

**Item 4.****Development Application: 1 Shakespeare Place, Sydney - D/2023/995**

File No.: D/2023/995

**Summary**

<b>Date of Submission:</b>	31 October 2023 18 January 2024 (amended information)
<b>Applicant/Owner:</b>	Library Council of NSW
<b>Architect/Designer:</b>	DTB Architects Pty Ltd
<b>Planning Consultant:</b>	Urbis
<b>Heritage Consultant:</b>	NBRS Architecture. Heritage
<b>Cost of Works:</b>	\$20,000
<b>Zoning:</b>	SP5 Metropolitan zone. The proposed use as a licensed food and drink premises is permitted with consent.
<b>Proposal Summary:</b>	<p>The application seeks approval for use of the venue on the roof top of the State Library of NSW as a licensed food and drink premises. The proposal seeks approval for 300 patrons, 20 staff, and operational hours of 12pm to 12am midnight Monday to Sunday, and until 2am on New Year's Day.</p> <p>The premises is currently operating as the 'Library Bar' under a small bar consent and liquor licence. Currently there are 120 patrons permitted. The hours of operation are 12pm to 10pm outdoors, with a 2-year trial ongoing for trading between 8pm and 10pm, and 12pm to 12am midnight indoors, with a 2-year trial ongoing for trading between 10pm and 12am midnight indoors and 12pm to 10pm outdoors, with a 2-year trial ongoing for trading between 8pm and 10pm, outdoors.</p> <p>This application is referred to the Local Planning Panel for determination as a 'sensitive development'. That is, the application is for a new licensed premises with a proposed hotel (general bar) licence under the Liquor Act 2007.</p>

The application is also a Crown Development Application, in accordance with section 4.33 of the Environmental Planning and Assessment Act 1979. This is because the application relates to the State Library of NSW and is owned by the Library Council of NSW. Agreement on conditions has been received on 8 February 2024.

The key issue with the application is that the proposed hours, being 12pm to 12am midnight Monday to Sunday, are outside the hours recommended for this area in the Sydney Development Control Plan 2012. The report recommends a modified approval of the hours, being:

- (a) indoor hours approved on a permanent basis from 12pm to 12am midnight Monday to Sunday; and
- (b) outdoor hours approved on a permanent basis from 12pm to 10pm, and for a 1-year trial period from 10pm to 12am midnight Monday to Sunday.

This allows for the venue to demonstrate good management and acceptable impacts on nearby sensitive receivers, while also encouraging vibrancy and nighttime economy in Metropolitan Centre of Sydney.

The application was notified in accordance with the Community Engagement Strategy and Participation Plan 2012 between 8 November 2023 and 7 December 2023. Seven (7) submissions were received. These submissions raised concerns with noise and amenity impacts of the proposal. The application is supported by an acoustic report which concludes that the premises will comply with relevant noise criteria. Where appropriate, conditions are recommended to mitigate against unreasonable impacts.

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

**Development Controls:**

- (i) Environmental Protection Biodiversity Conservation Act 1999
- (ii) Heritage Act 1977
- (iii) Environmental Planning and Assessment Act 1979
- (iv) Environmental Planning and Assessment Regulations 2000
- (v) State Environmental Planning Policy (Biodiversity and Conservation) 2021

(vi) Sydney Local Environmental Plan 2012

(vii) Sydney Development Control Plan 2012

**Attachments:**

A. Recommended Conditions of Consent

B. Selected Drawings

C. Plan of Management

**Recommendation**

It is resolved that consent be granted to Development Application Number D/2023/995 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 SP5 Metropolitan Centre zone.
- (B) The development will not detrimentally impact on the heritage significance of the site.
- (C) The development will not adversely affect the character of the locality and is generally compatible with the character of the Macquarie Street Special Character Area.
- (D) The development, subject to conditions, will safeguard neighbourhood amenity and will promote the orderly operation of the premises.
- (E) The development accords with objectives of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.

## Background

### Site and Surrounding Development

2. The site contains the State Library of New South Wales. It has a legal description of lot 7028 in deposited plan 1077148, lot 11 in deposited plan 117754 and lot 1 in deposited plan 51387, and is known as 1 Shakespeare Place, Sydney. It is irregular in shape and has an area of 9,359sqm.
3. The site has a frontage to Shakespeare Place to the north, Macquarie Street to the west, Hospital Road and the Domain to the east and Parliament House to the south.
4. The site contains the "Mitchell Building" which has a primary entrance from Shakespeare Place, and the "Macquarie Building" which has its primary entrance from Macquarie Street. The two buildings are linked below ground, and at first floor by a glass walkway.
5. The State Library of NSW is listed on the State Heritage Register as an item of State Heritage Significance (item number 01071). It is also listed in Schedule 5 of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) as an item of local heritage significance (item number 1950). The site is also located in the Macquarie Street Special Character Area, under the Sydney Development Control Plan 2012 (Sydney DCP 2012) and in the Governor's Domain and Civic Precinct, under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC 1999).
6. The surrounding area is characterised by a mixture of land uses. Macquarie Street is characterised by significant institutional, government, cultural and heritage buildings such as the Sydney Hospital, The Mint and the Reserve Bank of Australia. On the western side of Macquarie Street are a number of office, medical, retail, business and residential premises.
7. The subject application relates to the 'Library Bar' which is currently operating as a small bar under development consent D/2020/1236 (as amended). It is located on the eastern side of the Mitchell Building. It is hatched blue in the aerial photograph at figure 1 below. It includes three areas, being the indoor area, outdoor courtyard and observation deck. The observation deck is raised above the remainder of the tenancy and is located on the eastern side of the tenancy.
8. Photos of the site and surrounds are provided below.

