

Item 4.**Development Application: 256 Crown Street Darlinghurst - D/2023/265**

File No.: D/2023/265

Summary

Date of Submission:	31 March 2023 - Amended plans and information were submitted for assessment on 11 November 2023, 11 March 2024, 1 May 2024 and 14 May 2024.
Applicant:	Kristy Hodgkinson - Hamptons Property Services Pty Ltd
Architect/Designer:	Tonkin Zulaikha Greer Architects
Developer:	Soho House
Owner:	256 Crown Street Pty Ltd
Planning Consultant:	Kristy Hodgkinson - Hamptons Property Services Pty Ltd
Heritage Consultant:	Julie Mackenzie - TZG Heritage
Cost of Works:	\$24,826,580.00
Zoning:	<p>The site is located within the MU1 - Mixed Use zone.</p> <p>The proposed use is for a private members club which includes food and drink premises with entertainment area, entertainment facility (cabaret) and an associated rooftop terrace and pool.</p> <p>This is permissible with consent in the zone under the Sydney Local Environmental Plan 2012.</p>
Proposal Summary:	<p>The application seeks development consent for partial demolition, excavation and alterations and additions, including a two-storey addition to the existing building for use as private members club Soho House. Proposed uses include food and drink premises (restaurant, bar and entertainment area), entertainment facility (cabaret) and associated level 3 terrace, rooftop terrace and pool. The proposed patron capacity is up to 939 persons.</p>

Proposed internal hours of operation are 7am to 12am Monday to Saturday and proposed external hours of operation are 7am to 10pm Monday to Saturday.

The existing bar (Shady Pines) tenancy on the ground floor of the building is proposed to be retained.

The application is referred to the Local Planning Panel for determination as the development is for the purposes of a new licenses premises that may require an on-premises licence for public entertainment venues or a hotel (general bar) licence under the Liquor Act 2007.

The application was notified between 19 April 2023 and 18 May 2023 in accordance with Schedule 1 of the Environmental Planning and Assessment Act, 1979.

The City received 10 submissions, 3 in support and 7 objecting to the proposal. Submissions objecting to the proposal predominantly raised concerns around noise impacts, patron nuisance, traffic management, waste collection, height of the built form, view loss, construction impacts, vermin management and application document inconsistencies.

Following an assessment of the application, the applicant was requested to address a number of issues relating to proposed cultural and creative floor space, privacy, heritage impacts, height and setbacks, materiality, noise amenity, overshadowing, contamination, tree management, licensing, public art and interface with the public domain.

Amended plans and information were submitted to address Council's concerns on 11 November 2023, 11 March 2024, 1 May 2024 and 14 May.

A maximum base height of 18m is permitted for the site under Clause 4.3 of the Sydney Local Environmental Plan 2012. An alternative maximum height of 23m is available under Clause 6.60D where 10 per cent of the gross floor area is provided for cultural and creative purposes. The development provides 10 per cent cultural and creative floor space within the development and complies with the 23m alternative height of building standard for the site.

The proposed density of the development complies with the maximum floor space ratio (FSR) control of 5:1 under Clause 4.4 of the Sydney Local Environmental Plan 2012.

As a result of the modifications made to the proposed development and subject to recommended conditions, the amended proposal presents an improved outcome and comprises a satisfactory response to the conditions of the site and locality. The amended proposal is generally

acceptable with regard to the applicable planning controls, results in a form and scale that achieves the desired future character of the area and exhibits design excellence.

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

Development Controls:

- (i) Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000
- (ii) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
- (iii) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
- (iv) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (v) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (vi) City of Sydney Guidelines for Waste Management in New Developments
- (vii) City of Sydney Development Contributions Plan 2015

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Plan of Management
- D. Solar Access Analysis
- E. Visual Privacy Analysis
- F. Submissions

Recommendation

It is resolved that consent be granted to Development Application Number D/2023/265 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979, in that, subject to the imposition of conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) The development, subject to conditions, is consistent with the objectives of the MU1 Mixed Use zone.
- (C) Subject to the recommended conditions of consent, the proposed development achieves acceptable amenity for adjoining sites.
- (D) The proposal provides 10 per cent cultural and creative floor space and complies with the alternative maximum height of buildings control under in Clause 6.60D of the Sydney Local Environmental Plan 2012 and the design of the development responds appropriately to the scale of surrounding buildings.
- (E) The proposed density of the development complies with the maximum floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (F) The development, subject to conditions, exhibits design excellence and satisfies the provisions of Clause 6.21C of the Sydney Local Environmental Plan 2012.
- (G) Subject to conditions, the proposal generally satisfied the relevant objectives and provisions of the Sydney Local Environmental Plan 2012 and the Transport and Infrastructure SEPP.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot A in Deposited Plan 952390, known as 256 Crown Street, Darlinghurst. It is irregular in shape with area of approximately 515.35sqm. It has a primary street frontage to Crown Street to the west and secondary street frontages to Kells Lane to the north, Langley Street to the east and Foley Street to the south.
2. The site is located to the northern side of Oxford Street and forms part of the Oxford Street Cultural and Creative Precinct.
3. The site contains a three storey interwar mixed use building. Current uses on the site include a yoga studio, office premises, a bar on the ground level (Shady Pines) and retail premises on ground level fronting Crown Street.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial.
5. To the north of the site, across Kells Lane, is a 6 storey Land and Housing Corporation residential building. To the east of the site, across Langley Street is a two to three storey residential flat building known as Oxford Flats and two and three storey single residential dwellings. To the south and west of the site, across Foley Street and Crown Street, are four storey mixed use buildings which form part of an architecturally consistent group of buildings along Oxford Street. These buildings are currently being redeveloped and form part of the Oxford Street Cultural and Creative Precinct.
6. The site is not a heritage item but is located within the East Sydney heritage conservation area (C13). The subject building is identified as a contributing building.
7. The site is located within the East Sydney locality and is identified as being subject to flooding.
8. A site visit was carried out on 2 May 2023. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site (bordered in red) and surrounds



Figure 2: Site viewed from Crown Street looking east



Figure 3: Site viewed from the corner of Langley and Foley Street looking north west



Figure 4: Site viewed from Kells Lane



Figure 5: View east towards the site from Foley Street



Figure 6: Internal view west from second level

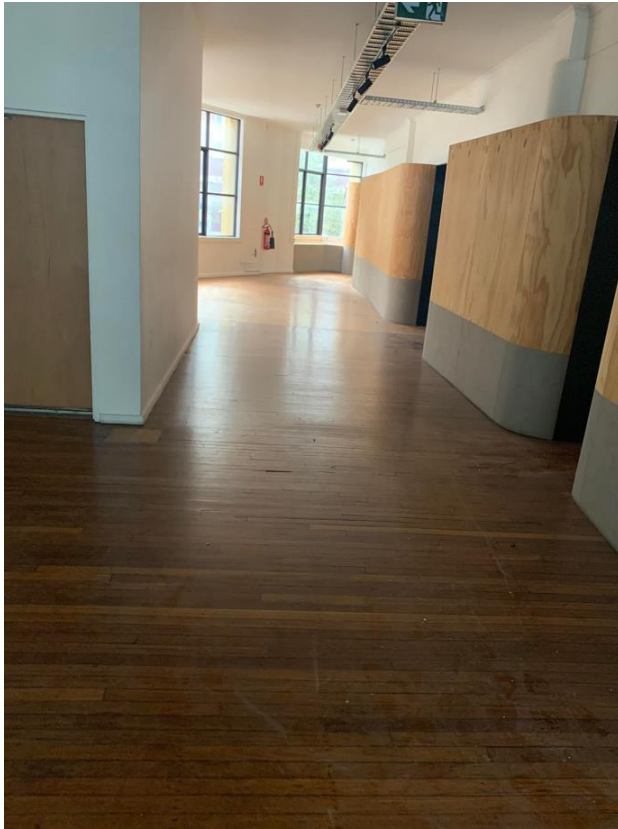


Figure 7: Existing internal view of premises - Level 1



Figure 8: View south-east from Crown Street towards neighbouring building at 82-106 Oxford Street to the south



Figure 9: View east from Crown Street towards neighbouring building to the north at 254 Crown Street

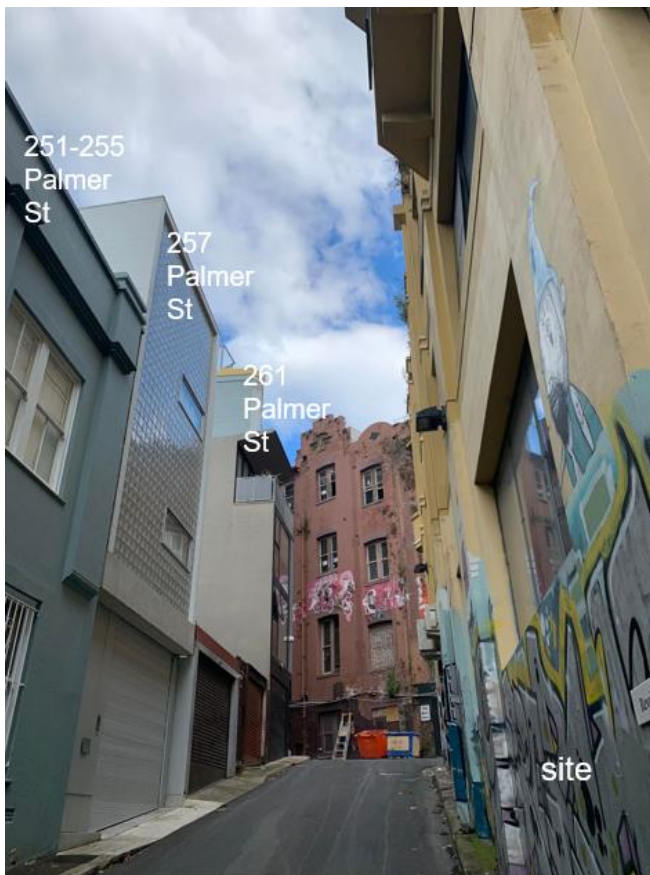


Figure 10: View south along Langley Street

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:
 - **D/2008/1594** – Development consent was granted on 16 December 2008 for fit out and use of shops 4 and 5 on the ground level as a bar (known as Shady Pines Saloon). A number of modifications to the consent have been approved (A-N) involving hours of operation and patron capacity. The premises currently has approval for 115 patrons on a trial basis until October 2024. Base hours of operation are between midday and 11pm 7 days a week with a trial period until 1.30am which ends 29 July 2024. The subject application states that the Shady Pines tenancy will continue to occupy the ground level of the building. Details are discussed further within the 'Discussion' section of this report.

Compliance Action

10. The site is not subject to current compliance action.

Amendments

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 11 July 2023. Key issues that were raised included the required inclusion of genuine cultural and creative floor space, amendments to the height and setbacks of the addition, heritage concerns, materiality and form, solar and noise impacts, privacy impacts from the level 3 terrace, site contamination, plan of management and patron capacity, liquor licencing, insufficient plan of management, public art requirements and required works to the public domain.
12. The applicant responded to the request on 11 November 2023 and submitted amended plans which reduced the height and scale of the additions to the building, additional solar access diagrams, a public art plan, a detailed site investigation, additional heritage details and proposed public domain diagrams.
13. Further requests for information were made by Council regarding items that had not adequately been addressed on 20 February 2024, 12 April 2024 and 8 May 2024. Key remaining issues of concern related to the provision of cultural and creative floor space, heritage, liquor licencing, privacy impacts, shadowing impacts, clarification around patron capacity, and the requirement for a preliminary public art plan.
14. The applicant responded with amendments and further information on 11 March 2024, 1 May 2024 and 14 May 2024 by providing amended architectural plans which retained the level 3 terrace, amendments to the designated cultural and creative spaces, an amended preliminary public art plan, an amended plan of management, an addendum heritage impact statement, updated solar diagrams and a visual privacy analysis.

Proposed Development

15. The application seeks consent for partial demolition, excavation and alterations and additions, including a two-storey addition to the existing building for use as private members club Soho House. Proposed uses include food and drink premises (bar, restaurant and entertainment area), entertainment facility (cabaret) and associated level 3 terrace, rooftop terrace and pool.
16. Proposed internal hours of operation are between 7:00am and 12:00am Monday to Saturday. Proposed external hours of operation are between 7:00am and 10:00pm Monday to Saturday. Hours of operation are not proposed on Sunday.
17. Proposed patron capacity is as follows:
 - (a) 939 persons between 7:00am and 6:00pm
 - (b) 973 persons between 6:00pm and 10:00pm
 - (c) 851 persons between 10:00pm and 12:00am.
18. The existing Shady Pines bar tenancy (approved under D/2008/1594) is proposed to remain on the ground level of the building.
19. The patron capacity outlined above excludes the Shady Pines tenancy.
20. Specific details of the proposed development are provided under each of the headings below:
21. **Basement level**
 - (a) demolition of existing slab, internal walls, columns and stairs;
 - (b) existing door on Kells Lane to be removed and opening widened;
 - (c) replacement of windows;
 - (d) bicycle store (13 bicycles);
 - (e) bulky waste, general waste room and services;
 - (f) end of trip WCs; and
 - (g) loading area.
22. **Ground level**
 - (a) portion of existing internal beam to be demolished;
 - (b) existing shopfront and external slab to be demolished;
 - (c) replacement of windows;
 - (d) club reception, lobby areas and cloakroom;
 - (e) existing Shady Pines tenancy; and

- (f) sanitary facilities and lockers.

23. **Level 1 floor**

- (a) floor structure to be partially demolished;
- (b) replacement of windows;
- (c) cabaret room, fixed stage and green room;
- (d) club bar;
- (e) back of house area; and
- (f) sanitary facilities.

