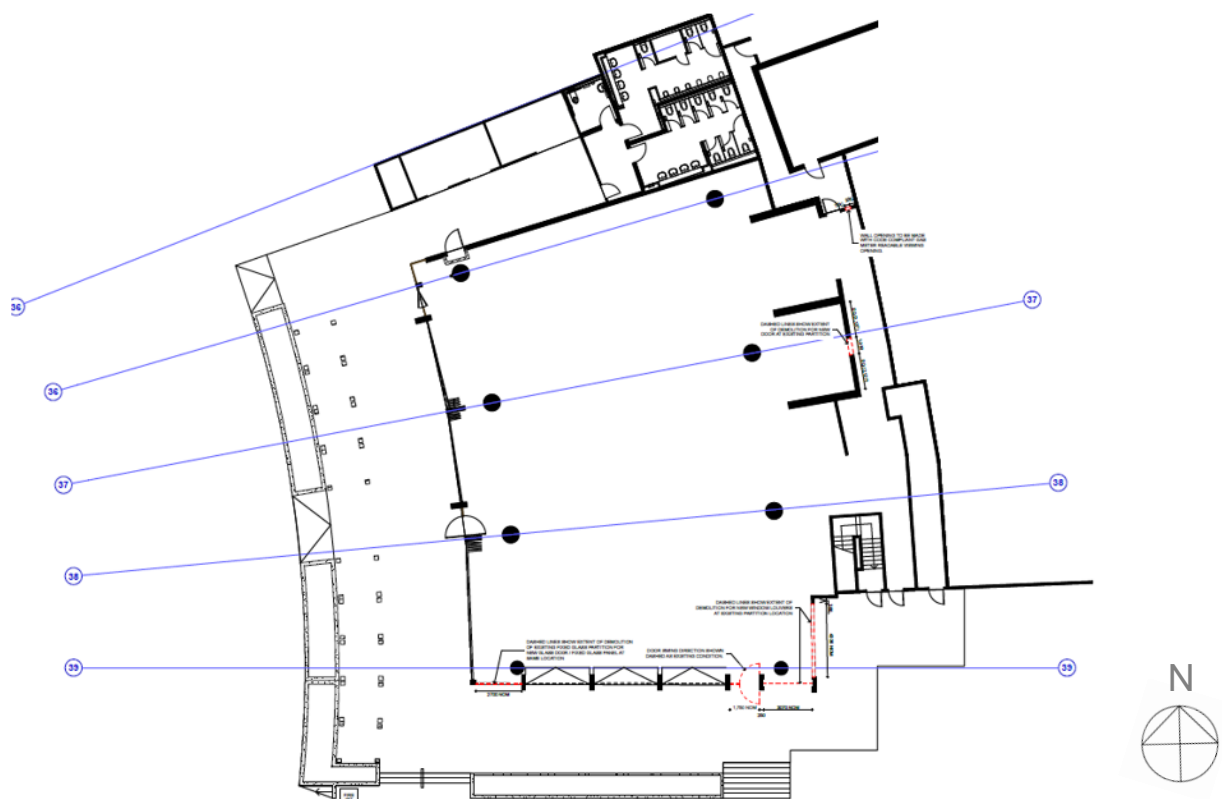


Figure 19: Proposed Demolition Plan

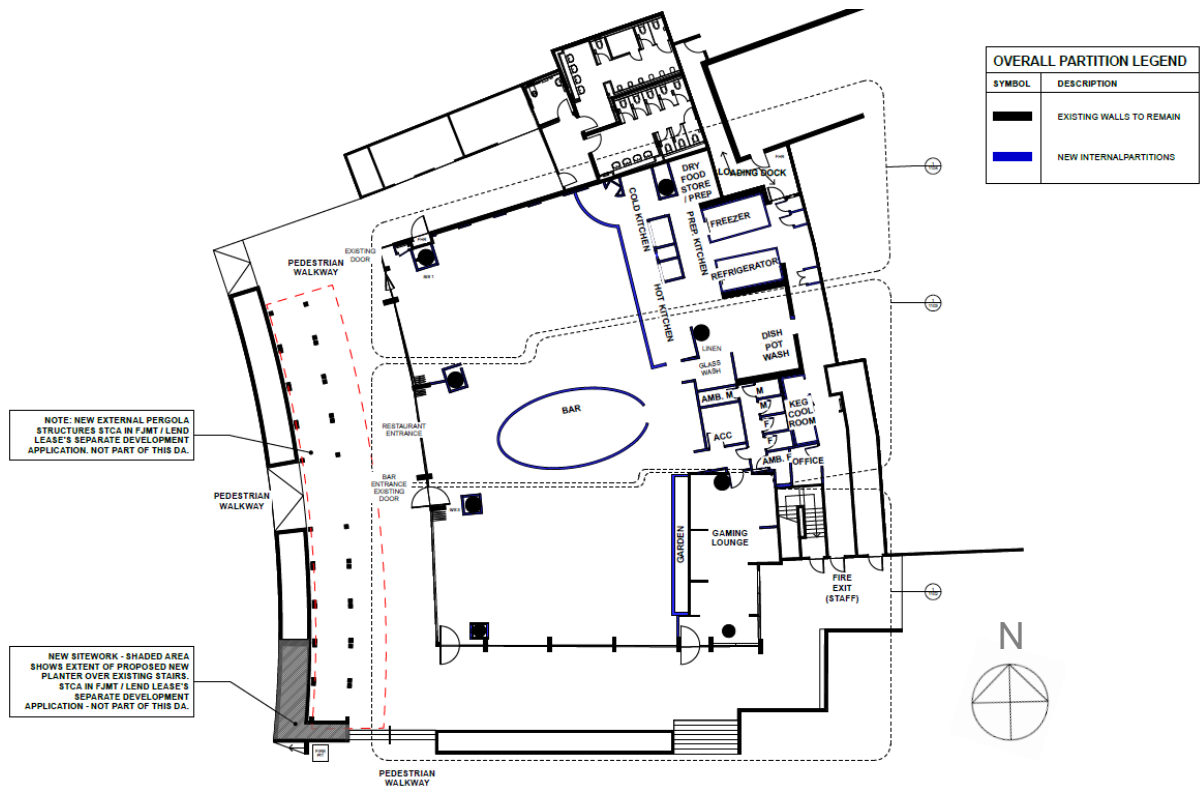


Figure 20: Proposed Partition Plan