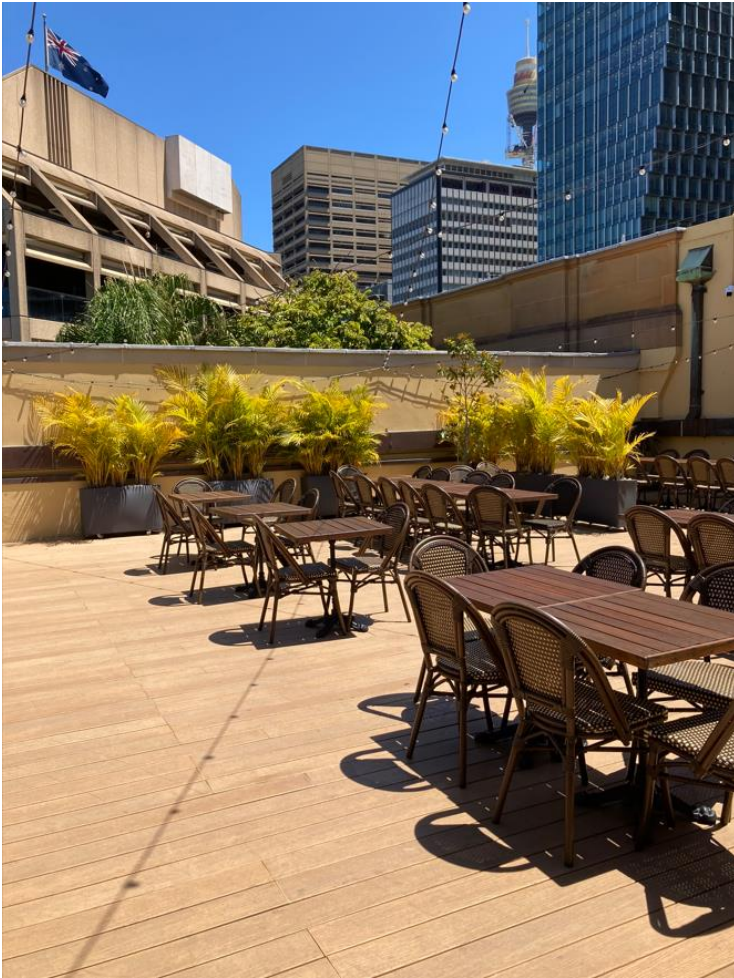


**Figure 1:** Aerial view of site and surrounds. The 'Library Bar' is annotated in blue and is located on the eastern side of the Mitchell Building, adjacent to Hospital Road and the Domain.