24. **Level 2 floor**

- (a) floor structure to be partially demolished;
- (b) replacement of windows;
- (c) studio;
- (d) drawing room and bar; and
- (e) kitchen preparation area, storage and back of house.

25. **Level 3 - new addition**

- (a) existing roof demolished;
- (b) bar and fixed stage/ entertainment area;
- (c) outdoor terrace with 3m high solid continuous glazed noise screen and overhead acoustic baffles; and
- (d) sanitary facilities.

26. **Level 4 - new addition**

- (a) dining room; and
- (b) kitchen, preparation area and storage.

27. **Level 5 roof top terrace**

- (a) terrace bar;
- (b) acoustic baffles and glazed noise screen;
- (c) pool area and decking; and
- (d) AC units.

28. Plans and elevations of the proposed development are provided below.

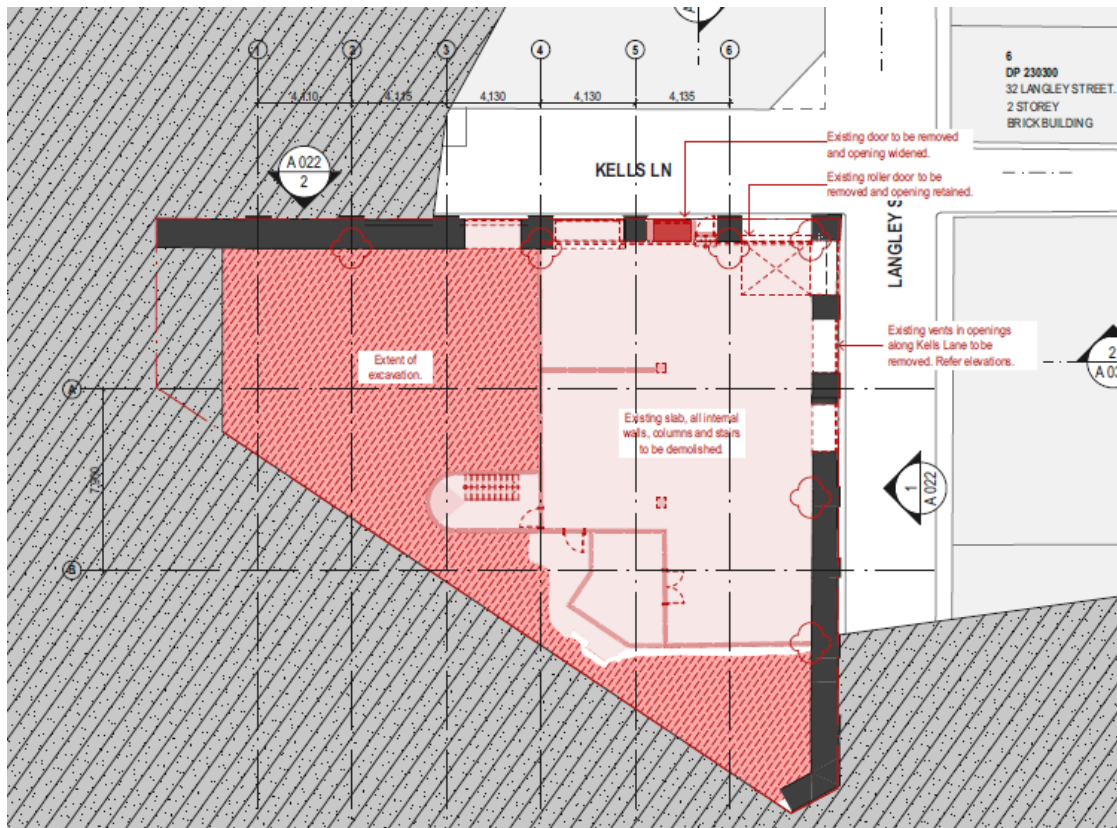


Figure 11: Proposed basement demolition

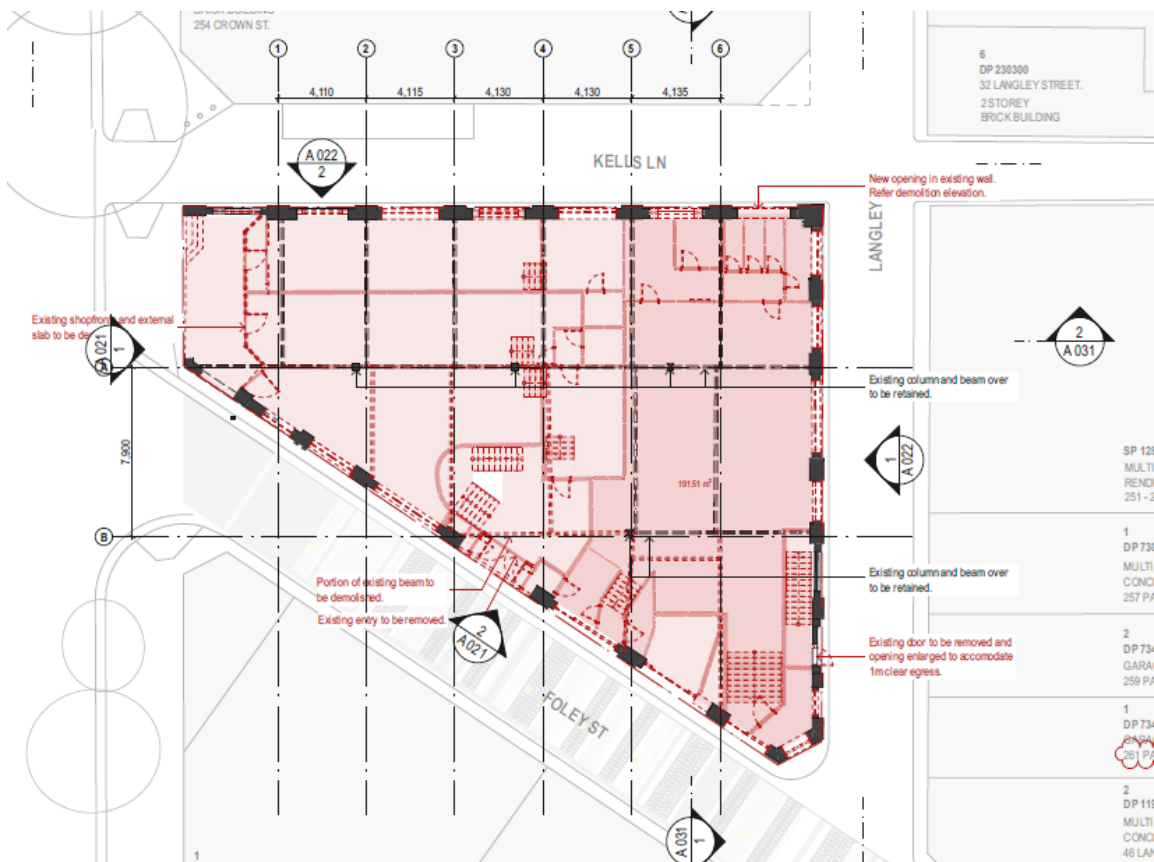


Figure 12: Proposed ground floor demolition

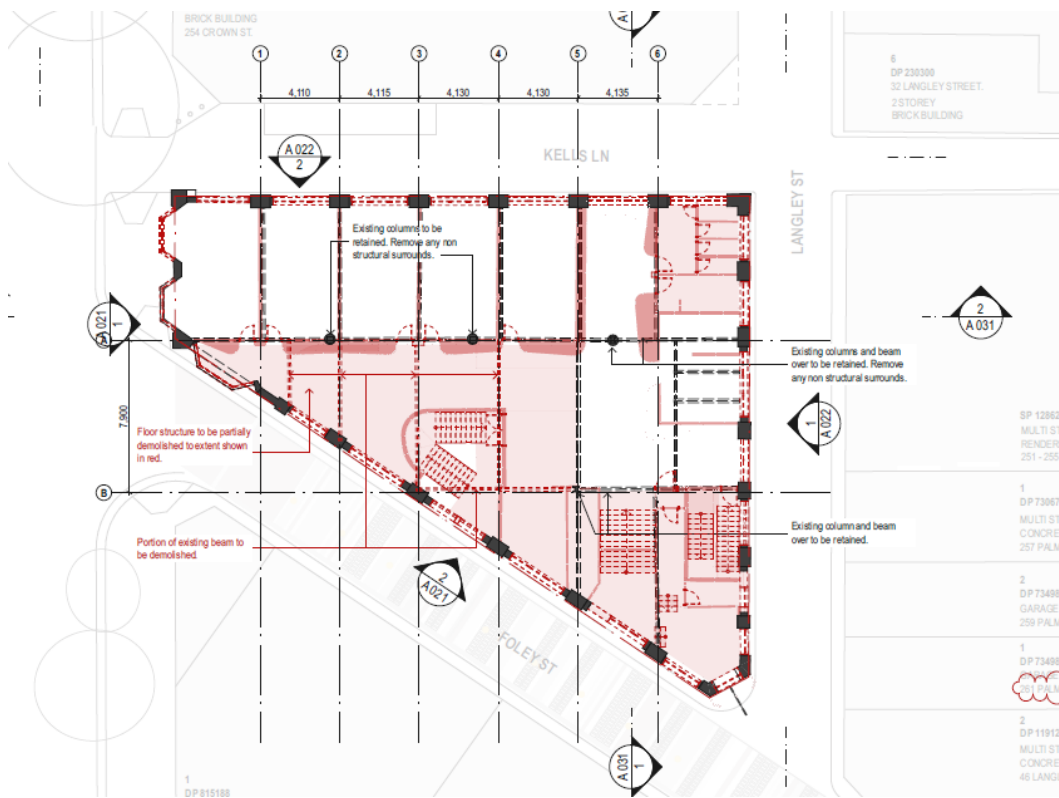


Figure 13: Proposed first floor demolition

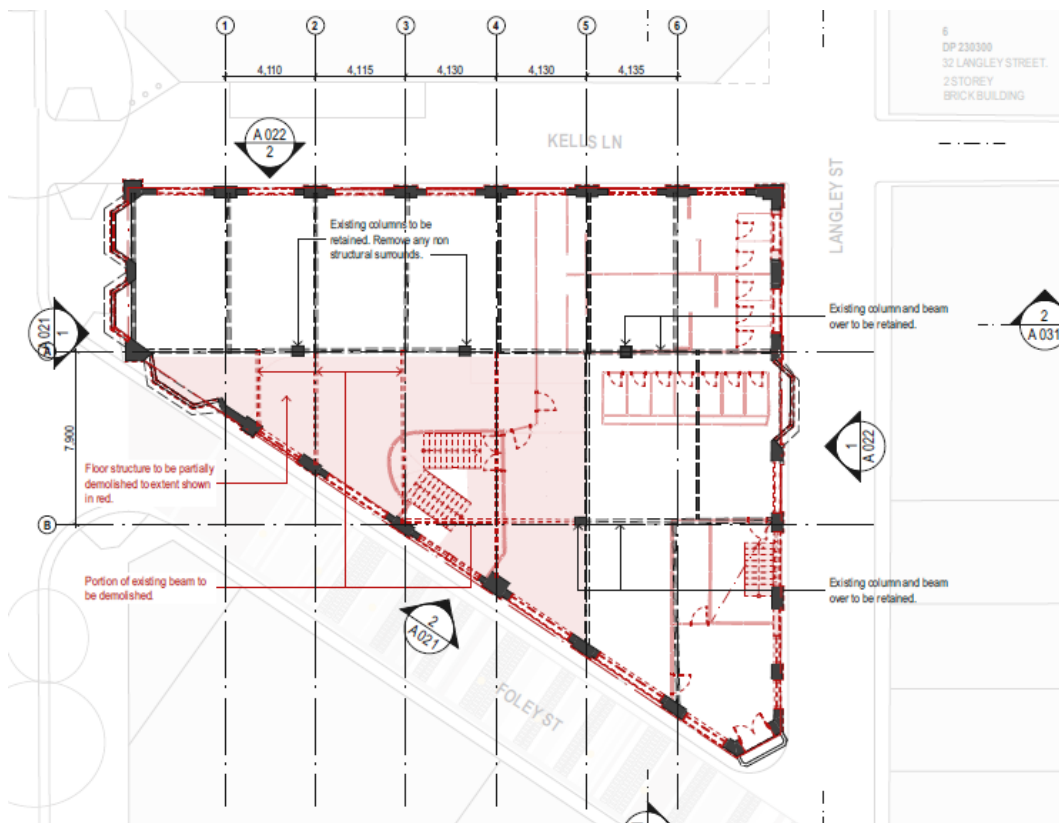


Figure 14: Proposed second floor demolition

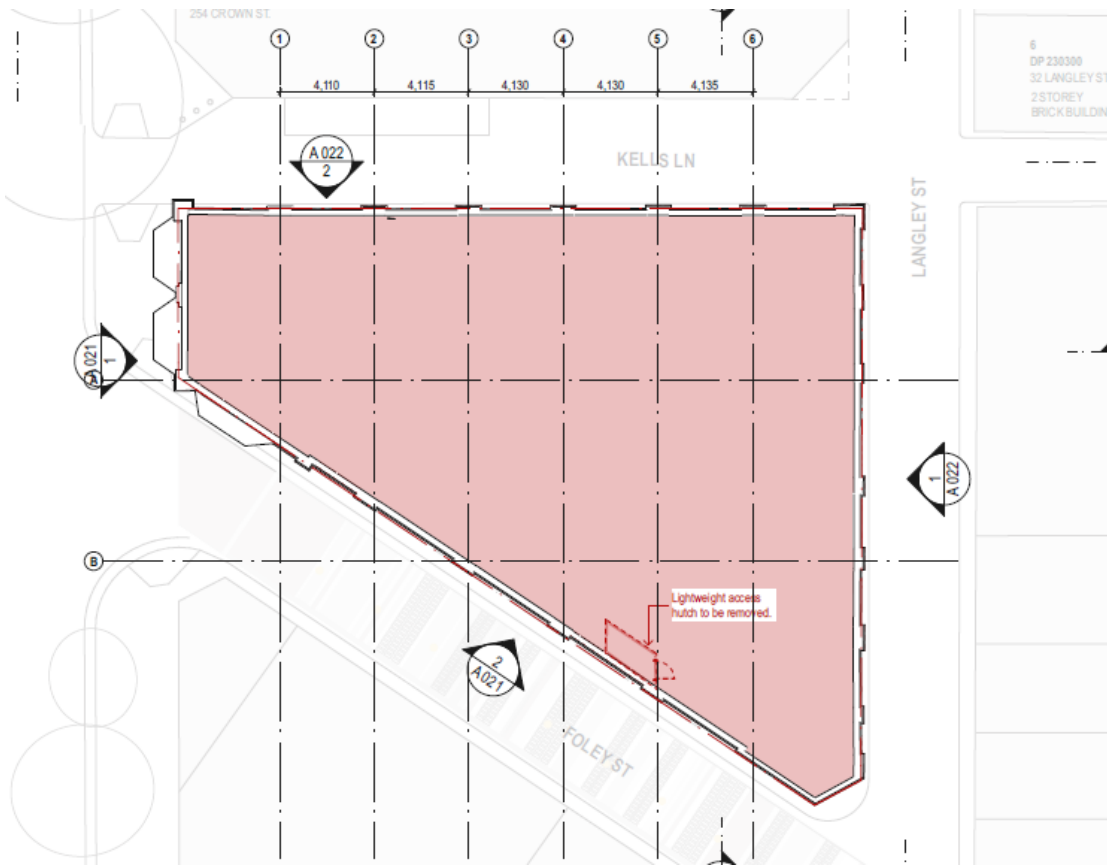


Figure 15: Proposed roof demolition

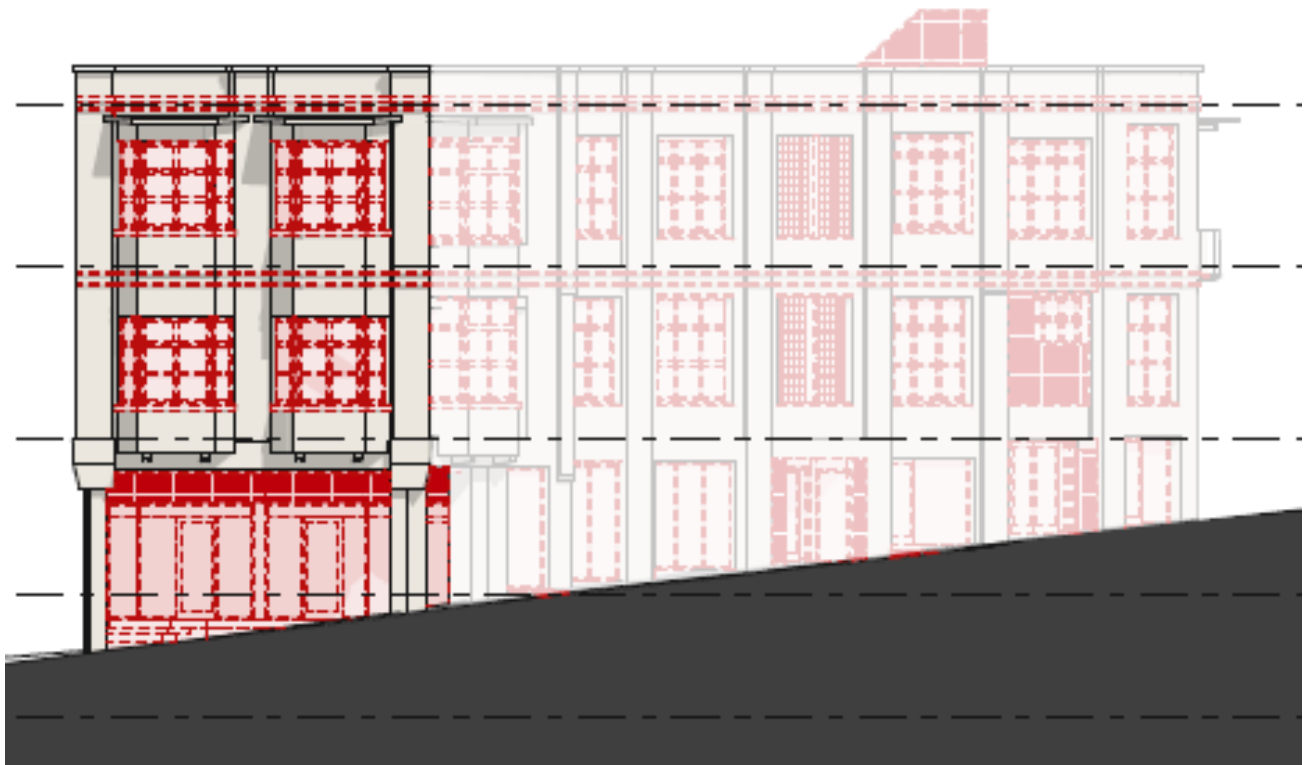


Figure 16: Proposed Crown Street elevation demolition

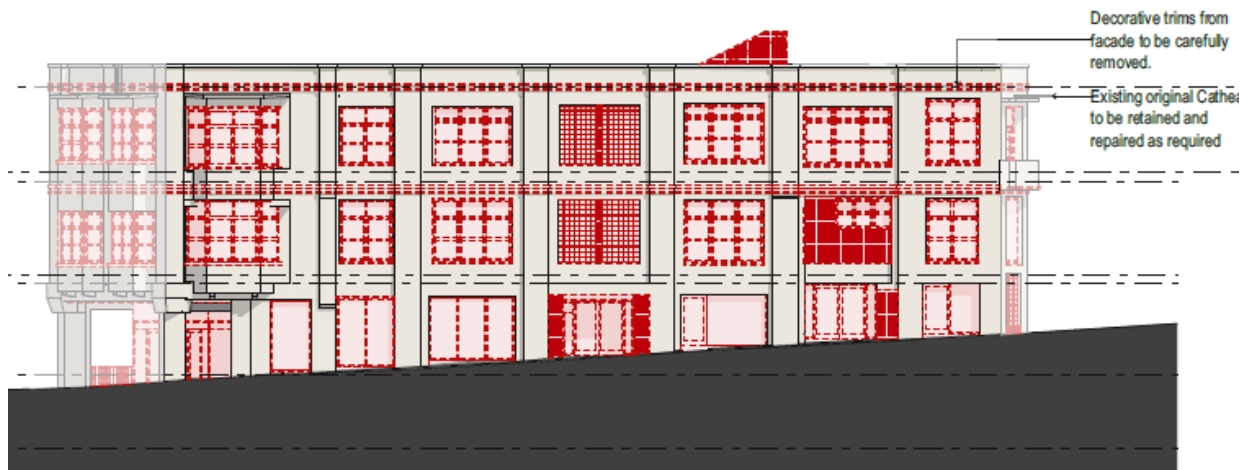


Figure 17: Proposed Foley Street elevation demolition



Figure 18: Proposed Langley Street elevation demolition

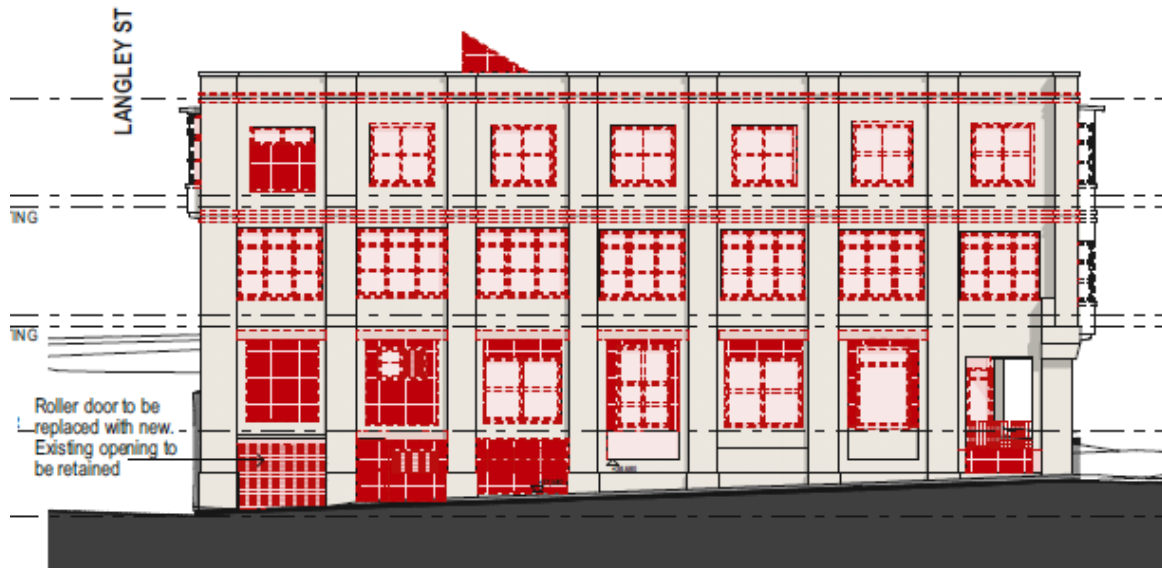


Figure 19: Proposed Kells Lane elevation demolition

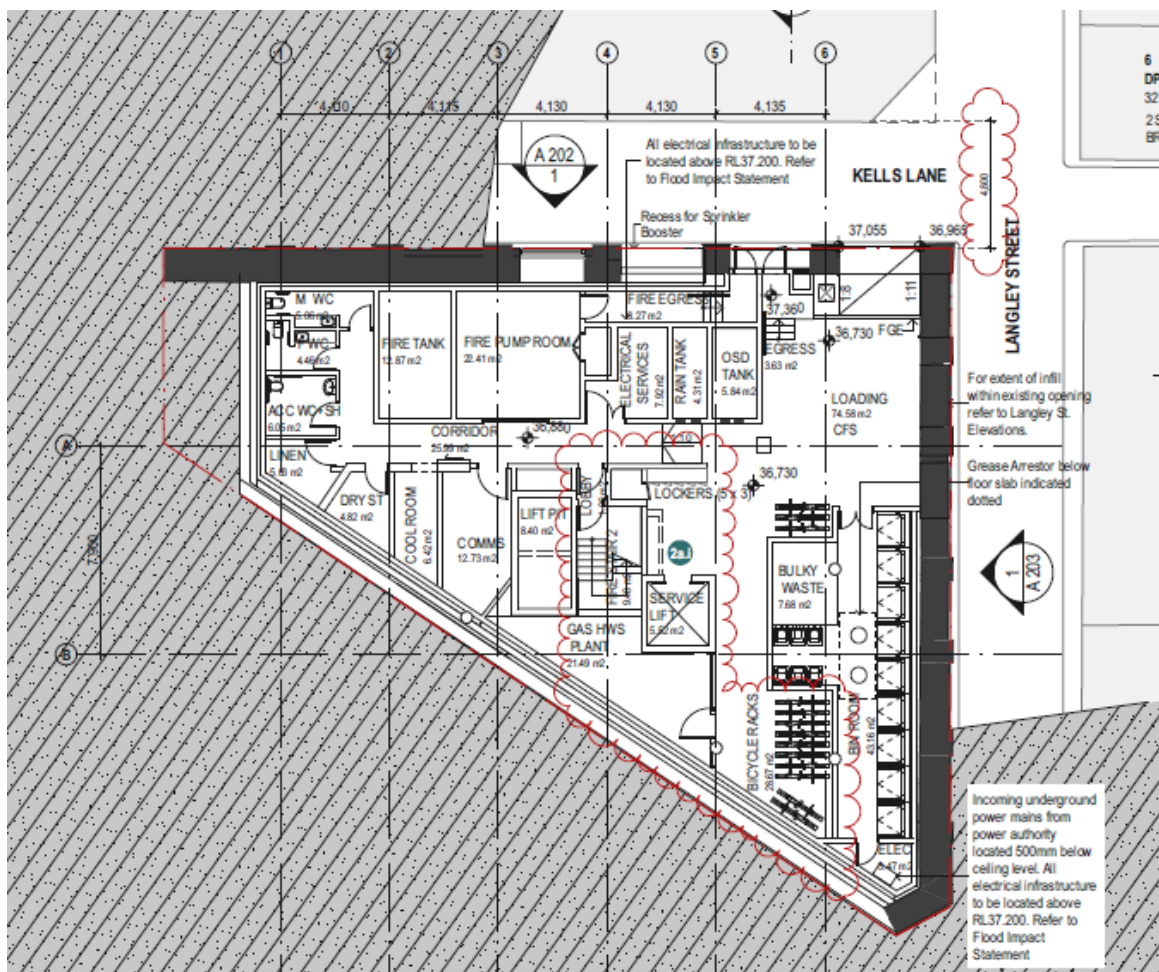


Figure 20: Proposed basement floor plan

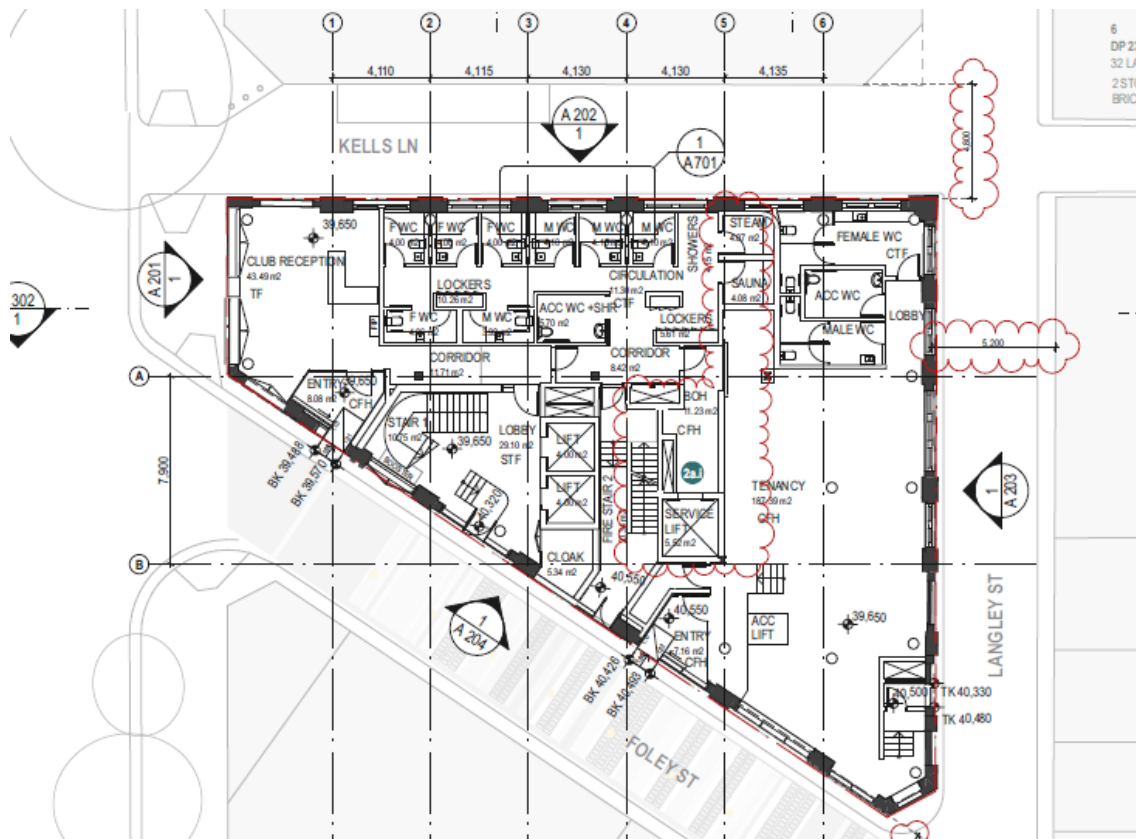


Figure 21: Proposed ground floor plan

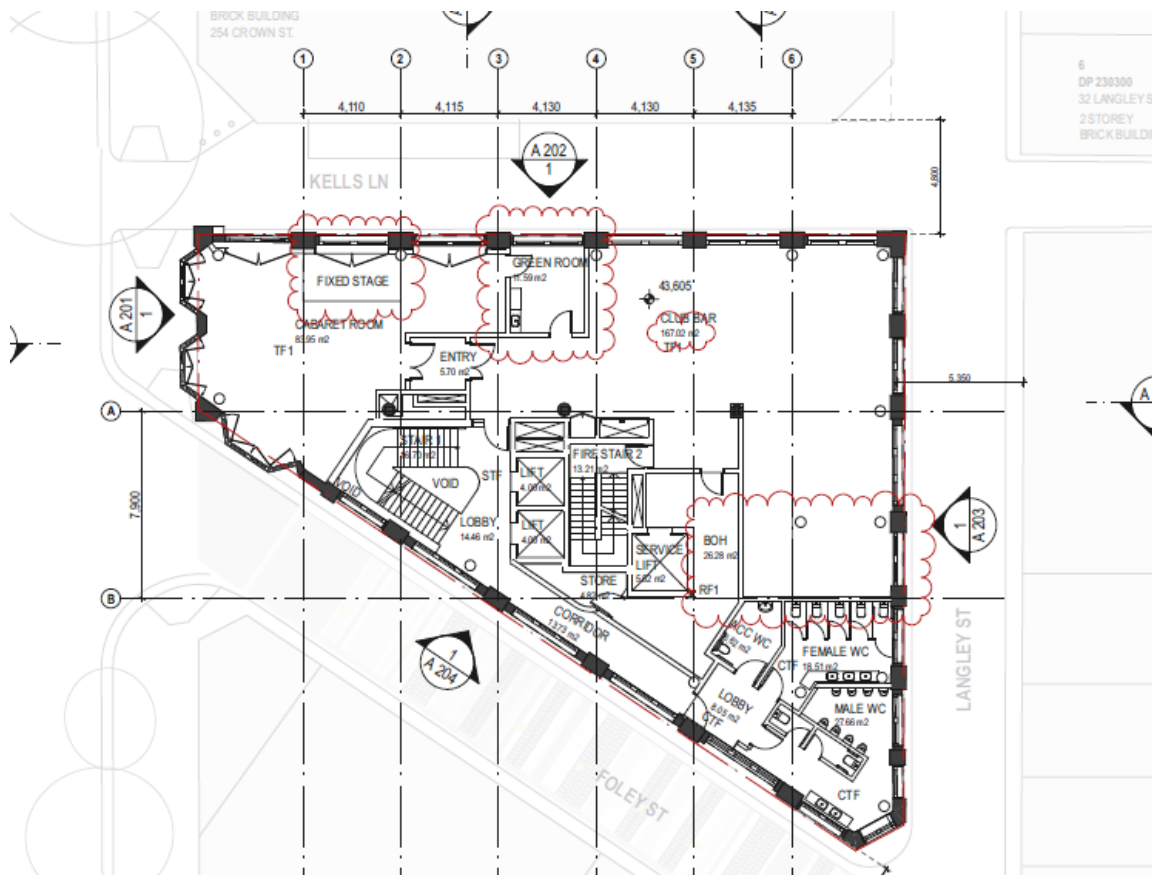


Figure 22: Proposed level 1 floor plan



Figure 23: Proposed level 2 floor plan

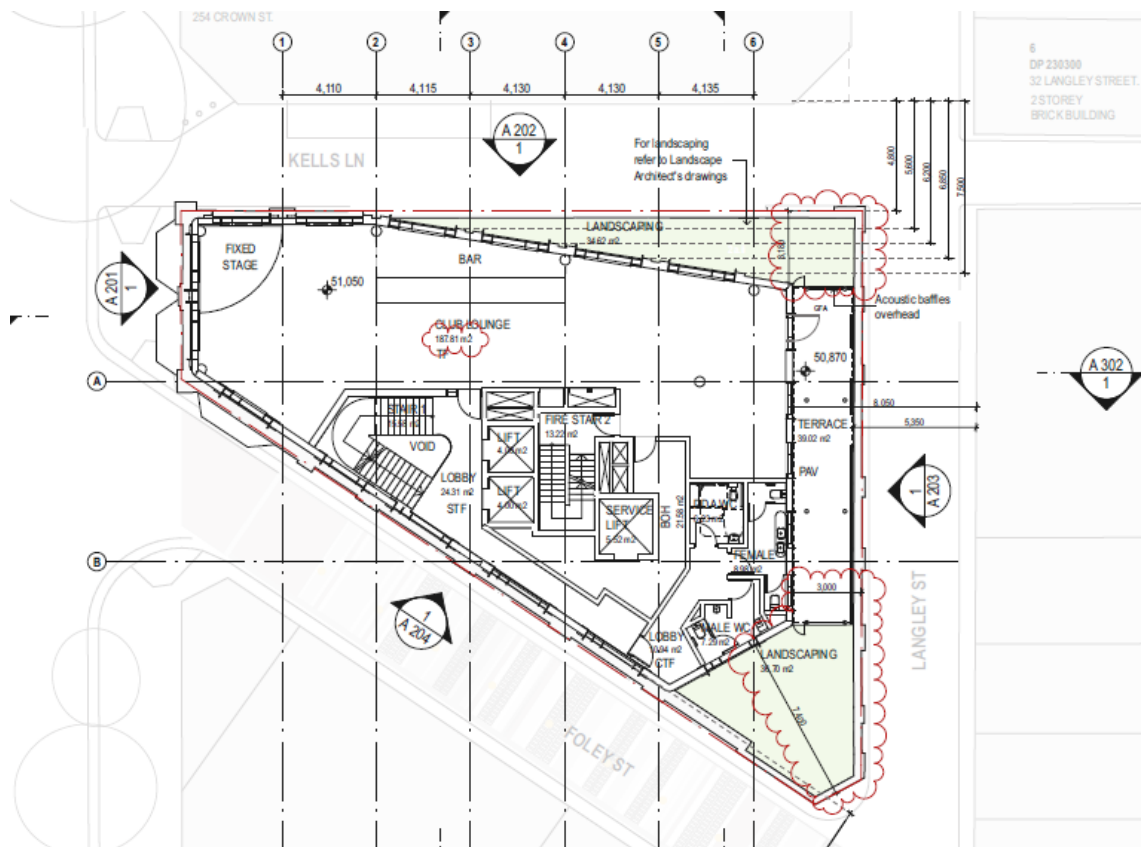


Figure 24: Proposed level 3 floor plan

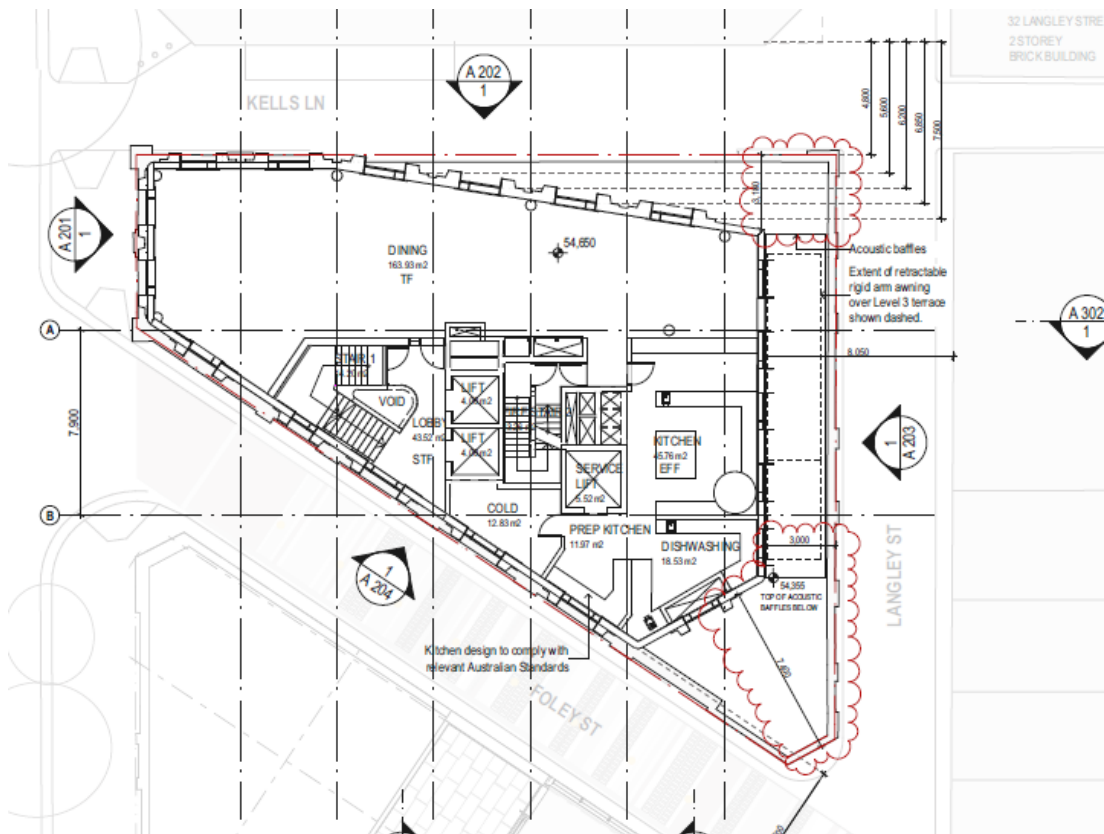


Figure 25: Proposed level 4 floor plan

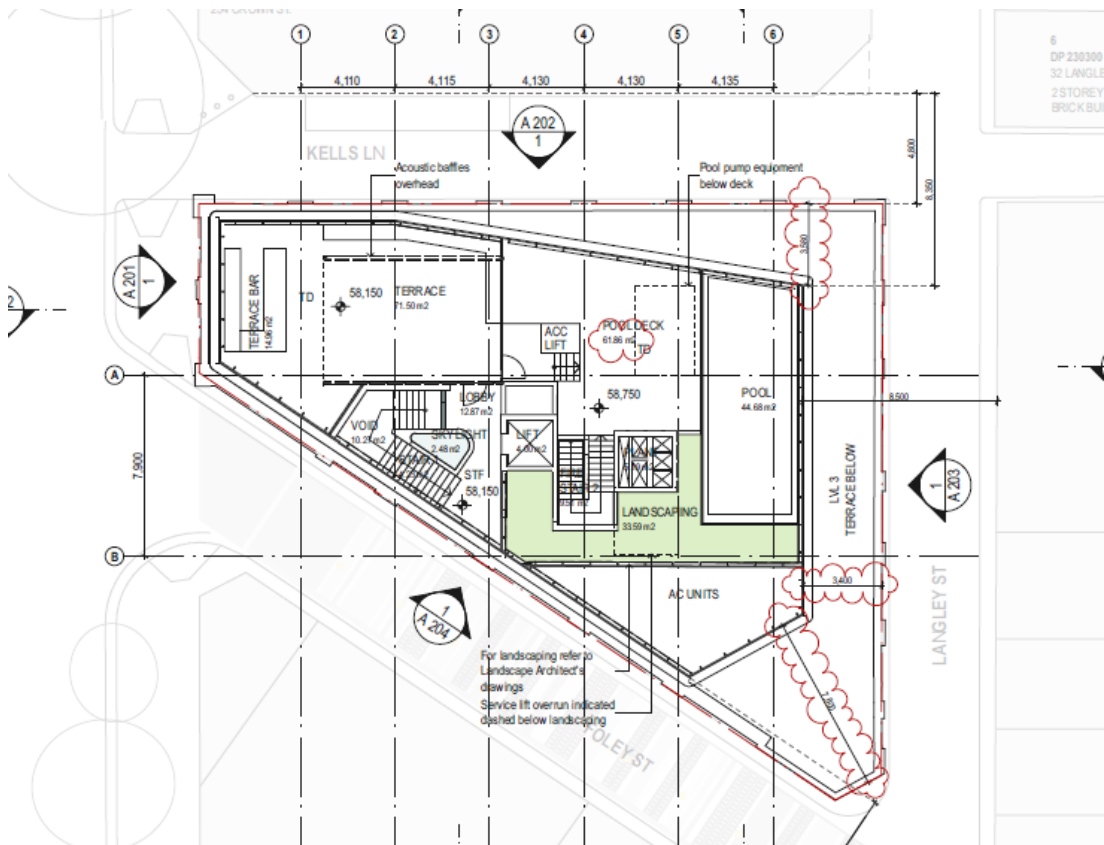


Figure 26: Proposed level 5 roof top plan

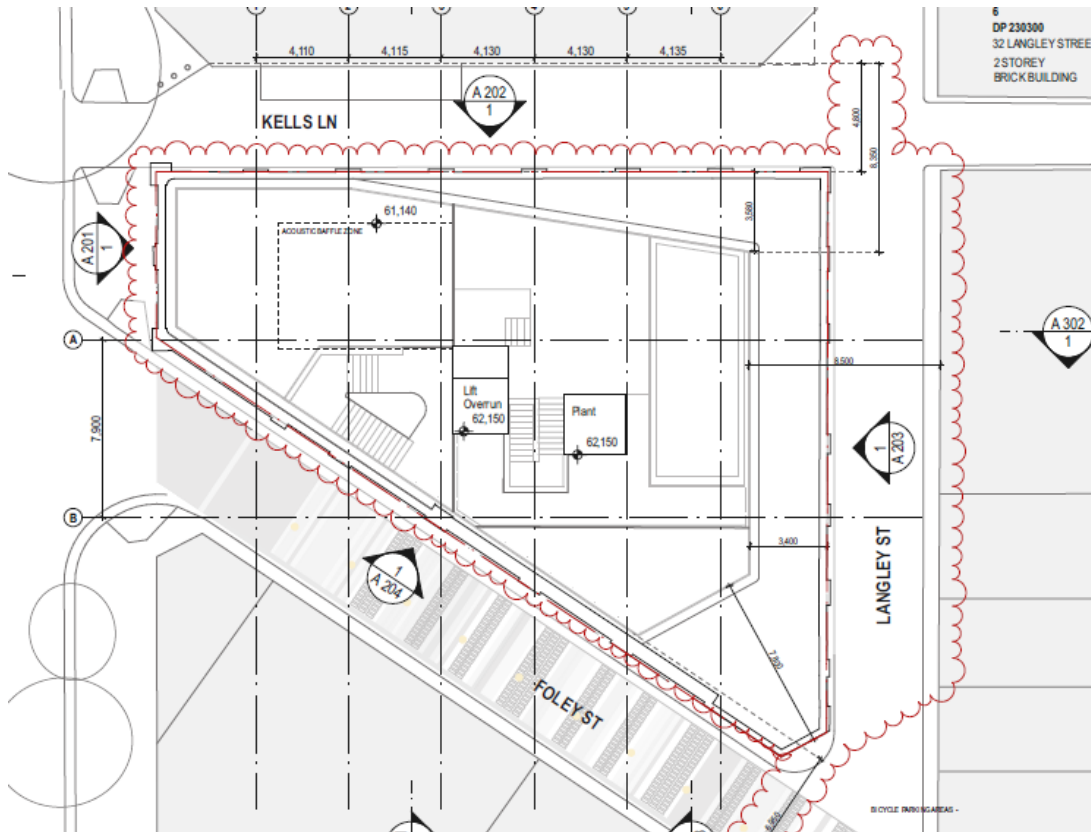


Figure 27: Proposed roof top plan

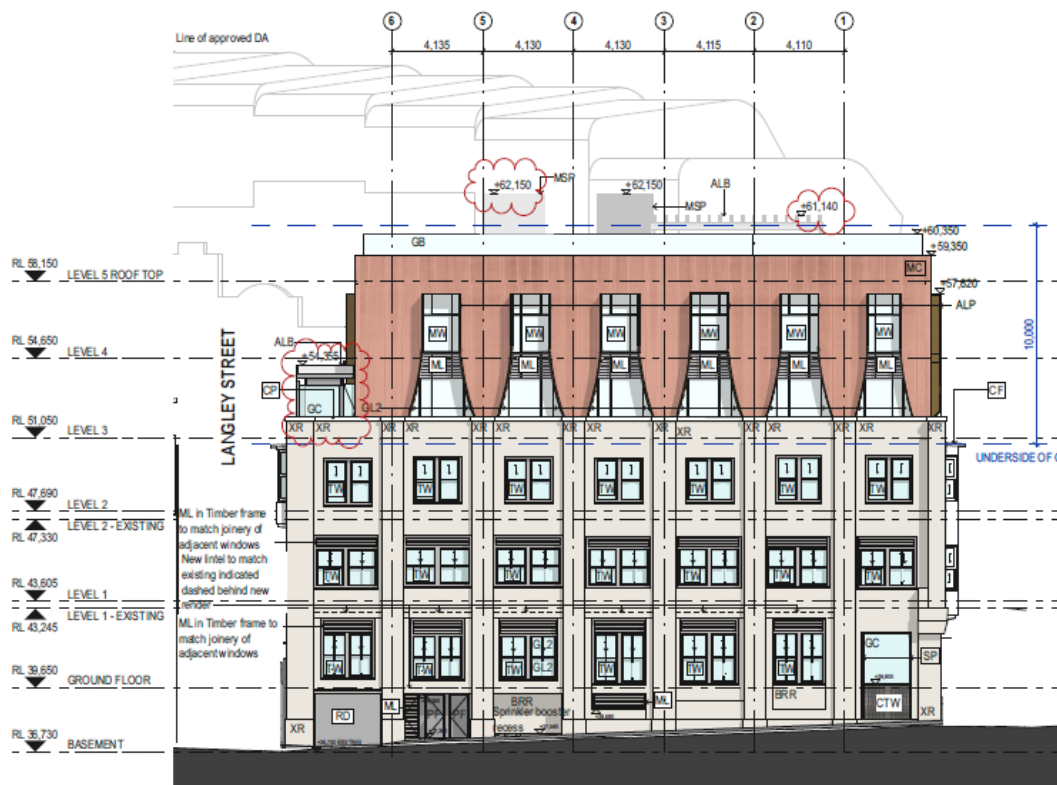


Figure 28: Proposed Kells Lane elevation

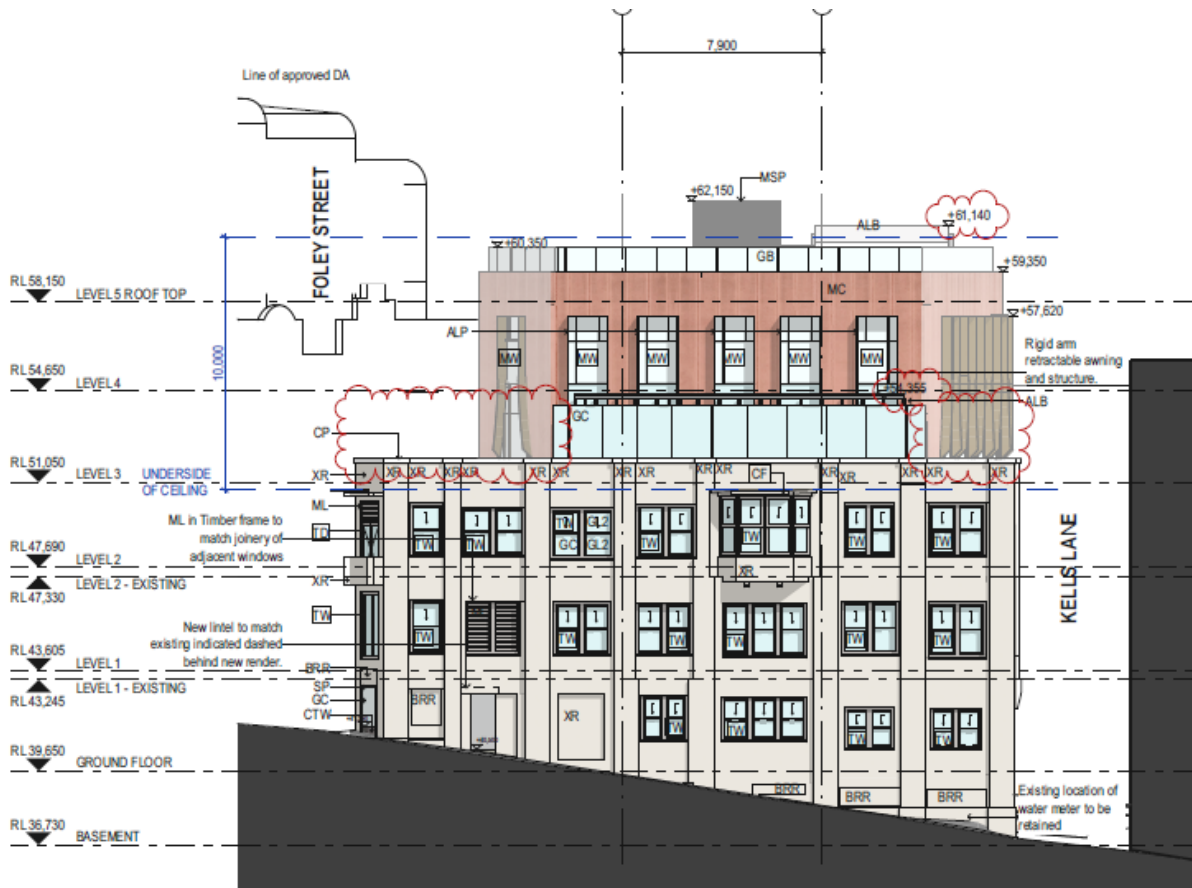


Figure 29: Proposed Langley Street elevation



Figure 30: Proposed Foley Street elevation



Figure 31: Proposed section 1

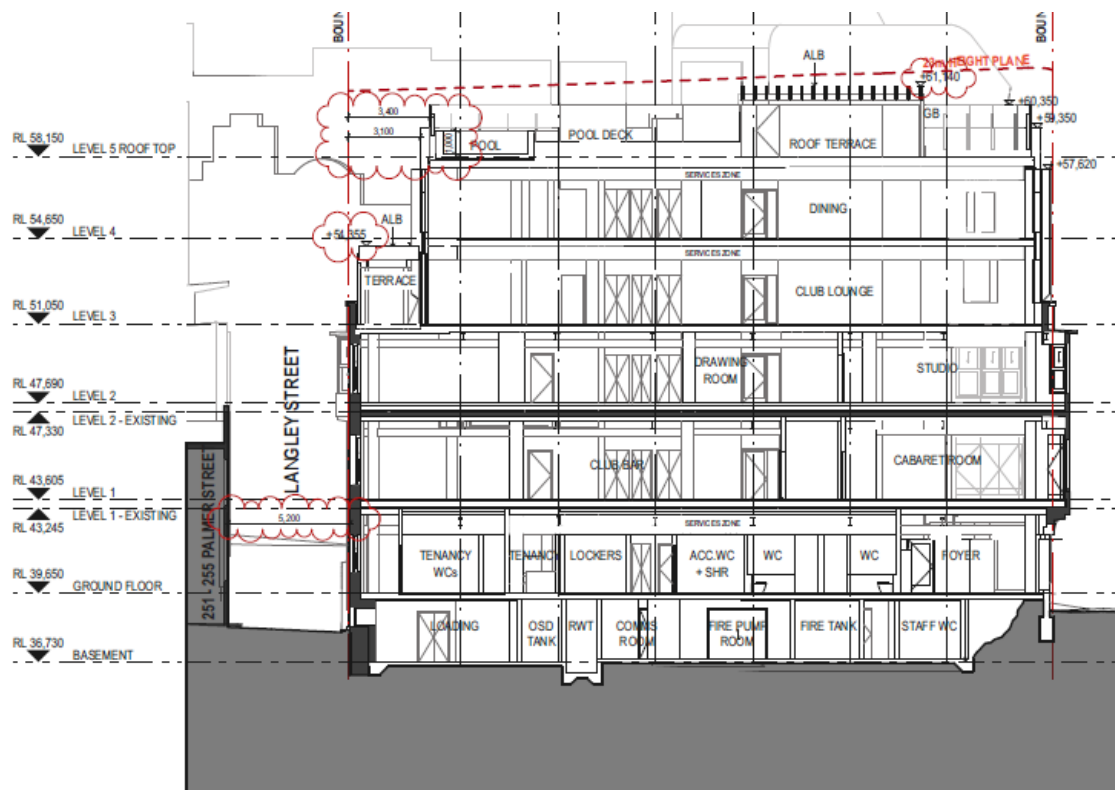


Figure 32: Proposed section 2

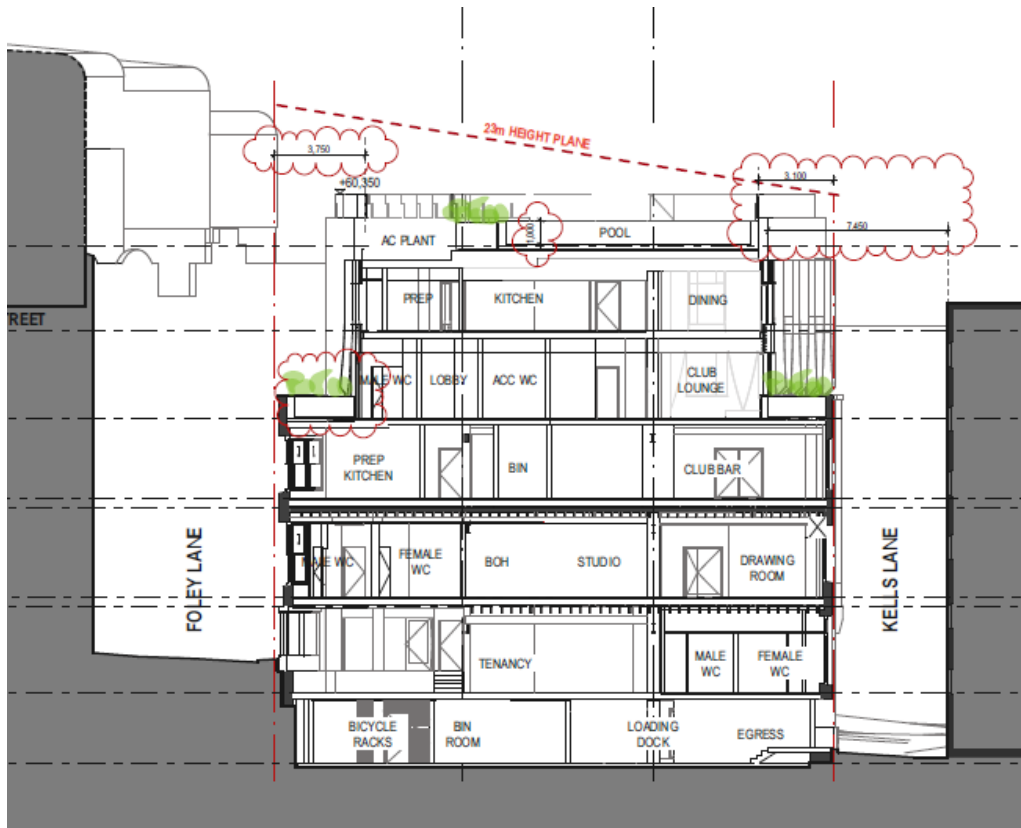


Figure 33: Proposed section 3



Figure 34: Proposed perspective 1



Figure 35: Proposed perspective 2

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land 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. Preliminary and detailed site investigation reports were submitted with the application. The detailed site reports presented investigations based on a number of soil samples taken and then tested for the concentrations of heavy metals. They found concentrations of chromium III, copper, nickel, zinc and B(a) P and CoPC were below concentration levels specified in human health guidelines. The report also stated that the ground surface will be sealed and there will be no exposure to human activities in the form of accessing the soil for gardening or planting purposes.
