

Item 4.**Development Application: 49-51 Market Street, Sydney - D/2023/984**

File No.: D/2023/984

Summary

Date of Submission:	27 October 2023
Date of Amendments	30 October 2023, 13 November 2023, 20 December 2023, 2 February 2024
Applicant:	Planning Lab
Architect/Designer:	Techne
Owner:	The Greater Union Organisation Pty Ltd
Planning Consultant:	Planning Lab
Heritage Consultant:	Urbis
Cost of Works:	\$3,226,474
Zoning:	SP5 Metropolitan Centre. The proposed use, being a bar with entertainment, is defined as a 'food and drink premises' in the Sydney LEP 2012 and is permissible with consent in the SP5 zone.
Proposal Summary:	<p>The proposal is for alterations to the State Theatre building for the change of use of the lower ground floor to a bar with entertainment and for use of the basement level for staff offices and back of house areas. The proposed trading hours for the bar are between 10.00am to 3.00am (the following day), Monday to Sunday.</p> <p>The application was notified for 28 days between 7 November 2023 and 6 December 2023. A total of 234 properties were notified. No submissions were received.</p> <p>The application is referred to the Local Planning Panel for determination as the proposal is identified as a sensitive development, being development for the purposes of a new licensed premises proposing to operate under a hotel (general bar) licence.</p>

The subject site is a State Heritage item. The subject application is not an Integrated Development Application as the proposed works fall within the site-specific exemptions under Section 57(2) of the Heritage Act 1977. The proposed works will not adversely impact significant fabric and appropriate heritage conditions are recommended.

The proposed hours of operation are supported on a permanent basis between 10.00am and 12.00 midnight, Monday to Friday. Hours of operation between 12.00 midnight and 3.00am are supported on a one-year trial period basis.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Environmental Planning and Assessment Regulation 2021
- (iii) Heritage Act 1977
- (iv) SEPP (Transport and Infrastructure) 2021
- (v) SEPP (Biodiversity and Conservation) 2021
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012
- (viii) Central Sydney Development Contribution Plan 2020
- (ix) City of Sydney Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings

Recommendation

It is resolved that consent be granted to Development Application Number D/2023/984 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:

- (B) The proposed development, subject to recommended conditions, is consistent with the objectives of the SP5 Metropolitan Centre zone.
- (C) The development is located within the Late Night Management area. The recommended hours of operation, subject to the imposition of a trial period, are consistent with the objectives and in accordance with the permitted hours for a Category A premises in a Late Night Management Area as identified in the Sydney DCP 2012.
- (D) The development, subject to recommended conditions, is able to operate without unreasonable disturbance or nuisance to surrounding properties.
- (E) Appropriate conditions have been imposed to ensure the development does not detrimentally impact on the heritage significance of the site.
- (F) The development accords with objectives of relevant planning controls.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 667918 and Lot 11 DP 1210715, known as 49-51 Market Street, Sydney. It is irregular in shape with area of approximately 3,310 square metres. It has a primary frontage to Market Street to the north, and a secondary frontage to George Street to the west.
2. The site contains The State Theatre and former State Shopping Block which is a 12-storey building with two below ground/basement levels. The building contains the State Theatre and its associated lobbies, ticketing and back of house areas within its lower levels, and the upper levels are occupied by the QT hotel which is accessed from a ground floor level lobby and adjacent café fronting Market Street. The subject application relates to the two below ground/basement levels, known as the lower ground level and basement level.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial and retail. The Swissotel hotel and the Myer/Westfield shopping centre are located directly opposite the site on the northern side of Market Street. The Queen Victoria Building is located on the western side of George Street. Pitt Street Mall is located to the north-east of the site.

The State Theatre is a state heritage item (00446) identified on the State Heritage Register. Schedule 5 of the Sydney LEP 2012 identifies the site as an item of state heritage significance (I1887) with its listing including the 'State Theatre and former State Shopping Block including interiors'.

4. A site visit was carried out on 21 December 2023. Photos of the site and surrounds are provided below:

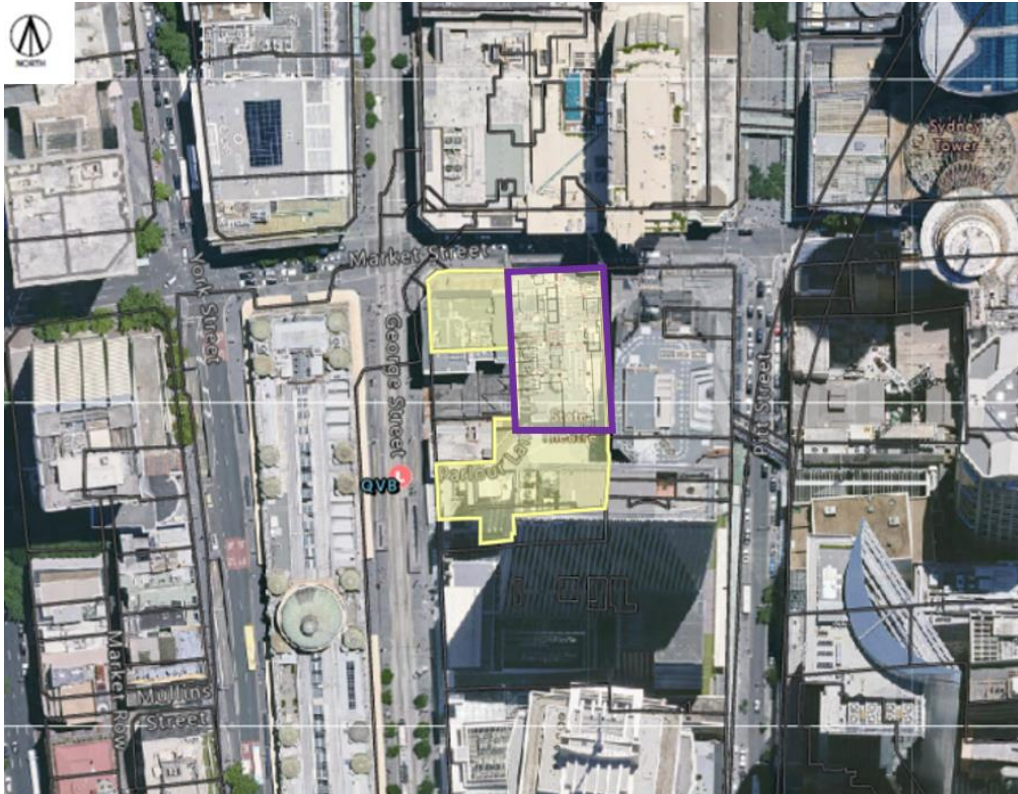


Figure 1: Aerial view of site and surrounds (site boundaries in blue | location of works in blue)



Figure 2: Site viewed from Market Street facing west (easterly entrance to the proposed bar shown directly left)



Figure 3: Site viewed from Market Street facing east (westerly entrance to proposed bar directly right)

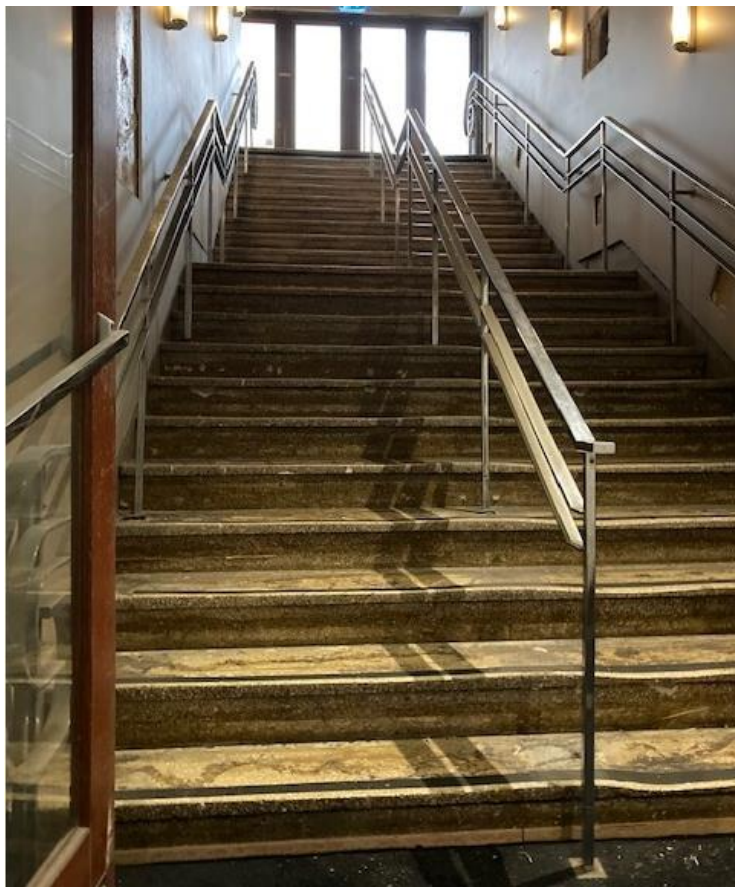


Figure 4: Staircase adjoining easterly entrance from Market Street



Figure 5: Screening room (Lower Ground Floor) proposed to be demolished



Figure 6: Stage fronting the above screening room (Lower Ground Floor) proposed to be demolished