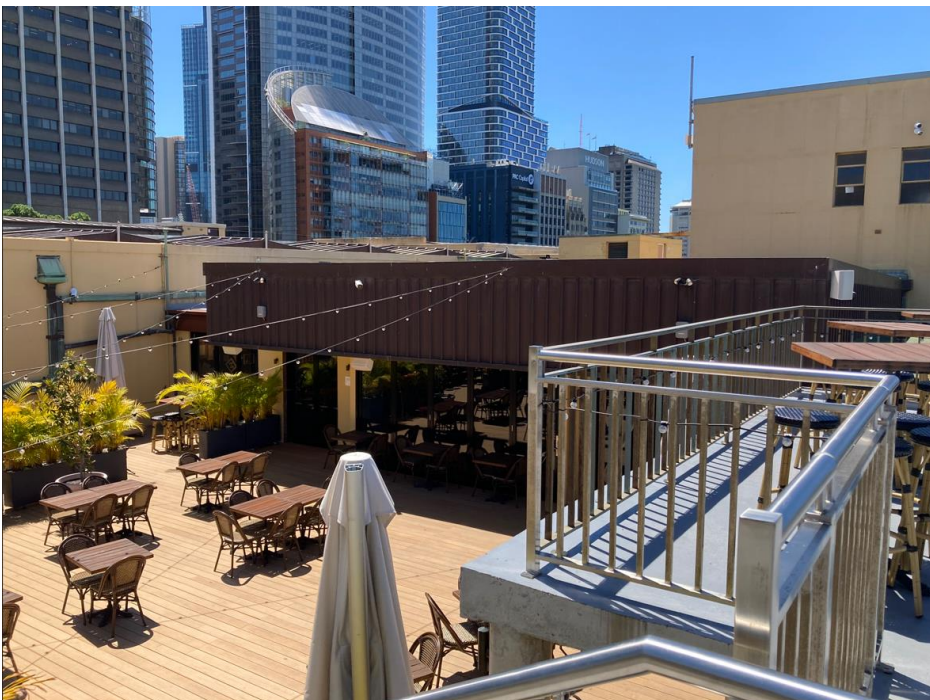


Figure 2: Outdoor courtyard area looking south west





**Figure 3:** Outdoor courtyard looking south towards Parliament House



**Figure 4:** Observation deck looking north west towards Macquarie Street





Figure 5: Observation deck looking north west



Figure 6: Observation deck looking west



**Figure 7:** Observation deck looking north east over Domain and Royal Botanic Gardens



**Figure 8:** Observation deck looking south east over Domain and Royal Botanic Gardens





**Figure 9:** Indoor seating area



**Figure 10:** Existing bar located inside, with kitchen and back of house behind this space

## History Relevant to the Development Application

### Development Applications

9. The following applications are relevant to the current proposal:
- **D/2020/1236** – Development consent was granted on 1 March 2021 for alterations and use of the rooftop of the Mitchell Building as a small bar. This premises is currently operating under this consent, as amended. This approved a maximum occupancy of 120 patrons and the following hours:
    - indoor base hours of 12pm to 10pm Monday to Sunday, and 10pm to 12am midnight for a 1-year trial period (being until December 2022); and
    - outdoor base hours of 12pm to 8pm Monday to Sunday, and 8pm to 10pm on a 1-year trial period (being until December 2022).
  - **D/2020/1236/A** – A modified development consent was issued on 2 July 2021. The approved changes included minor internal amendments, and reconfiguration of sanitary facilities, observation deck and stairs.
  - **D/2020/1236/B** – A modified development consent was issued on 5 August 2022. The approved changes included updates to the fire stair ventilation, slab upgrades to improve drainage, updates to the balustrade and stairs.
  - **D/2020/1236/C** – A modified development consent was issued on 22 December 2022. The approved changes allowed for a further two-year trial period for extended indoor (until 12am midnight) and outdoor trade (until 10pm).

### Compliance Action

10. The site is not currently subject to any related compliance action.

### Amendments

11. Following a preliminary assessment of the proposed development, the following clarification and amendments to the application were requested:
- (a) update plan of management to refer to the new liquor license proposed (currently says small bar);
  - (b) update plan of management to include specific/any additional measures to address New Year's Eve;
  - (c) confirm whether the proposal will include works to expand the existing kitchen or whether the proposed additional numbers will be serviced by the existing facilities;
  - (d) provide a response to submissions;
  - (e) confirm number of seats proposed as plan shows more than documentation specifies; and

- (f) confirm whether lift to observation deck is included in this application, or whether it is being installed under D/2020/1236 (where approval was granted).
12. In response, the applicant submitted and confirmed the following:
- (a) A letter outlining the changes to the below documents, a response to the submissions and confirmation that no changes to existing kitchen facilities are proposed as part of this development application. Instead, the current kitchen operations will be modified to incorporate greater use of the existing kitchen located on the lower ground floor for food preparation as necessary.
  - (b) Amended plan of management (POM). The plan says the Library Bar will submit an application for a Hotel license, designated as a general bar and endorsed with a minors area authorisation. The plan also includes a paragraph which details the additional measures proposed for New Year's Eve.
  - (c) Amended seating plan showing 300 seats.
  - (d) The applicant confirmed by email the accessible lift was included in the original consent D/2020/1236. The lift is now onsite and will be installed under the original consent. For this reason, the current small bar consent is not requested to be surrendered as a condition on this consent. However, once all works are complete, the applicant can surrender this consent, as indicated as their intention in their submitted Statement of Environmental Effects.
  - (e) A lighting report, prepared by Lehr Consultants International (Australia) which assesses the impact of the additional hours on nearby properties and includes recommendations for lighting levels.

