

Item 3.**Development Application: 28-30 Orwell Street, Potts Point - D/2021/893**

File No.: D/2021/893

Summary

Date of Submission:	5 August 2021 Amended drawings submitted 1 August 2022, 9 December 2022, and 7 March 2023
Applicant:	CE Minerva Pty Ltd
Architect:	Tonkin Zulaikha Greer Architects
Developer:	Central Element
Owner:	CE Minerva Pty Ltd
Planning Consultant:	Planning Lab
Heritage Consultant:	Tonkin Zulaikha Greer Heritage
DAP:	23 March 2023
Cost of Works:	\$30,255,941
Zoning:	The site is located within the MU1 Mixed Use zone and the proposed development is permissible with consent.
Proposal Summary:	<p>Development consent is sought for alterations and additions to the existing building including new basement levels, to facilitate an adaptive reuse to a mixed use development. The proposed land uses include a hotel with 63 rooms, cafe, entertainment facility, and small bar.</p> <p>The proposed development is compliant with the maximum 3.5:1 floor space ratio (FSR) standard under the Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The development exceeds the maximum 22 metre height of buildings standard by 2.92 metres, or 13.27%. The variation to the Sydney LEP 2012 height standard is subject to a written Clause 4.6 variation request, which is supported.</p>

The site is listed on the State Heritage Register and the Integrated Development Application was referred to the Heritage Council of New South Wales. The application was amended to address recommendations made by Heritage New South Wales, who have granted General Terms of Approval as delegate of Heritage Council of New South Wales. As approval has been granted by Heritage New South Wales, the consent authority must not refuse development consent on heritage grounds, in accordance with Clause 4.48 of the Environmental Planning and Assessment Act, 1979.

An independent Heritage Committee was established by the City as required by the Sydney Development Control Plan (Sydney DCP 2012). The Committee did not support the proposal, however a number of conditions are recommended in response to their advice.

The proposal was considered by the City's independent Design Advisory Panel who support the adaptive reuse of the building.

It is recommended that the capacity of the entertainment venue be restricted to 250 patrons and that the hours of operation of the entertainment facility and small bar be restricted to midnight to ensure that the proposal does not exceed the relevant acoustic criteria and impact upon neighbouring residential properties.

A view loss assessment has been carried out which demonstrates the proposal will not have an unreasonable impact on views from surrounding properties to the Sydney Harbour Bridge, Opera House, harbour and city skyline.

The application was notified and advertised for 28 days in accordance with Clause 2.22 of the *Environmental Planning and Assessment Act 1979*. A total of 178 submissions were received by the City in response, comprising 164 objections including a petition of 1,799 signatures, 11 submissions in support, and 3 comments. The amended proposal was re-notified for a period of 14 days. A total of 55 submissions were received in response to the re-notification of the amended application, comprising 47 objections including a petition of 1,773 signatures, 7 submissions in support, and 1 comment).

The application is referred to the Local Planning Panel for determination for the following reasons:

- Contentious development - Development that is the subject of 25 or more unique objections

- Departure from development standards - development that contravenes a development standard imposed by an environmental planning instrument by 10%

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

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
 - (ii) Heritage Act 1977
 - (iii) Water Management Act 2000
 - (iv) Sydney Local Environmental Plan 2012
 - (v) Sydney Development Control Plan 2012
 - (vi) State Environmental Planning Policy (Resilience and Hazards) 2021
 - (vii) State Environmental Planning Policy (Industry and Employment) 2021
 - (viii) State Environmental Planning Policy (Transport and Infrastructure) 2021
 - (ix) State Environmental Planning Policy (Biodiversity and Conservation) 2021

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings
 - C. Clause 4.6 Variation Request - Height of Buildings
 - D. General Terms of Approval - Heritage New South Wales
 - E. Heritage Committee Report
 - F. Plan of Management
 - G. View Impact Assessment

Recommendation

It is resolved that:

- (A) the variation requested to the Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979, a deferred commencement consent be granted to Development Application Number D/2021/893, subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the MU1 Mixed Use zone pursuant to Sydney Local Environmental Plan 2012.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the MU1 Mixed Use zone and the height of buildings development standard.
- (C) The development conserves the heritage significance of the heritage item and satisfies Clause 5.10 of the Sydney Local Environmental Plan 2012.
- (D) The development exhibits design excellence to satisfy Clause 6.21 of Sydney Local Environmental Plan 2012.
- (E) The development is consistent with the character and principles identified in the locality statement for Kings Cross in Section 2.4.7 of the Sydney Development Control Plan 2012.
- (F) The development, subject to conditions, will not result in significant amenity impacts on surrounding properties and public domain and does not unreasonably impact any significant view corridors.
- (G) The proposal, subject to conditions, provides acceptable amenity for the proposed hotel accommodation use.

- (H) The site is suitable for the proposed development.
- (I) The public interest is served by the approval of the proposal, as amendments to the development application have generally addressed the matters raised by the City. This is subject to the recommended conditions of consent imposed relating to the appropriate management of the potential environmental impacts associated with the development.

Background

The Site and Surrounding Development

1. The site has a legal description of Lots 1, 2, 3 and 4 in Deposited Plan 456456, and Lot 10 DP 10682, and is commonly known as 28-30 Orwell Street, Potts Point. It is rectangular in shape with area of 1,266.659 square metres. It has a primary frontage of 46 metres to Orwell Street and a secondary frontage of 25 metres to Orwell Lane. The site is located close to the intersection of Orwell Street and Macleay Street.
2. The site accommodates the Metro Theatre (formerly the Minerva) building, which is of state heritage significance as an outstanding example of modern architecture in New South Wales, and a now rare example of an Interwar Functionalist style theatre with Streamline Moderne features. The Metro Theatre is considered to be culturally iconic by the community, forming part of the history of theatre and cinema in New South Wales, reflecting the boom in cinema/theatre development in the 1930s.
3. The Metro Theatre is of historical and aesthetic significance as one of the finest surviving Functionalist exteriors in Australia, dominated by a bold, expressionist tower, contrasting with curved, horizontal motifs. The external volume of the fly tower highlights the design and use of the Minerva, and later Metro Theatre, for the production of live theatre as well as moving pictures.
4. The interior, particularly the auditorium, was one of the finest and most striking of any theatre to have been constructed in Australia during the 1930s. The auditorium's dramatically backlit proscenium splays and the coved, streamlined plaster ceiling continue to make a powerful visual impression. Although partly modified, the interior still demonstrates its sophisticated, original architectural character.
5. The site is a state heritage item, being the Metro Theatre (formerly Minerva Theatre) (State Heritage Register Number 02049) and was listed in 2020. The site is a local heritage item (Item Number I1150) and is located within the Potts Point heritage conservation area (Map reference C51).
6. The site has archaeological remains under the existing building, being the remnant footings and foundations of Orwell House an 1820s building.
7. There is a Right of Way at the rear of the site that connects to Orwell Lane.
8. The surrounding area is characterised by a mixture of land uses, primarily being residential flat buildings and commercial premises, and is opposite Springfield Gardens and the end on Llankelly Place.
9. To the south of the site, on the opposite side of Orwell Street, is:
 - (a) A public park known as Springfield Gardens, also known as Orwell Street Reserve, and the end of Llankelly Place
 - (b) 113-115 Macleay Street to the south-east, a mixed use building with ground floor retail premises and residential flats above known as 'Gowrie Gate'
 - (c) 117 Macleay Street further to the south-east, a residential flat building known as 'Cahors' (a local heritage item, numbered I1145)
10. To the south of Springfield Gardens is:

- (a) 12 Springfield Avenue, a residential flat building
 - (b) 12A Springfield Avenue, a residential flat building
 - (c) 27 Orwell Street, a backpackers' accommodation trading as the 'Jolly Swagman'
 - (d) 29 Orwell Street, a mixed use building with ground floor restaurant/cafe use fronting Llankelly Place and residential flats above
11. To the west is 26 Orwell Street, a residential flat building.
12. To the north the site adjoins 4 properties:
- (a) 1 Orwell Lane, an electrical substation (a local heritage item, numbered I1149)
 - (b) 27 Hughes Street, chapel with offices, crisis centre, meeting rooms, op-shop, café, one dwelling, known as the 'Wayside Chapel'
 - (c) 25 Hughes Street, a residential flat building
 - (d) 23 Hughes Street, a backpackers' accommodation
13. To the east on the opposite side of Orwell Lane is:
- (a) 32-34 Orwell Street, being a commercial building known as 'The Roosevelt', formerly the 2KY Radio Station (a local heritage item, numbered I1151)
 - (b) 101-103 Macleay Street to the north-east, being a mixed use building with commercial uses at ground floor and residential flats above known as 'Ganray'
 - (c) 97-99 Macleay Street further to the north-east, being residential flat building known as 'Byron Hall' (a local heritage item, numbered I1143)
14. The site is located within the Kings Cross locality and is identified as being subject to flooding.
15. Site visits were carried out throughout 2021, 2022 and 2023.
16. Photographs of the subject site and its surroundings are reproduced in the figures provided below:



Figure 1: Aerial view of the subject site (outlined in red) and its surroundings, including Springfield Gardens (outlined in green)



Figure 2: The subject site viewed from the corner of Orwell Street and Orwell Lane, facing north-west

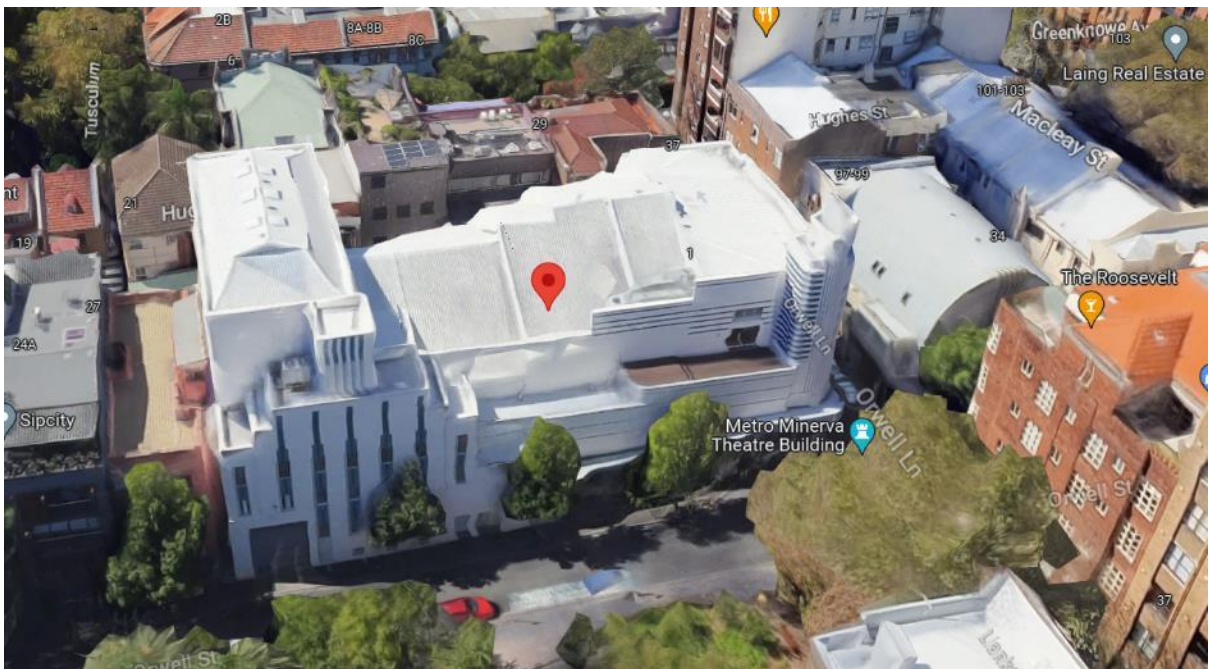


Figure 1: The subject site viewed from above



Figure 4: The flytower as viewed from Orwell Street, facing north



Figure 5: The subject site viewed from the corner of Orwell Street and Orwell Lane, facing north



Figure 6: The existing auditorium, as viewed from an upper level mezzanine



Figure 7: The existing stage and proscenium



Figure 8: The existing auditorium space



Figure 9: The existing flytower



Figure 10: The existing foyer and grand staircase



Figure 11: Neighbouring residential building at 113-115 Macleay Street, known as Gowrie Gate



Figure 12: View from upper level balcony to Springfield Gardens



Figure 13: Neighbouring substation and the Wayside Chapel to the north viewed from Orwell Lane



Figure 14: Neighbouring residential buildings on the opposite side of Orwell Lane looking north



Figure 15: The Roosevelt restaurant to the east viewed from Orwell Street



Figure 16: The view south along Lankelly Place



Figure 17: Neighbouring residential buildings at 24 and 26 Orwell Street



Figure 18: The view of the site (looking south) from the communal roof terrace of 25 Hughes Street to the north

History Relevant to the Development Application

Previous Uses

17. The subject building was originally designed to be operated as the Minerva Theatre. It officially opened in 1939 and operated as a theatre until 1950.
18. From 1950 to 1979 Metro Goldwin Mayer occupied the site. The Minerva reopened as a picture theatre and was renamed “Kings Cross Metro”. Between 1966 and 1971, the building briefly reverted back to a live theatre for the premier of the Australian musical “Hair”.
19. In 1981 the Metro Theatre opened as the Metro International Food Fair, however the use ceased in 1982.
20. Between 1982 and 2018 the building was occupied for motion picture production and offices.
21. The building is currently vacant.

Development Applications

22. The following application is relevant to the current proposal:

- **D/2022/57** – Development consent was granted on 1 April 2022 for archaeological test excavation. This application was a result of a request for further information by Heritage NSW as part of their referral under the Heritage Act, 1977.

Amendments

23. Since the lodgement of the development application, a number of amendments and packages of additional information have been received by the City throughout the period between 2021 and 2023.
24. Significant changes to the design include:
 - (a) A reduction of the proposed basement by two levels and reduction in the footprint of the basement, including deletion of a basement nightclub tenancy
 - (b) Retention of the grand staircase within the foyer
 - (c) Deletion of new openings within the flytower wall
 - (d) A reduction in the north-eastern corner of the vertical addition to the main building to assist with view sharing
25. A significant period of time was spent resolving archaeological issues based on a request for additional information from Heritage NSW. This required the lodgement of a separate development application (D/2022/57) prior to archaeological test excavation being carried out.
26. It is noted that amended drawings were submitted in December 2022 which brought the new vertical additions forward towards Orwell Street, due to a reconfiguration of the upper levels due to a reduction in the building envelope at the north-east corner to assist with view sharing.
27. This resulted in additional overshadowing to the public park known as Springfield Gardens and the applicant was advised that the amendments were not supported.
28. Further amended drawings were submitted in March 2023 which modified the form of the vertical addition so that there was no further overshadowing of Springfield Gardens beyond what had originally been proposed.
29. Additional information provided includes an amended Plan of Management, amended Noise Impact Assessment, amended Clause 4.6 variation request, and provision of a View Impact Assessment.

Proposed Development

30. The application seeks development consent for alterations and additions to the existing building including new basement levels, to facilitate an adaptive reuse to a mixed use development. The proposed uses include a hotel with 63 rooms, cafe, entertainment facility, and small bar.
31. The proposed works include:

- (a) Excavation under the building for two basement levels, including removal of the extant footings of the 1820s Orwell House
- (b) Insertion of concrete floor plates for 5 storeys in the flytower and 2 additional storeys on top
- (c) Two storeys of concrete floors and glazing addition on top of the auditorium ceiling
- (d) Two pop-up additions to the southern elevation on Level 3
- (e) A 7 storey tall concrete wall on the northern side of the building
- (f) Extensive structural system to support the proposed additions, including one large column in the auditorium space that will penetrate the ceiling
- (g) New partitions and rooms in the auditorium space
- (h) Demolition of fabric of exceptional significance including:
 - (i) part of the northern external wall
 - (ii) some southern windows
 - (iii) part demolition of external walls for new windows
 - (iv) lowering of flytower walls
- (i) Demolition of fabric of high significance including:
 - (i) all timber and steel roof structures
 - (ii) two southern staircases
 - (iii) northern external staircase
 - (iv) timber catwalk and associated ladders
- (j) Demolition of fabric of moderate significance including:
 - (i) original ground floor and basement toilets
 - (ii) original concrete slab in the foyer
 - (iii) all original floors in the southern parts
 - (iv) circular boxes
 - (v) original ceilings on northeast and southern areas
- (k) Demolition of non-significant fabric including:
 - (i) 1980s slabs
 - (ii) walls

- (iii) partitions
 - (l) Retention of the original auditorium ceiling in situ, with a structural birdcage solution requiring several penetrations into the ceiling fabric during construction
 - (m) Retention of the grand staircase and curved ceiling in the foyer
 - (n) Four new lifts, new services, National Construction Code-related upgrades, structural upgrade of existing retained building, works to achieve Disability Discrimination Act compliance, fire hydrant boosters, internal ceiling mounted sprinklers, and onsite substation
32. The proposed configuration of the development, by level, includes:
- (a) Basement 2 - Hotel gym, staff facilities, hotel administration, storage, plant rooms
 - (b) Basement 1 - Vehicle loading and 2 parking spaces, garbage room, small bar, kitchen
 - (c) Ground Floor - Foyer, hotel reception, cafe, entertainment facility and bar, finishing kitchen, back stage area, 1 hotel room, substation
 - (d) First Floor - Foyer balcony, entertainment facility, bathrooms, 6 hotel rooms
 - (e) Second Floor - Entertainment facility, 10 hotel rooms
 - (f) Third Floor - 9 hotel rooms
 - (g) Fourth Floor - 19 hotel rooms
 - (h) Fifth Floor - 13 hotel rooms
 - (i) Sixth Floor - 5 hotel rooms, rooftop plant
 - (j) Roof - Photovoltaic panels
33. The proposed hours of operation of the various uses are as follows:
- (a) Entertainment facility - 7.00am to 2.00am the following day, Tuesdays to Saturdays inclusive, and 7.00am to 12.00am midnight Sundays and Mondays
 - (b) Cafe - 7.00am to 12.00am midnight, Mondays to Sundays inclusive
 - (c) Small bar - 7.00am to 3.00am the following day, Mondays to Sundays inclusive
34. The proposed patron capacities are:
- (a) Entertainment facility - 250 patrons, with 450 patrons for up to 20 days per year
 - (b) Cafe - 30 patrons indoor, and 18 outdoor
 - (c) Small bar - 110 patrons

35. One sign is proposed, being the replacement of the 'Metro' corner sign with a 'Minerva' sign consisting of individual lettering. In addition, a signage strategy has been provided outlining future signage zones.
36. Plan, elevation, section and photomontage drawing extracts of the proposed development are reproduced in the figures provided below, and a full set of drawings is provided in Attachment B.