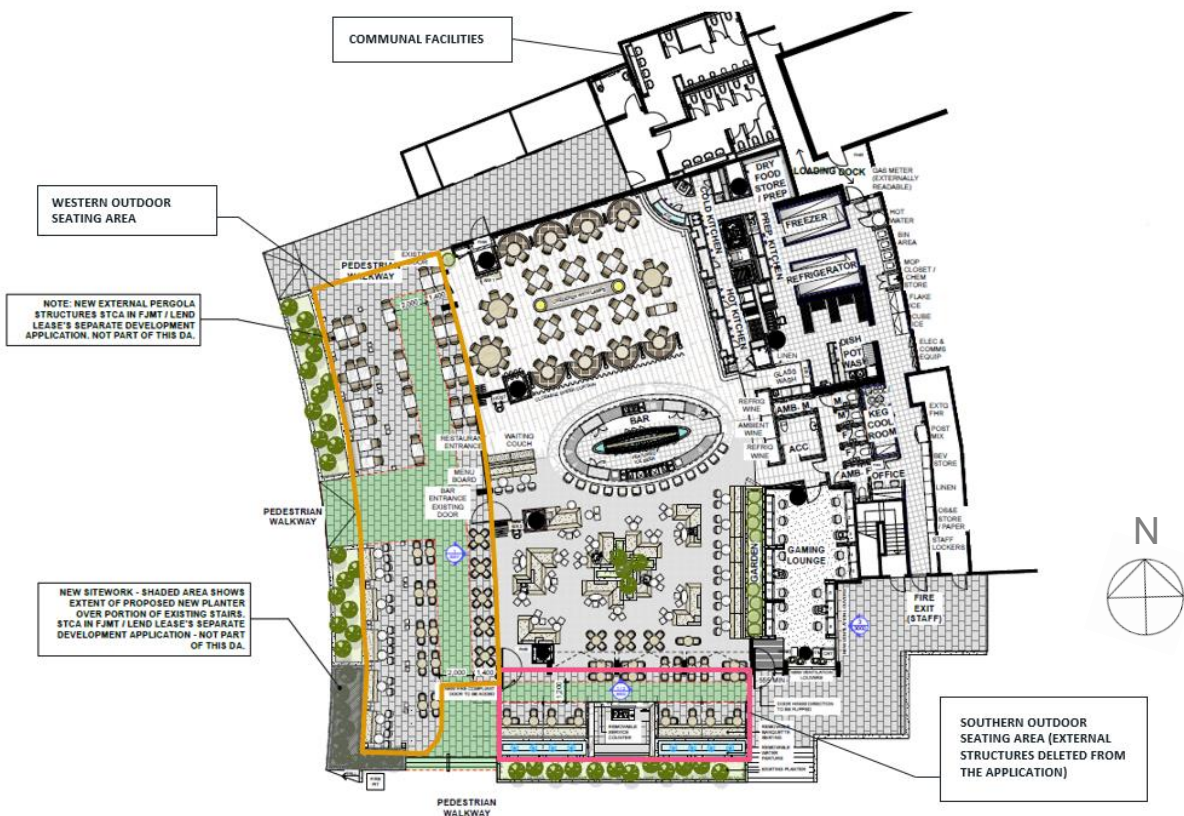


Figure 21: Proposed General Arrangement Plan

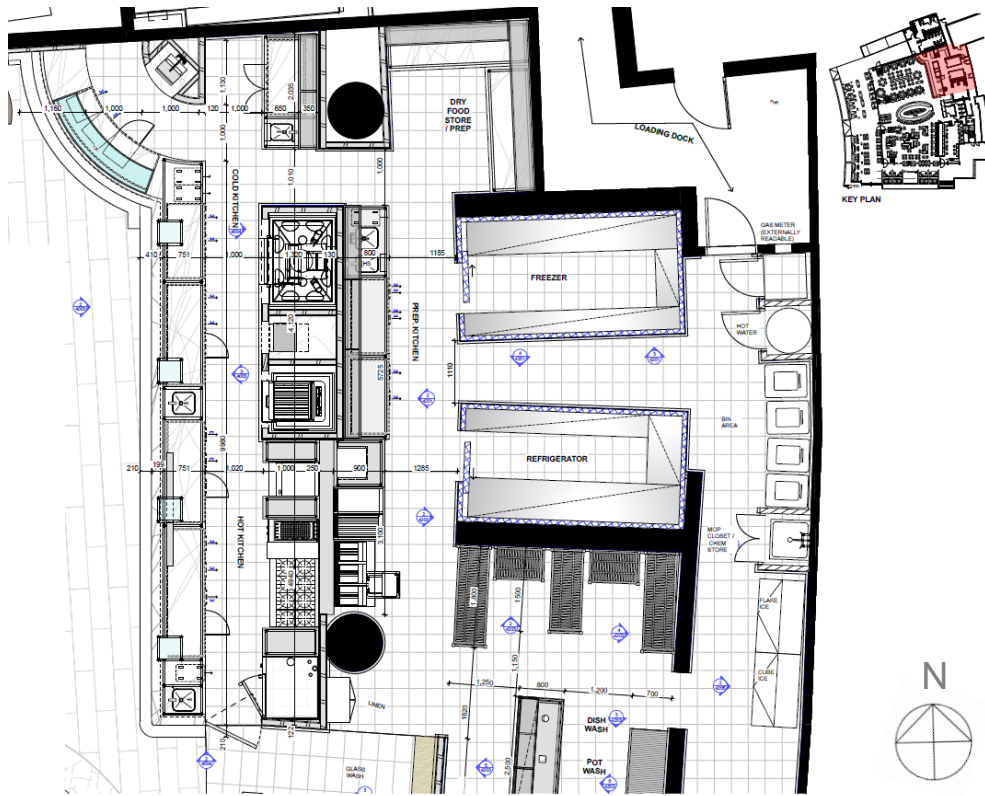