### **Proposed Development**

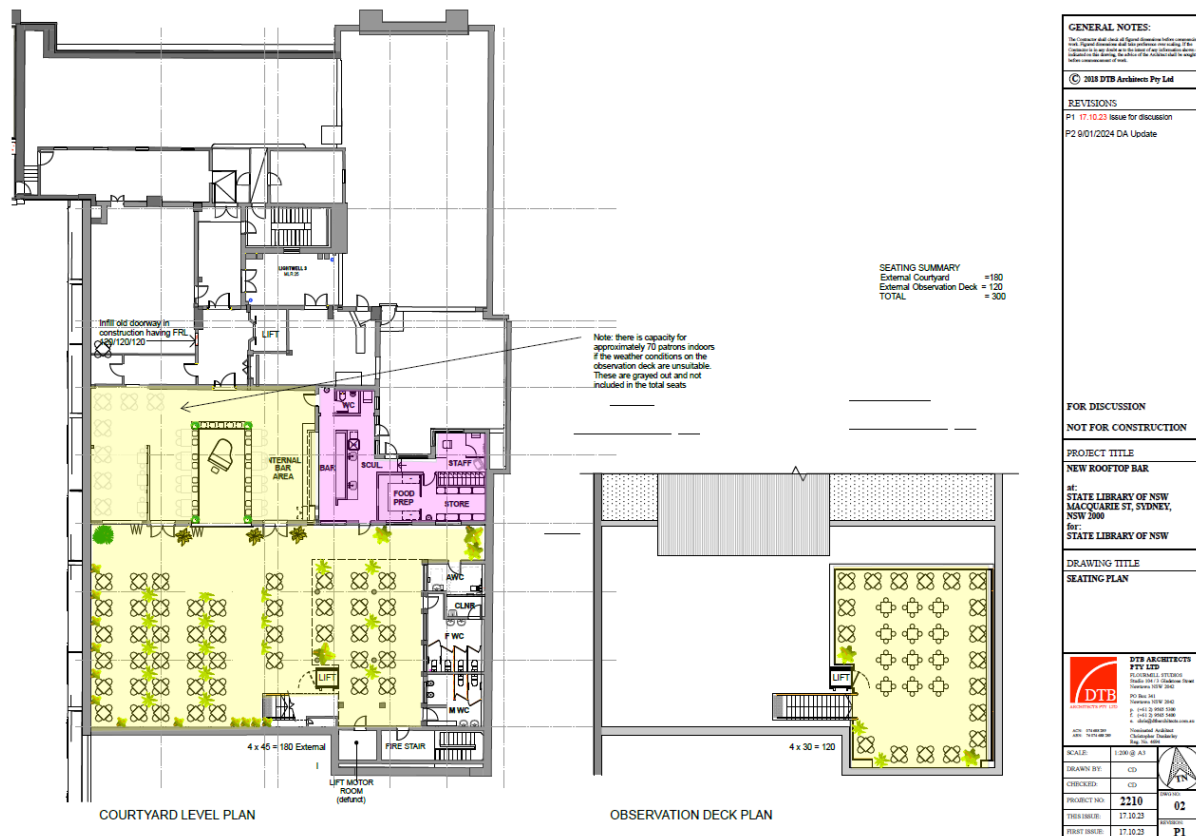
13. The application seeks consent for the following:
- change of use from an existing small bar to a licensed food and drink premises, as defined in the Sydney LEP 2012;
  - increasing the capacity of the premises to 300 patrons and 20 staff; and
  - extend the hours of operation, both indoors and outdoors, to 12pm to 12am midnight, Monday to Sunday, and additionally until 2am on 1 January annually.
14. To accommodate the above, a new license, being a hotel - general bar license, is required. The premises currently operates under a small bar license which limits the capacity to 120 patrons.
15. No physical works are proposed as part of this development application.
16. The following additional reports were submitted in support of the proposal:
- (a) Access Report, prepared by Group DLA and dated 21 May 2021;
  - (b) Access capability statement, prepared by Group DLA and dated 22 September 2023;



- (c) Acoustic assessment, prepared by Acoustic Studio and dated 25 October 2023;
- (d) SLNSW - Library Bar Light Spill report, version 1, prepared for SLNSW in February 2024 and dated February 2024;
- (e) Building Code of Australia Capacity Statement, prepared by Group DLA and dated 21 September 2023;
- (f) Fire Safety Engineering letter, prepared by Arup and dated 22 September 2023; and
- (g) Operational waste and recycling management plan, prepared for the Library Bar.

17. These reports are discussed further in the assessment of the application.

18. The submitted plan of the proposed development are provided below.



**Figure 11:** Proposed seating plan showing a maximum of 120 seats on the observation deck and 180 seats in the courtyard. There is additional capacity inside for wet weather, and this plan represents the maximum number of seats proposed outdoors.

**Assessment**

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

**Environment Protection and Biodiversity Conservation Act 1999**

20. The State Library of New South Wales is located in the Governors' Domain and Civic Precinct. This precinct is named on the National Heritage List and is considered to have National Heritage value.
21. As no physical works are proposed as part of this application, no concern is raised about impacts on the heritage value or significance of this precinct.

**Heritage Act 1977**

22. The subject site is listed as an item known as the State Library of New South Wales State Heritage Register under the Heritage Act 1977 (item number 01071). No physical works are proposed to the premises, and the change of use falls within the standard heritage exemption (No. 21 of standard exemptions) under section 57(2) of the Heritage Act 1977.
23. It is noted in the Conservation Management Plan, prepared by NBR Architecture in 2020, that most of the rooftop level of the area proposed for use is identified as having little heritage significance.

**Crown Development Applications**

24. This application has been made by or on behalf of a public authority (not being a Council) and is therefore to be assessed as a Crown development application.
25. Pursuant to section 4.33(1) of the EP&A Act, a consent authority (other than the Minister) must not:
  - (a) refuse its consent to a Crown development application, except with the approval of the NSW Minister for Planning and Public Spaces; or
  - (b) impose a condition on its consent to a Crown development application, except with the approval of the applicant, or the NSW Minister for Planning and Public Spaces.
26. Draft conditions of consent were provided to the applicant on 1 February 2024.
27. The applicant provided their response on 5 February 2024 and requested amendments to conditions relating to the need for a glass crusher, queuing and noise on New Year's Eve/Day.
28. The requested amendments are acceptable because the applicant has demonstrated that they are not relevant to the application. Draft conditions of consent were resubmitted to the applicant on 8 February 2024 and were approved on 8 February 2024.