Figure 7: Lower ground floor existing seating area



Figure 8: Lower ground floor existing seating area adjoining staircase to westerly entrance



Figure 9: Staircase to westerly entrance from Market Street

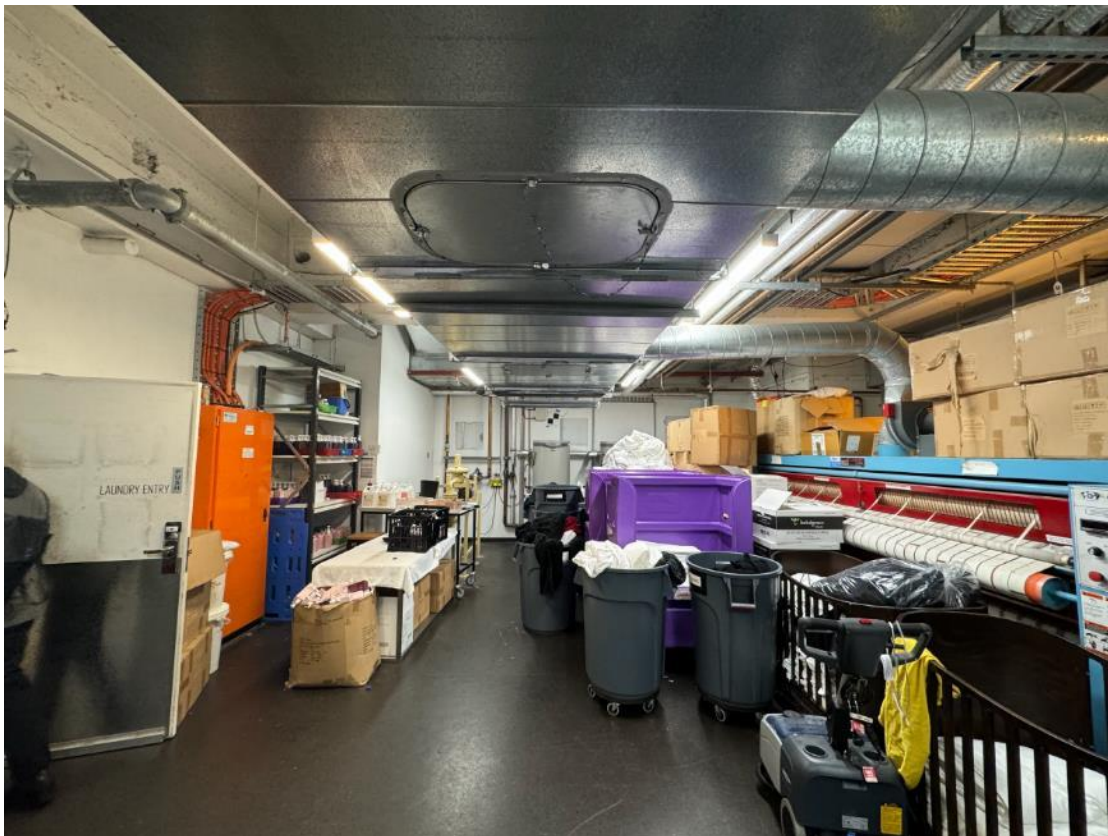


Figure 10: Laundry room on lower ground floor facing north



Figure 11: Laundry room on lower ground floor facing south

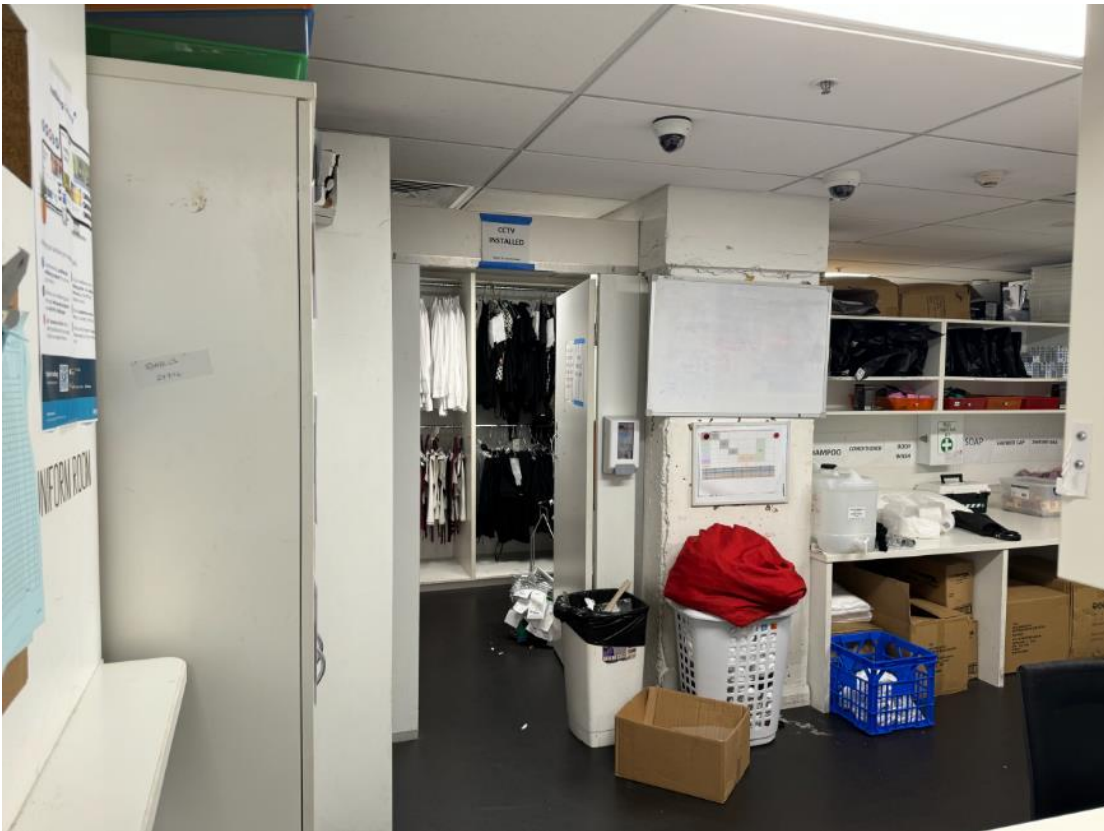


Figure 12: Staff changing room on basement level



Figure 13: Staff office space on basement floor

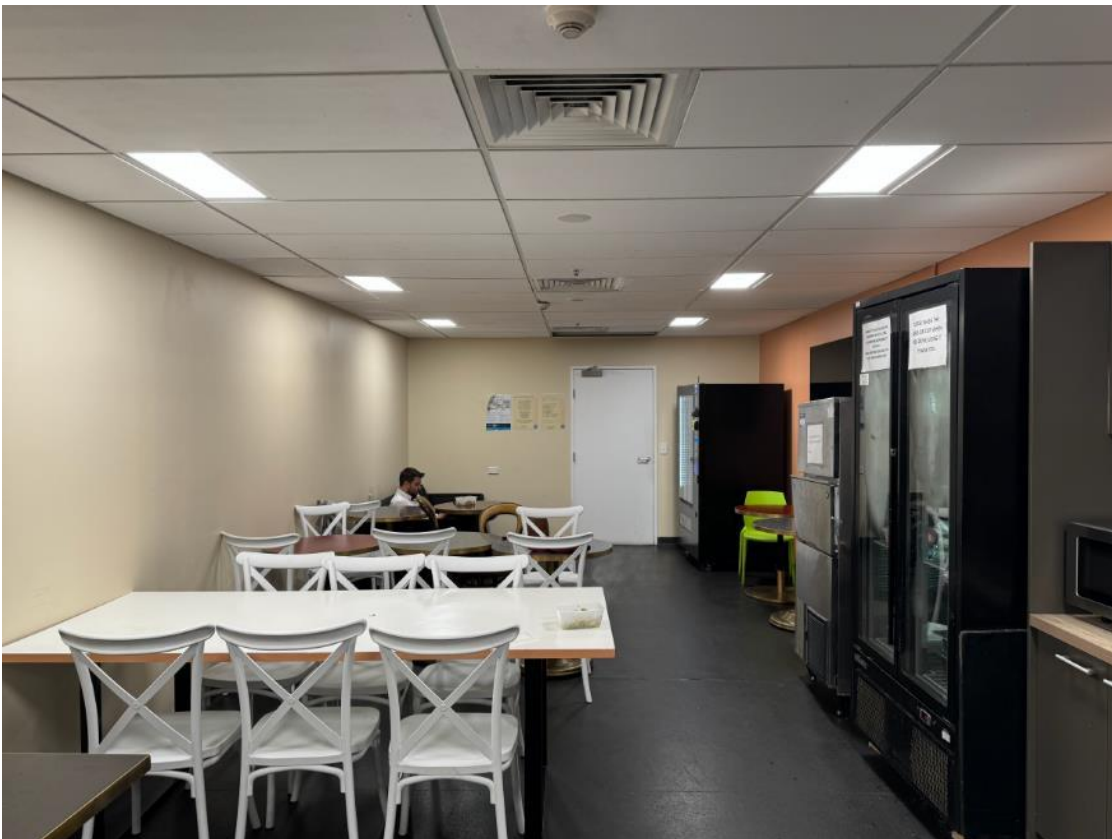


Figure 14: Staff break room on basement floor



Figure 15: Lift with access to lower levels adjoining Parlour Lane



Figure 16: Parlour Lane along the western side of the State Theatre, including waste storage



Figure 17: Waste room adjoining service lane, glass crusher and bins

History Relevant to the Development Application

Development Applications

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

- **D/2010/267** – Development consent was granted 9 September 2010 for conversion of the upper levels of the State Theatre & Gowings buildings to a heritage hotel including a restaurant and bar at level 2 of the Gowings building and a day spa at the mezzanine level of the State Theatre.

This application has been modified several times through A - H. The relevant modifications have been listed below.

- **D/2010/267/F** – A Section 96(2) Modification application (now known as a Section 4.55 modification) was granted on 14 March 2012 for the inclusion of a licensed function bar on the lower ground level ancillary to the theatrette. The hours of operation are between 6.00am to 12.00am (midnight), Monday to Sunday with a 1-year trial period for hours between 12.00am (midnight) and 2.00am (the following day). This included a maximum patron capacity of 115.

Compliance Action

6. The site is not subject to any relevant compliance action.

Amendments

7. The application was lodged as an Integrated Development Application requiring approval under the Heritage Act 1977 and was notified for 28 days.
8. In correspondence, dated 30 October 2023, clarification was sought regarding the intended liquor licence.
9. The applicant responded on 30 October 2023, and submitted a revised Plan of Management (POM) and copy of the existing on-premises liquor licence associated with the State Theatre. The applicant advised the proposal intended to utilise this existing on-premises license.
10. A request for additional information was sent on 18 December 2023 seeking details on the proposed kitchen and food preparation arrangements and further clarity on the licence type, as an on-premises licence as previously stated by the applicant does not correlate with the intended use/function.