Figure 22: Proposed Kitchen Arrangement Plan

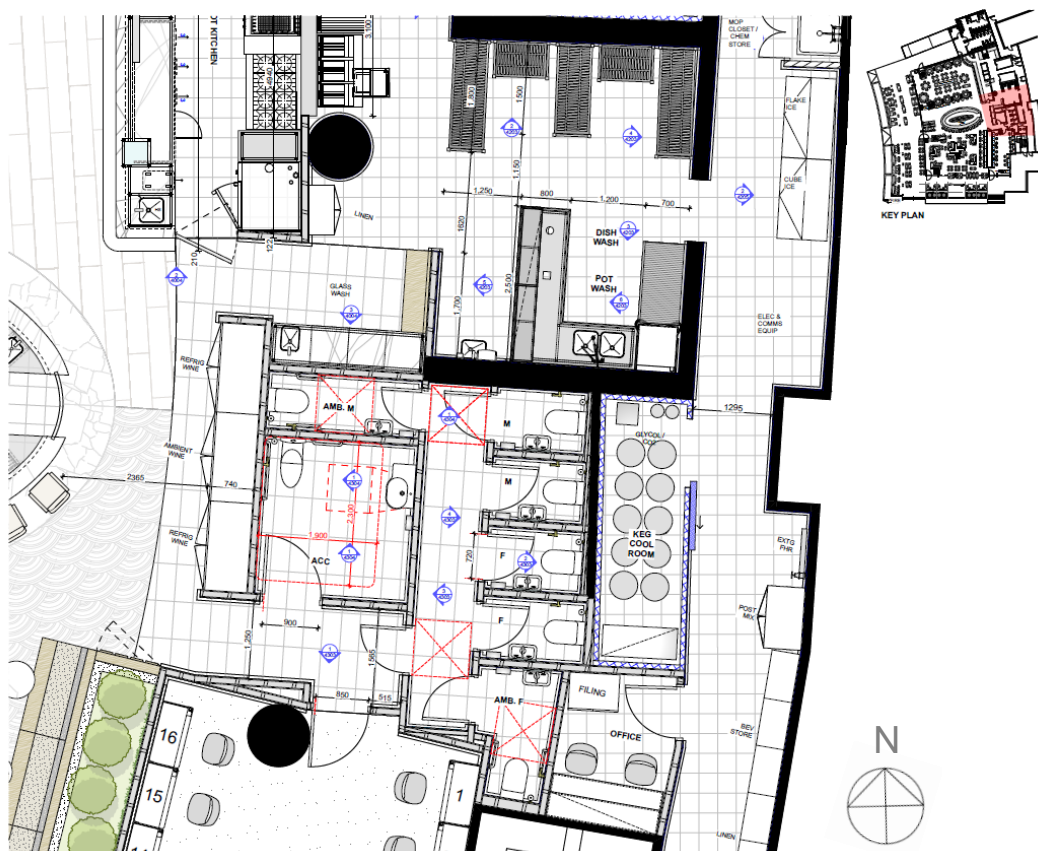


Figure 23: Proposed Kitchen/ Bathrooms Arrangement Plan