## State Environmental Planning Policies

### Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments

29. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
30. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

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

#### Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the SP5 Metropolitan Centre zone. The proposed development is defined as a food and drink premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Not applicable.	<p>The site is identified on Map Sheet HOB_014 of the Height of Buildings Map as being located in 'Area 2'.</p> <p>The maximum permitted height of buildings in 'Area 2' is the height of the building on the land at the commencement of the SLEP 2012.</p> <p>The proposed development does not alter the existing height of the existing Mitchell Building and therefore remains compliant.</p>

Provision	Compliance	Comment
4.4 Floor space ratio	Not applicable	<p>A maximum FSR of 5:1 is permitted on the site. The previous planning reports indicate that the existing FSR for the site is 3.49:1.</p> <p>The proposed development does not alter the existing gross floor area or FSR of the site, and therefore remains compliant.</p>

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a local and state significant heritage item and is located adjacent and in proximity to a number of heritage items. The site is also located within the Governors' Domain and Civic Precinct.</p> <p>The proposed development does not include any physical works. It will have acceptable impacts on the heritage significance of the subject, adjoining and nearby heritage items.</p> <p>The submitted supporting documentation refers to the need for deemed to satisfy and performance-based solutions to meet the BCA. This is discussed further in the issues section below. A condition is recommended to ensure any works required arising from compliance with these codes/regulations be subject to development assessment unless the works themselves are exempt.</p>

#### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21B Design excellence	Not applicable	In accordance with clause 6.21B, the division applies to development involving the erection of a new building or external alterations to an existing building. As this proposal is for use as a food and drink

Provision	Compliance	Comment
		premises with no associated works, this division does not apply.

### Part 7 Local provisions – general

Provision	Compliance	Comment
7.7 Retail premises	Yes	The proposed food and drink premises is located on land in category D, which is the greater level of public transport accessibility. A maximum number of three (3) car spaces permitted for this land use. No parking is proposed as part of this application.
7.20 Development requiring or authorising preparation of a development control plan	Not applicable	In accordance with clause 7.20(1), this clause applies to development for purposes of a new building or development that increases the gross floor area of an existing building. As this proposal is for use as a food and drink premises with no associated works, this clause does not apply.

## Development Control Plans

### Sydney Development Control Plan 2012

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

#### Section 2 – Locality Statements

33. The site is located within the Macquarie Street Special Character Area. The proposed development is in keeping with the unique character and the design principles of the locality. The heritage significance of the precinct is not impacted by the proposal.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	Yes	The site is a local and State significant heritage item and is located adjacent and in proximity to a number of heritage items. The site is also located within the Governors' Domain and Civic Precinct.



Provision	Compliance	Comment
		The proposed development, which includes no physical works, will have acceptable impacts on the heritage significance of the subject, adjoining and nearby heritage items.
3.11 Transport and Parking	Yes	The site is located in the Sydney CBD, which is well serviced by train and bus options. Access is via lift from Hospital Road and servicing/loading is via existing loading docks, also accessed from Hospital Road.
3.12 Accessible Design	Yes	<p>Access to the existing and proposed premises is via Hospital Road, with lift access provided from the street to the roof. An Access Report, prepared by Group DLA and dated 21 May 2021 and Access capability statement, prepared by Group DLA and dated 22 September 2023 were submitted in support of this application. They conclude that the Library Bar is capable of compliance with the relevant design requirements for the provision of access for people with disability. This will be achieved through a combination of compliance with the Deemed to satisfy provision of the BCA and performance solutions.</p> <p>It is also noted that there is a lift shown on the plans from the courtyard to the observation deck which was not present on site. The applicant has confirmed this lift is on site and is to be installed soon under development consent D/2020/1236.</p>
3.14 Waste	Yes	An operational waste and recycling management plan for the Library Bar was submitted. The waste storage areas are proposed to be located in the lower level of the building. Conditions are recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Assessed as acceptable	The proposed use of the premises is as a licensed food and drink premises. The licence type proposed is a hotel -

Provision	Compliance	Comment
		general bar licence. The premises is not located within a late-night trading area. The hours of operation sought are discussed further in the discussion section below under the heading 'Late night trading - proposed hours'. Overall, however, the proposed hours of 12pm to 12am midnight, Monday to Sunday, and until 2am on New Year's Day are considered acceptable, subject to trial period conditions.

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.11 Acoustic privacy	Yes	<p>An Acoustic report, prepared by Acoustic studio and dated 25 October 2023 was submitted with the application. It has been reviewed by Council's Environmental Health team who raises no concerns with the report.</p> <p>The report concludes the proposal will comply with the relevant City of Sydney noise conditions and EPA guidelines. It determines that the proposal will have no adverse impacts on nearby acoustic receivers. This report and its conclusions are further discussed in the Discussion section below under the heading 'Late night trading - proposed hours.'</p>

## Discussion

### Late night trading - proposed hours

34. The application proposes the following hours of operation:

- (a) 12pm to 12am midnight Monday to Sunday for the entire premises; and
- (b) until 2am on New Year's Day (1 January) annually.

35. The number of patrons and proposed licence type (being a hotel - general bar license) mean that the premises is classified as a 'Category A - High Impact Premises' under the Sydney DCP 2012.
36. The site is located outside any late night trading areas set out by the Sydney DCP 2012. The opposite side of Macquarie Street is designated as a 'Late Night Management Area', and this is shown in the figure below.