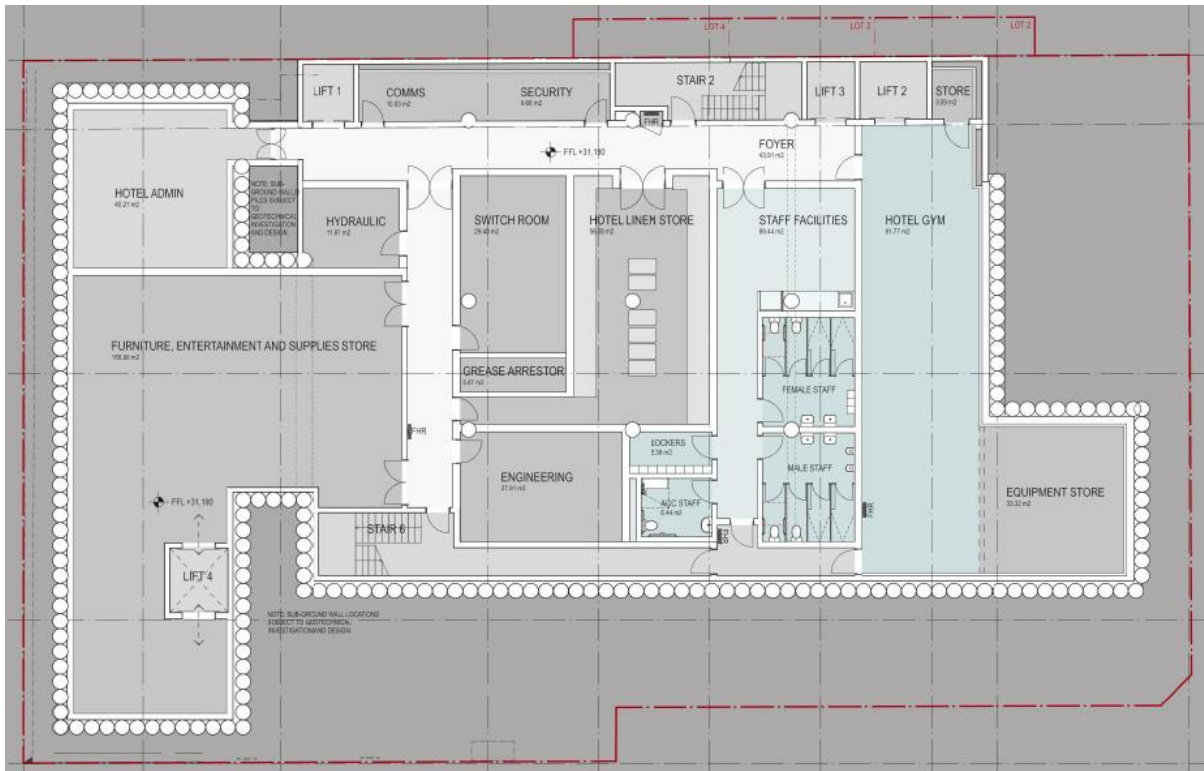


Figure 19: Basement Level 2 floor plan

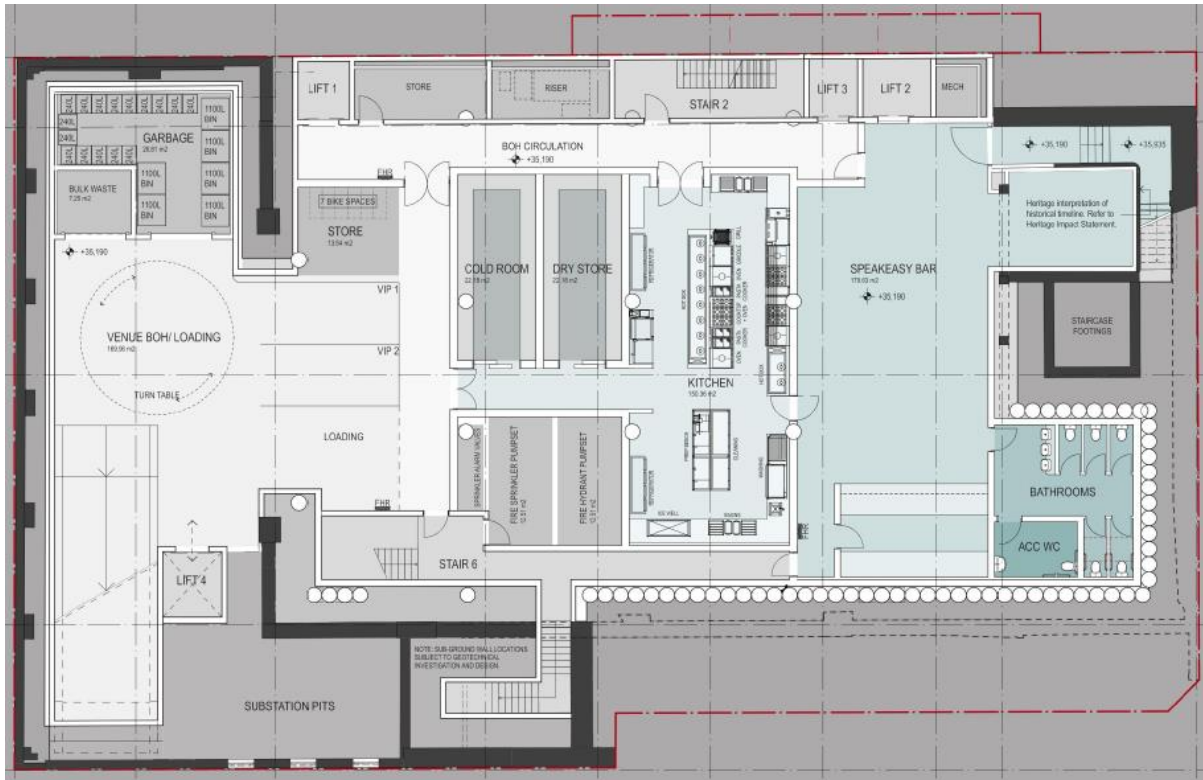


Figure 20: Basement Level 1 floor plan

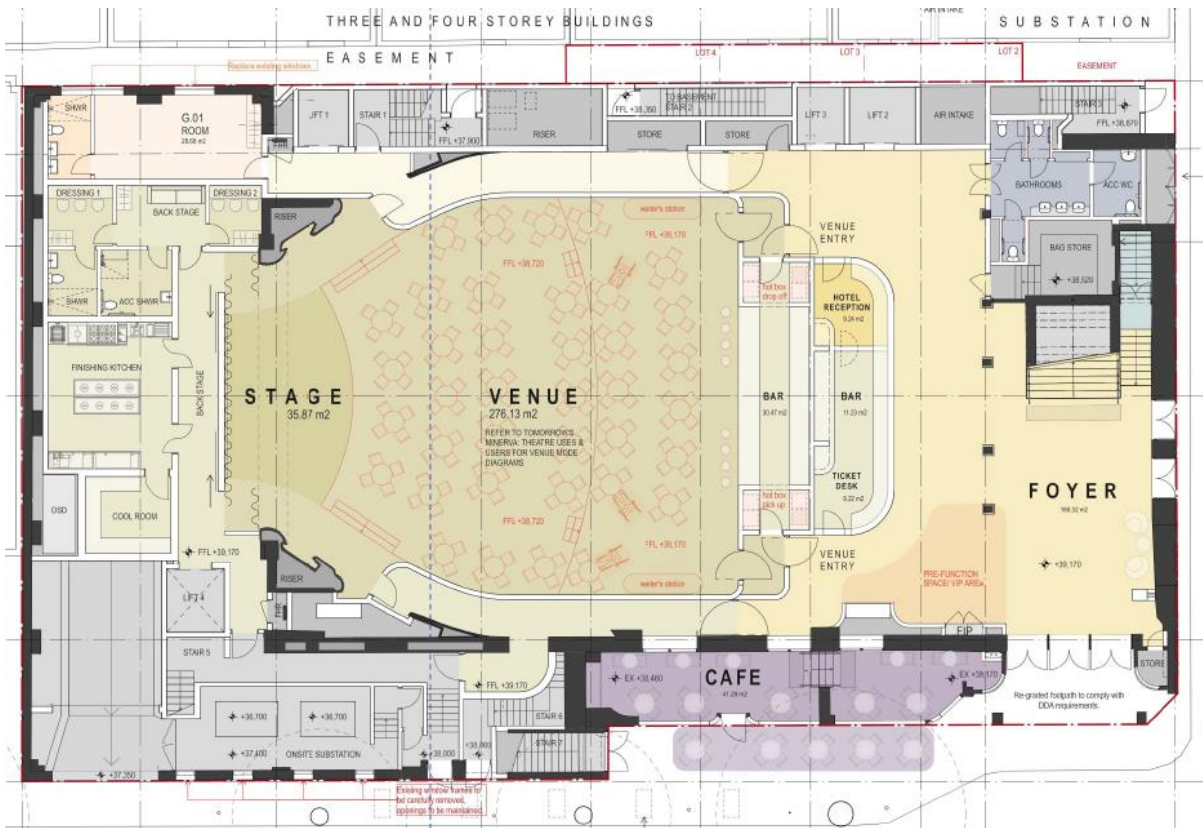


Figure 21: Ground floor plan

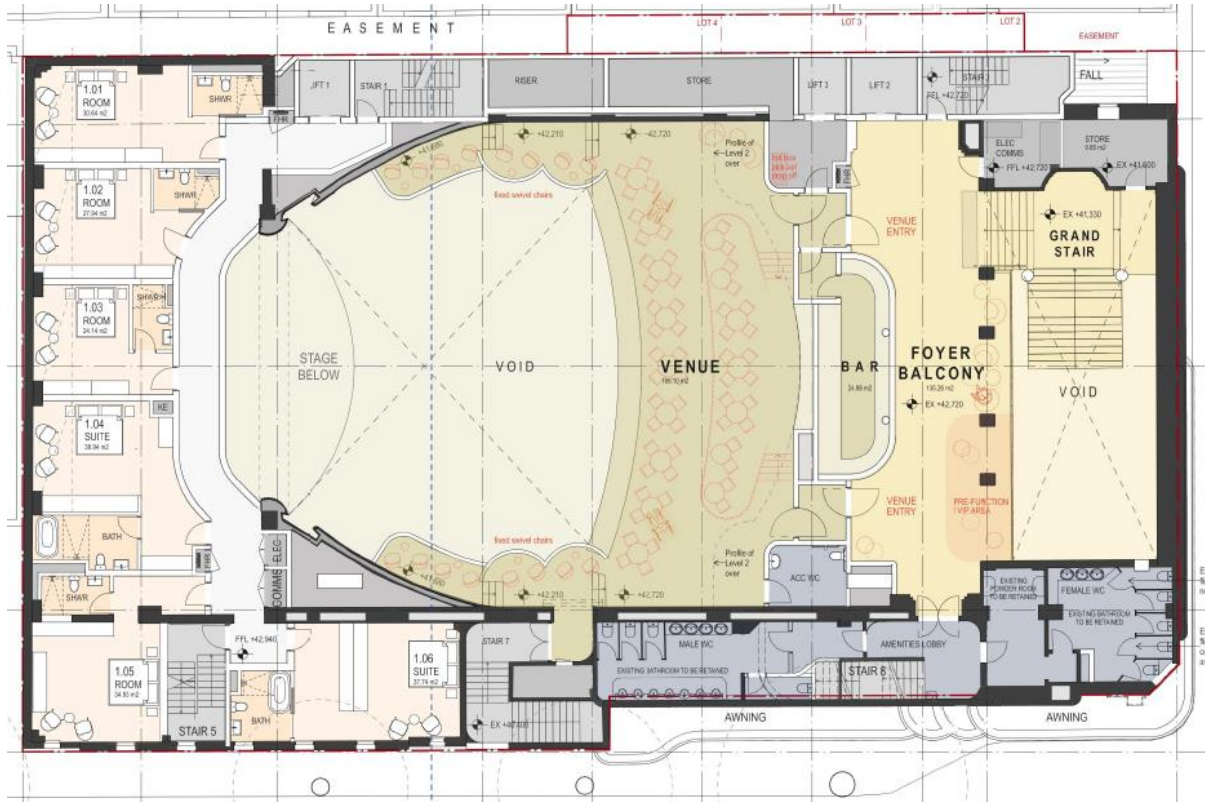


Figure 22: Level 1 floor plan

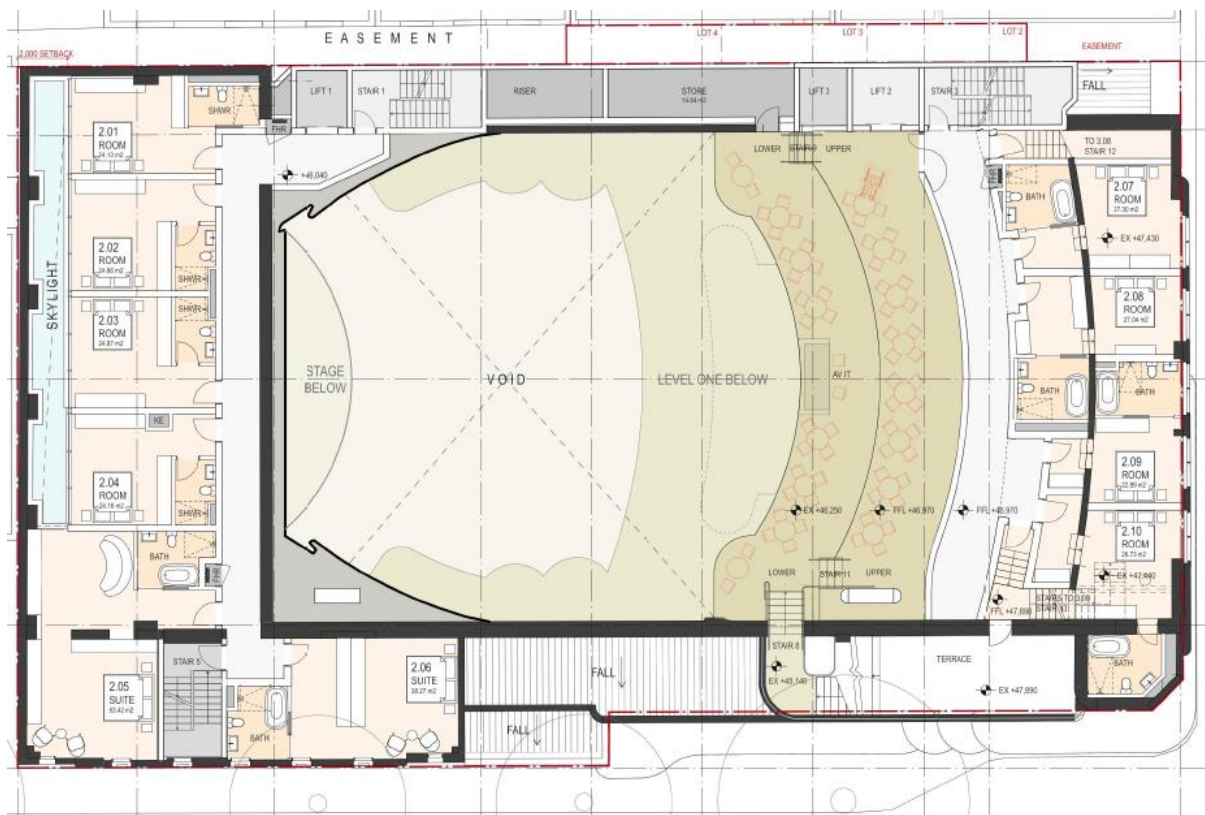


Figure 23: Level 2 floor plan

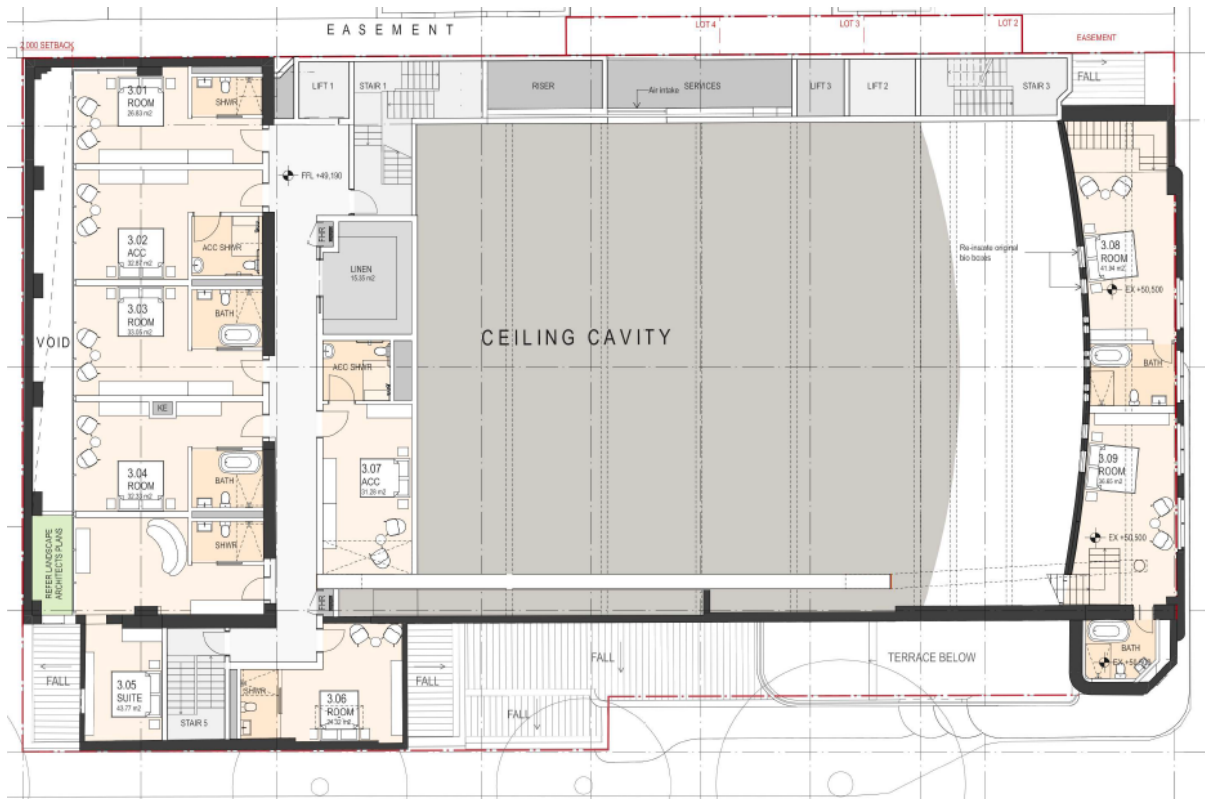


Figure 24: Level 3 floor plan

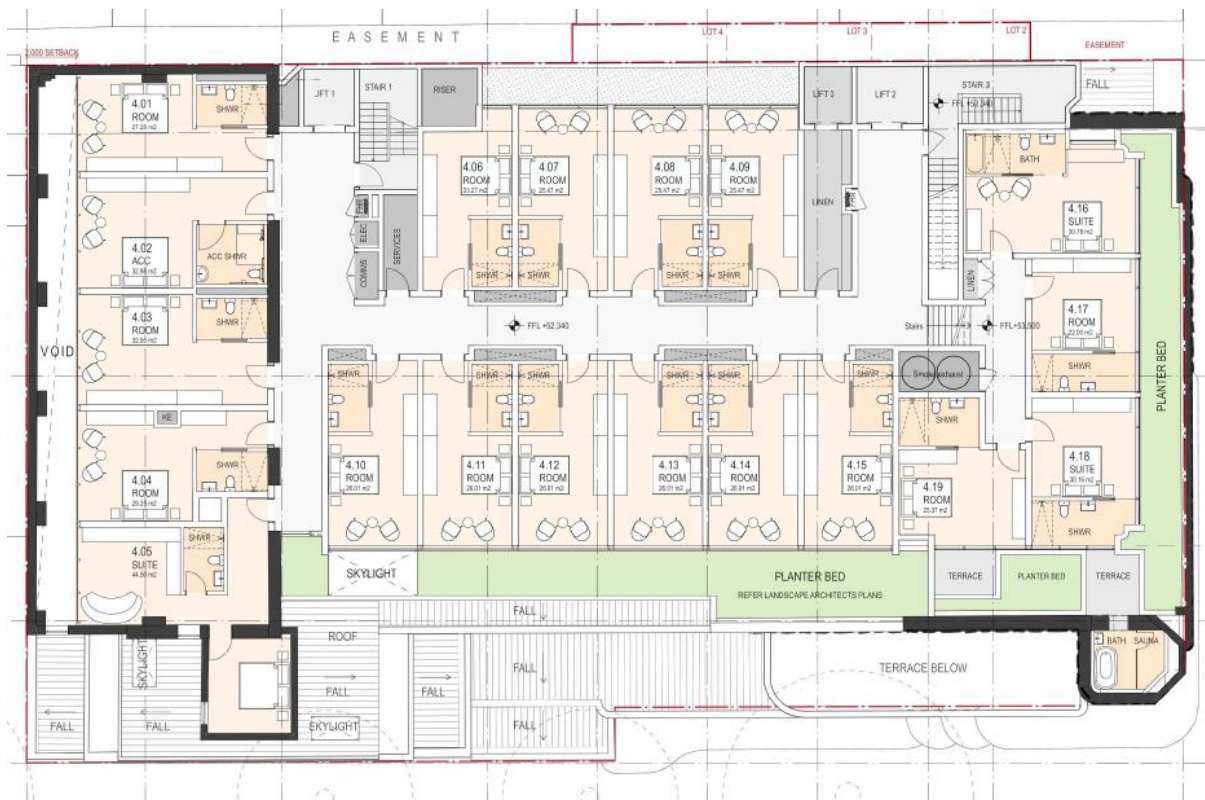


Figure 25: Level 4 floor plan

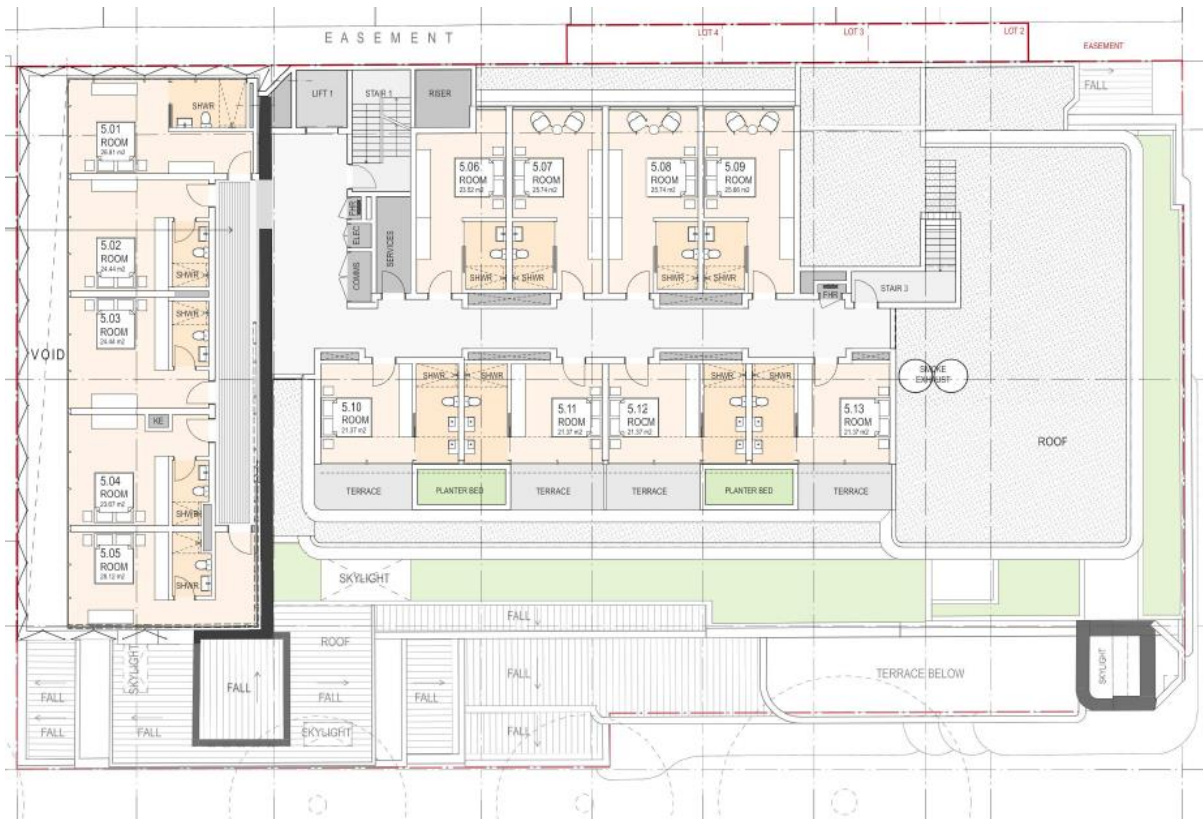


Figure 26: Level 5 floor plan

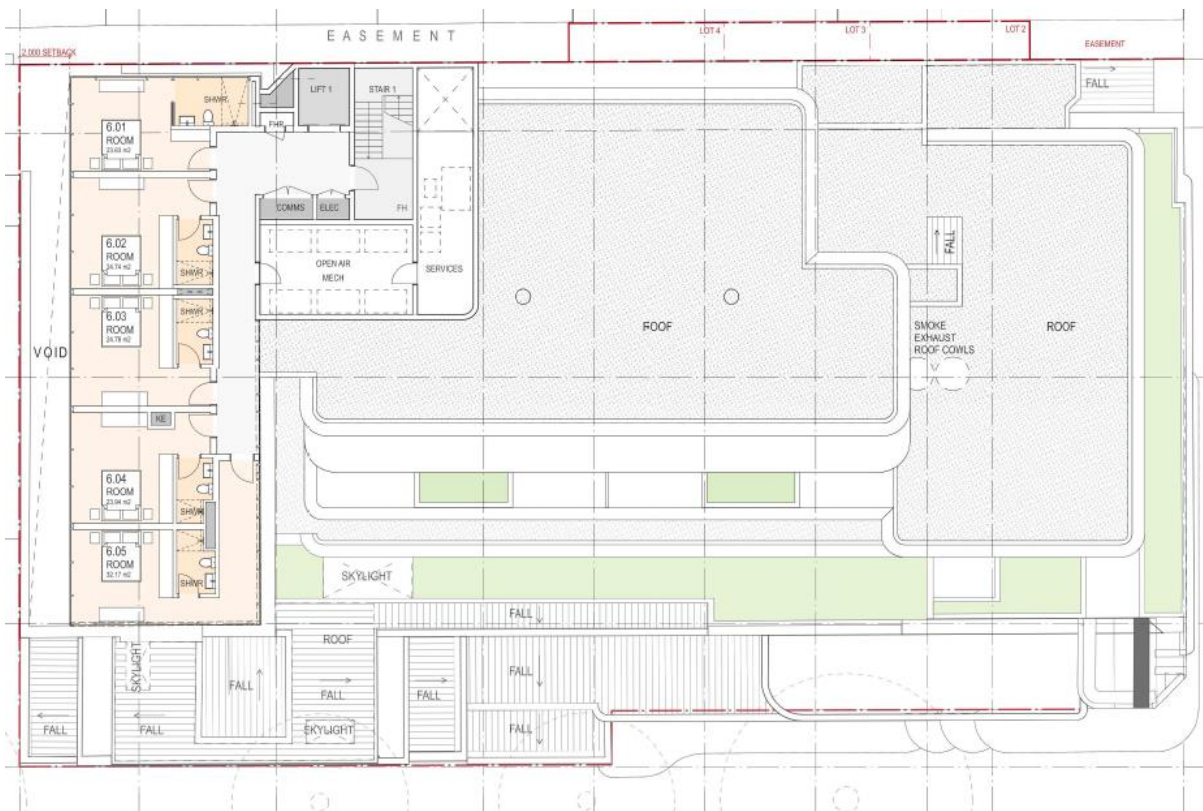


Figure 27: Level 6 floor plan

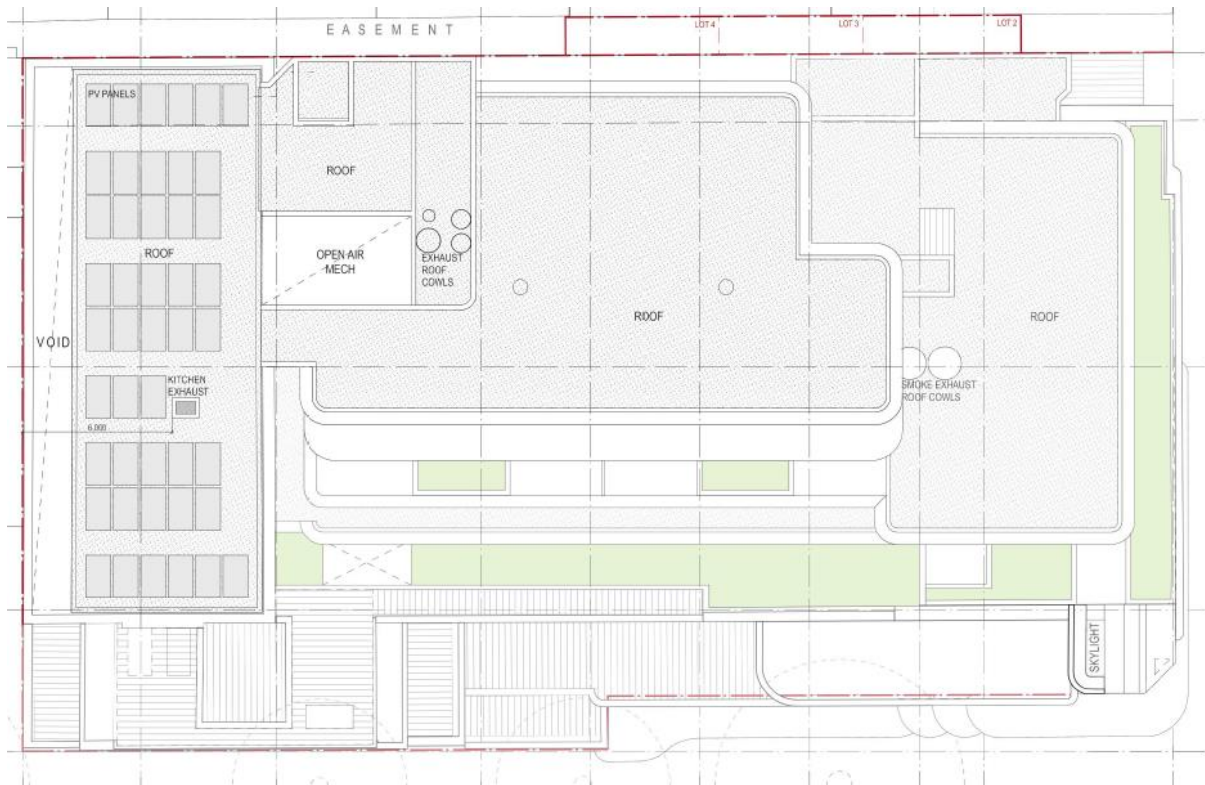


Figure 28: Roof plan

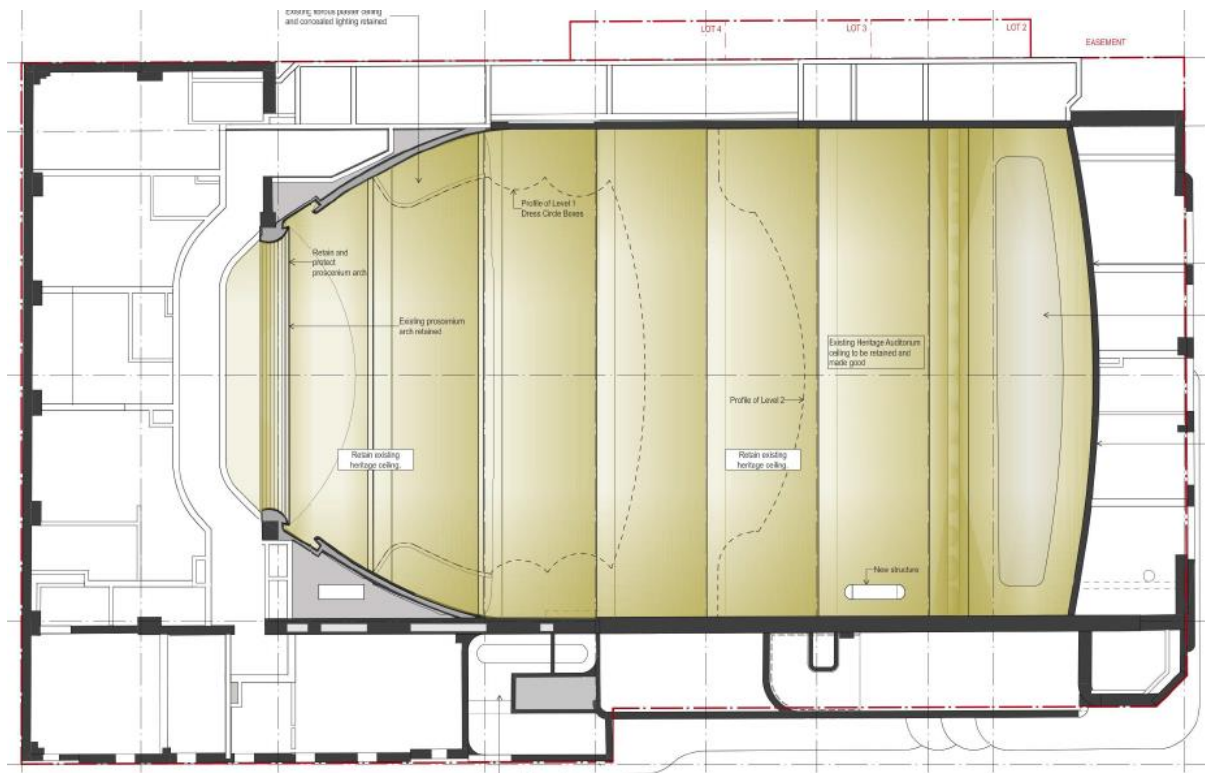


Figure 29: Reflected ceiling plan

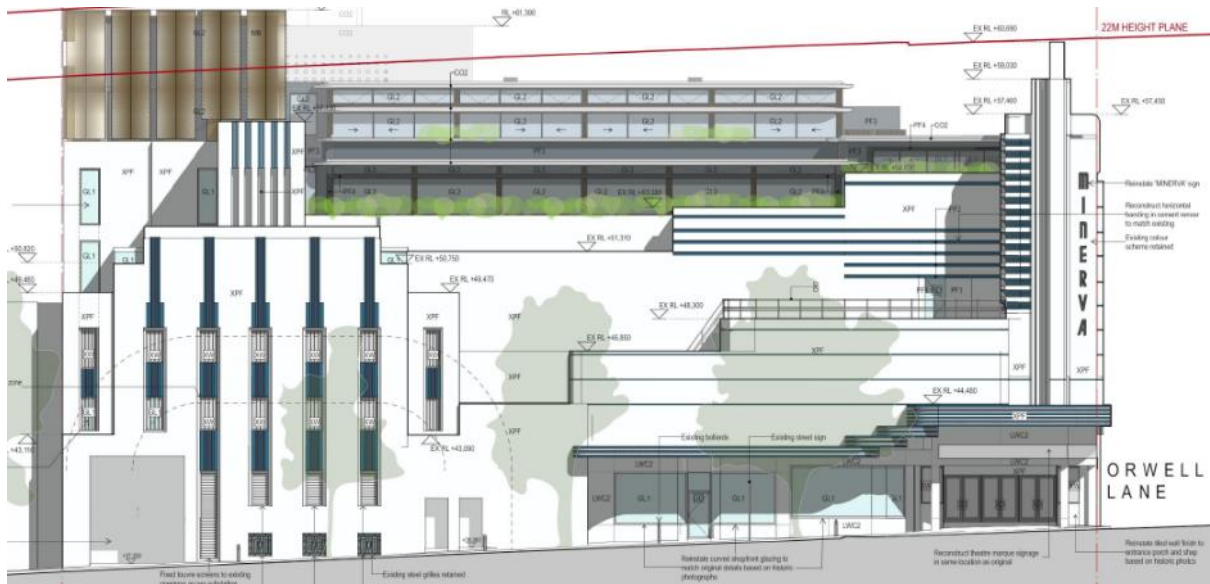


Figure 30: Orwell Street (south) elevation



Figure 31: Orwell Lane (east) elevation



Figure 32: West elevation

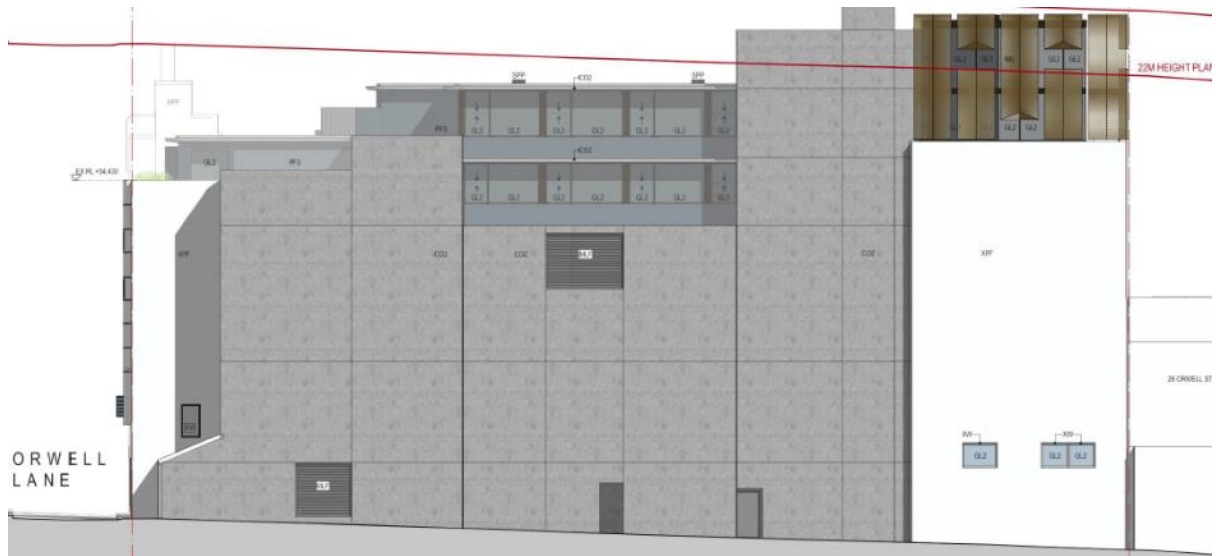


Figure 33: North elevation



Figure 34: Section through the flytower

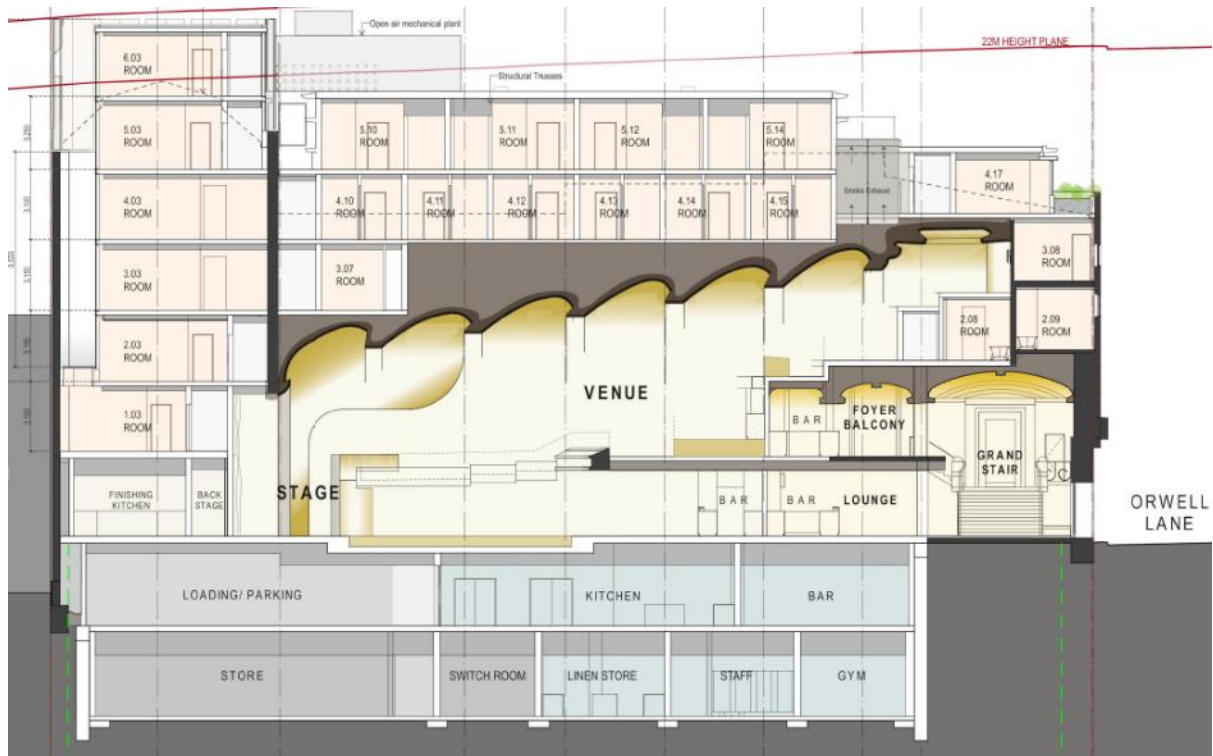


Figure 35: Long section