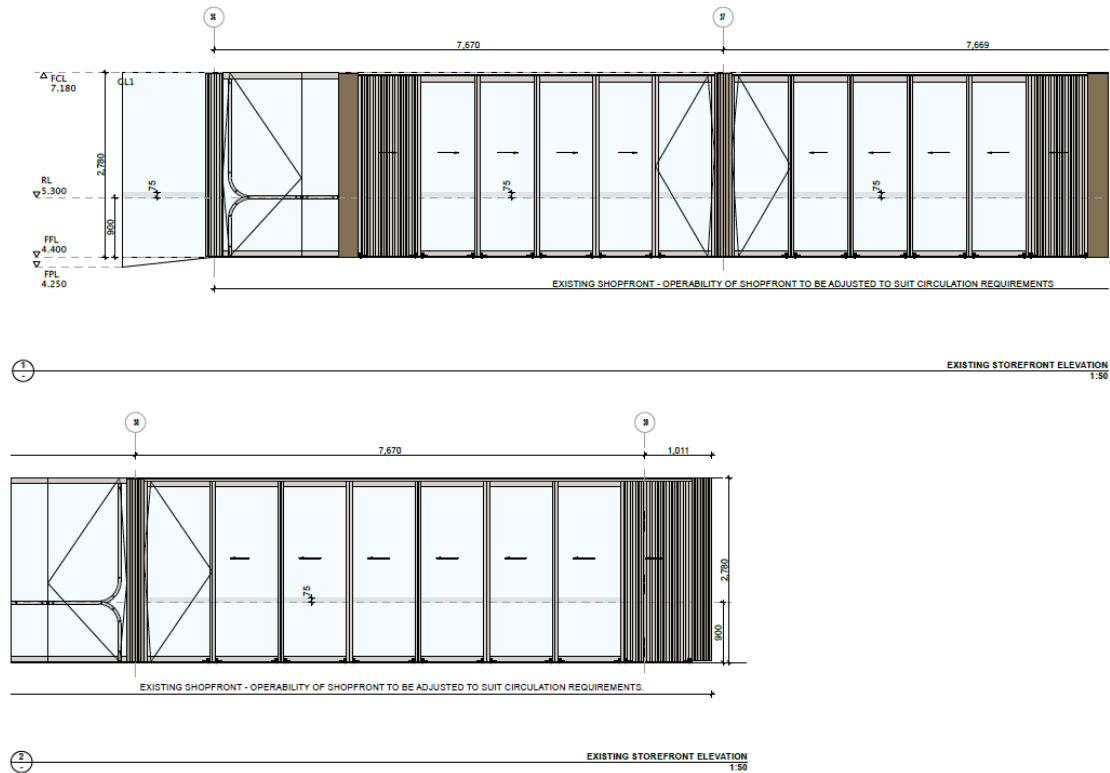


Figure 24: Existing western elevation showing minor adjustments to operability of stacking doors