**Figure 12:** Late night trading area map shown in green with the site hatched in red

37. Table 3.8 of the Sydney DCP 2012 sets out the trading hours and trial periods for different areas. This is shown in the figure below with the recommended hours for category A venues located in 'all other areas' hours circled in red. The recommended hours for 'late night management areas' are circled in blue.

Table 3.8: Late night trading hours

		Category A		Category B		Category C Unlicensed premises Indoor
		Indoor	Outdoor	Indoor	Outdoor	
Late Night Management Area	Base	6am to midnight	10am to 10pm	6am to 2am	7am to 10pm	24 hours
	Extended	24 hours	9am to 1am	24 hours	7am to 1am	
City Living Area	Base	7am to 11pm	10am to 8pm	7am to 1am	7am to 8pm	24 hours
	Extended	7am to 5am	9am to midnight	7am to 5am	7am to midnight	
Local Centre Area	Base	10am to 10pm	10am to 8pm	7am to 11pm	7am to 8pm	7am to 2am
	Extended	10am to midnight	9am to 10pm	7am to midnight*	7am to 10pm	
All other areas	Base	10am to 10pm	10am to 8pm	7am to 10pm	7am to 8pm	7am to midnight
	Extended	10am to midnight	10am to 10pm	7am to midnight	7am to 10pm	

Figure 13: Table 3.8 of the Sydney DCP 2012

38. Section 3.15.4(4) allows Council to permit trading hours that exceed the extended hours for 'all other areas' if it has considered the matters in section 3.15.3 of the Sydney DCP 2012, and the premises is not located in a residential or mixed use zone, and the premises is located within 800m of a station or 400m of a bus stop.
39. Given the sites location within the SP5 metropolitan centre, its proximity to public transport and its proximity to the late-night trading area in the CBD (being the other side of Macquarie Street), additional hours beyond those set in table 3.8 are considered reasonable.
40. For the reasons set out below, the proposed hours are supported, subject to a 1 year trial for the hours of 10pm until 12am for the outdoor areas. That is,
- indoor, base permanent hours of 12pm - 12am midnight Monday to Sunday;
  - outdoor, base permanent hours of 12pm to 10pm, Monday to Sunday and a 1 year trial period for 10pm to 12am midnight; and
  - until 2am on New Year's Day on a permanent basis.
41. These hours are consistent with the base hours for the late night management area, which is on the opposite side of Macquarie Street (and includes most of the Sydney CBD). The premises will contribute to the vibrancy of the area and CBD more broadly. It should be noted that the site and this side of Macquarie Street located outside of the late night management area is a row of civic State Government properties (being the State Library, Parliament, the Mint, Sydney Hospital and Hyde Park Barracks).

42. The application is also accompanied by an acoustic report which concludes that the hours, patron numbers and use will not have any unreasonable impact on nearby residential and commercial receivers. The acoustic report uses 185 Macquarie Street as its closest residential receiver and Parliament House as its closest commercial receiver. Live music is restricted to the indoor area, but opening to the rooftop, and PA presenting amplified music to a limit of 90dbA. A noise limiter is recommended to be installed to ensure this limit is not exceeded. This is addressed by condition.
43. The application is also accompanied by a light spill report. The report was taken from the rooftop at 4 Macquarie Street (Parliament House) which is closer than other residential buildings. It concludes that although the existing outdoor lighting is compliant with AS4282-2019 illuminance requirements, it is recommended to update the time base lighting programming to further dim the outdoor lighting to 50-60 per cent from 11pm until the bar closes. A condition of consent is recommended requiring compliance with this report and its recommendations.
44. Access to the premises is via Hospital Road, which is removed from the residents of Macquarie Street, but closely located to good public transport services.
45. The premises has been operational since December 2021 as a small bar with 120 patrons, trading until 10pm outdoors and 12am midnight indoors. There have been no substantiated complaints with the premises. The premises has demonstrated a commitment to good management.
46. The application is accompanied by a plan of management (POM). The POM includes a complaint register and response procedure on pages 27 and 28 of the plan, and a commitment to protect and enhance the amenity of the local area. It also includes detailed safety and security measures for patrons, including when patrons leave the premises.
47. It is recommended that the extended outdoor area hours be subject to a one-year trial period. Consideration for the continuation of these extended outdoor area hours on a further trial period basis will be via the submission of a further section 4.55(2) modification application following completion of the proposed one year trial period . While the submitted documentation supports that the premises is capable of trading until 12am midnight with no unreasonable impacts, it is in the applicant's interest to ensure the proper management of the premises with no unreasonable impacts to continue to trade beyond 10pm beyond the trial period.

#### **Patron Numbers and upgrade works**

48. The submitted floor plan, which will form part of the approved development plan, shows a maximum of 300 seats, with 180 seats shown in the courtyard and 120 seats shown on the observation deck. These represent the maximum seats in these spaces, and the plan makes allowances for some of this seating to be moved indoors depending on the weather. Further, the acoustic report has assumed all 300 patrons outside in its modelling, representing the highest impact scenario.
49. In order to demonstrate that the premises is capable of supporting the proposed 300 patrons and 20 staff, BCA, fire safety and access reports have been submitted in support of the application.
50. The submitted BCA reports indicate compliance with the BCA is capable of being achieved through a combination of deemed-to-satisfy provisions and the provision/documentation of Performance Solutions in accordance with the BCA.