34. The Council's Health Unit has reviewed the information and advised that based on the soil and groundwater investigation, the site can be made suitable for the proposed commercial development without the need for remediation.

State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3

Advertising and Signage

35. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage 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.
36. No signage is proposed as part of this application. A condition has been recommended within the recommended conditions of consent stating that a separate development application is required for any signage.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

Clause 2.122 – Traffic-generating development

38. The application is subject to Clause 2.122 of the SEPP as the development proposes a food and drink premises with more than 300sqm of gross floor area which has pedestrian access to a road that connects to a classified road (access within 90m of connection).
39. The application was referred to Transport for NSW for comment on 3 May 2023. Transport for NSW reviewed the submitted application and advised that they raise no objection as the development is not expected to have a significant impact on the classified road network.
40. The proposed development is therefore considered to satisfy the provisions of Clause 2.122 subject to conditions of consent.

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

41. 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.

42. 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

43. 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	<p>The site is zoned MU1 Mixed Use.</p> <p>The proposed development is for a private members club (commercial premises) which incorporates a restaurant, bar and entertainment area (food and drink premises) and cabaret area (entertainment facility). The existing bar Shady Pines is also proposed to remain on the ground level.</p> <p>The proposes uses are permissible with consent in the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Refer to Clause 6.60D	<p>A maximum building height of 15m is permitted.</p> <p>The proposal seeks to access the alternative height of building development standard under Clause 6.60D. See discussion below under table heading 6.60D Oxford Street Cultural and Creative Precinct.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 5:1 or 2,576.75sqm is permitted.</p> <p>A floor space ratio of 3.79:1 or 1,956sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the East Sydney heritage conservation area (C13).</p> <p>Subject to the recommended conditions of consent, the proposed development will not have detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood planning	Yes	<p>The site frontages at Foley Street and Langley Street are subject to both 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) flood events while Kells Lane is impacted by PMF only.