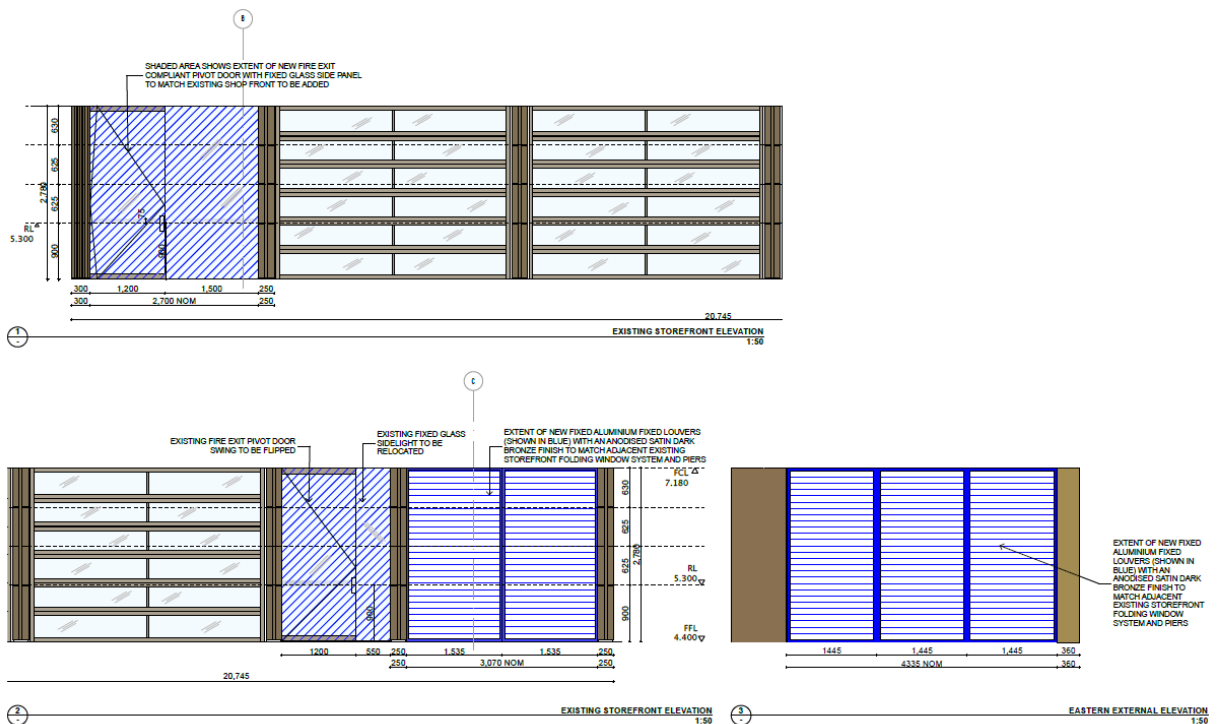


Figure 25: South and eastern elevation showing installation of a new fire door, flipped fire door and new proposed fixed louvres to the gaming room

Assessment

16. 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

State Environmental Planning Policy (Planning Systems) 2021

17. The proposed development has a capital investment of less than \$10 million on land identified as being within Darling Harbour. Accordingly, the proposal is not classified as State Significant Development.
18. Ordinarily, proposals which are not classified as State Significant Development can be determined by Council as the consent authority. However, in this instance, since the proposal is classified as sensitive development, being development for the purposes of a new licenced premises operating with a hotel liquor licence, the Local Planning Panel is the consent authority.
19. The proposed development is consistent with the aims and objectives of the SEPP.