51. Similarly, the fire engineering report identifies that further performance solutions are required to demonstrate compliance with the Performance Requirements of the BCA. As discussed under section 3.12 of the DCP, the submitted access reports draw the same conclusions. These will be addressed at the Crown building certificate stage.
52. While the proposed patron numbers are supported, to ensure no physical works are undertaken without assessment, a condition is recommended to ensure that it is clear, no physical works are approved under this consent. This condition is recommended to read that "No physical works are approved under this consent. Any physical works, including those carried out to achieve compliance with the NCC/BCA and other building regulation requirements need separate development consent, unless they are exempt under the Heritage Act and relevant planning instruments." This is to protect the heritage value and integrity of the premises.

## Consultation

### Internal Referrals

53. The application was discussed with Council's;
  - (a) building services unit
  - (b) environmental health unit
  - (c) licensed premises unit
  - (d) heritage and urban design unit
54. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

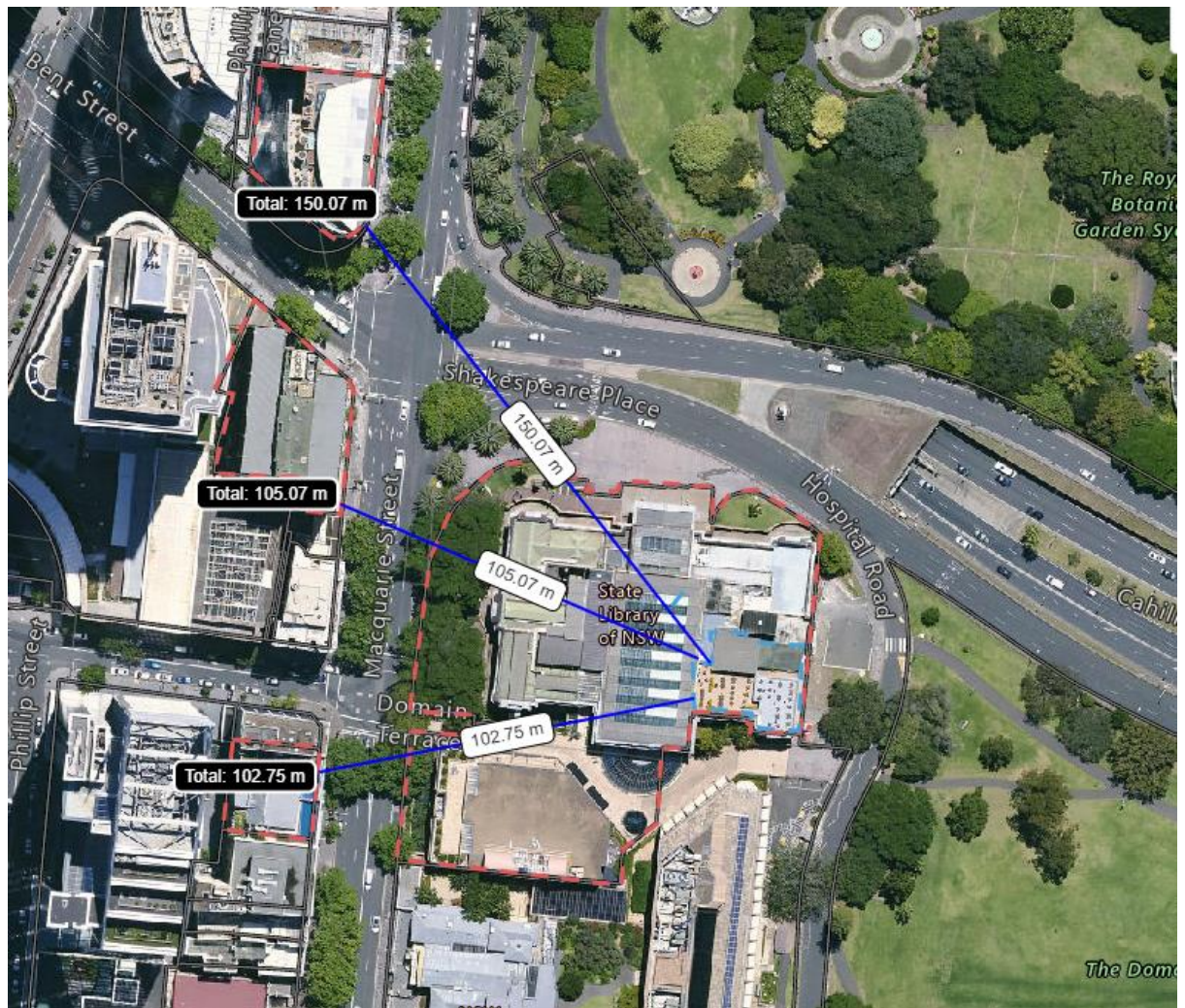
### External Referrals

#### NSW Police

55. The application was referred to NSW Police for comment.
56. No response was received.

### Advertising and Notification

57. In accordance with the Community Engagement Strategy and Participation Plan 2023, the proposed development was notified for a period of 28 days between 8 November and 7 December 2023. A total of 467 properties were notified and seven (7) submissions were received.
58. The submissions have been received from these three locations, as shown in the plan below.