11. On 20 December 2023, a revised POM and a copy of the existing Hotel Liquor License associated with the QT Sydney Hotel was submitted. The applicant advised that the proposal intends to utilise the QT Sydney Hotel Liquor Licence.
12. On 4 January 2024, amended architectural plans, information on materials and identification of waste management areas was requested. This information was submitted on 2 February 2024.

Proposed Development

13. The application seeks consent for the change of use of the lower ground floor to a pub and restaurant with entertainment (this pub is to be known as the Basement Bar) and the use of the basement level as staff offices and staff facilities.
14. In detail, the proposal seeks consent for the following works to the State heritage listed building:
 - Demolition of the existing internal fit out, including removal of doors, windows, walls, existing floor finish (retaining existing structure), redundant services, tiered raised floor structure, staircase/balustrade and railing, lightweight ceiling to expose concealed ceilings, sanitary fixtures (retain plumbing for new fixtures),
 - Relocate existing fire extinguisher to suit new works and carpet over existing stairs without damaging treads under.
 - New internal fit out works to the Lower Ground Floor to include a new bar, stage, seating, toilets, preparatory kitchen (no cooking facilities), store and cool rooms, plant, lifts, and stairs.

- New internal fit out works on the basement level to facilitate staff offices, housekeeping back of house, storerooms and cool rooms and staff canteen.
15. Consent is sought for the proposed lower ground floor level pub is to operate on a permanent basis between 10.00am and 2.00am (the following day), Monday to Sunday. Extended operating hours for trading between 2.00am and 3.00am, Monday to Sunday is sought on a trial period basis.
 16. A patron capacity of 300 is proposed within the lower ground floor bar.
 17. The patron entry to the bar will be off two separate ground level locations on the Market Street frontage, with the primary entry adjoining the pedestrian laneway to the east of the site. Lift access is also available from ground floor/street level of the QT hotel lobby. The provided Plan of Management and Statement of Environmental Effects states that the bar will also be available for use by private functions. See further details in the "discussion" section below. Plans of the proposed development are provided below.

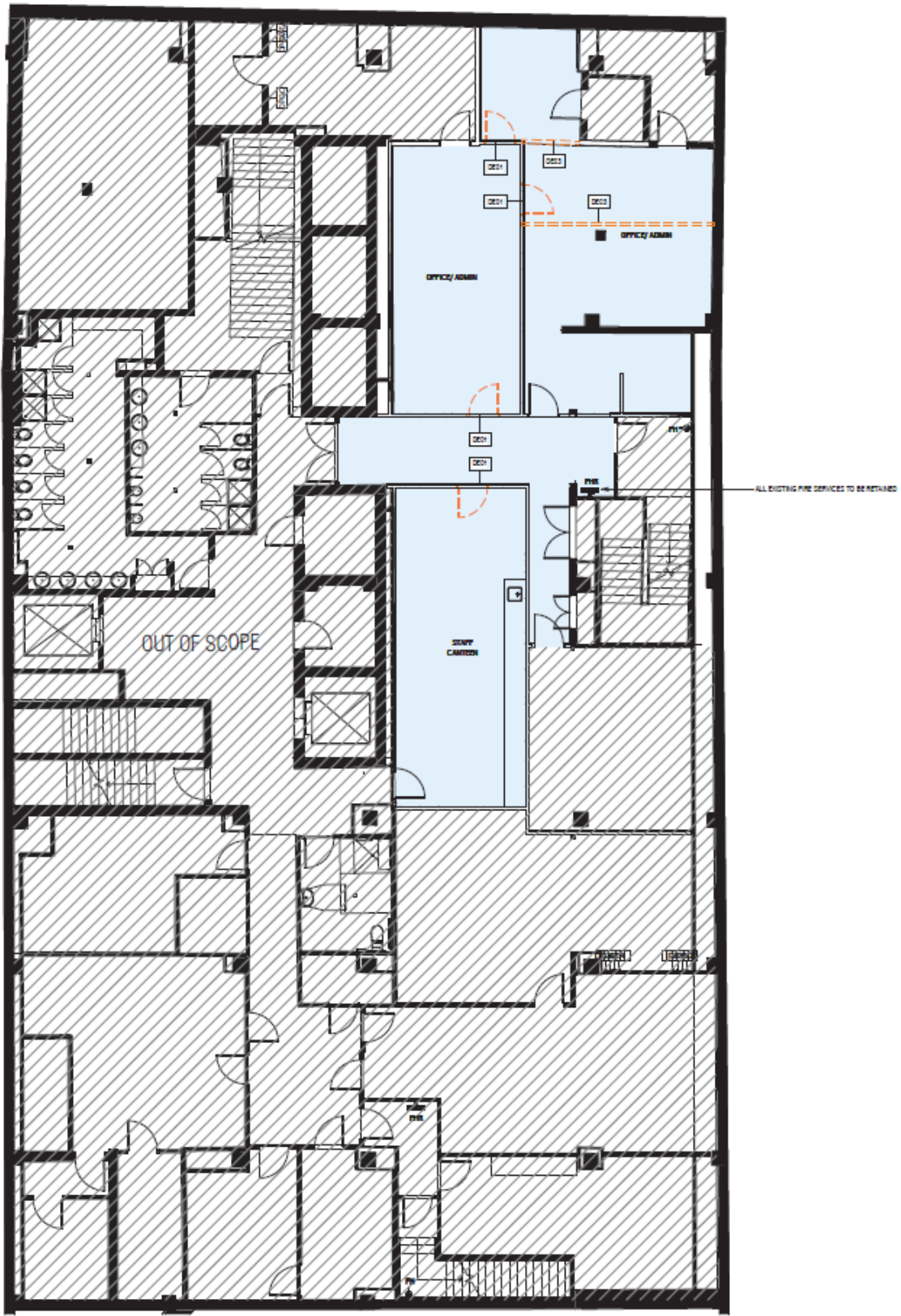


Figure 18: Extract of proposed basement demolition floorplan (left)