State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021 – Chapter 3 Darling Harbour

20. The site is located on land subject to the provisions of Chapter 3 Darling Harbour of the Precincts - Eastern Harbour City SEPP. It is noted that as of 1 March 2022, the now repealed Darling Harbour Development Plan No. 1 was consolidated into the Eastern Harbour City SEPP under Chapter 3.
21. The proposal meets the objectives of the Eastern Harbour City SEPP, in particular:
 - Section 3.5(a) which seeks to encourage development for the purposes of tourist, educational, recreational, entertainment, cultural and commercial facilities; and
 - Section 3.6 provides that certain kinds of development may not be carried out in the Darling Harbour area otherwise than in accordance with the terms of a permit.
22. The proposal may be carried out with a permit under section 3.5 (Permit required for certain development) and section 3.7 (Permits required for renovation and demolition) of the DHDP as the proposed work involves the change of use from a restaurant to a new pub (food and drink premise), minor external works, renovation and fit-out of the existing premise.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 10 Sydney Harbour Catchment

23. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the Biodiversity and Conservation SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.

24. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. The site is also located within the Foreshores Waterways Area and the Sydney Harbour Catchment Planning Principles must be considered.

Compliance Table		
Development Control	Compliance	Comment
10.10 Sydney Harbour Catchment	Yes	The proposed development will have a minimal environmental impact on the harbour catchment area.
10.11 Foreshores and Waterways Area	Yes	The proposal does not alter and will maintain access along the foreshore and promote activity within the precinct.
10.12 Heritage Conservation	Yes	The proposal does not result in any adverse impacts on the State heritage item, the Chinese Garden of Friendship.
10.19 Biodiversity, ecology and environment protection	Yes	The proposed development is not considered to have a significant additional impact on the quality of water entering the waterways compared to the existing development.
10.20 Public access to and use of foreshores and waterways	Yes	The proposed development maintains existing public access to Darling Harbour.
10.22 Interrelationship of waterway and foreshore uses	Yes	The proposal will not have any adverse impact on the use of the waterway, and will not result in congestion of traffic in the waterways or along the foreshore.
10.23 Foreshore and waterways scenic quality	Yes	The proposal does not impact on the quality of vistas within the foreshore area and would not adversely impact on the significance of the unique visual character of Sydney Harbour.
10.24 Maintenance, protection and enhancement of views	Yes	The proposal does not impact views to and from Sydney Harbour.

25. Overall, the proposal is consistent with the provisions of the SEPP and is supported.

Local Environmental Plans

Sydney Local Environmental Plan 2012

26. The provisions of the Sydney Local Environmental Plan 2012 are not applicable.

Development Control Plans

Sydney Development Control Plan 2012

27. 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 proposed development will activate the frontage of the currently vacant premise and provide a positive contribution to the public domain and Darling Quarter leisure and entertainment precinct.</p> <p>Although the site is not identified as an active frontage, the proposed use, fit-out, refreshed outdoor area, and use of high-quality materials will enhance the tenancy's presentation along the retail terrace, pedestrian boulevard and activate the interface with Tumbalong Park. The proposal achieves the objectives of Part 3.2 which requires development to contribute to the activity, safety, amenity and quality of streets and the public domain.</p>
3.7 Water and Flood Management	Yes	<p>The site is identified as being subject to flooding and is within the Darling Harbour Catchment. The proposal is limited to the existing premises and does not involve any penetration or excavation of the site. The development will not result in significant adverse stormwater impact to surrounding developments within the Darling Harbour Catchment or public domain.</p>
3.11 Transport and Parking	Yes	<p>The site is readily accessible to a range of public transport options, including rail services (Town Hall and Central Stations), light rail services (Exhibition Centre Station), bus routes, and ferry services.</p>

Provision	Compliance	Comment
		<p>In addition, the approved SSD (MP08_0057) included a 4-storey basement comprising 200 car parking spaces to serve the commercial buildings at the uppermost basement level, as well as 600 public car parking spaces within the remaining 3 basement levels.</p> <p>On balance, the proposed development is not likely to generate significant traffic impacts by virtue of its accessibility and location within the CBD. It is expected that the majority of patrons and staff will walk or travel to the site via public transport.</p>
3.12 Accessible Design	Yes	<p>The existing host building provides equitable access. The subject premise is located on ground floor and is accessible via the main entry ramp. A BCA report prepared by BCA Logic accompanies this application.</p> <p>The BCA report concludes the proposal can readily achieve compliance through adoption of recommended performance solutions with the relevant provisions of the BCA.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposal includes minor alterations to the existing south elevation for the installation of new fire doors, and construction of a gaming room. The gaming room has been positioned at the south east corner of the tenancy, and whilst screened with louvres, will maintain clear sightlines and unobstructed views into and out of the primary part of the premise. The proposal is accompanied by a Plan of Management outlining security and management processes to adequately minimise criminal behaviour at the premises which is proposed to operate from 5.00am to 3.00am the following day, daily (indoor), and from 9.00am to 1.00am the following day, daily (outdoor).</p>