**Figure 14:** Location of submissions and approximate distance to western edge of tenancy

59. The submissions raised the following issues:

- (a) **Issue:** light pollution, particularly the lighting of the 'upper deck' after 10pm, and the use of an invasive flood light.

**Response:** The applicant has advised that the flood light was from the adjoining Parliament House.. Lighting impacts have been discussed in the issues section above. A condition is recommended requiring compliance with the recommendations in the submitted light spill report..

- (b) **Issue:** the proposal is inconsistent with the library functions.

**Response:** the land use proposed is permitted with consent within the SP5 Metropolitan Centre zone. The library functions in the remainder of the building are unaltered by the proposal.

- (c) **Issue:** amplification of music and bands is a concern.

**Response:** the application is accompanied by an acoustic report. Conditions are recommended requiring the acoustic report to be complied with during operation. A noise limiter is also recommended as a condition of consent.

- (d) **Issue:** strictly policed noise levels and hours of operation required.

**Response:** a trial period is recommended and any additional hours beyond the 1 year trial period will be subject of further assessment, including understanding how the venue complied with their consent conditions.

- (e) **Issue:** noise from entertainment venues has increased in volume and frequency over 5 and 20 year period.

**Response:** as per point (c) above, appropriate conditions are recommended relating to noise.

- (f) **Issue:** should not have private functions with loud music near residents. Also hear music from concerts/functions at Mrs Macquarie's chair and the Domain which start during the day. Sometimes exposed to 12 hours of loud music. Request restrictions on amplified music.

**Response:** As per point (c) above, appropriate conditions are recommended relating to noise from the proposed venue.

- (g) **Issue:** Calyx has become a noise source.

**Response:** as per point (c) above, appropriate conditions are recommended relating to noise. Any issues relating to the operation of the Calyx (located within the Botanic Gardens) should be raised with Council's rangers.

- (h) **Issue:** restrict hours to 11pm.

**Response:** see discussion above regarding proposed hours. For the outdoor space, approval until 10pm is recommended permanent approval as base hours and extended outdoor trading until 12am midnight is recommended for a 1-year trial. This is accompanied by supporting acoustic information.

- (i) **Issue:** no parking facilities and traffic congestion (particularly with Chifley Plaza development).

**Response:** the site is well serviced by public transport and the planning controls for the site do not require parking to be provided.

- (j) **Issue:** clear sightline to premises - can hear music and patron noise clearly. Existing approval (small bar) has right balance to protect residents. Noise impacts will be unacceptable.

**Response:** As per point (c) above, appropriate conditions are recommended relating to noise.

- (k) **Issue:** Impact of patrons leaving the premises

**Response:** The submitted plan of management has a number of strategies aimed at minimising the impact of patrons leaving the premises. This includes signage, management involvement, security officers, and preventing patrons from leaving the premises with any glass, open bottles, open cans or alcohol.

- (l) **Issue:** Measure of noise at the boundary of the objector's property being 165 Macquarie Street.

**Response:** As per the discussion above, the nearest commercial receiver was measured at Parliament House and the nearest residential receiver was measured at 185 Macquarie Street. The acoustic report says at page 23 that "assessment at the receivers identified above represents the worst case scenario, therefore, compliance at these locations indicates compliance at all other affected receiver locations." Figure 14 shows that these two premises are closer than the objectors' property.

## Financial Contributions

### Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2000

### Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

60. The site is located within the Central Sydney affordable housing contribution area. A contribution is not required for this proposal as the development;
- (a) does not involve the creation of more than 100sqm of gross floor area; or
  - (b) does not involve the demolition and subsequent creation of more than 100sqm of gross floor area; or
  - (c) change the use of existing floor area to residential, or tourist and visitor accommodation.

## Housing and Productivity Contribution

61. The development is not subject of a Housing and Productivity Contribution under the provisions of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

## Relevant Legislation

62. Environmental Planning and Assessment Act 1979;
63. Environment Protection Biodiversity and Conservation Act 1999; and
64. Heritage Act 1977.

## Conclusion

65. The application seeks approval for use of the premises on the roof top of the State Library of NSW as a food and drink premises. The proposal seeks approval for 300 patrons, 20 staff, and operational hours of 12pm to 12am midnight Monday to Sunday, and until 2am on New Year's Day.
66. The key issue with the application is that the proposed hours, being 12pm to 12am midnight Monday to Sunday, are outside the hours recommended for this area in the Sydney DCP 2012. The report recommends a modified approval of the hours, being:
  - (a) indoor hours approved on a permanent basis from 12pm to 12am midnight Monday to Sunday; and
  - (b) outdoor hours approved on a permanent basis from 12pm to 10pm, and for a 1-year trial period from 10pm to 12am midnight Monday to Sunday.
67. This allows for the venue to demonstrate good management and acceptable impacts on nearby sensitive receivers, while also encouraging vibrancy and nighttime economy in metropolitan centre of Sydney.

## ANDREW THOMAS

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