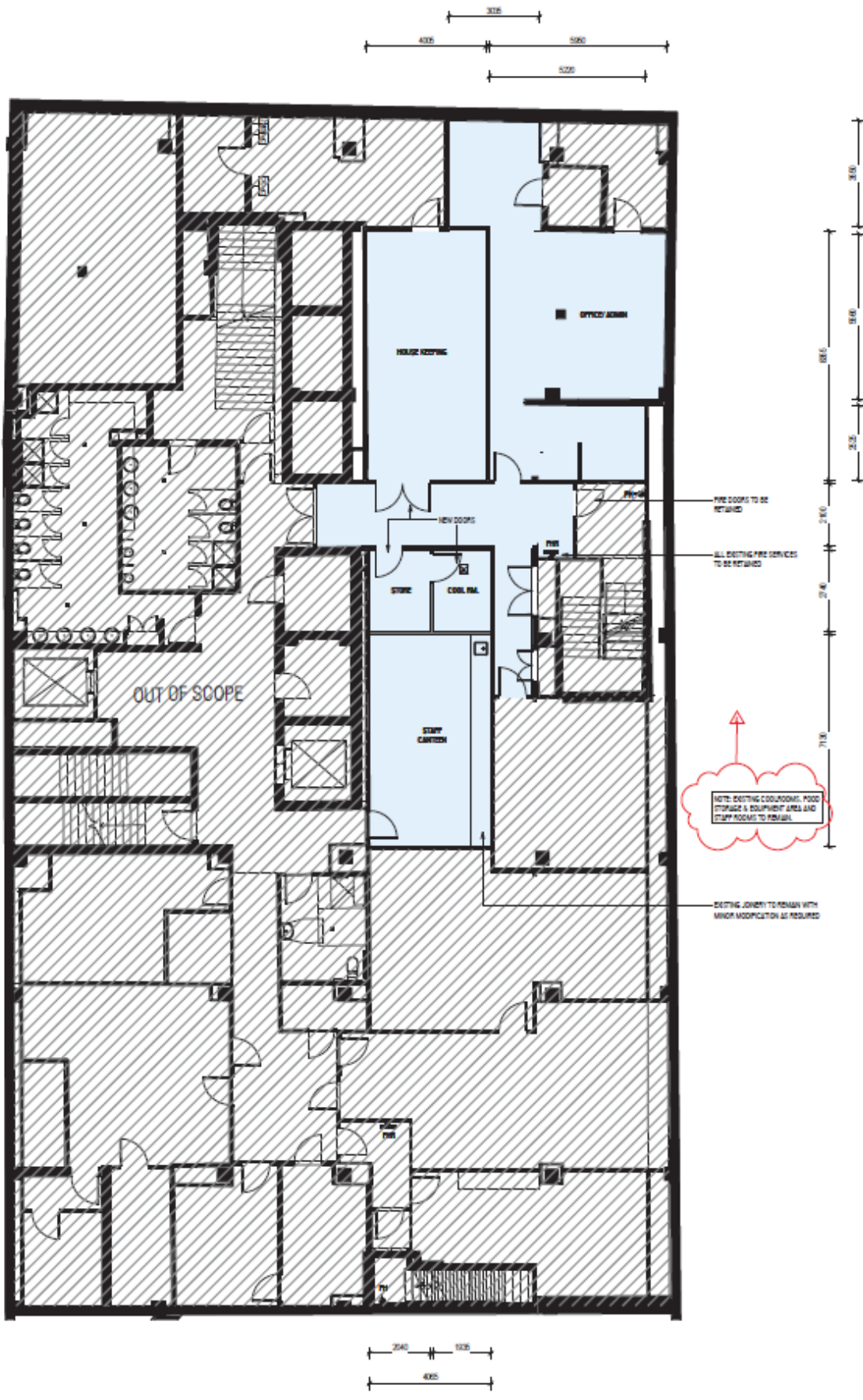


Figure 19: Extract of proposed basement floorplan (left)

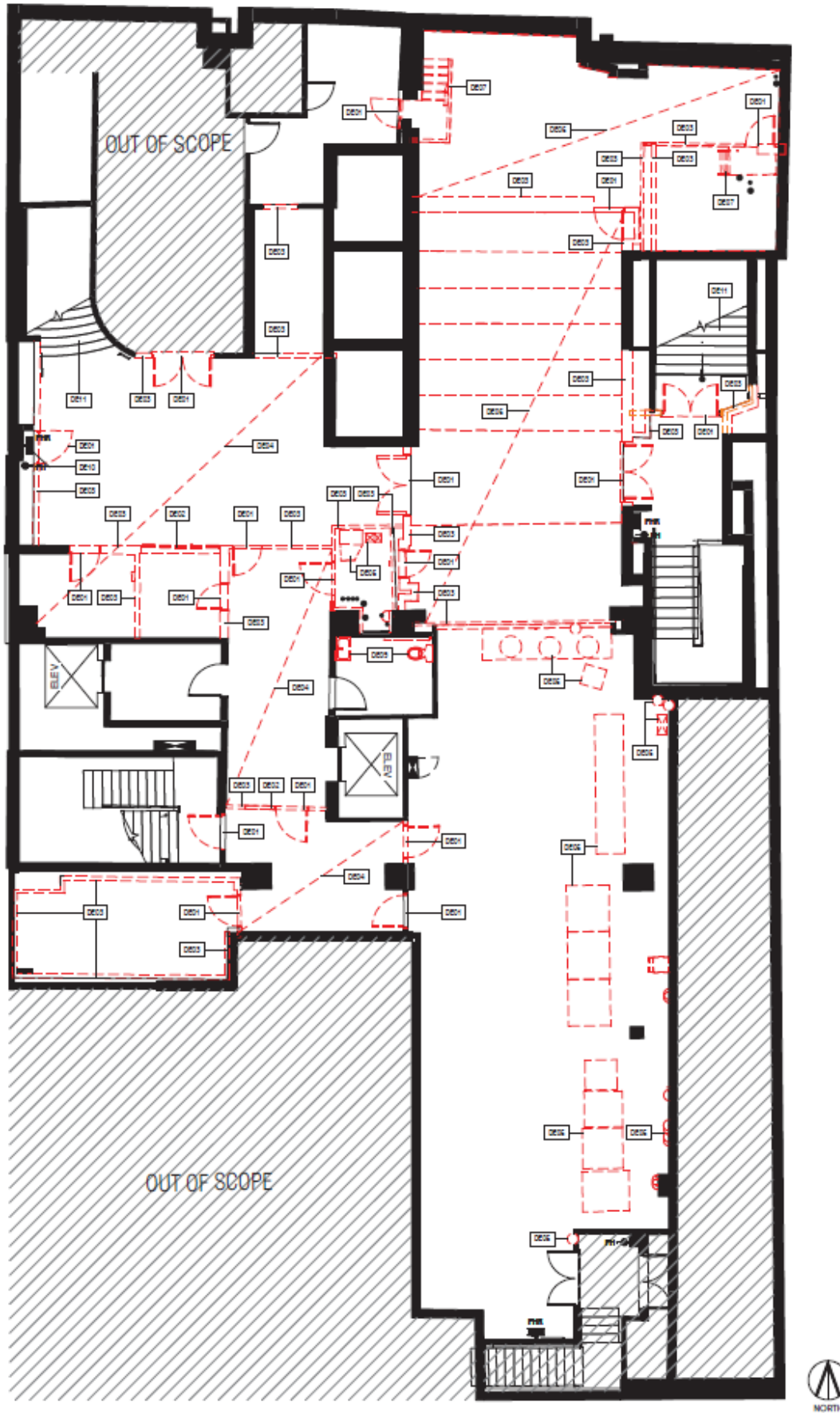


Figure 20: Extract of proposed lower ground floor demolition floorplan (left)