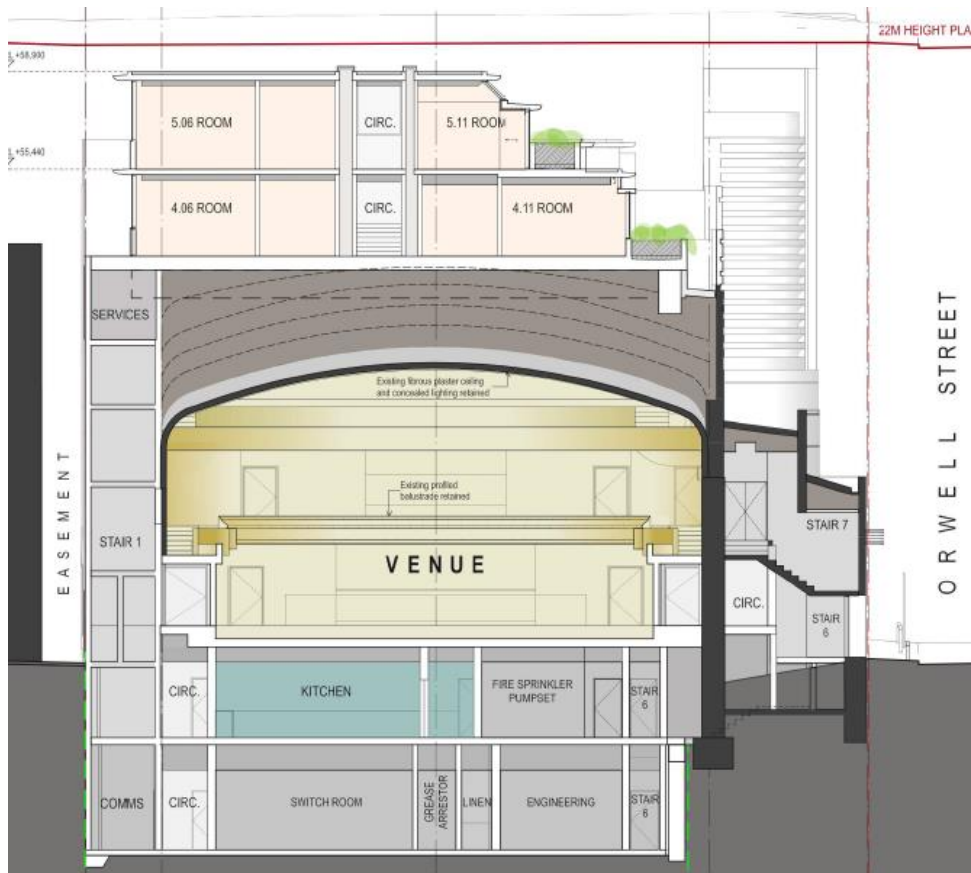


Figure 36: Short section



Figure 37: Photomontage as viewed from the corner of Orwell Street and Llankelly Place, facing north-west, with the addition to the flytower visible



Figure 38: Photomontage as viewed from Springfield Gardens, facing north-east (with tree removed for clarity), with the new additions visible above the flytower and existing parapet



Figure 39: Photomontage viewed at night from Orwell Street towards the corner with Macleay Street, facing west



Figure 40: Photomontage of an internal view of the proposed entertainment facility

Assessment

37. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Environmental Planning and Assessment Regulation 2021

38. Schedule 6, Part 1(3) of the Environmental Planning and Assessment Regulation, 2021 states that:

The 2000 Regulation continues to apply instead of this Regulation to a development application and an application for a complying development made but not finally determined before 1 March 2022.

39. The subject development application was made prior to 1 March 2022 and the Environmental Planning and Assessment Regulation, 2000 applies to the proposal as a result.