Provision	Compliance	Comment
		<p>It is also noted that the premises is within 100m from the Sydney City Police Command (192-196 Day Street). Council's Safe City Unit raised no objections to the proposal and considers that the proximity to a range of late-night transportation options, as well as the Sydney City Police Command will assist to mitigate antisocial behaviour in the public domain.</p> <p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
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	Yes	<p>The majority of the premises is located in a Late Night Management Area and the use is defined as a Category A High Impact Premise. A small portion of the premises along the western edge is not hatched on the map, however having regard to the immediate surrounding late night trading context of the site, for all intents and purposes the site is considered within a 'Late Night Management Area'. The pub is proposed to operate with a hotel licence.</p> <p>The proposed capacity of the premise is 780 persons comprising 730 patrons and 50 staff. The proposed daily trading hours are:</p> <ul style="list-style-type: none"> • Indoor: 5.00am to 3am, the following day; and • Outdoor: 9.00am to 1.00am, the following day.

Provision	Compliance	Comment
		<p>A trial period applies to the application as extended hours are sought. Provisions under Section 3.15.3 have been considered in the assessment of the proposed trading hours, with regards to potential impacts to nearby residential receivers (at 1 Dixon Street and 339 Sussex Street, Sydney).</p> <p>Refer to further discussion under heading 'Discussion' subheading 'Hours of Operation - Trial Period' below.</p>
3.16 Signage and Advertising	N/A	<p>The proposed development does not include any new signage. The trading name of the new pub is yet to be decided. Appropriate conditions are recommended to require a separate application to be submitted for any future signage.</p>

Discussion

Hours of Operation - Trial Period

28. The majority of the site is located within the Late Night Management Area and is classified as a Category A – High Impact Premises. Under Part 3.15 of DCP 2012, the permitted trading hours are:

- Indoor: Base hours between 6.00am to 12.00midnight, with extended trading of 24 hours; and
- Outdoor: Base hours between 10.00am to 10.00pm, with extended hours of 9.00am to 1.00am the following day.

The proposed hours comply with these provisions, subject to successful trial periods as outlined in Section 3.15.4 of the DCP 2012, as it seeks to operate daily between:

- Indoor: 5.00am to 3.00am the following day; and
- Outdoor: 9.00am to 1.00am the following day.

29. Section 3.15.4(3) states that premises seeking extended trading hours beyond the base hours may be permitted at the initial application stage on a trial period. Pursuant to Section 3.15.4(8) extended hours are permitted up to 2-hour increments per trial period. Section 3.15.4(9) stipulates an initial trial period of 1 year.

30. The proposal seeks an increased increment of 4 hours for both outdoor and indoor extended hours. Although the proposal is not consistent with Section 3.15.4(8) for a new premises, upon completion of the first trial period and subject to demonstrating good management, the additional 2 hours sought in the second trial period may be permitted with consent. The minor variation to Section 3.15.4(8) to permit additional operating hours within the first trial period is acceptable given:
- (a) the location of the site within a major tourist and entertainment precinct and surrounding Late Night Management uses within Darling Harbour, which is considered an appropriate location for the proposed use;
 - (b) the assessment of potential environmental impacts, which concludes the proposal is unlikely to have significant adverse impacts on the surrounding locality, as demonstrated in the:
 - (i) accompanying Acoustic Assessment; and
 - (ii) the Plan of Management.
 - (c) the historic hours of operation associated with the former restaurant use (extended trading until 1.00am on a trial basis for 8 years); and
 - (d) no submissions were received.
31. Furthermore, the application was reviewed by Council's Licensing and Environmental Health Specialists who advised the proposal is satisfactory on an initial trial basis, subject to recommended conditions.
32. In light of the above, it is recommended that the proposed daily indoor and outdoor base hours are permitted on a permanent basis, with a 1 year trial period for all extended trading between 5.00am to 6.00am and 12.00midnight to 3.00am (indoor) and between 9.00am to 10.00am and 10.00pm to 1.00am (outdoor). The trial period will allow Council to review the management performance of the venue.