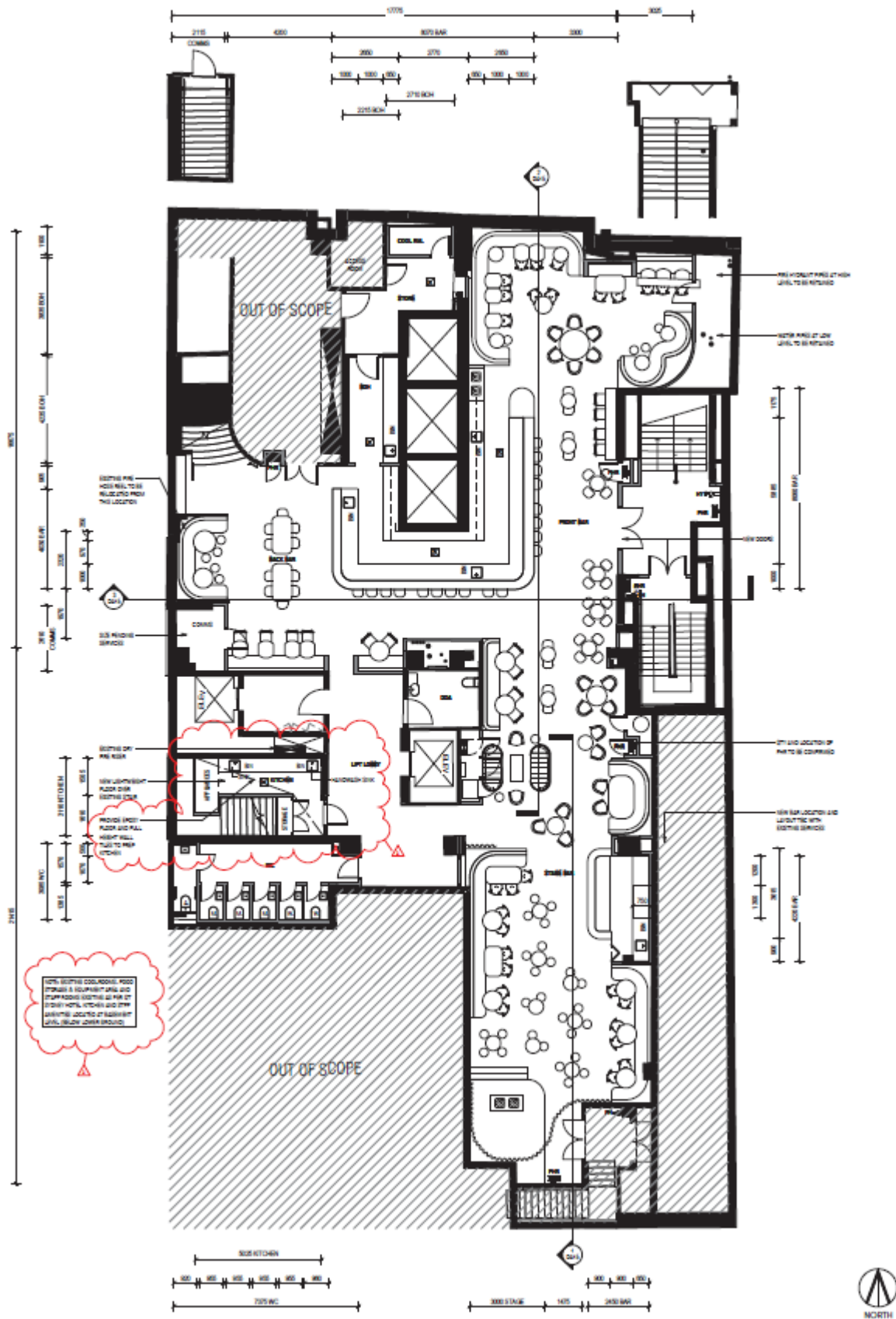


Figure 21: Extract of proposed lower ground floorplan (left)

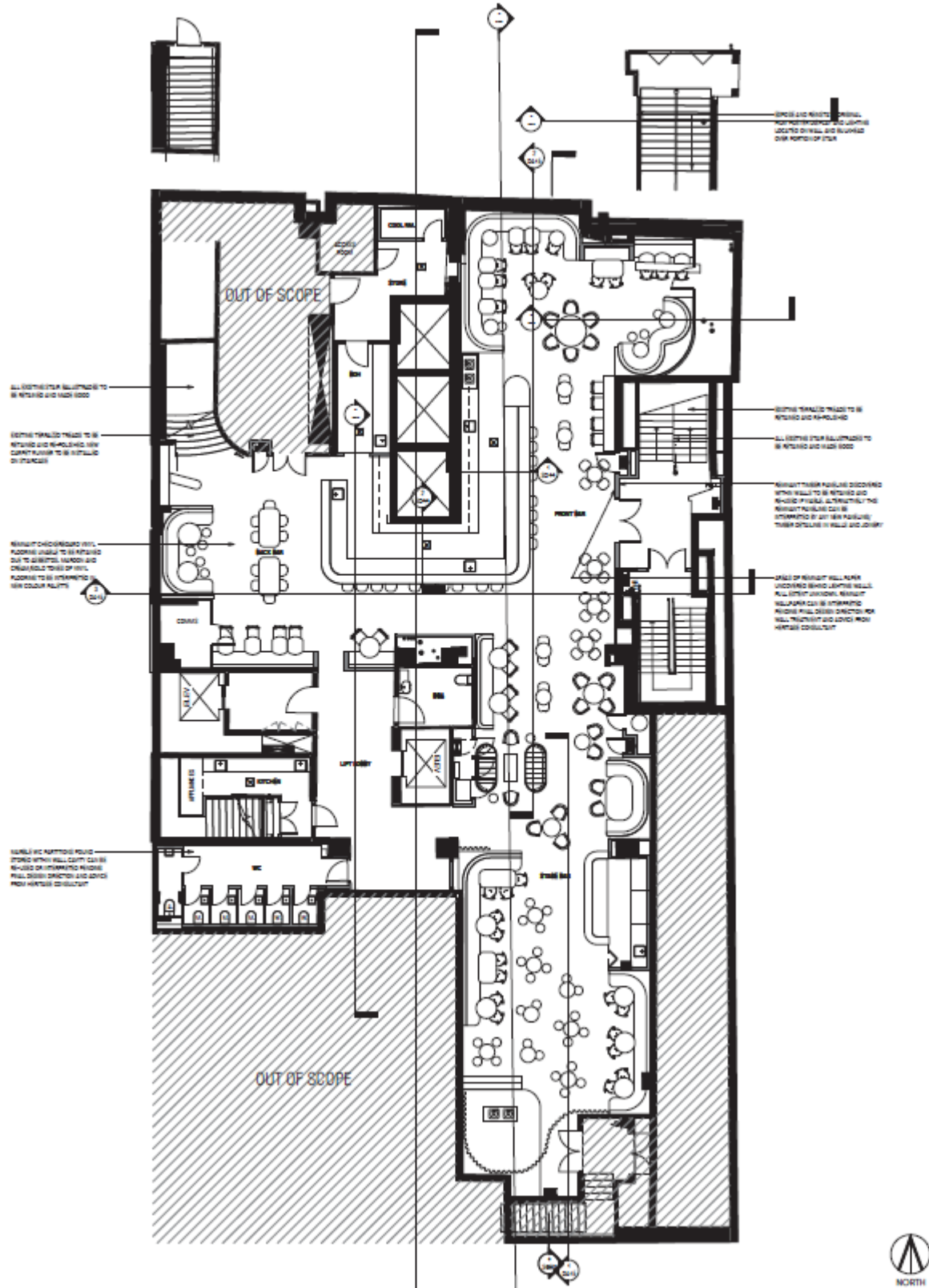


Figure 22: Extract of lower ground floor heritage direction plan (left)



Figure 23: Extract of finishes palette - note general indication only

Assessment

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

Heritage Act 1977

19. The subject site is listed as an item known as "The State Theatre" on the State Heritage Register under the Heritage Act 1977 as #00446.
20. A Conservation Management Plan dated 2010 prepared by Graham Brooks & Associates applies to the site.
21. At the time of lodgement, the application was lodged as Integrated Development requiring approval under the Heritage Act 1977. A copy of the application was referred to the Heritage Council on 7 December 2023 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000. In correspondence dated 30 January 2024, the NSW Heritage Council was advised that the exhibition period had been completed and no submissions were received.
22. In correspondence dated 30 January 2024, the Heritage Council of NSW advised that an integrated development application approval under the Heritage Act 1977 is not required as the site is covered by the following site-specific exemptions under the Heritage Act 1977:

- (a) The alteration of the building including the interior of the ground floor coffee shop and tobacco / sweet shop, other than the theatre, foyer entrance and Market Street facade.
 - (b) Any change of use of the interior of the building including the ground floor coffee shop and tobacco / sweetshop, other than the theatre, foyer or entrance.
23. As such, Heritage NSW are of the view that the proposed works can be assessed under the provisions of Section 57(2) of the Heritage Act 1977. In their correspondence, Heritage NSW recommended that Council assess the heritage impact of the proposed works by:
- (a) Considering the impact of the proposal on the heritage significance of the subject property and any heritage items in the vicinity; and
 - (b) Taking into account the recommendations of Council's heritage adviser.
24. The application was referred to Council's Heritage Specialist who supports the application, subject to conditions.