Heritage Act 1977

40. The subject site is listed as an item known as The Metro Theatre (formerly Minerva Theatre) on the State Heritage Register under the Heritage Act, 1977 (State Heritage Register Number 02049).
41. As Integrated Development requiring approval under the Heritage Act, 1977, a copy of the application was referred to the Heritage Council of New South Wales on 12 August 2021, in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000.
42. On 6 September 2022, the Heritage Council of New South Wales issued General Terms of Approval.
43. As the proposal was subsequently amended, it was re-referred to the Heritage Council on 9 March 2023.
44. On 30 May 2023, Heritage New South Wales, as delegate of Heritage Council of New South Wales issued updated General Terms of Approval (Attachment D), which are included in Attachment A.
45. Refer to the further details and assessment provided under the 'Heritage' sub-heading in the 'Discussion' section below.

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)

32. The aim of Chapter 4 of the Resilience and Hazards SEPP is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. Site investigations have identified that contaminants associated with petroleum infrastructure are present on the site, including pumps, traps, pipelines and a generator.
34. A Remediation Action Plan (RAP) for the site has been submitted with the application. The author of the RAP is registered with the New South Wales Environment Protection Authority.
35. The RAP proposes the off-site disposal of impacted materials to a licensed waste landfill facility.
36. The Council's Health and Building Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.
37. The Council's Health and Building Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use. These conditions are included in Attachment A.

State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)

38. The aim of Chapter 3 of the Industry and Employment SEPP is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
39. The proposed signage, comprising the reinstatement of the corner building sign 'Minerva', has been considered against the objectives of the policy.
40. An assessment against the provisions within the criteria set out in Schedule 5 of the Industry and Employment SEPP is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	Yes	The proposed signage is generally consistent with the character of the area, subject to conditions.
2. Special areas	Yes	The proposed signage does not detract from the amenity or visual quality of the locality or the heritage conservation area, subject to conditions.
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage is of an appropriate scale, proportion and form and provides a positive contribution to the streetscape and setting of the area.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable, and the materiality is compatible with the finishes and colours of the building.
6. Associated devices and logos	Yes	Not applicable.
7. Illumination	Yes	Not applicable
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

41. The proposed signage is consistent with the objectives of Chapter 3 of the Industry and Employment SEPP, as set out in Clause 3.1 and satisfies the assessment criteria specified in Schedule 5.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)

42. The relevant provisions of the Transport and Infrastructure SEPP have been discussed in the assessment provided under the heading below.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

43. The application is subject to Clause 2.48 of the Transport and Infrastructure SEPP as the development will be carried out immediately adjacent to an electricity substation.
44. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised, subject to conditions included in Attachment A.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)

45. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 10 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.
46. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. The site is not located in the Foreshores Waterways Area or adjacent to a waterway however and, with the exception of the objective for improved water quality, the objectives of Chapter 10 of the Biodiversity and Conservation SEPP are not applicable to the proposed development.
47. Subject to the conditions included in Attachment A relating to stormwater management and quality, soil erosion and sediment control, the proposal satisfies the objective for improved water quality.

Local Environmental Plans

Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

48. An assessment of the proposed development against the relevant provisions of the Sydney LEP 2012 is provided under the following headings and table 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 MU1 Mixed Use zone.

Provision	Compliance	Comment
		<p>The proposal is for a mixed use development with the proposed uses defined as entertainment facility, hotel or motel accommodation, small bar, and cafe.</p> <p>The proposed uses are permissible with consent in the zone.</p> <p>The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 22 metres is permitted.</p> <p>A height of 24.92 metres is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
4.4 Floor space ratio (FSR)	Yes	<p>A maximum FSR of 3.5:1, or 4,433.3 square metres of gross floor area (GFA) is permitted on the site.</p> <p>The applicant submits that an FSR of 3.35:1, or 4,246.4 square metres of GFA is proposed.</p> <p>When calculated in accordance with the definition of GFA in the Dictionary of the Sydney LEP 2012, the FSR is calculated to be 3.49:1, or 4,416.75 square metres of GFA.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>

Provision	Compliance	Comment
		<p>The difference in the calculation of gross floor area arises due to the applicant's exclusion of above ground storage (including linen and cool rooms), part of rooms 1.01-1.03, and the garbage room (which is not defined as a basement at that point of the building).</p> <p>Additionally, to ensure compliance with the floor space ratio development standard, a condition is included in Attachment A requiring that a wall and door are located between the 'equipment store' and gymnasium located on basement level 2, to ensure that the 'equipment store' space is used for storage only.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 Height of Buildings.</p> <p>A written Clause 4.6 variation request has been submitted with the application.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a state heritage item, local heritage item and located within a heritage conservation area. The site is also adjacent to a local heritage item, being an electrical substation at 1 Orwell Lane.</p> <p>The proposed development will have some impact on the significance of the heritage item, however that impact has been determined to be acceptable by Heritage NSW who have granted General Terms of Approval.</p> <p>The proposal will not have a detrimental impact on the adjoining heritage item,</p>

Provision	Compliance	Comment
		<p>and conditions are recommended relating to protection during construction.</p> <p>The proposal will have some impact upon the heritage conservation area, however that impact has been determined to be acceptable by Heritage NSW who have granted General Terms of Approval.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
5.20 Standards that cannot be used to refuse consent - playing and performing music	Yes	<p>The clause provides that the consent authority must not refuse consent to development in relation to licensed premises on a number of grounds including, the playing or performance of music, whether dancing occurs, and the presence or use of a dance floor.</p> <p>The clause also states that the consent authority must not refuse consent to development in relation to licensed premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.</p> <p>The proposal is defined as a licensed premises under the Liquor Act, 2007.</p> <p>The applicant submitted an amended Noise Impact Assessment which has been reviewed by Council's Health and Building Unit.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
5.21 Flood planning	Yes	<p>The site is located within a flood planning area.</p> <p>The proposal has been reviewed by the City's Public Domain Unit and is acceptable in relation to flood behaviour, safe occupation and evacuation, risk to life, and impact on the environment,</p>

Provision	Compliance	Comment
		subject to recommended conditions in Attachment A.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The proposed development is of a high standard of architectural design and uses materials and detailing which are compatible with the existing building type and location.</p> <p>The form and external appearance will improve the quality and amenity of the public domain.</p> <p>The proposal will not detrimentally impact on view corridors, as detailed under the 'Discussion' heading below.</p> <p>The proposal has considered heritage and streetscape constraints.</p> <p>The bulk, massing and modulation of the proposal is appropriate. In particular, the stepped back form of the addition minimises its visual impact when viewed from the street, and minimises overshadowing impacts to the park opposite the site.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to overshadowing and solar access, visual and acoustic privacy, and noise.</p> <p>The proposed development exhibits design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.7 Retail premises 7.9 Other land uses	Yes	<p>A maximum number of car parking spaces are permitted as follows:</p> <p>Entertainment facility 42 spaces</p> <p>Hotel accommodation - 16 spaces</p> <p>Cafe - 1 space</p> <p>Small bar - 4 spaces</p> <p>Total - 63 spaces</p> <p>The proposed development includes 2 car parking spaces and complies with the maximum car parking standard.</p> <p>It is noted that there is no minimum car parking requirement.</p>
Division 3 Affordable housing		
7.13 Contribution for the purpose of affordable housing	Yes	<p>The LEP clause outlines that the consent authority may impose a condition requiring a contribution equivalent to the applicable affordable housing levy contribution.</p> <p>An affordable housing levy contribution for development on residual land of 0.5% of the total floor area of the development, being 6,490.9 square metres, as the development application was lodged before 1 July 2022. A condition is included in Attachment A requiring a contribution to be paid prior to the issue of a Construction Certificate.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils.</p> <p>The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>

Development Control Plans

Sydney Development Control Plan 2012 (Sydney DCP 2012)

49. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided under the following headings and table sections.

Section 2 – Locality Statements

50. The site is identified in Section 2.4.7 of the Sydney DCP 2012 as being located within the Kings Cross locality, the extent of which is shown in the map extract reproduced in the figure provided below.

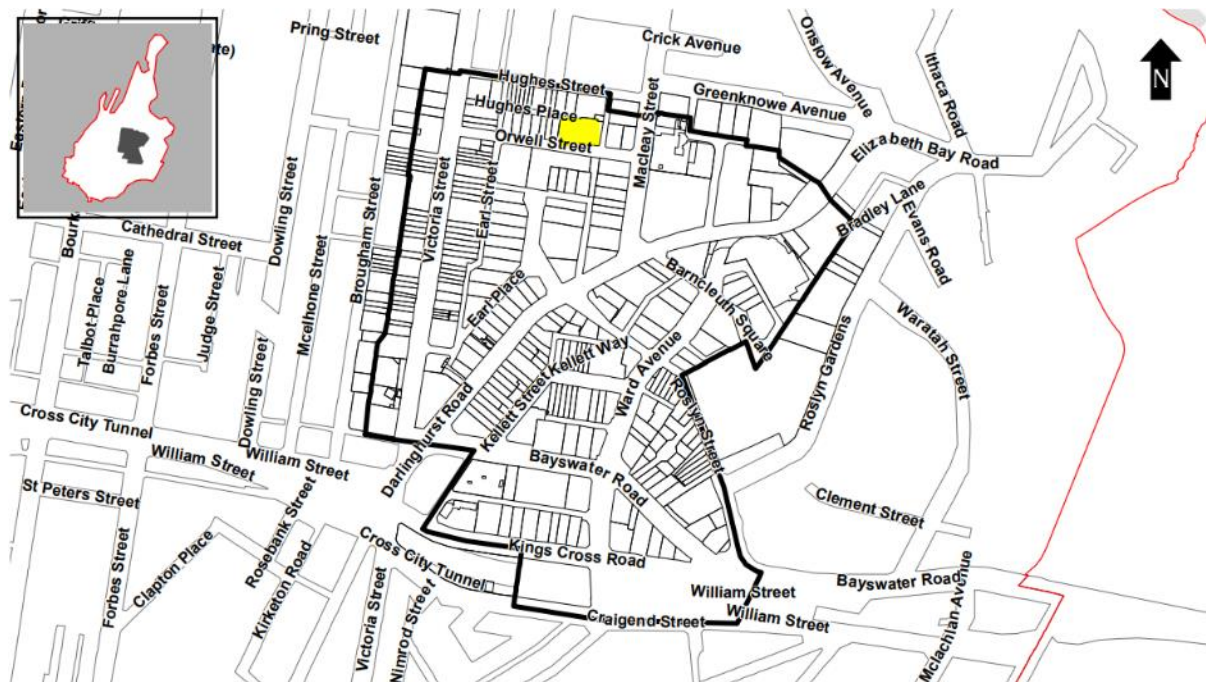


Figure 41: The Kings Cross locality, with the site identified in yellow.

51. Relevant sections from the character statement for the locality include that:
- (a) Kings Cross has long been recognised as an international and regional destination for tourism and entertainment, with international, regional, and local roles to play.
 - (b) The area’s role as a centre is to be strengthened by capitalising on its proximity to public transport, and by providing commercial and retail services for existing and future residents and visitors alike. The centre is to be consolidated with Orwell Street promoting active retail and commercial uses to improve the link between Darlinghurst Road, Macleay Street, Lankelly Place and Victoria Street.
52. An assessment against the relevant principles of the Kings Cross locality is provided in the table sections below.

Principle	Compliance	Comment
(a) Development must achieve and satisfy the outcomes	Yes	The proposal is consistent with the outcomes expressed in the character

Principle	Compliance	Comment
expressed in the character statement and supporting principles		statement, as it enhances the tourism and entertainment of the locality, and as it consolidates Orwell Street as part of the centre of the locality.
(b) Development is to respond to and complement subdivision, heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes	Yes	Heritage NSW found the heritage impacts of the proposed development to be acceptable and have granted General Terms of Approval. The proposal does not impact upon the subdivision pattern of the area. The impact upon the heritage conservation area is discussed under Section 5.10 of the Sydney LEP 2012
(c) Maintain the built form structure of the neighbourhood with taller buildings located predominantly along the ridge line and at the crossing of Victoria Street and Darlinghurst Road	Yes	The proposal generally maintains the built form structure of the neighbourhood. Refer to the further details and assessment provided in the 'Discussion' section below with regard to the proposed height of the development.
(e) Maintain view corridors along Orwell Street and over terraces along Victoria Street towards the city skyline	Yes	The impacts to view corridors along Orwell Street have been assessed as acceptable. Refer to the further details and assessment provided in the 'Discussion' section below with regard to view sharing and view loss.
(h) Retain the unique skyline elements of existing buildings that exceed the height context however these buildings do not set the precedent for future building heights	Yes	The proposal allows for the unique skyline of the locality to be generally retained.
(l) Encourage active retail and commercial uses on Orwell Street to improve the link between activities along Darlinghurst Road, Macleay Street, Llanckelly Place and Victoria Street and the activity	Yes	The proposal provides retail and active uses to Orwell Street and will result in the increase in activity in and surveillance of the pocket park on Orwell Street.

Principle	Compliance	Comment
and surveillance of the pocket park on Orwell Street		
(n) Encourage outdoor eating in Llankelly Places to expand the existing laneway character	Yes	The site is located opposite the northern end of Llankelly Place and provides the possibility of outdoor eating in Orwell Street associated with the cafe on site (subject to a future footway application).
(o) Encourage employment opportunities and provide a range of non-residential uses on Darlington Road that support the existing high population density of Kings Cross and serve its international, regional, and local function including retail, business, entertainment, food and drink, cultural, and community uses	Yes	The proposal provides employment opportunities within the locality.
(q) Increase uses that provide all day activity, particularly those that serve the broader community's social, cultural, and entertainment needs	Yes	The proposed entertainment facility will serve the community's social, cultural and entertainment needs.
(r) Encourage interesting development that references the socio-historic significance of Darlington Road and supports community diversity and harmony	Yes	The proposal provides an entertainment facility use that will contribute to the diverse offerings of the locality.

53. The proposed development is in keeping with the character and the design principles for the Kings Cross locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements		
3.1.5 Public Art	Yes	A preliminary public art plan has been submitted with the development application.

Provision	Compliance	Comment
		A condition is included in Attachment A to ensure the delivery of appropriate public art on the site.
3.2. Defining the Public Domain		
3.2.1.1 Sunlight to Publicly Accessible Spaces	Yes	<p>Overshadowing effects of new development on publicly accessible open space is to be minimised between the hours of 9am to 3pm. As discussed above, the design of the addition has provided a stepped building form to setback the upper levels, in order to minimise overshadowing impacts to Springfield Gardens which satisfies the control.</p> <p>It is also noted that during the assessment of the application the applicant put forward an option to reduce the street setback of the upper level, which resulted in additional overshadowing impacts to the park, which was not supported.</p> <p>The final amended proposal has not increased overshadowing beyond the extent originally proposed.</p>
3.2.1.2 Public Views	Yes	The proposal does not impede views from the public domain to highly utilised public places, parks, Sydney Harbour, heritage buildings or monuments.
3.2.2 Addressing the Street and Public Domain	Yes	The proposed design positively addresses the street and provides visibility to the building foyer at ground level.
3.2.7 Reflectivity	Yes	<p>Light reflectivity from building materials used on facades must not exceed 20%.</p> <p>A condition is included in Attachment A to ensure that reflectivity from the proposal does not exceed 20%.</p>
3.2.8 External Lighting	Yes	The indicative night photomontage shows uplighting to the building, however no details of external lighting

Provision	Compliance	Comment
		<p>have been provided with the application.</p> <p>A condition is included in Attachment A requiring that any external lighting is the subject of a separate development application.</p>
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	<p>A 'Design for Environmental Performance' report was submitted with the development application which sets out the environmental commitments for the development. The applicant also provided information with the application, indicating self-imposed environmental sustainability initiatives.</p> <p>A condition is included in Attachment A requiring that this report be updated to incorporate thermal bridging information to ensure self-imposed initiatives are incorporated and include the output capacity for photovoltaic systems.</p> <p>It is noted that there are requirements for new office premises, or for alterations and additions to office premises to achieve a NABERS Energy Commitment Agreement of 5.5 stars and 5 stars respectively.</p> <p>This requirement does not apply to the proposal as it is not for office premises.</p>
3.7 Water and Flood Management	Yes	<p>The site is identified as being within a flood planning area.</p> <p>Refer to the discussion provided above in relation to Section 5.21 of the Sydney LEP 2012.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to condition of consent.

Provision	Compliance	Comment
		A condition is included in Attachment A to require that all land titles within the site must be consolidated into one allotment.
3.9 Heritage		
3.9.1 Heritage Impact Statements	Yes	<p>A Heritage Impact Statement (HIS) prepared by Tonkin Zulaikha Greer Heritage has been submitted with the application.</p> <p>The HIS has provided its assessment based on the gradings of fabric contained within the Conservation Management Plan (CMP) for the site prepared by Tanner Kibble Denton Architects in 2020, and the Heritage Assessment prepared by Urbis for the City of Sydney in 2018.</p> <p>The Urbis Heritage Assessment had been prepared prior to the listing of the site on the State Heritage Register to assess that the building was of State heritage significance.</p> <p>Where there was a difference in grading of heritage fabric between the CMP and the Heritage Assessment, the HIS adopted the higher grading of significance.</p>
3.9.2 Conservation Management Plans	Yes	A Conservation Management Plan (CMP) was prepared for the site by Tanner Kibble Denton Architects in 2020.
3.9.3 Archaeological assessments	Yes	<p>The site has archaeological remains under the existing building, comprising the remnant footings and foundations of Orwell House, an 1820s building.</p> <p>Heritage New South Wales requested that archaeological test excavations occur, which were facilitated under development consent D/2022/57.</p> <p>The findings of the test excavations were considered by the archaeological team at Heritage New South Wales,</p>

Provision	Compliance	Comment
		<p>and the General Terms of Approval granted on 6 September 2022 included a deferred commencement condition requiring a revised assessment of significance to determine if recording and complete removal is the most appropriate management option for the remains.</p> <p>Heritage NSW and the applicant held an archaeological workshop, and the applicant submitted a detailed response addressing the NSW Heritage Criteria, being historic significance, associative significance, aesthetic significance, social significance, research potential, rarity and representative. This information was reviewed by Heritage NSW and the removal of the footings and foundations of Orwell House was considered to be acceptable. The General Terms of Approval granted on 30 May 2023 deleted the deferred commencement condition but include a condition that require an Archaeological Research Design and Excavation Methodology to be submitted as part of the Section 60 Application to ensure the salvage of any Orwell House remains.</p>
3.9.4 Development of sites of State heritage significance or containing more than one heritage item	Yes	<p>A Heritage Committee is required to be appointed to examine and advise on the merits of the proposal. The consent authority can only grant consent for proposed development for sites of State heritage significance after considering the advice of the committee.</p> <p>A heritage committee was formed and provided a report to the City on 1 July 2022, which is reproduced at Attachment E.</p> <p>Refer to the further details and assessment provided under the 'Discussion' heading below.</p>
3.9.5 Heritage items	Yes	Development affecting a heritage item must minimise the extent of change to significant fabric, elements or spaces. It should also enhance the heritage item by removing unsympathetic alterations

Provision	Compliance	Comment
		<p>and additions and reinstating missing details.</p> <p>Refer to the further details and assessment provided under the 'Discussion' heading below.</p>
3.9.6 Heritage conservation areas	Yes	<p>The new additions are designed to respect the heritage conservation area and the neighbouring buildings. They complement the existing character of the building but are modern and not a replica.</p> <p>The building form is compatible with the anticipated built form envisaged in the controls for heritage conservation areas.</p>
3.9.10 Building materials for heritage items and buildings within heritage conservation areas	Yes	<p>The proposed materiality of the existing building is generally maintained and enhanced.</p> <p>The new materials are modern and sympathetic to the subject heritage item and surrounding heritage conservation area, in terms of their quality, colours and finishes subject to the conditions included in Attachment A.</p>
3.9.11 Conservation of public domain features in heritage conservation areas	Yes	Features like stone kerbing, guttering and paving will be retained along all street frontages of the site.
3.9.13 Excavation in the vicinity of heritage items and in heritage conservation areas	Yes	<p>The application proposes excavation beneath a heritage item. The proposed excavation has been supported by a Geotechnical report and a Structural report and amendments were requested by the Technical Advisory Panel of Heritage New South Wales. The application was amended to reduce the extent of basement excavation from 4 levels to 2 levels, and by reducing the footprint of excavation, and the extent of excavation is considered satisfactory.</p> <p>The DCP provision states that excavation will not be permitted if it will occur under common walls and footings to common walls, or freestanding</p>

Provision	Compliance	Comment
		<p>boundary walls or under any other part of adjoining land, and if it occurs under or forward of the front facade.</p> <p>Part of the proposed excavation adjoins the boundary with 25 and 27 Hughes Street for a length of 10.9 metres, however the proposed excavation is not under common walls or footings of common walls and is not adjacent to freestanding boundary walls.</p> <p>The proposed excavation is not directly under or forward of the front facade of the building.</p>
3.11 Transport and Parking		
3.11.1 Managing transport demand	Yes	A condition is included in Attachment A that requires a Transport Access Guide to be prepared and submitted to the City for approval, prior to the issue of an Occupation Certificate.
3.11.3 Bike parking and associated facilities	Partial compliance	<p>The proposal requires 6 bicycle parking spaces for employees, and 25 for visitors, including 3 for the hotel, 17 for the entertainment facility, 3 for the small bar and 2 for the cafe.</p> <p>A bicycle parking area for 14 bicycles is provided within Basement Level 1.</p> <p>Council's Access and Transport Unit has reviewed the proposal and advised that a reduction in the provision of visitor bicycle parking spaces is warranted due to the constraints of the site, as it would be not possible to provide visitor bicycle parking spaces within the lobby without resulting in other impacts to the heritage significance of the building.</p> <p>Sufficient end of trip facilities for employees have been provided.</p>
3.11.6 Service vehicle parking	Yes	The application utilises the existing vehicle entry and proposes an on-site loading space with a turntable.