</p> <p>A flood risk assessment report was carried out to review existing flood conditions in the vicinity of the proposed development. The report also assessed the proposal against the City's Interim Floodplain Management Policy requirements.</p> <p>The report tabulated the relevant 1% AEP, PMF and corresponding flood planning floor levels.</p> <p>The City's Public Domain Engineer reviewed the submitted flood assessment report and advised that the recommended flood planning levels are acceptable. A flood planning levels condition has been included within recommended conditions to ensure compliance with the required flood planning levels.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The development is assessed against the relevant sections of Clause 6.21C(2)(d) below:</p> <ul style="list-style-type: none"> i) the site is in an MU1 zone and is suitable for development ii) the use mix allows for the inclusion of cultural and creative purposes iii) materials and detailing are compatible with existing contributory development in the street v) subject to conditions, the bulk, massing and modulation of the additions are considered appropriate within the context of the site vi) subject to conditions, appropriate street frontage heights are achieved, particularly along Langley Street which abuts residential terraces (vii) subject to conditions the proposal will have an acceptable solar and visual privacy impact (further details are in the 'Discussion' section of the report below) (viii) an ESD report was submitted and the development achieves the principle of ecologically sustainable development (ix) a traffic report for the site outlines appropriate vehicular and service access and circulation for the development (x) subject to conditions, the development will result in improvements to the public domain directly adjoining the subject site (xii) active frontages are maintained at the ground level with the retention of glazing at the Crown Street interface

Provision	Compliance	Comment
		<p>(xiii) subject to landscaping conditions, the development will achieve integrated landscape design.</p> <p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>For the above reasons, the development achieves design excellence.</p>
Division 5 Site specific provisions		
6.60D Oxford Street Cultural and Creative Precinct	Yes	<p>The proposal seeks to access the alternative height of building development standard under Clause 6.60D of the Sydney LEP 2012.</p> <p>In accordance with Clause 6.60D, an alternative height of 23m is available for the site where 10% of the gross floor area of the building is used for cultural and creative purposes.</p> <p>The development proposes 10% of the floor area of the building for cultural and creative purposes and complies with the 23m alternative height standard for the site.</p> <p>See further details in the 'Discussion' section below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	Yes	<p>No specific car parking requirements are set out in the LEP for the proposed uses.</p> <p>The proposed development does not include any car parking which is in line with the objectives of the division.</p>