State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

25. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Clause 2.98 – Development adjacent to rail corridors

26. The site's western boundary is located within the rail reserve of the North Shore and City Circle Train Line tunnels located below George Street. The site is also located adjacent to the George Street Light Rail corridor.
27. Whilst noting the proximity to these rail corridors, the proposed development is limited to a change of use and internal fit out below ground levels of the existing building. No further excavation or works that impact on the rail corridors is proposed. As such, the application is not required to be referred to Transport for NSW.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

28. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
29. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

30. 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 'food and drink premises' (which includes a pub and restaurant) and is permissible with consent in the zone. The proposal generally meets the objectives of the zone. The primary purpose of the pub is for the service of alcohol and food.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 130 metres is permitted. The proposal comprises works to the lower ground and basement floor levels with no excavation. As such, the proposal will not affect the height of the existing building.
4.4 Floor space ratio 6.4 Accommodation floor space	Yes	The site has a base floor space ratio control of 8:1 (approximately 26,592 square metres). Council records show an existing GFA calculation of the relevant sites, completed as part of D/2019/883 which was approved on 12 November 2020. Based on this consent, the site has a current FSR of 5.3:1 (17,748 square metres). In this instance, the proposed use occupies existing lower ground and basement levels of the building: <ul style="list-style-type: none"> • Lower Ground Floor: Existing GFA 1,722 square metres. • Basement Level: Existing GFA 614 square metres. There will be approximately 78.5 square

Provision	Compliance	Comment
		<p>metres of additional GFA on the lower ground level and 14.6sqm on the basement level as a result of the change of use of existing space that is not calculated as floor space to uses that are calculated as floor space.</p> <p>The proposed FSR as a result of a 93.1 square metres GFA increase is 5.37:1 (17,841 square metres). In this regard, the proposal is under the site's permissible base FSR.</p> <p>Under the provisions of Clause 6.4 of the SLEP 2012, the site is located within Area 2 where different land use types are eligible for additional floor space of between 4.5:1 to 6:1 depending on the use.</p> <p>Given the above, the provisions of Clause 6.4 are not relevant.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a state heritage item identified as the 'State Theatre'. It is identified by the State Heritage Register as No. 00446.</p> <p>Schedule 5 of the Sydney LEP 2012 identifies the site as 'State Theatre and former State Shopping Block including interiors' No. I1887.</p> <p>Refer to previous discussion on use of site-specific exemptions under Heritage Act 1977.</p> <p>The proposed development has been referred to Councils Heritage Specialist who raised no objection to the proposal, subject to conditions.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
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Provision	Compliance	Comment
Division 4 Design excellence		
6.10 Heritage floor space	N/A	Council's Heritage Floor Space register shows no record of any Heritage Floor Space award for the State Theatre.
6.11 Utilisation of certain additional floor space requires allocation of heritage floor space	N/A	This clause is not applicable as the building does not exceed 55m in height and therefore no HFS is required to be allocated.
6.21C Design excellence	Yes	<p>Clause 6.21B(1) of the SLEP 2012 states that the Division 4 - Design Excellence applies to development that involves the erection of a new building or to external alterations to an existing building.</p> <p>The proposed external works under this application are limited to repair and make good works at the entrances from Market Street. These external works have been assessed as being suitable and sympathetic to the heritage significance of the building and will have a positive impact on the public domain.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development 7.7 Retail premises	N/A	<p>The site is located on land identified as Category D on the Public Transport Accessibility Level Map.</p> <p>The LEP allows for a maximum car parking spaces in association with the use. No spaces are proposed.</p>
7.13 Contribution for purposes to affordable housing	Yes	Please refer to the 'Financial Contributions' section below for further details.
7.14 Acid Sulfate Soils	Yes	The site is located on land with class Class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid

Provision	Compliance	Comment
		Sulfate Soils Management Plan.
7.20 Development requiring or authorising preparation of a development controls plan	N/A	<p>The proposal increases the gross floor area of the existing building by roughly 93 square metres. The site is in Central Sydney and has a site area greater than 1,500 square metres (3,324 square metres). The preparation of a development control plan is not required in this case as the proposal:</p> <ul style="list-style-type: none"> • only involves alterations and additions to an existing building. • does not significantly increase the height or gross floor area of the building. • does not have significant adverse impacts on adjoining buildings or the public domain, and • does not significantly alter any aspect of the building when viewed from public spaces.
7.24 Development near Cross City Tunnel ventilation stack	Yes	<p>A small portion of the site is within 500 metres of the Cross City Tunnel ventilation stack.</p> <p>The proposal relates to change of use and internal fit out works to the lower ground and basement floor levels.</p> <p>The proposal will not adversely affect the dispersal of emissions from the Cross City Tunnel ventilation stack nor will persons using those levels be affected by those emissions.</p>

Development Control Plans

Sydney Development Control Plan 2012

31. 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

32. The site is not located within a locality identified by Section 2 of the Sydney DCP 2012.

Section 3 – General Provisions

Provision	Compliance	Comment
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.
3.9 Heritage	Yes	See further details in the 'Discussion' section below, above under the Heritage Act 1977 and 5.10.
3.11 Transport and Parking	Yes	Currently, the site does not have any parking provisions. The proposal does not seek to increase or change parking provision.
3.12 Accessible Design	Yes	Lift access to the lower ground floor bar is available through the QT Hotel Lobby which is available at ground level from Market Street. The access points are identified in the provided plan of management.
3.13 Social and Environmental Responsibilities	Yes	The proposed development is accompanied by a Plan of Management and Acoustic Report which provides management recommendations. These documents recommend the installation of CCTV, upkeep of a complaints and incidents register, security allocations and patron management. Subject to conditions the proposal complies with the provisions of 3.13 Social and Environmental Responsibilities.
3.14 Waste	Yes	The site has existing shared waste storage and service areas that the proposed bar and office intends to utilise. This area currently services the existing uses and is located along Parlour Lane. The application was referred to Council's Cleansing Specialist who raised no objection to the proposed waste management arrangement subject to conditions. A condition is recommended to ensure the proposed development complies

Provision	Compliance	Comment
		with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Partial compliance	<p>The premises is located in a Late Night Management Area and the use is defined as a category A premises.</p> <p>The proposal seeks permanent trading hours between 10.00am and 2.00am (the following day) and is seeking extended trading hours on a 1-year trial period for the hours between 2.00am and 3.00am. The proposed patron capacity is 300. The proposal is for change of use of the lower ground floor from a function bar ancillary to the theatrette to a pub and restaurant with entertainment.</p> <p>Table 3.8 of the Sydney DCP 2012 permits base indoor hours of operation between 6.00am - 12.00am (midnight) and extended 24-hour trading.</p> <p>See further details in the 'Discussion' section below.</p>

Section 5 – Specific Areas

Provision	Compliance	Comment
5.1 Central Sydney	Yes	<p>With the exception of the works to repair and make good the entrances to the lower ground floor and basement level, the proposal does not seek for any external changes to the State Theatre. As the proposal will enhance the quality of the elements of the facade, the proposal will make a positive contribution on the streetscape.</p>

Discussion

Heritage

33. The subject site is identified as a State Heritage Item, listed as "The State Theatre" on the State Heritage Register under the Heritage Act 1977 (#00446). Schedule 5 of the Sydney LEP 2012 identifies the site as an item of state heritage significance (I1887) being the 'State Theatre and former State Shopping Block including interiors'.
34. As discussed under the heading of Heritage Act 1977 section above whilst the application was lodged as Integrated development under the Heritage Act, Heritage NSW has confirmed that the proposal falls within the site-specific exemptions and is not required to obtain a separate approval under the Heritage Act 1977.
35. The application has been assessed by the City's Heritage Specialist who has noted the response of Heritage NSW and their advice. A detailed assessment has been undertaken by the City's Heritage Specialist noting the following:
 - (a) The 2010 Conservation Management Plan (CMP) identifies the spatial qualities of the Reel Room, internal walls, and part of the lower ground level as being of high significance. See Figure 24 below:

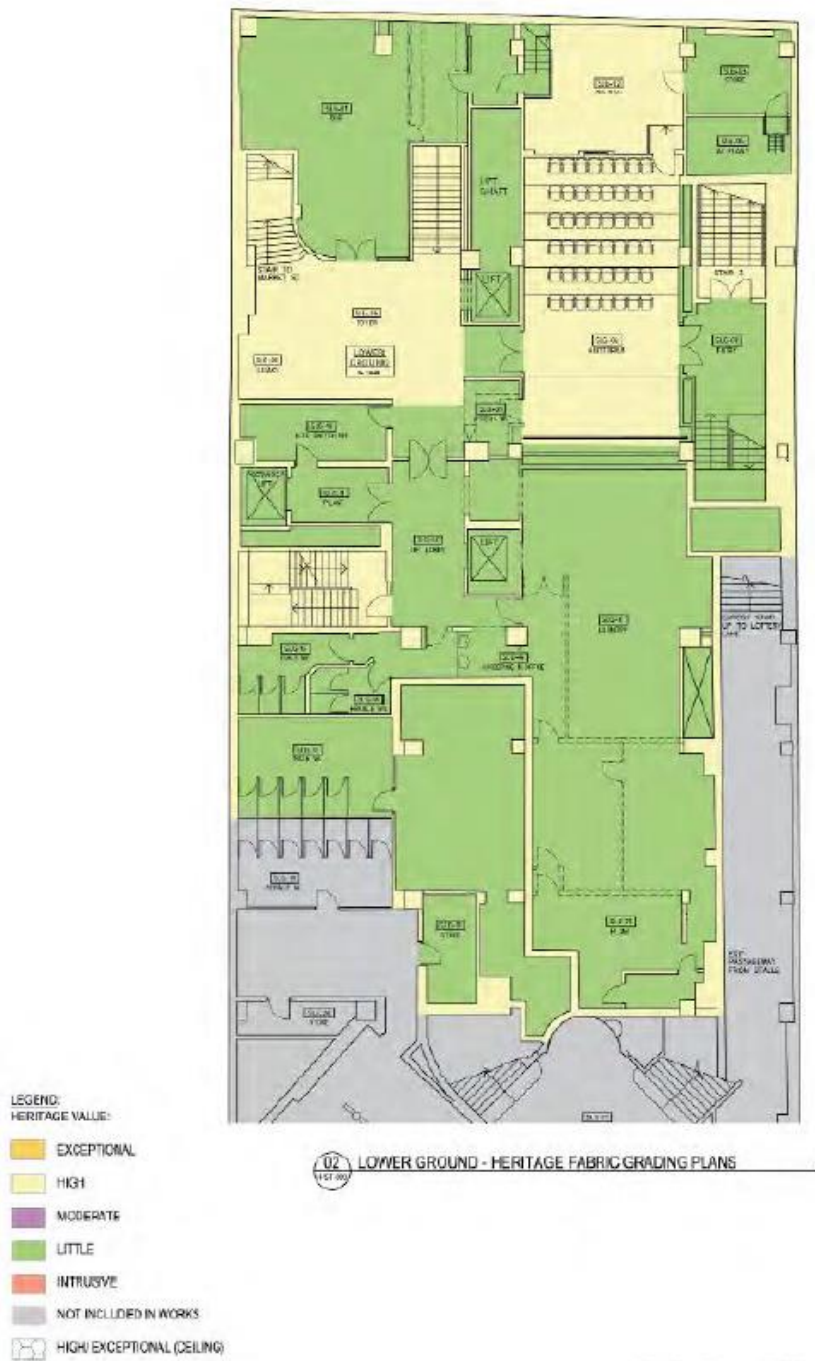


Figure 24: Extract from 2010 CMP of Lower Ground Floor Graded Heritage Fabric

It is noted the proposal will result in the loss of the Reel Room (a 1995 remodelling of the State Newsreel Theatre) and will impact on the original foyer space. Further, some existing walls located at the lower ground level (ranked as being of high significance) are to be demolished. It is also possible that works relating to the stripping out of later fit outs may reveal early wall or ceiling finishes.

- (b) To mitigate the proposed impact on the heritage significance, the application has been accompanied by a Heritage Interpretation Strategy (HIS) and Heritage Impact Assessment (HIA). The key assessments made in these documents are:

- (i) The works are located on levels where there has been substantial and repeated modifications and contain little remnant significant or original fabric.
 - (ii) There are no works to the theatre, foyer entry or Market Street façade.
 - (iii) The lower ground floor originally housed the State Newsreel Theatre and has been reconfigured for various uses as a theatre, function room and bar. Currently, this level accommodates the vacant bar space and the Reel Room (a 1995 remodelling of the State Newsreel Theatre), which is underutilised and not accessed by the public. The proposal will reactivate this level and make a positive contribution to the sustainable use of and activity in the building.
 - (iv) The CMP identifies the spatial qualities of the Reel Room and part of the lower ground floor as being of high significance. These spaces were reconfigured in 1995 and do not reflect the original spatial layout of this floor.
 - (v) The CMP identifies the area of the works in the basement level as being of little significance.
 - (vi) The proposal includes a meaningful interpretation of the lower ground floor (including spatial layout, remnant fabric and historic functions) and is outlined in the Heritage Interpretation Strategy.
 - (vii) The proposal does not impact on original fabric associated with the lower ground floor and basement (including staircases, stair lobbies and associated features).
 - (viii) The proposed fit out is lightweight and reversible. Where viable, remnant fabric from the historic uses will be retained and incorporated into the interior design.
36. Based on the site-specific exemptions under the Heritage Act 1977 and the assessment and analysis contained within the HIS and HIA, the City's Heritage Specialist raises no objections subject to the following conditions:
- (a) the preparation of a Heritage Interpretation Plan to be based on the provided strategy. The plan is to be submitted to and approved by Council prior to the issue of any construction certificate.
 - (b) photographic archival documentation be recorded of the areas/spaces affected. Maintaining a record in accordance with the guidelines provided by NSW Heritage Division guidelines ensures the ongoing conservation of the history of the site.
 - (c) A general indication of intended materials and finishes has been provided with the application, but no materials are nominated or keyed to the plans. As such conditions are recommended to ensure any new materials for making good and repairs match the existing in terms of colours, finishes, sizes, profile, and properties.

- (d) any early or significant fabric and finishes uncovered during the works must be retained, protected, and properly incorporated into bar design and what cannot be retained should be recorded.
- (e) a heritage consultant be commissioned throughout the design development, contract documentation and construction stages. This will ensure the best outcomes are achieved and significant heritage fabric is protected.

Compliance with the National Construction Code

- 37. As the site is a State Heritage Item, the opportunities for upgrades to meet the relevant standards may be limited due to their potential impact on any heritage significant fabric. The application is accompanied by a BCA Capability Statement which recommends performance-based solutions be adopted for sanitary facilities and height of rooms. The statement also states fire compartmentation drawings and a fire safety engineer is required to address any relevant performance requirements. In conclusion, the report confirms that the proposal is capable of achieving compliance with the Building Code of Australia 2022, subject to normal design development and assessment reviews required at the next stage of documentation and prior to the issue of the construction certificate.
- 38. A condition is recommended to ensure any works required for compliance with the NCC not specified in the submitted/approved plan must not result in damage to existing fabric and building features. The condition ensures if upgrade works are required which may impact on existing fabric and features, the details are to be submitted to and approved by Council prior to any construction certificate.

Late Night Trading/Hours of Operation

- 39. The proposal seeks permanent approval for hours of operation between 10.00am and 2.00am (the following day), Monday to Sunday and seeks consent for extended trading on a 1-year trial period for the hours between 2.00am and 3.00am.
- 40. The premises intends to operate under the existing QT Hotel Liquor Licence and is proposed to have a patron capacity of 300. As such, the premises is identified as a Category A - High Impact Premises and the Liquor Licence is considered appropriate for the intended use.
- 41. The Sydney DCP 2012 permits permanent base indoor trading hours between 6.00am and 12.00am (midnight) with extended 24-hour trading considered on a trial period basis. Whilst the overall hours sought are consistent with the DCP on a trial period basis, the proposal is seeking variation for the permanent base hours until 2.00am.
- 42. The applicant states consideration should be given to the proposed variation to the DCP's base hours on the basis of the previously approved hours under development consent D/2010/267/F, and the previous use as the State Theatre Screening Room Bar (Function Bar) which occupies the lower ground floor that is proposed to be converted into a bar. It is noted this application was approved in 2012.