Provision	Compliance	Comment
		The proposal satisfies the requirement for 1 service vehicle parking space for 50 to 100 hotel rooms.
3.11.11 Vehicle access and footpaths	Yes	A single vehicle crossing with a turntable is proposed to avoid vehicles reversing out into the street.
3.12 Accessible Design	Partial compliance	<p>The proposal meets the requirements for accessibility in relation to equitable access.</p> <p>The application originally proposed 4 accessible hotel rooms, which is compliant with the requirements of the National Construction Code for 63 hotel rooms. During design amendments the number of accessible rooms was reduced to 3. Therefore a condition is recommended that the number of accessible hotel rooms is increased from 3 to 4. It is noted that many of the hotel rooms are of sufficient size to enable conversion to an accessible room without reducing the overall number of hotel rooms.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the Crime Prevention Through Environmental Design (CPTED) principles.
3.14 Waste	Yes	A condition is included in Attachment A 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		
3.15.1 General	Yes	The Sydney DCP 2012 sets out base and extended trading hours and provides definitions for Category A (High Impact Premises), Category B (Low Impact Premises) and Category C (Retail and Business premises).

Provision	Compliance	Comment
		<p>The proposed entertainment facility is assessed as a Category A premises when operating with up to 450 patrons for 20 days per year and is assessed as a Category B premises at other times when operating with up to 250 patrons.</p> <p>The cafe and small bar are defined as Category B premises.</p>
3.15.2 Late night trading areas	Yes	<p>The Sydney DCP 2012 identifies a hierarchy of three late night trading areas located throughout the City.</p> <p>The site is located within a Local Centre area which is the lowest intensity of the three late night trading areas.</p>
3.15.3 Matters for consideration	No	<p>Appropriate trading hours for late night trading premises will be determined by taking into account a number of issues, including the location and context of the premises, including proximity to residential land uses and other late night trading premises, and the likely impact on amenity including noise, and the ability to manage the impacts.</p> <p>An acoustic report has been submitted with the application, however it has not been demonstrated that the proposed use is capable of operating within an acceptable noise criteria, in terms of the hours of operation and maximum capacity proposed.</p> <p>This would result in the potential for unacceptable amenity impacts to neighbouring and nearby residential uses.</p> <p>Conditions are included in Attachment A to restrict the capacity of the proposed entertainment facility to 250 patrons, and the hours of operation of the entertainment facility and small bar to midnight.</p> <p>Refer to the further details and assessment provided under the 'Discussion' heading below.</p>

Provision	Compliance	Comment
3.15.4 Trading hours and trial periods	No	<p>The Sydney DCP 2012 identifies base and extended trading hours with the three late night trading areas.</p> <p>The proposed trading hours do not comply with the permitted base and extended trading hours.</p> <p>Refer to the further details and assessment provided under the 'Discussion' heading below.</p>
3.15.4(2) Extended indoor hours	No	<p>The Sydney DCP 2012 permits extended indoor hours of Category B premises in Local Centre Areas up to 2am where entry and egress of all patrons will be onto a main street and not onto a laneway which abuts residential properties or into a predominantly residential area.</p> <p>The Sydney DCP 2012 maps indicate that Orwell Street is not a 'main street' and therefore the proposed use is not eligible for these extended hours.</p>
3.15.4(6) Extended trading hours beyond base hours	Partial Compliance	<p>Extended trading hours beyond the base hours may be permitted at the initial application stage, but only where the Council has determined that the premises have been or will be well managed.</p> <p>The proposed hours are beyond the base hours.</p> <p>Refer to the further details and assessment provided under the 'Discussion' heading below.</p>
3.15.4(9) Trial periods	Yes	<p>Trial periods are permitted to be for one year for the first trial, two years for the second trial, and five years for the third and subsequent trials.</p> <p>Extended hours are to be restricted to a one year period, as it will be the first trial.</p>

Provision	Compliance	Comment
3.15.4(16) Additional hour for dedicated performance venues	Yes	<p>Venues which are a Category B dedicated performance venue and located within a late night trading area, may be permitted one additional indoor hour at closing time on a trial period basis.</p> <p>The proposed entertainment facility is a dedicated performance venue and is eligible for an additional trading hour until 1am, however as discussed above, a condition is included in Attachment A to restrict hours of operation until midnight.</p> <p>Refer to the further details and assessment provided under the 'Discussion' heading below.</p>
3.15.4(17) Additional operating hours for venues including performance, creative or cultural uses	No	<p>Category A and B premises which are located within a late night trading area and provide indoor space with the capacity for performance, creative and cultural uses may be permitted an additional indoor operating hour at closing time on the night the premises provides performance on a trial basis.</p> <p>These provisions exclude a dedicated performance venue, and therefore the proposed entertainment facility is not eligible for an additional operating hour under these provisions.</p> <p>The applicant seeks to utilise these provisions for an additional operating hour for the proposed small bar. The Sydney DCP 2012 requires that venues seeking to demonstrate their capacity to provide performance.</p> <p>The submitted Plan of Management indicates that the specific performance, creative or cultural use will be confirmed following the formal appointment of the hotel operator.</p> <p>The small bar is not eligible for an additional operating hour under these provisions as it has not been demonstrated the capacity to provide</p>

Provision	Compliance	Comment
		performance as required by the Sydney DCP 2012.
3.15.5 Plans of management requirements	Partial compliance	<p>A Plan of Management (Attachment F) has been submitted with the development application which generally satisfies the requirements of the Sydney DCP 2012.</p> <p>The Plan of Management has not provided management practices for operating with 450 patrons for up to 20 days per year. This is discussed further under the discussion heading below.</p> <p>A condition is included in Attachment A that requires the Plan of Management to be amended to ensure that it is consistent with the conditions of consent.</p>
3.16 Signage and Advertising	Yes	<p>The application proposes the reinstatement of the 'Minerva' corner building sign. This is the reinstatement of a historic building sign and is acceptable on this basis.</p> <p>A condition is included in Attachment A requiring a separate development application be submitted for any other future signage, unless it is exempt development.</p>
3.16.1 Signage Strategy	Yes	<p>A signage strategy was submitted with the development application which proposes the provision of five signage zones.</p> <p>The signage strategy proposes signage on the fly tower addition which is 20 metres above the existing ground level. The Sydney DCP 2012 does not permit top of building signs higher than 15 metres unless it is permitted by a signage precinct, or the site is located in the B8 or B3 zones.</p> <p>The top of building sign is not supported on this basis.</p>

Provision	Compliance	Comment
		<p>The signage strategy also proposes three flat wall mounted display signs at the ground level of the Orwell Lane frontage.</p> <p>The flat mounted wall signs are inconsistent with Section 3.16.6.3 of the Sydney DCP 2012 as they do not improve the elevation of the building or its contribution to the public domain, and as they contribute to visual clutter. Additionally, the two southern-most of these signage zones are appropriate locations for public art and/or heritage interpretation, and it is recommended that these zones be used for those purposes, rather than for signage zones.</p> <p>A condition is included in Attachment A that requires the signage strategy to be amended to address the issues outlined above.</p>
3.16.5.2 Top of building signs	No	As discussed above, the proposed top of building sign to the flytower addition is inconsistent with the requirements for top of building signs and is not supported on this basis.
3.16.6.3 Flat mounted wall signs	No	As discussed above, the proposed flat mounted wall signs within the signage strategy are inconsistent with the requirements for flat mounted wall signs, are not supported on this basis.
3.16.11 Signage related to heritage items and conservation areas	Yes	The proposed 'Minerva' corner building sign is the reinstatement of a historic sign and is acceptable on this basis.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Partial compliance	<p>The site is permitted a maximum building height of 6 storeys with a maximum street frontage height of 3 storeys.</p> <p>The proposed development is generally 6 storeys in height, with a 7th storey to the flytower. The existing street frontage height is maintained.</p> <p>The maximum storey height can only be achieved where it can be demonstrated that the proposed development reinforces the neighbourhood character, is consistent with the scale and form of surrounding buildings in the heritage conservation area and does not detract from the character and significance of the existing building.</p> <p>The proposal reinforces the neighbourhood character, as discussed under the locality statement above, is compatible with the scale and form of surrounding buildings, being of equal to or greater height than the proposal. The proposal does not detract from the character or significance of the existing building, noting that General Terms of Approval have been granted by Heritage NSW.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below with regard to the proposed height of the development.</p>
4.2.2 Building setbacks	Yes	The site is not subject to setback controls under the Building setback and alignment map, so the Sydney DCP 2012 requires that setback and alignment be consistent with adjoining buildings, or the adjacent or average front setback when the setback varies.

Provision	Compliance	Comment
		<p>The new addition is setback by 6.28 to 8.45 metres from the Orwell Street frontage and 2 metres from the Orwell Lane frontage. The addition to the flytower is setback by 5.1 metres from the Orwell Street frontage.</p> <p>The Sydney DCP 2012 requires that the rear setback and alignment is to be consistent with adjoining buildings. The application proposes a no setback of the main addition and fly tower addition to the rear boundary. These rear setbacks are consistent with the adjacent and average rear setbacks of neighbouring buildings.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The Sydney DCP 2012 requires that apartments in neighbouring developments achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1 square metres of living room windows and a minimum 50% of the required private open space area. Additionally, new development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours of direct sunlight to habitable rooms and 50% of the private open space.</p> <p>The site is located to the north west of a residential building at 113-115 Macleay Street, known as Gowrie Gate.</p> <p>The proposal results in additional overshadowing to the windows on the lowest level of residential uses at 3pm, however maintains the existing level of solar access at other times, and 2 hours of direct sunlight is maintained.</p> <p>The site is located to the north of three residential flat buildings and a backpacker's accommodation on the opposite side of Springfield Gardens.</p>

Provision	Compliance	Comment
		<p>The proposal results in some minimal additional overshadowing to these buildings, however 2 hours of direct sunlight is maintained to the front facade of these buildings.</p>
4.2.3.10 Outlook	Yes	<p>The Sydney DCP 2012 requires that views and outlooks from existing residential development should be considered in the site planning and massing of new development.</p> <p>The impacts on views from neighbouring residential development is discussed further under the discussion heading below.</p> <p>The impacts to outlook of neighbouring properties across the opposite side of Orwell Street is acceptable, given the separation across the width of the street.</p> <p>The impacts to outlook of neighbouring properties to the rear of the site, including the dwellings and communal rooftop terrace of the residential flat building at 25 Hughes Street is acceptable noting that the existing outlook towards the subject site is the blank wall of the flytower.</p>
4.2.3.11 Acoustic privacy	No	<p>The Sydney DCP 2012 requires that a Noise Impact Assessment is provided for uses which may affect the acoustic privacy of adjacent residential uses.</p> <p>A Noise Impact Assessment has been provided which has been reviewed by Council's Acoustic Specialist.</p> <p>The submitted information has not demonstrated that the proposal is able to satisfy the relevant acoustic criteria based on the capacity and hours of operation proposed. Conditions are recommended in Attachment A to restrict the patron capacity and hours of operation.</p>

Provision	Compliance	Comment
		Refer to the further details and assessment provided under the 'Discussion' heading below.
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The Sydney DCP 2012 requires that each building facade is to be articulated into smaller elements at a scale or grain that reflects the use of the building and the various components of the building, the location, and the details and building elements including building entries, ground floor, lower floors, top floor and roof.</p> <p>The design of the development reflects the various uses of the building including the entertainment venue within the existing auditorium and hotel uses within the new additions.</p> <p>The existing details and building elements at building entries, and ground floor remain. The existing roof of the building which is not currently visible from surrounding streets at pedestrian level is to be removed as part of the proposal.</p>
4.2.6 Waste and recycling Management	Yes	A condition is included in Attachment A to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Partial compliance	<p>The site is in the MU1 Mixed Use zone, formerly the B4 Mixed Use zone. Non-residential development on sites within proximity to residential uses must consider a number of matters in relation to the potential impacts on the amenity of existing residential uses.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below with regard to noise impacts and operating hours.</p> <p>With regard to privacy and overlooking, the windows of the proposed addition are 18.8 metres from the nearest residential flat building at 113-115</p>

Provision	Compliance	Comment
		<p>Macleay Street, known as Gowrie Gate. This is sufficient separation to ensure visual privacy.</p> <p>At the rear, the residential flat building at 25 Hughes Street has windows within its rear wall, however they currently look towards the existing rear wall of the site, and the proposal will not result in new windows at lower levels adjacent to 25 Hughes Street or additional privacy impacts. There are proposed north facing windows to Level 5 and 6 of the flytower, however these windows are elevated above the communal roof terrace of 25 Hughes Street, and have fixed screening, and will not result in unreasonable privacy impacts.</p> <p>With regard to the generation of vehicular and pedestrian traffic as a result of the development, the proposal has been reviewed by the City's Access and Transport Unit and Traffic Operations Unit.</p> <p>The site is located in close proximity to public transport infrastructure, including bus stops on Macleay Street and Kings Cross train station.</p> <p>The application proposes to change the existing 'no stopping' area to a 'no parking' area to allow for a pick-up and set down zone on Orwell Street outside the main entrance of the site.</p> <p>This is not supported by Council's Traffic Operations Unit as it is within the statutory 10 metres of 'no stopping' required adjacent to the intersection with Orwell Lane. Council's Traffic Operations Unit have also advised that there are a number of other potential changes to parking restrictions to allow for a pick-up and drop off zone within either Orwell Street or Orwell Lane. This would be done post the granting of any development consent if supported and after consideration by the City's Local Pedestrian, Cycling and Traffic Calming Committee (LPCTCC).</p>

Provision	Compliance	Comment
		<p>There is an existing 'no parking' zone outside part of the site's Orwell Street frontage, and this is legally allowed to be used as a pick up and drop off zone, however would block the carriageway if used in this manner. Changing this to a 'no stopping' zone would resolve this issue.</p> <p>To improve pedestrian safety, a condition is included in Attachment A that requires a continuous footpath treatment be provided across Orwell Lane as part of the public domain works. The continuous footpath treatment will provide a raised section of the roadway that is level with footpath so that pedestrians have priority over vehicles.</p> <p>With regard to vibration, the proposed uses are not likely to result in vibration impacts to neighbouring properties, subject to conditions included in Attachment A.</p> <p>As discussed elsewhere in this assessment report, a condition is included in Attachment A requiring that reflectivity not exceed 20%.</p> <p>With regard to overshadowing, as discussed elsewhere in this assessment report, the proposal will not result in significantly adverse overshadowing impacts to neighbouring and nearby residential properties.</p>

4.4 Other Development Types and Uses

4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1 General	Yes	<p>The proposed hotel is self contained with no common access ways with adjoining properties.</p> <p>A site manager must be on site when guests have access to the premises. A condition is included in Attachment A</p>

Provision	Compliance	Comment
		<p>that a site manager be on site 24 hours per day.</p> <p>Sleeping rooms do not include triple-tier bunks or cooking facilities. All toilet and shower facilities are located within each hotel room.</p> <p>A Plan of Management and Acoustic Impact Assessment have been submitted with the application.</p> <p>The Plan of Management addresses the requirements of the Sydney DCP 2012 in relation to visitor accommodation, and a condition is included in Attachment A that requires compliance with the Plan of Management.</p>
4.4.8.3 Additional provisions for hotels, private hotels and motels	Yes	<p>The Sydney DCP 2012 requires that each room be 5.5 square metre per person for guests staying longer than 28 days, being 11 square metres for double rooms. All hotel rooms satisfy the minimum size requirements.</p> <p>The Sydney DCP 2012 permits a maximum length of stay of 3 months. A condition is included in Attachment A to ensure the maximum length of stay is 3 months.</p> <p>Appropriate storage facilities for baggage and travel items are provided within each room.</p>

Discussion

Reinstatement of former Theatre use

54. A number of submissions request that the site be returned to its former use which was predominantly as a multi purpose theatre. A multi purpose theatre is not proposed as part of the development application, however the proposal will return an entertainment use to part of the building for the first time in 44 years.
55. It is noted that the building was originally designed as a theatre, and operated as a theatre between 1939 and 1950, as a cinema between 1950 to 1979 and had reverted back to a theatre between 1966 and 1971. It has not been used for a theatre, cinema or entertainment use since 1979.

56. A Minerva Theatre Feasibility Study was commissioned by Create NSW in 2020 to investigate whether a refurbished Minerva Theatre would be a viable performance space in the Sydney market. This concluded that reinstatement of the Minerva as a commercially operated theatre is a viable proposition. The report indicated that the building was capable of being converted to a 1,000 seat theatre at a cost of approximately \$43 million including purchase price.
57. The applicant provided a Feasibility Study Review which concluded that it was not technically feasible to revert the building into a 1,000 seat theatre, as it was not possible to fit 1,000 seats into the envelope of the auditorium in a code compliant way, or that will provide a positive audience experience. The Feasibility Study Review advised that the building could reasonably accommodate a 650 seat theatre, and that it would be possible to achieve a maximum of 806 seats within the envelope of the auditorium envelope, which would need to be further reduced to address compliance issues.
58. In their submission to the application, Create NSW advise that they do not agree with the assertion that restoration for a 1,000 seat theatre is not possible, and that a 1,000 seat theatre is a workable and realistic option.
59. A theatre is not proposed as part of the development application, however an entertainment use is proposed within the main auditorium. The development application is to be assessed against the relevant planning controls based upon the information submitted with the application.
60. The applicant has described the use of the proposed entertainment facility as "*a nocturnal adventure offering a high end and experimental dining concept, consisting of immersive music shows and participative entertainment.*" The use is defined under the Sydney Local Environmental Plan 2012 as an 'entertainment facility'. The Plan of Management also outlines that the premises will be available for hire by local performance groups, businesses and for events on Mondays and Tuesdays when the principal entertainment use is not operating. The proposal will return an entertainment use to the site for the first time in 44 years.
61. The proposed land uses are permissible within the MU1 zone and are consistent with the zone objectives. The site is privately owned, and the proposed use must be assessed against the planning controls that apply. In this instance the proposed use as an entertainment facility is acceptable. Under the EP&A Act council assessment staff or the determining authority is not able to increase the number of seats or change the use of the building to be a larger multipurpose theatre.

Heritage

62. The building was constructed in the late 1930s. The site is a local heritage item, located in a heritage conservation area, and is listed on the State Heritage Register. As such, the proposal is subject to heritage controls under the Heritage Act, 1977, Sydney LEP 2012 and Sydney DCP 2012.
63. The former theatre building is in a modified condition due to interventions carried out in the 1980s, including floor levels inserted within the auditorium space.
64. Key features of the building include the Expressionist ceiling and proscenium arch, and the entry foyer with double height space, the vaulted, fluted ceiling, and the grand staircase with decorative steel balustrade. The timber catwalks, volume within the flytower and original roof structure remain.



Figure 42: The Sydney LEP 2012 Heritage Map (with the subject site outlined in blue)

65. As the site is listed on the Stage Heritage Register, the application was referred to Heritage New South Wales to carry out an assessment. The key items of the Heritage New South Wales assessment are:
- The application was referred to the archaeologists at Heritage New South Wales who requested further information, including archaeological test excavations.
 - The application was referred to Heritage New South Wales' Technical Advisory Panel three times, and additional and amended information was provided in relation to a number of matters.
 - Following receipt of additional information that had been requested, the application was referred to the Approvals Committee at their meeting of 6 September 2022. Following the receipt of additional information requested by the Approvals Committee, General Terms of Approval were granted on 27 September 2022.
 - The amended application was referred back to Heritage New South Wales on 9 March 2023. General Terms of Approval to the amended application were granted on 30 May 2023 (Attachment D).

66. It is noted that the proposal will require a Section 60 application to be approved by Heritage New South Wales after the granting of development consent, but prior to work commencing. A number of items to be addressed with the Section 60 application have been specified within the General Terms of Approval, as follows:

DETAILS TO BE SUBMITTED FOR APPROVAL

1. The following information is to be submitted with the s60 application for approval by the Heritage Council of NSW (or delegate):
 - a. Revised construction methodology drawings and structural sequencing reflecting the updated proposal.
 - b. Structural adequacy report of the upper stalls/balcony and their ability to withstand additional load.
 - c. Detailed drawings providing further details on the facilities required to operate the entertainment venue including lighting, green rooms, backstage storage, sound, etc., to maintain as much of the original heritage fabric and form as possible.
 - d. Detailed drawings that consider compliance with building standards, safety and access.
 - e. Minimise the number of openings to reduce impact on eastern and western elevations. The openings should be articulated to be sympathetic to the style of the existing Interwar heritage facades.
 - f. Detailed inventory, condition and significance assessment of all existing fabric and a detailed schedule of conservation works.
 - g. Provide an inventory of significant fabric being salvaged for reuse within the building or used as part of interpretation.
 - h. An inventory of moveable heritage items associated to the significant historical occupancy of the building be recorded. The inventory should identify items, their storage (short and long term) and their eventual relocation within the site.

67. As approval has been granted by Heritage New South Wales, the consent authority must not refuse development consent on heritage grounds. This is because Clause 4.48 of the Environmental Planning and Assessment Act, 1979 states that:
 - (1) This section applies to the determination by a consent authority of a development application for development that is integrated development for which a heritage approval is required.
 - (2) A consent authority must not refuse development consent on heritage grounds if the same development is the subject of a heritage approval.