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The site is located within the Residual Lands affordable housing contribution area. As the proposed development includes additional floor space of more than 60sqm that is intended for purposes other than residential accommodation, a contribution is required. A condition of consent is recommended in this regard.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

44. 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

45. The site is located within the East Sydney locality. The proposed development is in keeping with the unique character and the design principles of the East Sydney locality in that the development responds to and complements the subject contributory building and the heritage conservation area, including the surrounding streetscape and lanes.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public Art	Yes	<p>A preliminary public art plan has been prepared and submitted for the development in accordance with Section 3.1.5 of the DCP.</p> <p>The preliminary public art plan identifies opportunities for artwork including shopfront window installations and facade wall murals.</p> <p>The City's Public Art Team reviewed the public art plan and advised that it satisfies the requirements of the City's</p>

Provision	Compliance	Comment
		<p>Interim Guidelines for Public Art in Private Development, subject to conditions.</p> <p>A condition of consent has been recommended to ensure that a detailed public art plan is submitted for approval by Council prior to issue of any Construction Certificate for above ground works.</p>
<p>3.2. Defining the Public Domain</p> <p>3.2.3 Active frontages</p>	Yes	<p>The Crown Street frontage of the site is identified as a requiring an active frontage. The proposed building is designed to address and activate Crown Street with glazing proposed to the club reception.</p> <p>The shop front windows along Crown Street have also been identified within the preliminary public art plan for public art installations.</p> <p>A condition has been included within the recommended conditions of consent to ensure that the glazing and public art to Crown Street and any casement to the windows maintains visibility through the artwork to the uses beyond for activation.</p>
<p>3.5 Urban Ecology</p> <p>3.5.2 Urban vegetation</p>	No, but acceptable	<p>The proposal does not provide 15% canopy cover within 10 years in accordance with Section 3.5.2.</p> <p>The existing footprint of the building, which takes up 100% of the site, is proposed to be retained. This will not allow for additional planting at the ground plane.</p> <p>Investigations into planting on structure by the applicant revealed that the extent of soil volume, coupled with the weight of the required trees, may compromise the integrity of the existing contributory building structure and cause settlement and cracking.</p> <p>Council's Tree Management Specialist reviewed the submitted information and did not object to the non-compliance due to the specific circumstances of the subject building and the site.</p>