43. It is noted that the approved trading hours for the function bar on the lower ground floor under development consent D/2010/267/F are between 6.00am and 12.00am (midnight), Monday to Sunday on a permanent basis with a 1-year trial period between 12.00am (midnight) and 2.00am, granted from the date of the issue of the occupation certificate being 16 August 2012 (CF10575OC01). There have been no complaints received by Council in relation to the Function Bar. Also, there was no application for the renewal or continuation of extended trading hours after its expiration period being 16 August 2023.
44. The patron capacity of the approved Function Bar is 115 whereas the proposal seeks to accommodate 300 patrons. The previous Function Bar approval required it to be ancillary to the lower ground theatre and included a stage and screening room which formed part of the use. The proposal seeks to remove the screening room to allow for the floor area to be used as part of the pub. The proposal will provide a new stage bar area for entertainment.
45. Considering the differences in scale between the two uses, it is considered the previous use does not provide sufficient justification to grant approval for permanent extended hours as requested.
46. The following considerations have been given to the recommended hours of operation:
 - (a) Council's Licensed Premises Unit raise no objection subject to conditions and to any extended hours after 12.00am midnight being subject to a trial period.
 - (b) NSW Police provided no response and is taken to be no objection to the proposal.
 - (c) The accompanying plan of management includes the following:
 - (i) All staff involved in the sale or service of alcohol must have completed an approved Responsible Service of Alcohol course and be in possession of their valid RSA certificate.
 - (ii) Limiting amplified music to play at maximum 105dB(A)L10, installing acoustic seals around the perimeter of the entry door and ensuring the entry door remain closed during the operation of the bar. Adopting the recommendations of the Acoustic report and committing to comply with Council's requirements and the Protection of the Environment (Operations) Act 1997.
 - (iii) Maintaining a complaint management and incident register which will maintain a record of all incidents associated with the Bar including details of those instances / those involved.
 - (iv) Security being provided at a ratio of 1 guard per 100 patrons from 6.00pm until close on Thursday - Sundays. Security will be appropriately licensed, and will be responsible for monitoring patron capacity, queuing and patron management.
 - (v) Installation of CCTV surveillance cameras - installed, operated and maintained with particular coverage of all principal entrance/s and exists and all areas occupied by the public (excluding toilets).

- (vi) Criteria for monitoring drugs and drink spiking including the adoption of crime scene preservation guidelines.
- (vii) Provision of a detailed site plan and training to assist in the need for evacuation / emergency closing.
- (d) The application is accompanied by an acoustic report, prepared by ADP Consulting Engineering. The report identified the nearest sensitive receivers as (see Figure 25 below):
 - (i) R1: Multi-level mixed use building to the north, opposite Market Street,
 - (ii) R2: Multi-level commercial development to the east
 - (iii) R3: Multi-level mixed-use development to the south and
 - (iv) R4: Commercial development directly to the west.

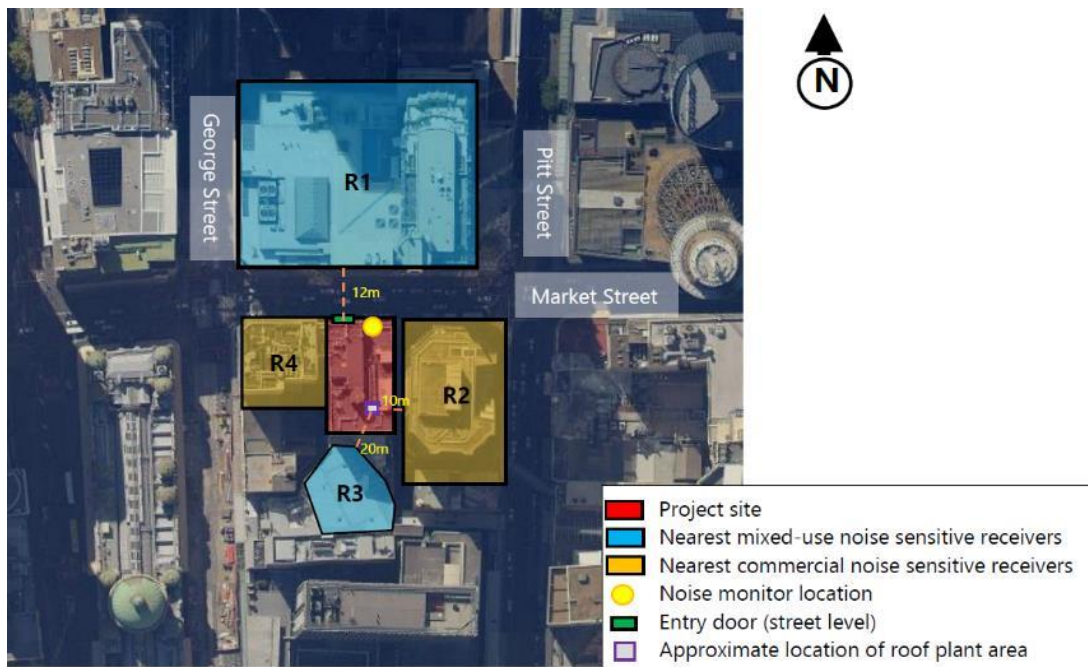


Figure 25: Extract from acoustic assessment of nearby noise receivers

- (e) The nearest receiver to the entry door of the proposed bar is the Swissotel hotel which is 12 metres to the north of the site. The acoustic assessment provides the following recommendations for managing potential noise impacts:
 - (i) That the full capacity of the bar should not exceed 300 patrons.
 - (ii) Amplified music to play as a maximum of 105dB(A)L10.
 - (iii) Install acoustic seals around the perimeter of the entry door.
 - (iv) Entry door to remain closed during the operation of the Bar (except of ingress/egress).

- (f) The Acoustic Report concludes the premises can comply with relevant noise criteria, responsible management of music and patron noise to protect the surrounding amenity and nearby sensitive noise receivers subject to compliance with the recommendations above.
 - (g) The Plan of Management and Acoustic Report have been peer reviewed by the City's Licensed Premises and Environmental Health Units. The documents are considered satisfactory, and conditions are recommended requiring the use to operate in accordance with these documents.
47. With consideration to the above, it is recommended the proposal be supported with permanent base hours of operation between 10.00am and 12.00am (midnight), Monday to Sunday and that the extended operating hours between 12.00am (midnight) and 3.00am be supported on a 2-year trial period commencing from the date of issue of an Occupation Certificate.

Land Use - Functions

48. The proposal is accompanied by a Statement of Environmental Effects and Plan of Management. These documents state the proposed bar will be for the primary purpose of alcohol consumption but will be available for private functions. No further information is provided in relation to what 'private functions' would entail.
49. The Sydney LEP 2012 defines "Function Centres" as a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.
50. Given that insufficient information has been provided to understand how the use may operate for the purpose of functions a condition is recommended requiring the plan of management be revised to address this issue. The condition is not intended to prohibit the use from allowing the reservation of tables or part of the space for the purposes of private events but is intended to clarify that the proposal has been assessed for the purposes of a pub and restaurant that offers entertainment intended to operate under a hotel licence.

Consultation

Internal Referrals

51. The application has been referred to/discussed with Councils Environmental Health, Licensed Premises, Heritage and Waste Management Unit.
52. The relevant comments are discussed elsewhere in this report and relevant conditions are included in Attachment A.

External Referrals

NSW Heritage Council

53. Pursuant to the Heritage Act 1977, the application was referred to NSW Heritage Council on 7 December 2023 for concurrence.

54. As detailed in the Heritage Act 1977 section above, the site-specific exemptions are applicable to the proposal and therefore the application is not classified as integrated development.

Advertising and Notification

55. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 7 November 2023 and 6 December 2023. A total of 234 properties were notified and no submissions were received.

Financial Contributions

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

56. The cost of development is in excess of \$250,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan.
57. A condition relating to this levy is recommended and 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

58. The site is located within the Central Sydney affordable housing contribution area. As the development is not creating more than 100sqm of gross floor area and is not for the change of use to residential or visitor/tourist accommodation, the development is not subject to a Section 7.13 contribution.

Relevant Legislation

59. Environmental Planning and Assessment Act 1979.
60. Heritage Act 1977.

Conclusion

61. The proposed development, subject to recommended conditions, is consistent with the objectives of the SP5 Metropolitan Centre zone.
62. The development is located within the Late Night Management area. The recommended hours of operation are consistent with the planning controls, subject to any extended hours after 12.00am midnight being on a trial period and the imposition of management and operational controls to protect nearby amenity. The development, subject to the recommended conditions is able to operate without unreasonable disturbance or nuisance to surrounding properties.

63. The site is a State Heritage Item. Heritage NSW have advised that the proposed works and use fall within the site specific exemptions. The proposal is located in areas that have been significantly modified and hold little significance in terms of spatial quality, configuration and remaining fabric. The proposal will reactivate part of the building and provide a meaningful heritage interpretation of the space. Appropriate conditions are recommended for imposition to ensure the development to protect the heritage significance of the site.
64. The proposed development has been assessed as being consistent with the applicable planning controls and is supported subject to the imposition of conditions in Attachment A.

ANDREW THOMAS

Executive Manager Planning and Development

Isaac Toledano, Planner