68. A Heritage Committee was formed to consider the application in accordance with Section 3.9.4 of the Sydney DCP 2012, which requires that:
 - (1) This provision applies to development that will introduce major changes to a heritage item identified in Schedule 5 of the Sydney LEP 2012 as being of State heritage significance or to a site containing more than one heritage item, if the development involves:
 - (a) demolition that will result in a reduction of the building envelope of the heritage item by more than 35%;

- (b) an increase in the size of the building envelope of the heritage item by more than 20%; or
 - (c) building over more than 20% of a heritage item's building footprint within the airspace above the item, but not within the airspace next to the item.
- (2) When considering an application for development to which this provision applies, the consent authority is to:
- (a) appoint a committee that includes heritage professionals to examine and advise on the merits of the proposal;
 - (b) be satisfied that that committee has followed an appropriate public process for the purpose of that examination; and
 - (c) consider the advice of the committee, but is not bound by the advice of the committee.
69. The Committee was made of 3 members with heritage and structural expertise, being:
- (a) Scott Robertson, Robertson & Hindmarsh Pty Ltd, Architects
 - (b) Otto Cserhalmi, OCP Architects
 - (c) Nicholas Joannides, Partridge, Engineers
70. The Committee provided a report on 1 July 2022 (Attachment E). The Committee did not support the proposal, and provided a number of recommendations, which are outlined in the table below.
71. The conclusion of the heritage committee was:
- (a) NSW Heritage Management principles and the Burra Charter require that adaptation of a heritage place be informed by, and tested against, a thorough understanding of the significance of the place. A vigorous analysis of options to determine best outcomes for its continuing use should be undertaken, with the least amount of change to its original fabric and use being the preferred outcome. Any proposal for alterations or additions to the theatre should demonstrate that there will not be an unacceptable level of heritage impact on the building as a whole; and the proposed work should be reversible in future.
 - (b) The current proposal is considered to alter the building from its original use to an extent that is deemed unacceptable. The proposal neglects to conserve the heritage significance of the place in terms of its aesthetic significance, as well as its significance in terms of function. Considerable fabric of High and Exceptional significance is removed under the proposal. The Exceptionally significant Auditorium ceiling, in particular is under threat. Moreover, the use of the building as a hotel will forever prevent the return of the original use of the building, due to the loss of the original functional spaces that enabled the theatre to operate.
 - (c) Hence, the Committee has concluded that the current proposal as submitted (D/2021/893) and as revised (drawings B2, B1 and Ground plan, dated 10 June 2022 and revised SHI dated June 2022 Rev 2), cannot be supported from a heritage perspective.

72. It is noted that the Heritage Committee's report was provided to Heritage NSW for consideration in their assessment under the Heritage Act, 1977. As discussed above, Heritage New South Wales, as delegate of Heritage Council of New South Wales have provided General Terms of Approval for the proposed development. In accordance with Clause 4.48 of the Environmental Planning and Assessment Act, 1979, the application cannot be refused on heritage grounds.
73. An assessment against the recommendations of the Heritage Committee is provided in the table below.

Heritage Committee Recommendations	Response
<p>The building should be used for a function that reinforces the significance of the building and that does not require non-reversible alterations to the building fabric and spaces to accommodate the proposed new function. The original and revised proposals submitted for this application, fall short of adequately fulfilling this requirement.</p>	<p>The proposed works have been assessed by Heritage New South Wales who have granted General Terms of Approval.</p>
<p>The Conservation Management Plan (CMP) should be prepared for the site as required for State-listed items. The CMP submitted with the development application was prepared before the State-listing of the place and was prepared for a different proposal. The new CMP is to be submitted to the City Council for assessment and acceptance.</p>	<p>A Conservation Management Plan (CMP) was prepared for the site by Tanner Kibble Denton Architects in 2020.</p> <p>A Heritage Assessment was also prepared by Urbis in relation to the recommendation for the site to be listed on the State Heritage Register.</p> <p>A Heritage Impact Statement (HIS) was submitted with the development application, and it used the higher grading of fabric where those gradings differed between the CMP and Urbis Heritage Assessment.</p> <p>Heritage New South Wales have not raised any issues with the CMP and HIS.</p> <p>The building has not changed since the CMP was prepared, and sufficient information in relation to the building fabric has been provided to enable a thorough heritage assessment, and the CMP is acceptable on this basis.</p>
<p>A conservation repairs list should be prepared and form part of the documentation.</p>	<p>A condition is included in Attachment A requiring a schedule of conservation works to be submitted prior to the issue of a Construction Certificate, and for these works to be undertaken concurrently with the development works.</p>

Heritage Committee Recommendations	Response
Archival recording through drawings and photography should be carried out.	Conditions are included in Attachment A that require an archival recording of the building, including drawings and photographs.
Prepare a detailed document that thoroughly examines the alternatives for re-use of the building that maximise the retention of fabric and that maintain the significance of the building.	Section 6.2 of the Heritage Impact Statement outlines the design options considered prior to the development application being lodged. A thorough assessment has been carried out of the development application proposal as submitted. The amended proposal has been assessed as acceptable by Heritage NSW who have granted General Terms of Approval.
Provide a costed maintenance strategy document that projects maintenance requirements 5, 10, 15 and 20 years into the future. This document is to be prepared by a suitably qualified heritage specialist with experience in restoration and conservation works, such as a Heritage Architect, Quantity Surveyor and Structural Engineer with experience in heritage restorations and costings.	A condition is included in Attachment A that requires a costed heritage asset maintenance plan to be prepared that will be a guide for effective, continuous, protective maintenance of all significant heritage fabric for a minimum period of 20 years.
Continue to maintain the building and repair the building to prevent the current ingress of water that is damaging significant fabric.	The applicant has advised that they have continued to maintain the building in order to prevent the ingress of water.
Structural Engineer with heritage experience to provide Dilapidation Surveys with photography of archival quality; for both the Subject Site and all neighbours within two buildings sites of the Subject Site.	A condition is included in Attachment A to require dilapidation reports to be prepared for the subject site and relevant neighbouring properties.
Submit a Construction Methodology Report that includes methodology for both demolition and construction for the Subject Site. Report is to provide evidence that satisfactorily instructs how to support and maintain retained structure in a detailed and systematic form.	<p>The applicant has submitted information relating to structural methodology and construction sequencing.</p> <p>A deferred commencement condition is included in Attachment A to ensure that the final construction methodology is submitted and approved prior to the consent commencing.</p>

Heritage Committee Recommendations	Response
During the demolition and construction phases, the interior of the Subject Site is to be monitored by both vibration and survey mark monitoring; and all neighbours within two building sites of the Subject Site.	A condition is included in Attachment A to require vibration monitoring during the demolition and construction phases.

74. Council's Heritage Specialist raised a number of concerns, including the following matters:
- (a) The proposed irreversible demolition of significant fabric, new floor additions and introducing a hotel use are contrary to the articles of the Burra Charter
 - (b) Almost all of the understanding of the original layout, planning and workings of the original theatre is diminished
 - (c) The timber catwalk, volume within the flytower and original roof structure survived the 1980s interventions only to be lost under the application
 - (d) The proposal results in a significant physical and cumulative impact on the integrity and intactness of the building
 - (e) The building will never be able to revert to a theatre again
 - (f) The visibility of the proposed additions is not minimised and will change the silhouette of the building
 - (g) The structural solution required to support these additions are excessive and intrusive and does not guarantee risk free environment and certainty of the retention of significant fabric including the ceiling
75. An Auditorium Methodology Report was submitted to outline how the works can be carried out whilst preserving the existing building fabric. This includes the installation of a temporary birdcage scaffolding to enable access to the ceiling and temporary support prior to loads being transferred to the new Level 4 structure.
76. The report outlines that some small penetrations (around 60) will be required through the ceiling to enable these scaffold legs. The ceiling material is proposed to be retained and labelled for later reinstatement. Sprinklers are proposed to be installed in the ceiling.
77. Council's Heritage Specialist also acknowledges that the application cannot be refused on heritage grounds as General Terms of Approval have been granted by Heritage NSW. A number of conditions are included in Attachment A to ensure that the impacts to the heritage significance of the building are minimised, including:
- (a) A deferred commencement requiring the submission of the final structural solution
 - (b) The number of penetrations to the ceiling are to be minimised. Details of the size and number of holes to the ceiling are to be submitted. Details of the method of repair work to the ceiling are to be submitted

- (c) Details of fire sprinklers to the ceiling are to be submitted, and that there be no further attachments
 - (d) Details of the grand staircase and handrail upgrade are to be submitted
 - (e) Details of the support and protection systems to dress circle boxes and moulding
 - (f) Details of methods of protection of openings for fire separation (such as screening) are to be submitted
 - (g) Details of water proofing of the exposed flytower walls and connection of new structure to the flyertower walls are to be submitted
78. In summary, given the heritage significance of the building and the controls and objectives of the Sydney LEP 2012 and Sydney DCP 2012, a high quantity of heritage conservation is required.
79. This requires more resolution in detail and appropriate consent conditions are included in Attachment A. These conditions will ensure that the proposed additions to the building, and the structural and services interventions necessary to support them, can be constructed while maintaining the heritage significance of the place. It is noted that in imposing these conditions, they do not defer consideration of an essential element of the proposal.

Design Advisory Panel and Design Excellence

80. The proposal was referred to the City's independent Design Advisory Panel (DAP) on 23 March 2023. The panel noted their support for the adaptive reuse of this building.
81. The recommendations of the Panel are outlined in the table below.

Design Advisory Panel Recommendations	Response
The Panel noted that the building is State heritage listed and elements of exceptional significance include the ceiling, foyer and bathrooms.	This comment is noted.
The Panel supports adaptive reuse of this building.	This comment is noted.
There is concern that the structural work to excavate the basement may impact exceptional heritage fabric and materials. If there is damage the significance is lost.	Heritage NSW's Technical Advisory Panel has reviewed the application prior to Heritage NSW issuing the General Terms of Approval.
The Panel noted that the Heritage Council's Technical Advisory Panel has	The Heritage Committee appointed to review the application including a structural engineer, and the heritage committee did not make any

Design Advisory Panel Recommendations	Response
<p>reviewed the structural assessment and is satisfied.</p>	<p>specific recommendations in relation to reducing the size of the basement.</p> <p>It is noted that, prior to being reviewed by DAP, that the proposal was amended to reduce the number of basement levels from 4 to 2 as well as reducing the basement footprint.</p>
<p>The poor amenity of the hotel design is a significant concern. Access and circulation is not clearly legible. The light shaft lacks generosity and will collect water and leaf litter. There is a high reliance on artificial lighting. Servicing and ventilation is too tight.</p>	<p>Access and circulation:</p> <p>The hotel reception are located at ground floor level, adjacent to Lifts 2 and 3 that provide direct access to hotel rooms located on Levels 2 to 4. Lift 1 is located at the end of the ground floor rear corridor and provides access to hotel rooms located within the fly tower and Level 5. A condition is recommended that wayfinding signage be provided.</p> <p>Natural light:</p> <p>There are 28 hotel rooms that rely on natural light through the light well void of the fly tower which has a depth of 1.56 metres to the internal face of the wall of the fly tower.</p> <p>The applicant submitted a window schedule to demonstrate whether each hotel room was able to comply with the requirements of the National Construction Code (NCC).</p> <p>This information shows that the hotel rooms on Levels 4 to 6 comply with the deemed to satisfy provisions in relation to natural light. However the hotel rooms on Level 2 would require a 1.92 metre deep lightwell and rooms on Level 3 would require a 1.71 metre deep lightwell to comply with the deemed to satisfy provisions.</p> <p>The applicant submits that a performance solution would be pursued, as the rooms have floor to ceiling glazing that exceeds the minimum glazing size requirements of the NCC.</p> <p>While a performance solution could be considered by a certifier, better amenity will be provided by increasing the width of the lightwell.</p>

Design Advisory Panel Recommendations	Response
	<p>A design modification condition is included in Attachment A to require that the size of the lightwell void is increased to a depth of 1.92 metres.</p> <p>The smallest hotel room within the fly tower is 23.6 square metres. As the minimum hotel size for a double room is 11 square metres, the design modification does not require a reduction in hotel rooms.</p> <p>It is noted that the hotel rooms on Level 1 have skylights only, which are compliant with the deemed to satisfy provisions of the NCC.</p> <p>Servicing and ventilation:</p> <p>Servicing includes plant rooms located on basement levels 1 and 2, a new substation located adjacent to the Orwell Street frontage, service risers, and rooftop plant.</p>
<p>A reduction in the number of hotel rooms is recommended to allow for more generosity, amenity, legibility, and circulation.</p>	<p>As discussed above, a design modification condition is included in Attachment A to ensure that the lightwell is increased in size, however this will result in a reduction in the size of those rooms, rather than a reduction in the total number of rooms.</p> <p>The remainder of the proposal remains compliant with the amenity criteria of the Sydney DCP 2012, and issues relating to legibility and circulation can be addressed through appropriate wayfinding signage, which is addressed by a condition included in Attachment A.</p>
<p>The Panel noted that there are no back of house facilities and the venue will only be able to support performances such as cabaret or solo artists.</p>	<p>The back of house facilities associated with the entertainment facility use consist of a backstage room with two dressing rooms and bathrooms.</p> <p>The applicant has advised that this is sufficient for the proposed operating model.</p>
<p>The venue has a capacity for up to 450 patrons and the foyer should have enough generosity to accommodate the tidal flow of these crowds.</p>	<p>The size of the ground floor and first floor foyer is over 300 square metres.</p> <p>The National Construction Code includes deemed to satisfy provisions for a foyer space</p>

Design Advisory Panel Recommendations	Response
	<p>to accommodate at least 0.25 square metres per person that the auditorium accommodates.</p> <p>On this basis the foyer is large enough to accommodate 1,200 persons.</p> <p>The size of the foyer is sufficient for the proposed patron capacity of 450 patrons for the entertainment facility and 110 patrons for the small bar. It is noted that a condition is recommended in Attachment A that restricts the patron capacity of the entertainment facility to 250 patrons due to acoustic amenity impacts as discussed elsewhere in this report.</p>
<p>New facades should meet a sustainability rating. This may require an alternative approach to full glazing with screening.</p>	<p>A Design for Environmental Performance Report was submitted with the development application which sets out the environmental commitments for the development.</p> <p>The applicant also provided information with the application indicating self-imposed environmental sustainability initiatives, and a Section J report that has been completed satisfactorily against NCC standards.</p> <p>The proposal has been reviewed by the City's Environmental Sustainability Advisor who has advised that there are no sustainability ratings that are mandated for this development type, and that the information submitted in relation to the sustainability of the facade is generally acceptable, except that information relating to thermal bridging has not been provided.</p> <p>A condition is included in Attachment A to require that the Design for Environmental Performance Report is updated to incorporate thermal bridging information, to ensure self-imposed initiatives are incorporated.</p>

82. The proposal, subject to conditions, achieves an appropriate design outcome that responds to the issues raised by the Panel and is recommended for deferred commencement approval on this basis.

Clause 4.6 Request to Vary a Development Standard - Height

83. The site is subject to a maximum height of buildings control of 22 metres under Clause 4.3 of the Sydney LEP 2012.
84. The proposed development has a height of 24.92 metres, which represents a 13.27% non-compliance with the height of buildings development standard.

85. Details of the non-compliance with the 22 metre height control is depicted in the figures provided below.

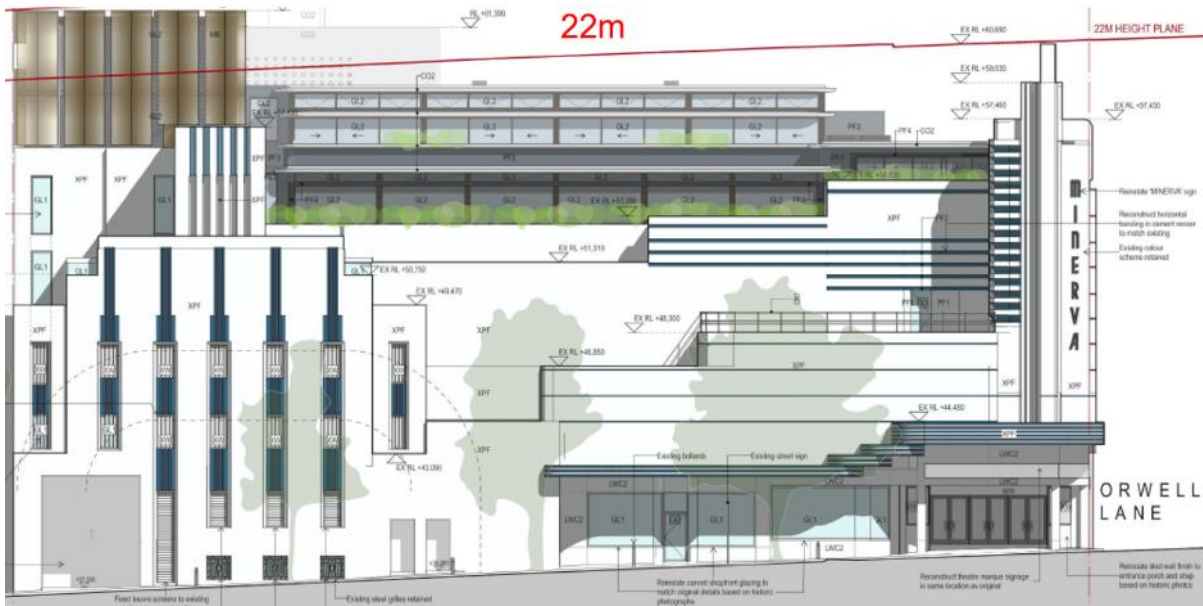


Figure 43: The height limit (shown as a red line) as viewed from the Orwell Street elevation



Figure 44: The height limit (shown as a red line) as viewed from the northern elevation

86. A written request (Attachment C) has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard
 - (c) The proposed development will be consistent with the objectives of the zone

- (d) The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

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

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
- (i) The proposal is consistent with the objectives of the 'Height of Building Standard'
 - (ii) The vast majority of the proposed building envelope is below or in line with the 22 metre height limit. As such, the scale of the building remains consistent with the desired character of the locality notwithstanding the proposed minor variation
 - (iii) The proposal retains, conserves and adapts the building, respecting its aesthetic significance. The existing streetscape is varied, with a range of scales and architectural styles. The proposed additions have been designed to minimise visual impacts on the streetscape and the local heritage conservation area
 - (iv) The proposed variation to the height of buildings control does not give rise to an impact on the amenity of the locality
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The massing and design of the flytower addition is the result of a considered analysis of the qualities of the base theatre building and the surrounding context and the desire to deliver a positive design outcome with a high level of architectural merit
 - (ii) The modifications to the original flytower of the building have been carefully designed to ensure that its external volume retains its primacy within the streetscape and the vertical extension reads as secondary complementary form
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposed development, which includes a mix of uses such as tourist and visitor accommodation, entertainment facilities, and commercial premises, has the potential to significantly increase employment opportunities and economic growth in the surrounding locality
 - (ii) The proposal aims to enhance the building's street presence along Orwell Street and Orwell Lane by introducing active uses on the ground floor
 - (iii) Potential negative impacts are minimised through the careful planning, design of the proposal and the future management of the venues
 - (iv) The proposal will create a lively and inviting environment in the vicinity of the renovated building

- (v) The proposed mix of uses is expected to have a positive impact on the surrounding community, creating jobs, driving increased spending, and attracting new visitors and residents
 - (vi) The location of the site boasts remarkable access to a multitude of public transportation options, which include rail services, bus networks, and cycleways
- (d) The proposed development will be consistent with the objectives of the standard:
- (i) The majority of the proposed building complies with the 22 metre height limit
 - (ii) The portion of the building that exceeds the height limit does not cause any negative visual or environmental impacts on the public domain, local streetscape, or surrounding residential properties
 - (iii) In relation to visual impacts, the primary facades of Orwell Street and Orwell Lane are preserved and remain the focal point of the composition. The addition above the flytower corresponds with the original building's form and will be clearly distinguishable as a secondary element
 - (iv) In relation to overshadowing impacts, the proposed additions have been designed to ensure that the current level of solar access to surrounding properties is maintained and little significant additional overshadowing of the public domain is caused
 - (v) In relation to residential amenity impacts, the elements that exceed the height limit are adequately separated from residential development, which eliminates concerns about overlooking or noise disruption
 - (vi) The proposed addition is appropriately scaled and designed as a secondary component which defer to the architecture of the original building. The addition has been setback from the principal facades and adopts contemporary materials to minimise the visual impact
 - (vii) The view loss resulting from the amended proposal would be of moderate to minor significance

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

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

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

89. The applicant's written request adequately addresses the matters required for demonstration by Clause 4.6(3)(a) and (b) of Sydney LEP 2012.
90. A detailed discussion with regard to the objectives of the height of buildings development standard has been provided and satisfies the test under Clause 4.6(3)(a), in that compliance with the standard is both unreasonable and unnecessary, to the extent of the variations proposed.
91. The applicant has satisfactorily demonstrated that there are sufficient environmental planning grounds to contravene the development standard which satisfies the test under Clause 4.6(3)(b).
92. As such, the requirement of clause 4.6(4)(a)(i) of Sydney LEP 2012 is met.

Is the development in the public interest?