Provision	Compliance	Comment
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under Clause 5.21 above.
3.9 Heritage	Yes	<p>The site is located within the East Sydney heritage conservation area (C13). The building is identified as a contributing building.</p> <p>Subject to the recommended conditions of consent, the proposed development will not have detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	No, but acceptable	<p>A Traffic Impact Statement was submitted with the proposal.</p> <p>No vehicle parking is proposed on site.</p> <p>Loading and servicing will occur from available on-street parking spaces proximate to the site as it is not possible for service vehicles to egress the site in a forward direction. This complies with section 5.11.7 Development fronting laneways.</p> <p>The roller door along Kells Lane is to be retained for transfer of bins and access to bicycle parking.</p> <p>13 bicycle spaces are proposed for staff and patrons. The proposed shortfall from the required 18 bicycle parks is considered acceptable in this instance as bicycle usage is anticipated to be low based on the type of uses that are proposed, and required staff bicycle needs are comfortably accommodated on site.</p> <p>The proposal was reviewed by the City's Transport Specialist who advised that the proposal is acceptable subject to conditions which have been included within the recommended conditions of consent.</p>

Provision	Compliance	Comment
3.12 Accessible Design	Yes	<p>The proposal provides access and facilities for persons with disabilities including lifts to all levels and DDA compliant amenities.</p> <p>An Accessibility Design Assessment Report was submitted with the application which concluded that compliance with accessibility requirements is readily achievable, subject to further information being provided at the design development stage.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
3.14 Waste	Yes	<p>A waste management plan was submitted with the proposal. The bins are proposed to be picked up from Kells Lane by a private waste contractor (which is the existing situation for the building).</p> <p>The City's Waste Specialist reviewed the proposed plans and advised that a sufficiently sized waste storage and bulky waste area has been proposed and that the development is satisfactory subject to conditions.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	Yes, subject to conditions	<p>The premises is not located within a late night trading area and the use is defined as a category A premises as the premises has a capacity of more than 120 patrons where a main purpose is the sale or supply of liquor for consumption on the premises. A Plan of Management was submitted with the application (Attachment C).</p> <p>Further details regarding hours of operation and patron capacity are</p>

Provision	Compliance	Comment
		provided below in the 'Discussion' section.
3.16 Signage and Advertising	Yes	No signage is proposed as part of this application. A condition is recommended stating a separate development application is required for any future signage.