Consultation

Internal Referrals

33. The application was discussed with the following internal units:
- (a) Council's Building Services Unit;
 - (i) The accompanying BCA report prepared by BCA Logic confirms the premises can accommodate the proposed maximum capacity of 780 persons and readily achieves compliance with the relevant provisions of the BCA.
 - (b) Environmental Health Unit;
 - (i) In the first internal referral, concerns were raised on the accompanying Noise Impact Assessment Report prepared by Acoustic Logic, which did not provide an assessment of the potential noise impacts to the nearest identified residential receivers at 1 Dixon Street, Haymarket.

- (ii) Following a request for further information, a re-referral was made including the applicant's further justification including Addendum to the Noise Impact Assessment and supplementary Acoustic Report prepared by Stantec (that was completed as part of the approval for the expansion of rooftop mechanical plant for the Darling Quarter Development). The additional justification submits that the noise monitoring conducted at 339 Sussex Street is equally significant due to the sharing of a direct line of site to the outdoor seating area similar to that of 1 Dixon Street. As such, a further assessment for 1 Dixon Street is not necessary as amenity criteria for the premises will be not altered by the proposal.
 - (iii) In consideration of the above, acoustic report and addendum assessment, surrounding restaurant uses within the entertainment and tourist precinct, and no submissions received, Council's Environmental Health Specialist advised the proposal is acceptable, subject to a 1-year trial period and recommended standard conditions relating to noise and food safety.
- (c) Licenced Premises Unit;
 - (i) The proposal is supported by Council's Licenced Premises Unit, subject to recommended conditions relating to maximum capacity, Plan of Management, hours of operation and surveillance.
- (d) Heritage and Urban Design Unit;
 - (i) Concerns were raised by Council's Urban Design Specialist on the proposed design of the new pergola structure and removal of water features at the southern retail seating zone. The proposed pergola introduces another ad-hoc element to the building, that is not consistent with the architectural language of the existing building. It comprises a combination of both an awning and modules in one structure as opposed to two separate elements per the existing condition along the western and northern facades.
 - (ii) As discussed above, the applicant resolved this issue by deleting the pergola from the proposed application (refer to discussion under subheading 'Amendments' above).
 - (iii) Conditions of consent are therefore recommended to require submission of revised plans to delete the pergola and water features. This would also enable the outdoor furniture within the southern retail seating zone to be shifted further south to provide a wider clear path of travel for pedestrians. Additional conditions are recommended to maintain a clear continuous path of at least 2m for pedestrian access and to enable the public to move through the western and southern retail seating zones. Subject to recommended conditions, urban design issues are now resolved.
- (e) Safe City Unit;
 - (i) As discussed above, no objections to the proposal were raised by Council's Safe City Unit (refer to Section 3.13 of DCP 2012).

- (f) Waste Management Unit;
 - (i) The existing waste management facilities will be sufficient in capturing the increased waste volumes generated by the new pub use. The proposal is supported by Council's Waste Management Unit, subject to recommended conditions.
- (g) Public Domain Unit.
 - (i) The proposal is supported by Council's Public Domain Unit, subject to recommended conditions to ensure all existing public assets are retained and preserved for the duration of the development works.

External Referrals

NSW Police

34. The application was referred to NSW Police for comment on 19 January 2022. No response was received.

Advertising and Notification

35. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified for a period of 21 days between 19 January 2022 and 10 February 2022. A total of 776 properties and occupiers were notified and no submissions were received.

Financial Contributions

Contribution under Section 7.11 and 7.12 of the EP&A Act 1979

36. The development is not subject to a development contribution as it is not located on land to which the City of Sydney Development Contributions Plan 2015 or the Central Sydney Development Contributions Plan 2020 applies.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

37. The development is not subject to an affordable housing contribution as it is not located on land to which Sydney LEP 2012 applies.

Conclusion

38. The application proposes a fit out and use of tenancies T24-T27 of the existing mixed-use building, as a pub, known as 11 Harbour Street, Sydney, which previously operated as a licenced restaurant. Outdoor seating is proposed within the retail seating zones consistent with MP08_0093.

39. The proposal subject to conditions is generally consistent with the objectives and provisions of Chapter 3 Darling Harbour of the State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021 and Sydney DCP 2012. Instances where the proposal varies with DCP controls have been assessed as acceptable subject to conditions.
40. The proposal is suitable to the Darling Harbour locality and Late Night Management Area; and subject to conditions will not cause adverse impacts on the amenity of the surrounding area.
41. The proposal is in the public interest and is recommended for approval subject to conditions.

ANDREW THOMAS

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