93. As per clause 4.6(4)(a)(ii) of the Sydney LEP 2012, the proposed development is in the public interest because it is consistent with the objectives of the height of buildings standard and the objectives of the MU1 Mixed Use zone. That is:
 - (a) The height of the development is appropriate to the site conditions. The height, when considered with the proposed building form and setbacks, allows for an appropriate relationship with the heritage item on site, and the surrounding heritage conservation area
 - (b) The height of the development does not unreasonably compromise views or outlook
 - (c) The proposed development includes a mix of compatible land uses that are appropriate to the MU1 Mixed Use zone
 - (d) The site is located 270 metres from the Kings Cross railway station and close to multiple bus stops. The location and accessibility and the connection between the public domain and the subject development creates a highly permeable access arrangement which promotes pedestrian movement

Conclusion

94. For the reasons provided above the requested variation to the height of buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012.
95. The proposed development would be in the public interest because it is consistent with the objectives of height of buildings development standard and the MU1 Mixed Use zone.

Hours of Operation and Acoustic Impacts

96. The proposed hours of operation of the various uses are:
 - (a) Entertainment facility - 7.00am to 2.00am the following day, Tuesdays to Saturdays inclusive, and 7.00am to 12.00am midnight Sundays and Mondays

- (b) Cafe - 7.00am to 12.00am midnight, Mondays to Sundays inclusive
 - (c) Small bar - 7.00am to 3.00am the following day, Mondays to Sundays inclusive
97. The proposed patron capacities are:
- (a) Entertainment facility - 250 patrons, with 450 patrons for up to 20 days per year
 - (b) Cafe - 30 patrons indoor, and 18 outdoor
 - (c) Small bar - 110 patrons
98. Section 3.15 of the Sydney DCP 2012 sets out controls for late night trading premises and identifies a hierarchy of three late night trading areas located throughout the City. The site is located within a Local Centre area which is the lowest intensity of the three late night trading areas.
99. The Sydney DCP 2012 sets out base and extended trading hours and provides definitions for Category A (High Impact Premises), Category B (Low Impact Premises) and Category C (Retail and Business premises). The entertainment facility is defined as a dedicated performance venue primarily for the purpose of performance, creative or cultural uses.
100. The Sydney DCP 2012 definition states that performance, creative or cultural uses include:
- (a) Live entertainment, being an event at which one or more persons are engaged to play or perform live or pre-recorded music, or a performance at which the performers (or at least some of them) are present in person or
 - (b) Display, projection or production of an artwork, craft, design, media, image or immersive technology or
 - (c) Rehearsal, teaching or discussion of art, craft, design, literature or performance
101. The proposed entertainment facility is consistent with this definition and is assessed as a Category A premises when operating with up to 450 patrons for 20 days per year, and is assessed as a Category B premises at other times when operating with up to 250 patrons. The cafe and small bar are defined as Category B premises.
102. The Sydney DCP 2012 sets out matters for consideration when determining appropriate trading hours for late night trading premises. This is determined by taking into account a number of issues, including the location and context of the premises, proximity to residential land uses and other late night trading premises, the likely impact on amenity including noise, and the ability to manage the impacts.
103. A Noise Impact Assessment has been submitted with the application and has been reviewed by Council's Acoustic Specialist. A number of issues were identified with the Noise Impact Assessment and it has been amended a number of times. Despite repeated requests for a more detailed and accurate acoustic assessment, the applicant has not adequately demonstrated that the proposed use is capable of operating within an acceptable noise criteria with the hours of operation until 2am and 3am and capacity of up to 450 patrons for the entertainment facility.

104. This would result in the potential for unacceptable adverse amenity impacts to neighbouring residential uses.
105. The proposed hours of operation of the entertainment facility and small bar do not comply with the base and extended hours for Category A and B premises in a Local Centre Area.
106. In relation to the proposal to operate the entertainment facility with a capacity of 450 patrons for up to 20 days per year for VIP performers with tables removed, the submitted Plan of Management has not set out what management practices would be undertaken at these times. It has not been demonstrated that this would be well managed and that the dual capacities are capable of being enforced. It would be logistically difficult for Council Rangers, the Local Police and residents to know what capacity is occurring at the premises on any given day and therefore monitor compliance with the relevant consent conditions.
107. Conditions are included in Attachment A that restrict the capacity of the entertainment facility to 250 patrons and the hours of operation of the entertainment facility and small bar to midnight. Compliance with the Sydney DCP 2012 and the recommended trading hours are outlined in the table below:

Proposed use and capacity	DCP Category	DCP Hours	Proposed Hours	Recommendation
Entertainment Facility 250 patrons	Category B	Base: 7am to 11pm Extended: 7am to 12am midnight Additional hour: 1am	7am to 2am the following day Tuesdays to Saturdays inclusive 7am to 12am midnight Sundays and Mondays	7am to 11pm and one year trial period between 11pm and 12am midnight Mondays to Sundays inclusive
Entertainment Facility 450 patrons 20 days per year	Category A	Base: 10am to 10pm Extended: 10am to 12am midnight	7am to 2am the following day Tuesdays to Saturdays inclusive 7am to 12am midnight Sundays and Mondays	Patron capacity to be restricted to 250 patrons with the hours outlined above
Cafe 30 patrons	Category B	Base: 7am to 11pm	7am to 12am midnight	7am to 11pm and one year trial period between

Proposed use and capacity	DCP Category	DCP Hours	Proposed Hours	Recommendation
		Extended: 7am to 12am midnight	Mondays to Sundays inclusive	11pm and 12am midnight Mondays to Sundays inclusive
Small Bar 110 patrons	Category B	Base: 7am to 11pm Extended: 7am to 12am midnight	7am to 3am the following day Mondays to Sundays inclusive	7am to 11pm and one year trial period between 11pm and 12am midnight Mondays to Sundays inclusive

View Sharing

108. A number of submissions raised concerns with the loss of views towards the skyline of the Sydney Central Business District, Sydney Harbour, the Sydney Opera House, and the Sydney Harbour Bridge.
109. The concerns relate to views from multiple apartments within the residential flat building at 113-115 Macleay Street (Gowrie Gate), and from one apartment and the communal rooftop terrace at the residential flat building at 5 Orwell Street.
110. The location of these properties is shown in the map extract reproduced in the figure provided below.



Figure 45: The subject site (shown in blue) and properties with objectors with view loss concerns (shown in red)



Figure 46: The neighbouring properties where view assessments were conducted.

111. The proposal must satisfy the objectives of the building height control, including objective 4.3(1)(c) of the Sydney LEP 2012 which states "to promote the sharing of views".
112. It must also satisfy the design excellence provisions including Clause 6.21C(2)(c) of the Sydney LEP 2012 which states "whether the development detrimentally impacts on view corridors".
113. The applicant submitted a view impact assessment report to analyse the view sharing impacts of the proposal. An amended view impact assessment report (reproduced at Attachment G) was submitted with the amended proposal. The amendments included a reduction in the built form at the north-eastern corner of the site to assist in view sharing with 113-115 Macleay Street.

114. The view impact assessment report has been reviewed by Council's model makers who have confirmed that the images provided within the report accurately model the impacts to views from these apartments.

115. A summary of the impacts to each apartment is summarised in the table below:

Site	View impact assessment reference	View impact
5 Orwell Street		
Unit 1107	Viewpoint 22-23 Pages 43-46, 125-130	No impact, as the proposal is below the views of Sydney Harbour
Communal rooftop terrace	Viewpoint 26 Pages 47-48, 131-133	No impact, as the proposal is below the views of Sydney Harbour
113-115 Macleay Street (Gowrie Gate)		
Unit 602, Level 6	Viewpoint 28, 29, 31 Pages 50-55, 140-148	No impact, as the proposal is below the views of the Sydney Harbour Bridge, Opera House, Sydney Harbour and the City skyline
Unit 603, Level 6	Viewpoint 08, 10, 13, 14 Pages 24-31, 98-109	No impact, as the proposal is below the views of the Sydney Harbour Bridge, Opera House, Sydney Harbour and the City skyline
Unit 604, Level 6	Viewpoint 01, 02, 03 Pages 14-19, 81-91	The views of the City skyline are retained. The proposal results in a partial loss of view to Sydney Harbour from one viewpoint. This is discussed further below.
Unit 503, Level 5	Viewpoint 34 Pages 60-61, 155-157	No impact, as the proposal is below the views of the Sydney Harbour Bridge and Opera House
Unit 504, Level 5	Viewpoint 32, 33 Pages 56-59, 149-154	No impact, as the proposal is below the views of the Sydney Harbour Bridge
Unit 505, Level 5	Viewpoint 06, 07 Pages 20-23, 92-97	There is an existing view of the Sydney Harbour Bridge and Opera House, which are both partially obstructed.

Site	View impact assessment reference	View impact
		The proposal results in a partial loss of view to the Opera House. This is discussed further below.
Unit 506, Level 5	Viewpoint 18, 19, 20 Pages 38-43, 119-130	There is an existing view of part of the City skyline from the bedroom window. The proposal results in a partial loss of view to the City skyline. This is discussed further below.
Unit 404, Level 4	Viewpoint 15, 16, 17 Pages 32-37, 110-118	There is an existing view of the Sydney Harbour Bridge, which is partially obstructed. The proposal results in a partial loss of view to the Sydney Harbour Bridge. This is discussed further below.

116. Assessment of view impacts is undertaken based on the principles of view sharing established in *Tenacity Consulting v Warringah Council [2004]* NSWLEC 140 by the Land and Environment Court of New South Wales.

117. In the *Tenacity* case, Senior Commissioner Roseth notes that:

The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.)

118. To decide whether view sharing is reasonable or not, Senior Commissioner Roseth developed a four step assessment, which is summarised in part below:

- (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
- (b) The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. The expectation to retain side views is often unrealistic.
- (c) The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas.
- (d) The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.

119. An assessment against the four steps for each property with a view impact is outlined below.
120. Unit 604, Level 6, 113-115 Macleay Street:
- (a) Views to be affected: Views of Sydney Harbour. This view is already obscured by other buildings between the subject site and the harbour, and is a partial view not a whole view
 - (b) Part of property viewed from: Views are from Viewpoint 03 which is the west facing outdoor deck area over the Llanckelly Place frontage
 - (c) Extent of impact: A portion of the views to the harbour are obstructed when viewed from the west facing outdoor deck, whilst the views of the harbour are retained when viewed from the outdoor balcony and living room window
 - (d) Reasonableness: The views are obstructed by a portion of the proposed plant area, which exceeds the 22 metre height control, and impacts to the view must be assessed with a higher degree of sensitivity. The view is from one viewpoint from Unit 604, and there are better viewpoints of the harbour that remain unobstructed (as shown in the viewpoint from the other balcony below). The view of the harbour from the affected viewpoint is only a glimpse of the harbour, and the proposed development will obstruct around 25% of the view, with a glimpse of the harbour being retained from this viewpoint. In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 47: The existing view from the west facing outdoor deck area



Figure 48: The impact on the view of Sydney Harbour from this view point



Figure 49: Viewpoint from the primary outdoor balcony of Unit 604 showing no impact on the views to Sydney Harbour

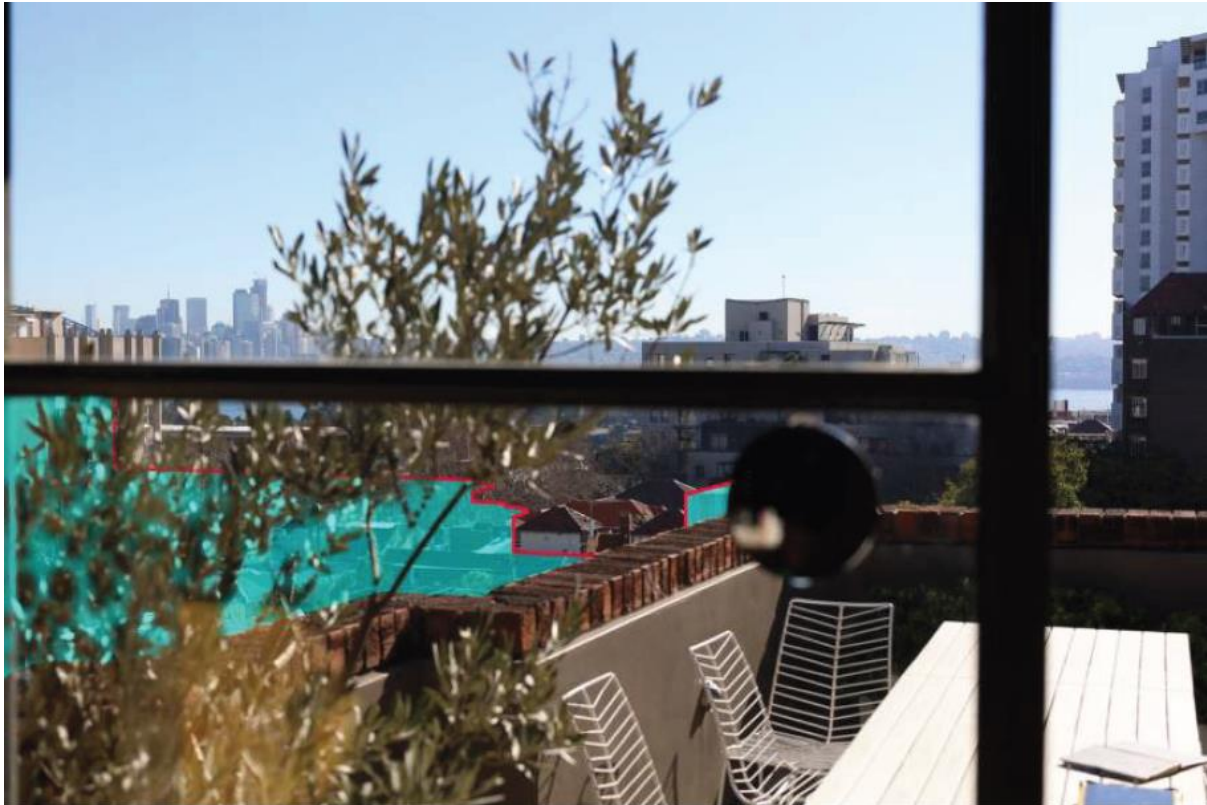


Figure 50: Another viewpoint from the living room window of Unit 604 showing no impact on the views to Sydney Harbour

121. Unit 505, Level 5, 113-115 Macleay Street:

- (a) Views to be affected: Views of the Opera House. This view is already obscured by other buildings between the subject site and the Opera House, and is a partial view not a whole view
- (b) Part of property viewed from: Views are from Viewpoint 06 and 07 which is the north facing living room
- (c) Extent of impact: A portion of the views to the Opera House are obstructed when viewed from the north facing living room, whilst the views of the Sydney Harbour Bridge are retained from the same viewpoints
- (d) Reasonableness: The proposal was amended to delete a portion of the proposed built form to minimise the impact upon the views from Unit 505. The views are obstructed by the second level of the vertical addition which is compliant with the 22 metre height control. The amount of the Opera House to be obstructed is limited to less than a quarter, with the majority of the existing views to the Opera House, as well as the Sydney Harbour Bridge, being retained from these viewpoints. In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 51: The existing view from Unit 505



Figure 52: The impact on the view of the Opera House from this view point



Figure 53: The amended proposal (purple) and original proposal (green)

122. Unit 506, Level 5, 113-115 Macleay Street:

- (a) Views to be affected: Views of the City skyline. This view is already obscured by other buildings between the subject site and the City skyline, as well as being limited to the northern section of the City skyline, and does not include Sydney Tower Eye, and is a partial view not a whole view. The buildings visible are Deutsche Bank Place, Chifley Tower, Aurora Place, and Quay Quarter Tower.
- (b) Part of property viewed from: Views are from Viewpoint 19 which is the north-west facing bedroom window
- (c) Extent of impact: A portion of the views to the City skyline are obstructed when viewed from the north-west facing bedroom, with the top of the skyline remaining visible.
- (d) Reasonableness: The views are obstructed by a portion of the proposed addition to the flytower, which exceeds the 22 metre height control, and impacts to the view must be assessed with a higher degree of sensitivity. The view is from the bedroom and not the living room. The view of Deutsche Bank Place is generally retained whilst the tops of the buildings of Chifley Tower, Aurora Place and Quay Quarter Tower are retained. In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 54: The existing view from the bedroom window of Unit 506

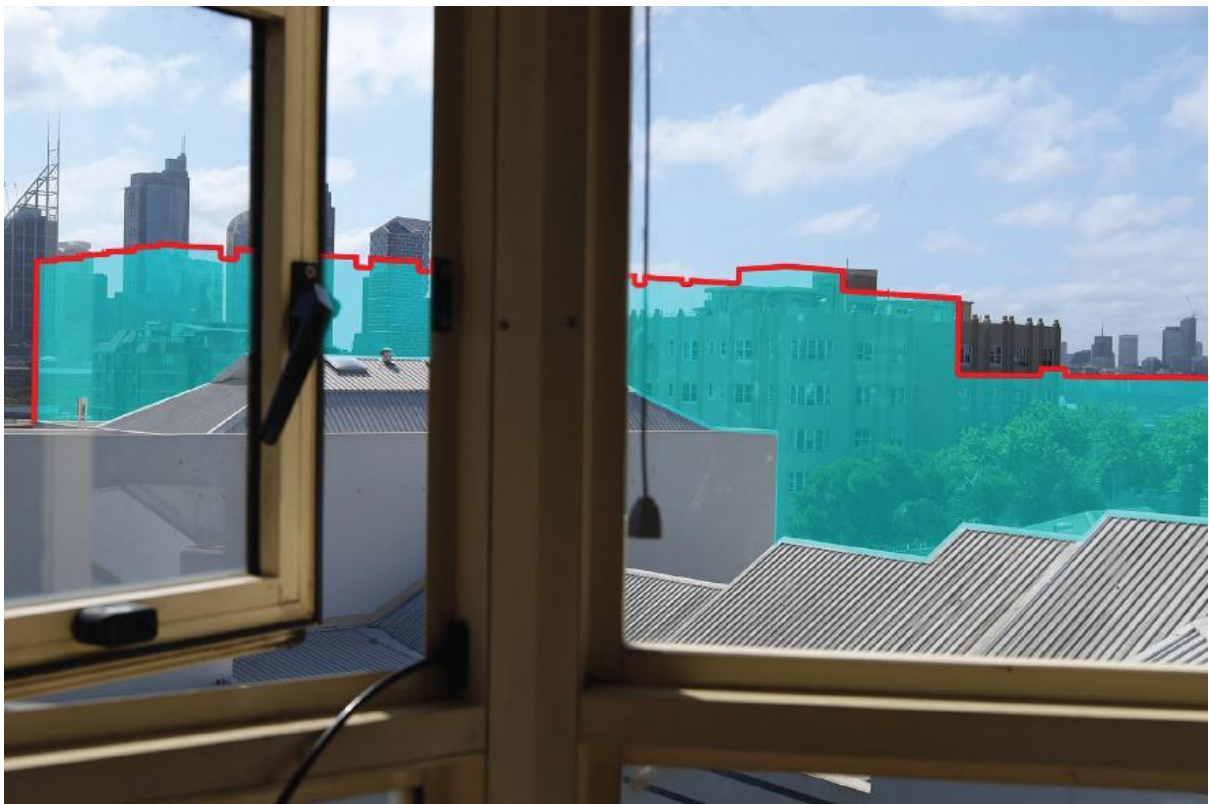


Figure 55: The impact on the view of the City skyline from the bedroom window of Unit 506



Figure 56: A wider viewpoint from the bedroom window of Unit 506 showing the proposal as modelled

123. Unit 404, Level 4, 113-115 Macleay Street:

- (a) Views to be affected: Views of the Sydney Harbour Bridge. This view is already obscured by other buildings between the subject site and the bridge, and whilst most of the arch of the bridge remains visible, it is a partial view not a whole view
- (b) Part of property viewed from: Views are from Viewpoint 15 (living room), 16 (bedroom) and 17 (living room) which is the north facing living room and bedroom
- (c) Extent of impact: A portion of the views to the Sydney Harbour Bridge are obstructed when viewed from the north-facing bedroom and living room. The majority of the arch would remain visible from Viewpoints 15 and 16 whilst the majority of the bridge would be obstructed from Viewpoint 17.
- (d) Reasonableness: Unit 404 is located on Level 4 and views are more difficult to retain due to the lower height of the unit. The views are obstructed by the first level of the vertical addition which is compliant with the 22 metre height control. The majority of the view of Sydney Harbour Bridge is retained from two of the viewpoints (15 and 16). In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 57: The existing view from the living room (Viewpoint 17) of Unit 404