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	N/A	An alternative height in storeys control applies to the site under section 5 of the Sydney DCP 2012. Refer to section 5.11.5.1 below.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	<p>The floor-to-floor heights of the existing contributory building are retained as follows:</p> <p>Basement: 2.92m</p> <p>Ground: 3.955m</p> <p>First floor: 4.085m</p> <p>Second floor: 3.72m</p> <p>These levels generally meet the requirement for commercial premises to have a floor-to-floor height of 3.6m.</p> <p>The new the third floor and fourth floor have floor-to-floor heights of 3.6m and 3.5m respectively which are considered acceptable. The proposed floor-to-floor heights minimise the overall height of the building whilst maintaining good internal amenity for the premises.</p>
4.2.2 Building setbacks	Yes	<p>The existing three-storey built to boundary contributory building is to be retained.</p> <p>The new two storey addition provides a 3m setback to Kells Lane, tapering to a</p>

Provision	Compliance	Comment
		<p>nil setback towards and along Crown Street. A 3m setback to Langley Street (residential street) and a nil setback to Foley Street is also provided.</p> <p>The proposed development relates to the existing setback pattern of multi-storey development in the adjoining streets, which generally have no setback. A greater setback is provided to the eastern side of the development (Langley Street) which abuts residential terraces. See further details in the 'Discussion' section below regarding the location of fixed structures within the eastern setback.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No, but acceptable	<p>The development, as proposed, will result in additional overshadowing to a small portion of a neighbouring private open space area which currently receives less than 2 hours of sunlight to 8sqm between 9am and 3pm on 21 June.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.5 Landscaping	Yes	<p>Landscape plans for the roof top and level 3 setback area were submitted with the application. The City's Landscape Specialist reviewed the plans and advised that they are acceptable as a concept design. Further details and coordination are required to ensure that the landscape component is successful.</p> <p>Detailed landscape conditions are recommended, including a design modification condition to ensure safe access to the planters for maintenance.</p>
4.2.3.6 Deep Soil	No, but acceptable	<p>The existing contributory building to be retained has full site coverage. This will not allow for any deep soil at the ground plane. No deep soil is therefore proposed as part of the development</p>

Provision	Compliance	Comment
		which is considered acceptable in this instance.
4.2.3.11 Acoustic privacy	Yes	<p>An acoustic assessment report was provided with the application.</p> <p>The report makes recommendations to achieve the relevant noise criteria and these are included as part of the recommended conditions of consent.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.6 Waste and recycling Management	Yes	<p>A waste management plan was submitted with the proposal. The bins are proposed to be picked up from Kells Lane by a private waste contractor.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.</p> <p>See further details in the 'Discussion' section below.</p>

Section 5 – Specific Areas

Provision	Compliance	Comment
<p>5.11 Oxford Street Cultural and Creative Precinct</p> <p>5.11.1 Locality statement</p>	Yes	<p>The proposal satisfies the outcomes expressed in the locality statement.</p> <p>The proposal supports the realisation of the Oxford Street Cultural and Creative Precinct with the retention and provision of cultural and creative floorspace.</p> <p>The proposal retains important heritage fabric and the additions complement the character of the buildings and area.</p> <p>The proposal provides for uses that contribute to the activation of Oxford Street and the night-time economy by</p>

Provision	Compliance	Comment
		providing entertainment uses within the premises.
5.11.2 Cultural and creative spaces	Yes	<p>The development proposes 10% of the gross floor area of the development for cultural and creative purposes, including a cabaret room and live entertainment area with fixed stage.</p> <p>See further details in the 'Discussion' section below.</p>
5.11.4 Heritage Conservation 5.11.4.1 Heritage conservation	Yes	<p>The development conserves the heritage significance of the existing contributory building.</p> <p>The main structural walls of the existing building are retained, and the new internal walls are not proposed to intersect with significant openings, in line with the control.</p> <p>The massing and modulation of the two-storey addition is considered appropriate for the building and site context. Standing seam zinc cladding is proposed to the addition to differentiate the new work from the retained rendered and painted contributory building.</p>
5.11.4.2 Statement of Heritage principles	No, but acceptable	Although a Statement of Heritage Principles was not formulated through a pre-development application process, a Heritage Impact Statement was submitted with the application which outline heritage principles for the site.
5.11.4.3 Heritage Structural Impact Statement	Yes	A Geotechnical report and Structural Engineering Report Design Report were submitted with the development. The reports provided a detailed construction methodology for retaining significant fabric on site during the demolition and construction stages and for enabling the structural stability of the building and heritage features for their long-term retention.
5.11.5 Built form and design	Yes	The two-storey addition to the building has been amended to have a simpler design with a consistent material that is differentiated from the heritage fabric of the building.

Provision	Compliance	Comment
5.11.5.1 Additional building height	Yes	<p>The proposed building is predominantly 5 storeys as required by the alternative building height in storeys control for the site. A small portion of the development is 6 storeys in height due to the slope of the land and a portion of the basement protruding above ground, which is considered acceptable in this instance.</p> <p>The proposed addition is two-storeys in height and does not exceed 10m in height (except for the lift overrun and mechanical plant).</p>
5.11.5.2 Architectural details and materials	Yes	<p>The facade elements and window openings of the addition are vertically proportioned.</p> <p>The additions above and behind the existing parapet of the building are articulated from the existing retained facade elements.</p> <p>The proposed materials and design detailing responds to (but does not copy) elements and details observed in surrounding buildings in accordance with the controls.</p>
5.11.5.3 Building alignment, setbacks and street frontage heights	No, but acceptable	<p>A street frontage height of 3 storeys, with additional storeys set back a minimum of 3 metres, is required by the controls.</p> <p>The existing building to be retained is 3 storeys in height. The new two storey addition is setback 3m to Kells Lane, tapering to a nil setback towards and along Crown Street. A 3m setback to Langley Street and a nil setback to Foley Street is provided. Subject to conditions, the proposed reduced setbacks are considered acceptable due to the following:</p> <ul style="list-style-type: none"> • Due to the narrowness of the site on Crown Street, strict compliance to the setback controls would result in the proposed additions tapering to a chamfered edge at the western end of the building. This would not achieve a good heritage outcome.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • The proposal still reinforces the human scale of the public domain. • The new addition is set behind the existing parapet to retain the integrity of the parapet. • A design modification condition has been recommended to remove the proposed level 3 terrace, acoustic baffling and acoustic glass wall along the Langley Street elevation to reduce the bulk of the development and reduce solar impacts. See further details in the 'Discussion' section below. • The conditioned proposal displays design quality which results in a complementary relationship with the architectural language of the existing building.
5.11.6 Active frontages and street level tenancy design	Yes	The Crown Street frontage of the site is identified as a requiring an active frontage. The proposed building is designed to address and activate Crown Street with glazing proposed to the club reception which will remain activated during hours of operation.
5.11.7 Development fronting laneways	Yes	<p>The controls require activation of Foley Street. The proposed development provides entrances to the premises from Foley Street, activating the lane. Windows within the development also overlook the laneway to provide visual surveillance. Public domain upgrades at ground level are proposed to facilitate and respond to the design and operation of the laneway. Conditions requiring detailed public domain plans have been recommended within the conditions of consent.</p> <p>Loading and servicing is proposed to occur from Kells Lane which is line with the controls for development fronting laneways.</p>
5.11.8 Servicing and access	Yes	A Traffic Impact Report was submitted which outlines the anticipated generation

Provision	Compliance	Comment
		of waste, delivery and servicing trips caused by the proposed development, with reference to the proposed uses and quantum of gross floor area. Conditions are included within the recommended conditions of consent to ensure a loading service management plan and transport access guide are prepared for the development.

Discussion

Cultural and Creative Purposes and Alternative Building Height

46. The proposal seeks to access the alternative height of building development standard under clause 6.60D of the Sydney LEP 2012.
47. In accordance with clause 6.60D, the site has an alternative height control of 23m where existing cultural and creative floor space is retained, and 10 per cent additional gross floor area of the development is used for cultural and creative purposes.
48. A cultural and creative purpose is defined within clause 6.60D(11) of the Sydney LEP 2012 as uses including 'live entertainment, music, performing arts, film or television, media, advertising, fine arts and craft, photography, publishing, fashion, industrial or graphic design, and includes museums or archives related to a cultural or creative purpose'.
49. The existing building does not contain existing approved cultural and creative uses.
50. The proposed overall gross floor area of the building is 1,956sqm. The development proposes 10 per cent (195,6sqm) of the gross floor area of the development for cultural and creative purposes, including a cabaret room and green room on level 1 and a live performance space with fixed stage on level 3 (see Figure 36). The proposed uses comply with the definition of cultural and creative purposes being uses for live entertainment, music and performing arts.

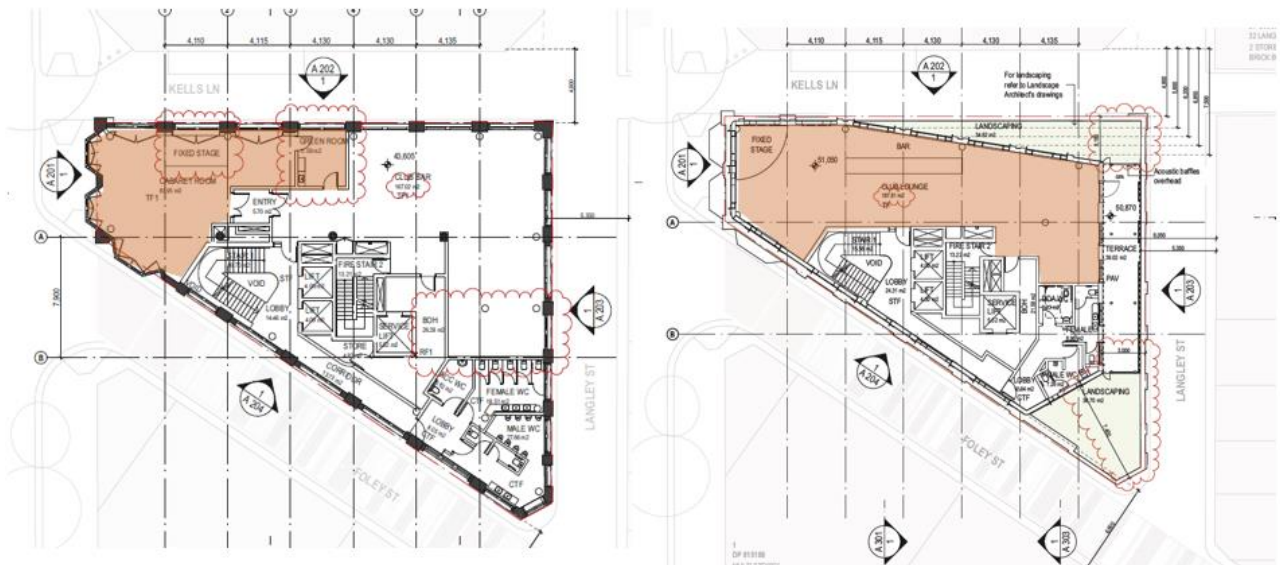


Figure 36: Proposed location of cultural and creative space within level 1 and 3

51. A design modification condition is recommended within Attachment A for the live entertainment area to include a greenroom to ensure that the space provides appropriate facilities for performance space in accordance with Section 5.11.2 and the Creative Spaces guideline in Schedule 13 of the Sydney DCP 2012.
52. A condition is also recommended for the Plan of Management (Attachment C) to be updated to include further details about the operation of the cabaret space, and the live entertainment performance area. This will include the nature and frequency of performances and how they will be ticketed or attended and planned programming.
53. A condition is recommended requiring a restrictive covenant for the use of land to be registered on the title to ensure the continued use of the dedicated floor space for a cultural or creative purpose.
54. Subject to conditions in Attachment A, the proposal complies with the requirements of clause 6.60D and complies with the 23m alternative height control for the site.
55. Subject to the recommended conditions of consent, the development promotes the status of the Oxford Street Cultural and Creative Precinct as a centre for cultural and creative purposes and is in accordance with the requirements of Clause 6.60D of the Sydney LEP 2012.

Hours of operation

Section 3.15.4 of the Sydney DCP 2012 states that internal base hours for category A premises outside of late-night trading areas are between 10am and 10pm, with extended hours until 12midnight. Outdoor base hours are between 10am and 8pm, with extended hours until 10pm.

The proposed internal trading hours are 7am to 12am Monday to Saturday and proposed external hours of operation are 7am to 10pm Monday to Saturday.

The proposed trading hours exceed the required base hours of the DCP. A condition has therefore been included to require a 1-year trial period for internal operation of the premises between 10pm and 12midnight. A 1-year trial period for the roof terrace is also proposed between 8pm and 10pm.

Section 3.15.4(4) of the DCP states that trading hours that exceed extended hours for 'all other areas' are only able to be considered where the premises is not located within a mixed-use zone. As the premises is located within an MU1 mixed use zone, a condition is recommended to restrict the morning hours of the premises to begin operation at 10am in line with the base and extended hour controls.

Patron capacity

The proposed patron capacity for the premises set out in the submitted Plan of Management (refer to Attachment C) is 939 persons between 7:00am and 6:00pm, 973 persons between 6:00pm and 10:00pm and 851 persons between 10:00pm and 12:00midnight (once outdoor areas close).

A Building Code of Australia assessment report accompanying the application demonstrates that the premises can cater for the number of patrons sought based on available sanitary facilities.

Despite this, it is not considered practical for 122 patrons to leave the premises at 10pm when the external area closes. Further, it cannot be guaranteed that the maximum number of patrons on the external area will be achieved at any one time, which may mean that internal maximum capacities are exceeded.

A condition is therefore recommended restricting the total capacity of the premises to 851 persons at any one time.

Heritage

56. The site is located within the East Sydney heritage conservation area (C13). The existing building is from the Inter-War period and is identified as a contributing building.
57. The proposal involves excavation to extend the existing basement, partial demolition of internal portions of the existing building to accommodate a new lift core and fire stair, internal fit out of all levels and construction of a two-storey addition to the building with rooftop structures.
58. Subject to conditions recommended in Attachment A, the proposal will have acceptable heritage impacts due to the following:
 - (a) The proposal retains the main structure of the contributory building and the proposed conservation works will improve the overall presentation of the existing building and enhance its contribution to the Heritage Conservation Area. This includes the conservation of the rendered and painted masonry façades, reinstatement of the original pattern of fenestration and new timber windows that reflect the 1922 drawings.
 - (b) The proposal is accompanied by a heritage structural statement that outlines the strategy for retention of retained building elements. The proposed excavation will be contained within the subject site boundary and the submitted documentation confirms potential impacts on the structural integrity of the retained and original heritage fabric will be minimised.