Figure 58: The impact on the view of the Sydney Harbour Bridge from Viewpoint 17



Figure 59: Another view (Viewpoint 15) from the living room of Unit 404



Figure 60: The impact from Viewpoint 15 on views to the Sydney Harbour Bridge



Figure 61: The existing view from the bedroom (Viewpoint 16) from Unit 404

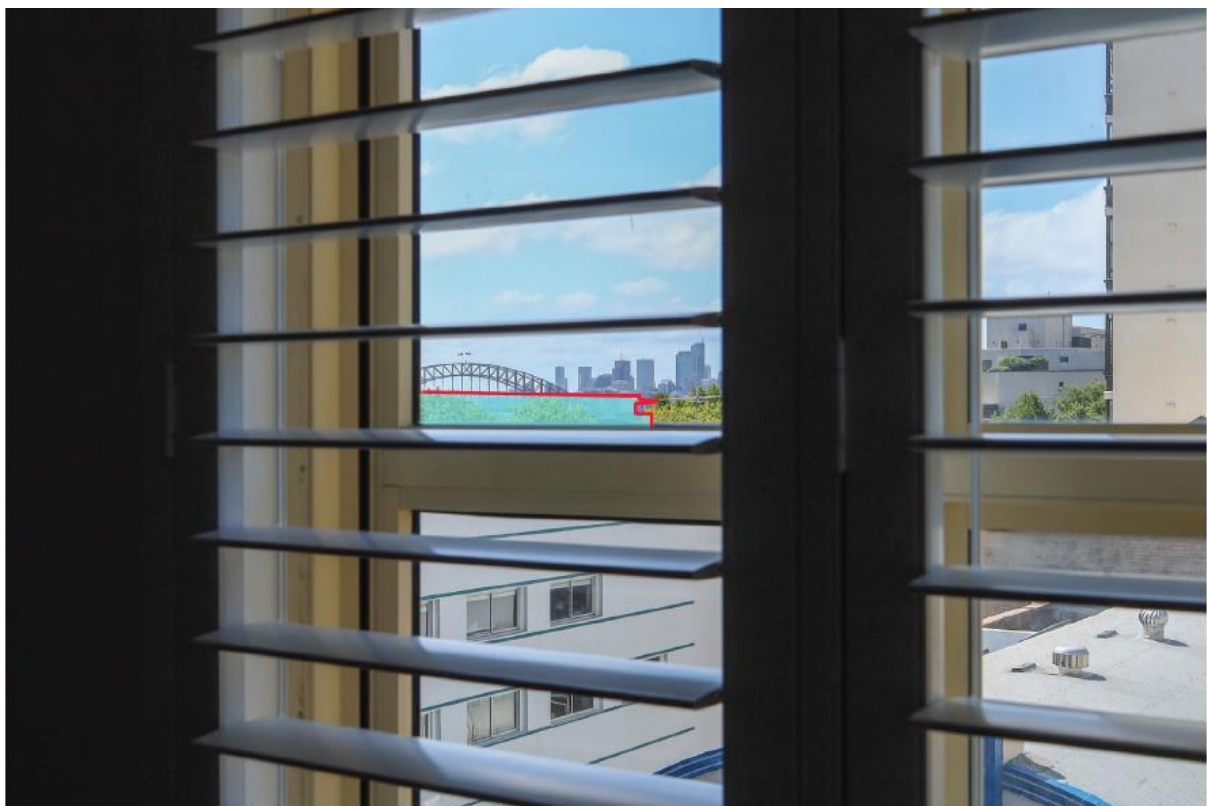


Figure 62: The impact on the view of the Sydney Harbour Bridge from the bedroom (Viewpoint 16)

View sharing - Conclusion

124. The proposed additions will be visible from a number of adjoining buildings to varying degrees.
125. The view sharing assessment found that the protection of views from adjoining properties is not reasonable in this instance. This is due to several reasons outlined below:
- (a) Despite the proposal obscuring views from some apartments in buildings, the value of views that would be retained from these properties from other vantage points remains high, with
 - (i) Unit 604 retaining views towards Sydney Harbour
 - (ii) Unit 505 retaining views to the Sydney Harbour Bridge and a partial view to the Opera House
 - (iii) Unit 506 retaining a partial view to the City skyline
 - (iv) Unit 404 retaining views to the Sydney Harbour Bridge to varying degrees within the apartment.
 - (b) Only partial views of the Sydney Harbour Bridge, Opera House are currently achieved, with the nearest objector being 1.74 kilometres from the Opera House, 2.4 kilometres from the Sydney Harbour Bridge.
 - (c) Opportunities for a more skilful design to reduce the view impact would result in other impacts, such as streetscape and heritage impacts.
126. While it is acknowledged that the proposal is not without view sharing impacts, the results of the *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* assessment conclude that view loss from adjoining properties as a result of the proposed addition are reasonable for the reasons described above.

Consultation

Internal Referrals

127. The application was discussed with Council's:
- (a) Building Services Unit;
 - (b) City Model Unit;
 - (c) Environmental Health Unit;
 - (d) Environmental Sustainability Advisor;
 - (e) Licensed Premises Unit;
 - (f) Heritage and Urban Design Unit;
 - (g) Public Art Unit;
 - (h) Public Domain Unit;

- (i) Cultural Strategy Advisor;
- (j) Specialist Surveyors;
- (k) Transport and Access Unit;
- (l) Tree Management Unit; and
- (m) Waste Management Unit.

128. Generally, the referrals have advised that the proposal is acceptable subject to conditions, except where discussed elsewhere in this assessment report.

129. Where appropriate, these conditions are included in Attachment A.

External Referrals

Ausgrid

130. Pursuant to Section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid for comment.

131. A response was received raising no objections to the proposed development.

Heritage Council of New South Wales

132. Pursuant to the Heritage Act, 1977, the application was referred to the Heritage Council of New South Wales on 12 August 2021.

133. General Terms of Approval were issued by the Heritage Council of New South Wales on 6 September 2022.

134. The amended application was re-referred to the Heritage Council of New South Wales on 9 March 2023, and amended General Terms of Approval (Attachment D) were issued on 30 May 2023, and have been included Attachment A.

New South Wales Police Force

135. The application was referred to the New South Wales Police Force for comment.

136. No response was received.

Water New South Wales

137. Pursuant to the Water Management Act, 2000, the application was referred to Water New South Wales on 12 August 2021.

138. General Terms of Approval were issued by Water New South Wales on 23 May 2022.

139. The amended application was re-referred to Water NSW on 9 March 2023, and amended General Terms of Approval were issued on 29 March 2023, and have been included in Attachment A.

Advertising and Notification

140. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 17 August and 15 September 2021.
141. A total of 2,041 property owners and occupiers were notified and 178 submissions were received, including 11 in support, 164 objecting, 3 comments and a petition in opposition with 1,799 signatures.
142. The amended application was re-notified for a period of 14 days between 31 March and 15 April 2023. A total of 55 submissions were received during the re-notification period, including 7 in support, 47 objecting, a petition with 1,773 signatures in opposition, and 1 comment.
143. The submissions raised the following issues:
- (a) **Issue:** Support for the proposal due to:
- (i) The proposal saves and restores the historic building
 - (ii) The proposal will bring passive surveillance to the area
 - (iii) The proposal is by a private developer and will not cut into taxpayer funds
 - (iv) A huge theatre is not needed in the area, and there are other theatres within a short distance.
 - (v) The creation of multiple venues allows varied performance and function type
 - (vi) The distinguished hotel and entertainment operator will draw more tourists and visitors to the area
 - (vii) The hotel will ensure the viability of the venue use
 - (viii) The proposal will create job opportunities for local residents
 - (ix) The proposal addresses community needs whilst being financially viable
 - (x) The additions will hardly be visible from the street

Response: These comments are noted.

- (b) **Issue:** The former theatre use should be reinstated. There is demand for a 800-1,000 seat theatre in Sydney. The applicant's Feasibility Study Review is limited in it's findings and there are workable solutions to return the building to a theatre.

Response: As discussed above, the existing land use of the site is not a theatre, and proposed land use is a permissible use that is acceptable when assessed against the relevant planning controls, and subject to the conditions included in Attachment A. A multi purpose theatre is not proposed as part of the development application, however the proposal will return an entertainment use to part of the building for the first time in 44 years.

- (c) **Issue:** Noise impacts to surrounding residential uses from the use, patrons, and from the lift and mechanical plant. The Noise Impact Assessment is inadequate.

Response: As discussed above, a Noise Impact Assessment Report has been submitted with the development application and has been reviewed by Council's Acoustic Specialist. The report has not adequately demonstrated that the proposal is able to satisfy the relevant noise criteria with the hours of operation and capacity proposed. Conditions have been included in Attachment A that restrict the capacity of the entertainment facility to 250 patrons and restrict the hours of operation of the entertainment facility and small bar to midnight. A number of conditions are recommended in Attachment A to ensure that noise from the use and from mechanical plant complies with the relevant acoustic criteria.

- (d) **Issue:** The proposal will result in anti-social behaviour

Response: The proposed uses of an entertainment facility and small bar are permissible land uses and appropriate measures are in place to ensure that impacts from anti-social behaviour are minimised, including those outlined in the Plan of Management submitted with the application. A number of conditions are included in Attachment A, including the requirements of security and surveillance cameras, as well as limiting the hours of operations between 11pm and midnight to a one year trial period to enable the operational performance of the venue to be monitored to ensure it is well managed.

- (e) **Issue:** The hours of operation are inappropriate within a residential context and inconsistent with surrounding licensed premises

Response: As discussed above, conditions are included in Attachment A that restrict the hours of operation to 11 pm with a one year trial to midnight.

- (f) **Issue:** The patron capacity of over 800 patrons across the various venues is unacceptable

Response: The application was amended to reduce the patron capacity across all uses from 870 patrons to a maximum of 590. A condition is included in Attachment A that restrict the maximum patron capacity across all uses to 390 patrons, as the maximum capacity recommended for the entertainment facility is 250 patrons.

- (g) **Issue:** The proposal results in a significant exceedance to the height control of the Sydney LEP 2012 and the Clause 4.6 is not justified.

Response: As discussed elsewhere in this assessment report, the proposed height of the development is acceptable and the Clause 4.6 request is supported.

- (h) **Issue:** The proposal is an overdevelopment of the site.

Response: The proposal is consistent with the floor space ratio development standard of the Sydney Local Environmental Plan 2012 and has satisfied the requirements of the planning controls as discussed in this report.

- (i) **Issue:** No vertical additions should be supported to the buildings

Response: The assessment considered the impact of vertical additions to the heritage significance of the buildings as well as the structural impact of the additions on the existing heritage fabric. A number of conditions are included in Attachment A to ensure that the vertical additions do not result in the loss of significant internal fabric or undermine the structural stability of the buildings. The proposal was considered by Heritage NSW who granted General Terms of Approval. The proposed vertical additions are acceptable, subject to conditions.

- (j) **Issue:** View loss from properties at 113-115 Macleay Street and 5 Orwell Street. That the view impact assessment has not considered the communal roof terrace of 25 Hughes Street.

Response: As discussed elsewhere in this assessment report, a view impact assessment has been carried out for 113-115 Macleay Street and 5 Orwell Street and the proposal is consistent with the view sharing planning principles established by the Land and Environment Court of New South Wales. The city skyline views from the communal roof terrace are not impacted by the proposal due to the orientation of the site, with the views being to the west and the proposal being to the south of 25 Hughes Street.

- (k) **Issue:** The proposed additions dominate the heritage item, and are not compatible with the character of the heritage items and conservation area

Response: The proposed additions differentiate between the existing building and new additions. The form of the addition is designed with a stepped form to minimise the perceived bulk and scale of the addition. The proposal was considered by Heritage NSW who granted General Terms of Approval.

- (l) **Issue:** The proposal will result in a significant impact upon the heritage item including its internal features.

Response: The proposal was considered by Heritage NSW who granted General Terms of Approval. A detailed assessment of the internal fabric of the buildings has been carried out and conditions are included in Attachment A to ensure that significant internal fabric is retained.

- (m) **Issue:** The works are irreversible and would not allow later conversion to a working live theatre.

Response: The proposal was considered by Heritage NSW who granted General Terms of Approval.

- (n) **Issue:** The proposed cabaret operator has no connection to the area.

Response: The application seeks consent for the use of the land, however the specific operator of the venue is not a matter for consideration as part of the assessment of the application.

- (o) **Issue:** Impact of excavation on neighbouring buildings.

Response: The proposal has been amended to reduce the depth of excavation from 4 levels to 2 levels and by reducing the footprint of the basement floorplans. The proposed excavation is considered to be acceptable and a number of conditions have been recommended to ensure that the proposed works do not impact upon neighbouring properties.

- (p) **Issue:** Hotel rooms do not have sufficient natural amenity and are undesirable.

Response: The proposal is consistent with the requirements for hotel amenity under the Sydney Development Control Plan 2012 and a condition is recommended in Attachment A to increase the size of the lightwell to provide additional natural light to hotel rooms.

- (q) **Issue:** Visual privacy impacts to neighbouring residential properties including 113-115 Macleay Street and 25 Hughes Street, including the communal roof terrace of 25 Hughes Street.

Response: As discussed elsewhere in this assessment report, the proposal does not result in unreasonable privacy impacts to neighbouring dwellings or the communal roof terrace of 25 Hughes Street.

- (r) **Issue:** Impact on light to dwellings at 25 Hughes Street.

Response: Due to the orientation of the site, the proposal does not result in any midwinter overshadowing to 25 Hughes Street. The current compliance levels under the National Construction Code (NCC) for natural light to habitable rooms within 25 Hughes Street are maintained, as horizontal distance of greater than 1 metre is maintained between the windows and the wall of the site, and as the height of the wall within which the windows are located (being the rear wall of 25 Hughes Street) does not change in height. In addition, natural light is maintained from existing mid-block lightwells within 25 Hughes Street.

- (s) **Issue:** Overshadowing impacts to neighbouring properties.

Response: Due to the orientation of the site, the proposal will not result in significantly adverse overshadowing impacts to living room windows or private open space areas of adjoining residential properties.

- (t) **Issue:** Overshadowing impacts to Springfield Gardens.

Response: As discussed above, the proposal has been designed to minimise overshadowing impacts to the park known as Springfield Gardens by stepping back each level of the addition. The overshadowing controls of the Sydney Development Control Plan 2012 have been satisfied.

- (u) **Issue:** The location of a substation within Springfield Gardens is inappropriate.

Response: The proposal was amended to locate the substation within the existing building.

- (v) **Issue:** Sustainability measures should be included.

Response: The proposal has been reviewed by Council's Environmental Sustainability advisor who has advised that the proposal is capable of satisfying the relevant sustainability criteria, subject to conditions as included in Attachment A.

- (w) **Issue:** The applicant should nominate a responsible manager to liaise with surrounding property owners during the construction period and once operation has commenced.

Response: During construction, a certifier will be appointed who will oversee the construction period and be the point of contact for the community. A condition is recommended in Attachment A that requires a site notice to be displayed with the relevant contact details. A condition is also recommended that, once operational, the site is to have a manager on-site 24-hours per day with their contact phone number made available to guests, local residents and neighbours, police and local council.

(x) **Issue:** Orwell Street and Orwell Lane should be upgraded to shared zones, and Springfield Gardens should be upgraded.

(y) **Response:** The upgrading of Orwell Street, Orwell Lane and Springfield Gardens as part of this development is not required under the planning controls. Council's Traffic Operations team have recommended that a continuous footpath treatment be provided across Orwell Lane to improve pedestrian safety, and this is recommended in Attachment A. A condition is also recommended in Attachment A relating to the payment of Section 7.11 contributions, which goes towards the maintenance of community infrastructure including roads and parks.

(z) **Issue:** There was no true consultation with surrounding residents and neighbours prior to the development application being lodged.

Response: There is no requirement under the Environmental Planning and Assessment Act, 1979 for applicants to consult with neighbours prior to submitting development applications.

(aa) **Issue:** The notification period was insufficient to digest the amount of information submitted with the development application.

Response: The proposal was notified for a period of 28 days. Where submitters made requests for additional time to provide their submission, these requests were granted.

(bb) **Issue:** Asbestos must be carefully managed

Response: Conditions are included in Attachment A to ensure the safe removal of any asbestos from the site.

(cc) **Issue:** Risk of hazardous materials on site.

Response: Conditions relating to hazardous material are included in Attachment A.

(dd) **Issue:** Additional waste will exacerbate existing vermin problems.

Response: Waste rooms are to be provided on site and conditions are included in Attachment A to ensure that they are designed to appropriate standards, and to ensure vermin issues can be managed appropriately.

(ee) **Issue:** Insufficient space for waste collection is proposed and waste bins should not be left on the street.

Response: A waste room of sufficient size is proposed and meets Council's requirements. Conditions relating to waste removal are recommended in Attachment A, and waste bins are not permitted on the street.

- (ff) **Issue:** Waste collection should not occur prior to 8am to avoid disturbance to neighbouring residential properties.

Response: A condition is recommended in Attachment A that requires the collection of waste and recycling to only occur during the designated zone collection times as outlined in the City's Waste Policy - Local Approvals Policy for Managing Waste in Public Places. This allows waste and recycling to be collected from 6am on Mondays to Saturdays and from 8am on Sundays.

- (gg) **Issue:** Surrounding streets are already congested and cannot handle more traffic or impacts to on-street parking. Orwell Street may be blocked by additional traffic or loading.

Response: The site is located in close proximity to public transport infrastructure and only two parking spaces are proposed, which will ensure that the proposal does not result in any unreasonable impacts through traffic congestion. Conditions are recommended in Attachment A in relation to the provision of pick-up and drop-off space and on-site loading.

- (hh) **Issue:** Impact from traffic during construction.

Response: A condition is recommended that requires the submission of a Construction Traffic Management Plan.

- (ii) **Issue:** The traffic impact of the proposal and impact to pedestrian safety has not been adequately addressed.

Response: The proposal has been reviewed by Council's Transport Planner and Traffic Operations Unit and is acceptable subject to recommended conditions.

- (jj) **Issue:** Servicing, parking and bicycle access via a car lift is inappropriate.

Response: The proposal was amended to delete the level of basement parking and to delete the car lift. The servicing and bicycle parking arrangements have been reviewed by Council's Transport planner and are acceptable.

- (kk) **Issue:** The hours of construction must be restricted.

Response: Conditions are included in Attachment A to restrict construction hours to Council's standard construction hours.

- (ll) **Issue:** The construction will result in noise and dust and impact upon neighbouring residents.

Response: A number of conditions are included in Attachment A to minimise the construction impacts from the proposal.

- (mm) **Issue:** New openings should not be permitted to the side walls of the flytower as these walls are on the boundary.

Response: The proposal was amended to remove new openings from the flytower walls on the side boundary. A condition is also included in Attachment A that notes that any windows or openings on the side boundary may be blocked by future development of neighbouring properties.

- (nn) **Issue:** All supporting documentation, including the Statement of Environmental Effects and Heritage Impact Statement, was not updated when the amended application was re-submitted and re-notified.

Response: When the amended application was submitted the applicant provided a cover letter that detailed the amendments made, as well as a range of supporting documents. Sufficient additional information has been provided to enable a thorough assessment of the application.

Financial Contributions

Contribution under Section 7.11 of the Environmental Planning and Assessment Act 1979

144. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
145. Credits have been applied for the most recent approved use of the site, being production studios which is defined as light industry.
146. A condition relating to this development contribution has been included in the recommended conditions of consent in Attachment A.
147. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

148. Section 7.32 of the Environmental Planning and Assessment Act 1979 outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:
- (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
 - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
 - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
 - (d) the regulations provide for this section to apply to the application.
149. The proposal is consistent with the criteria under part (c) that is, the proposed uses are permissible under the initial zoning of the site.
150. Section 7.32 (3)(c) allows a condition to be imposed on the following basis:

- (c) the condition requires a reasonable dedication or contribution, having regard to the following—
- (i) the extent of the need in the area for affordable housing,
 - (ii) the scale of the proposed development,
 - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.
151. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.
152. The City of Sydney Affordable Housing Program (Affordable Housing Program) identifies the need for affordable housing in the area and identifies the appropriate contributions and therefore addresses 7.32 (3) (c) (i) above.
153. The site is located within residual land of the affordable housing contribution area.
154. As the proposed development includes additional floor space, a contribution is required at a rate of \$10,611.53 multiplied by 0.5% of the of total floor area of 6,490.9 square metres, totalling \$344,391.86
155. A condition of consent is included in Attachment A requiring payment prior to the issue of a construction certificate.

Relevant Legislation

156. Environmental Planning and Assessment Act, 1979.
157. Heritage Act, 1977.
158. Water Management Act, 2000.

Conclusion

159. The proposal seeks consent for alterations and additions to the existing building including new basement levels, for an adaptive reuse to mixed use development. The proposed uses include a hotel with 63 rooms, cafe, entertainment facility, and small bar.
160. The proposed development is compliant with the permitted floor space ratio and the variation to the Sydney LEP 2012 height standard is subject to a written Clause 4.6 variation request, which is supported.
161. The site is listed on the State Heritage Register and the application was referred to Heritage New South Wales. The application was amended to address recommendations made by Heritage New South Wales, who have granted General Terms of Approval. As approval has been granted by Heritage New South Wales, the consent authority must not refuse development consent on heritage grounds in accordance with Clause 4.48 of the Environmental Planning and Assessment Act, 1979.

162. An independent Heritage Committee was appointed, as required by the Sydney DCP 2012. The Committee did not support the proposal, however a number of conditions have been recommended in response to their advice.
163. The proposal was considered by the Design Advisory Panel who support the adaptive reuse of the building. They raised a number of issues which have been addressed in the assessments and by recommended conditions of consent.
164. It is recommended that the capacity of the entertainment venue be restricted to 250 patrons and that the hours of operation of the entertainment facility and small bar be restricted to base of 11.00pm with an extension to midnight on a trial basis for 1 year to ensure that the proposal does not exceed the relevant acoustic criteria and impact upon neighbouring residential properties.
165. A view loss assessment has been carried out which has demonstrated that the proposal will not have an unreasonable impact on views from surrounding properties to the Sydney Harbour Bridge, Opera House, harbour and city skyline.
166. The proposed development is considered to respond appropriately to the desired future character of the area, it demonstrates design excellence and is recommended for deferred commencement approval. Deferred commencement conditions are recommended requiring the final structural solution to be submitted prior to the consent becoming operative.

ANDREW THOMAS

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