- (c) The proposed additions retain the existing parapet of the contributory building and are clearly articulated from the original built form and designed to read as secondary elements. The additions have been designed to read as 'rooms in the roof' to minimise visual bulk. A contemporary materials palette is proposed for the new additions to make it distinct from the original building. The materials include prefinished zinc cladding, in a colour to complement the rendered brickwork below, with metal framed windows.
 - (d) The scale of the proposed two storey addition with rooftop terrace and pool deck is considered appropriate within the context of the site and is contained within the Alternative Building Height controls prescribed by Sydney LEP 2012. The proposal responds to the varying scale of development in the immediate vicinity of the site.
 - (e) A Statement of Heritage Impact accompanies the proposal and assesses the extent to which carrying out the proposed development would affect the heritage significance of the East Sydney Heritage Conservation Area and Heritage Items in the vicinity. The proposed impacts are assessed to be acceptable.
 - (f) The City's Heritage Specialist reviewed the proposal and advised that the proposed bulk over the existing contributory building is not unprecedented in the context of recent development along the north side of Oxford Street. In the context of those sites which are currently under construction, the proposed vertical addition would not look out of place within the Heritage Conservation Area and will be in keeping in the streetscape. They also recommended the following heritage conditions:
 - (i) The proposed metal louvres along the existing windows of the Kells Lane elevation are to be broken up in four portions to better align with the original window design intent.
 - (ii) Removal of the steam room partition abutting existing windows.
 - (iii) Inclusion of solid spandrel materials to break up the glazing extent of the new windows within the addition.
 - (iv) Details of adequate waterproofing between the proposed concrete slabs over the existing timber floors to be provided.
59. The above heritage conditions have been included within the recommended conditions of consent in Attachment A.
60. The conditioned proposal is considered to conserve the heritage significance of the contributory building, including associated fabric in accordance with the heritage requirements of Clause 5.10 of the Sydney Local Environmental Plan 2012.

Overshadowing

61. Under the relevant controls, the proposal should maintain 2 hours of solar access to 1sqm of living room windows and 50 per cent of the private open space areas of neighbouring dwellings between 9am and 3pm on 21 June. The controls also state that no additional overshadowing should occur to living room windows and private open space areas where less than 2 hours' sunlight is currently achieved.
62. The amended application included shadow diagrams in plan and views from the sun (refer to Attachment D) to illustrate the impacts resulting from the proposal.

63. These diagrams indicate that the proposal may result in some overshadowing to the residential sites at No. 46 Langley Street, No. 261 Palmer Street, No. 259 Palmer Street and No. 257 Palmer Street at mid-winter (see Figure 37 below).



Figure 37: Location of neighbouring living room windows and private open space areas

64. Overshadowing impacts to the neighbouring residential properties is discussed below.

No. 257 Palmer Street

65. The living room within No. 257 Palmer is located to the east of the first floor with an eastern facing window (see Figure 37). Due to its orientation, this window is not impacted by the proposal.

66. The approved private open space for the dwelling is located on the ground level central courtyard and is not impacted by the proposed development.

No. 259 Palmer Street

67. The primary living room for No. 259 Palmer Street is located on the ground level to the front of the dwelling, facing east (see Figure 37). This living room window is not impacted by the proposal.

68. The private open space areas of this dwelling include a ground level western facing courtyard and 4.5 by 3.2m first floor terrace west facing terrace. The submitted shadow diagrams demonstrate that the existing ground level courtyard does not currently receive any sunlight between 9am and 3pm on June 21. The first-floor terrace is demonstrated to achieve solar access between 10.25am and 11.30am and will not be affected by the proposed development at mid-winter.

No. 46 Langley Street

69. No. 46 Langley Street has living room windows on the first floor which face east and west (towards the proposed development). The submitted shadow diagrams indicate that 1sqm of solar access is achieved to the eastern facing window for two hours between 9am and 11am and 1sqm is achieved to the western facing window for 1 hour 10 minutes between 11.30pm and 12.40pm. Compliant solar access to living room windows is therefore achieved.
70. The private open space for this site is in the form of a ground level eastern facing courtyard and first floor eastern facing balcony which directly adjoin the living spaces of the dwelling (see Figure 37). Due to the position and design of these spaces, they do not currently receive any solar access on June 21 between 9am and 3pm. The proposed development will not have any further impact on these spaces due to their location and orientation.
71. Although a 6sqm western balcony on the third floor is impacted by the development between 1.20pm and 3pm on June 21, this balcony is off a bedroom and supplementary to the primary private open space areas, which are off living spaces. This balcony is therefore not protected by the controls in terms of overshadowing.

No. 261 Palmer Street

72. It is understood that the primary living area and living room window to No. 261 Palmer is located to the west of the site along Palmer Street and is not impacted by the development.
73. The private open space area of this dwelling is located on the ground level to the west of the house (facing the proposed development) (see Figure 37).
74. The submitted solar diagrams indicate that the ground level private open space area does not currently receive compliant solar access, receiving about 3sqm at 12midday, 1.7sqm at 1pm and none by 1.20pm.
75. The submitted views from the sun show that the acoustic screen and roof structure to the proposed third floor terrace of the proposed development will begin to create additional shadows to this private open space at 12.30pm (see Figure 38).

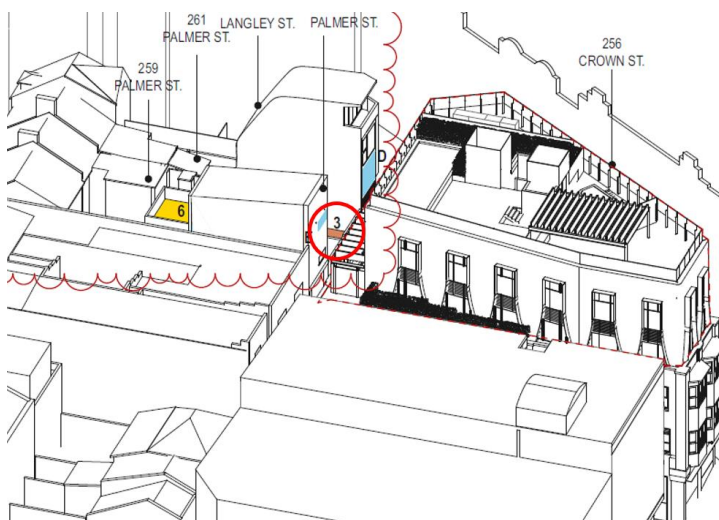


Figure 38: Views from the sun of the development at 12.30pm at June 21 (private open space area of 261 Palmer circled in red).

76. A design modification condition has therefore been included within the recommended conditions of consent to remove this level 3 terrace and its considerable bulk. This will lessen the overshadowing impact (and reduce privacy impacts discussed below) to the adjoining residential properties.
77. With the terrace and structure removed, the main Langley Street wall of the new addition will continue to have a minor impact to a very small area of solar access to the private open space area of No. 261 in the order of 20 minutes. The proposed development has a 3m setback to Langley Street for levels 3 and 4, and this would need to be increased to reduce the overshadowing impact. Given the constrained shape of the subject site and the minor impact, further setbacks at levels 3 and 4 would be unreasonable. Subject to the removal of the level 3 terrace and associated structure, the proposed non-compliance is considered to be acceptable in the circumstances.

Visual privacy

78. Following requests by the City for further information, a visual privacy analysis was submitted in support of the application (refer to Attachment E). Visual privacy impacts of the development are discussed below:

Existing windows within the contributory building

79. The proposed development generally retains the existing window locations within the contributory building. This is considered a current commercial/ residential interface, and no additional privacy treatments are required for the existing situation where windows are not being altered.
80. Some widenings of existing windows are proposed along the Foley Street, Langley Street and Kells Lane elevation. Two existing obscured glass block windows are also proposed to be replaced with new windows along the Langley Street elevation.
81. The proposed window widenings along Foley Street abut the existing commercial building at 82 - 106 Oxford Street and are considered acceptable.
82. The proposed widened windows along the ground level of the Kells Lane elevation are to proposed bathrooms within the development (see Figure 39 below).

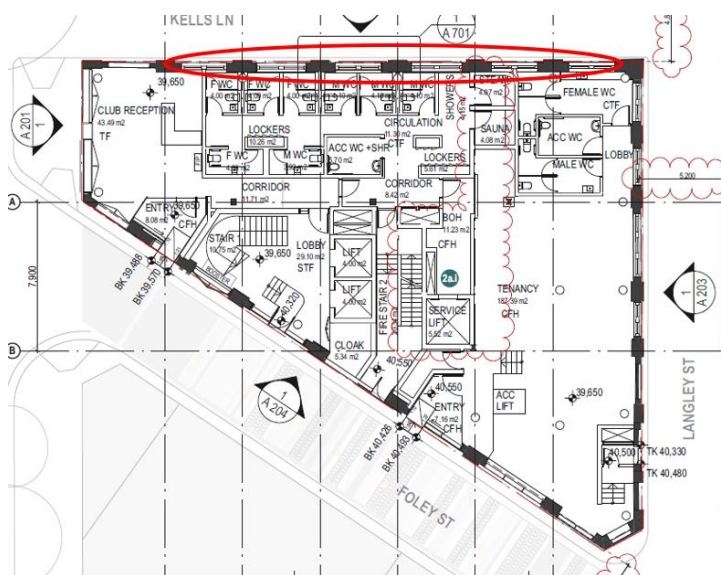


Figure 39: Proposed windows to be widened along the Kells Lane elevation circled in red

83. A design modification condition has therefore been recommended within Attachment A to ensure these windows (gr.2, gr 3, gr 4, gr 5, gr 6 and gr 7) are obscured glass to minimise privacy impacts into and out of the development. The widening of window W2.7 on level 2 of this elevation abuts frosted glass windows and windows to a stair corridor within the adjoining residential building at No. 254 Crown Street. No further treatment of this window is considered necessary.
84. The proposed widening of existing windows (W1.13, W2.9 and W2.8) and the replacement of the existing obscured glass block windows (W1.12 and W2.12) at the first and second floor along the Langley Street elevation will have a privacy impact to neighbouring properties. These windows will increase overlooking impacts on the adjoining residential development at No. 257 Palmer and No. 251 - 255 Palmer (see Figure 40 below).

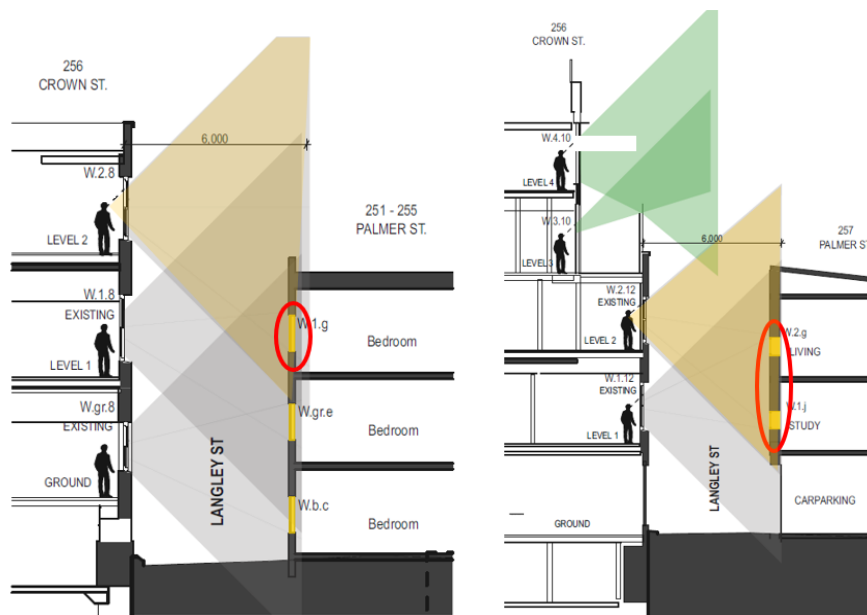


Figure 40: Overlooking impacts from widened windows W2.8 and W2.12 to No. 251-244 Palmer and 257 Palmer Street (yellow cone)

85. A design modification condition has therefore been recommended to ensure that windows W1.13, W2.9, W2.8, W1.12 and W2.12 incorporate obscured glazing to minimise impacts.

New windows to the two-storey addition

86. The new windows to the Crown Street and Foley Street elevations adjoin commercial development and no privacy treatment is therefore required to these windows.
87. New windows W3.1, W3.2, W4.1 and W4.2 to the Kells Lane elevation will have overlooking impacts on No. 254 Crown Street (see Figure 41).



Figure 41: Extract from the visual privacy analysis showing overlooking impacts from proposed new Kells Lane windows W3.1 and W3.2 circled in red

- 88. These windows have been conditioned to be obscure to restrict overlooking of the kitchen windows within No. 254 Crown Street.
- 89. The remaining new windows along Kells Lane do not have a detrimental privacy impact as they are set back from the boundary and look across to corridors, garbage room, fire stairs and obscured bathroom windows of No. 254 Crown Street (see Figure 42).



Figure 42: Views to No. 254 Crown Street from subject property showing windows corridors, fire stairs and existing obscured windows

Level 3 terrace

90. The Level 3 terrace proposed along the eastern boundary is shown on the plans to incorporate a 3m high clear glass noise reduction screen and overhead baffles. Without a solid privacy screen along this boundary, which would further increase the bulk of the new addition to Langley Street, the terrace will have overlooking impacts on adjoining residences at 257 Palmer and 251-255 Palmer Street (see Figure 43).

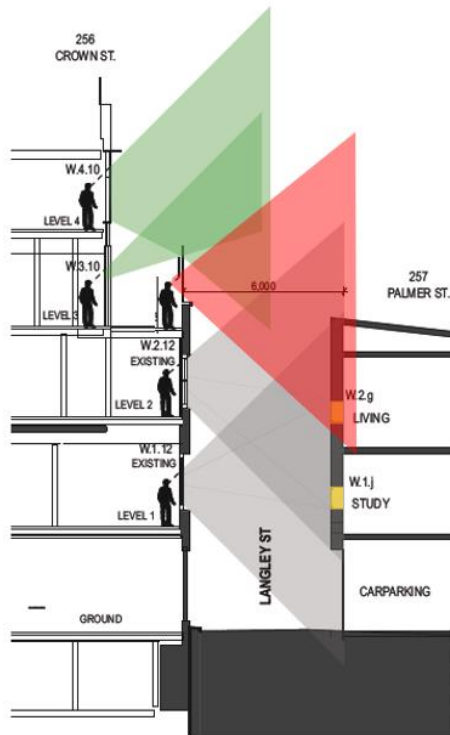


Figure 43: Edited extract of privacy analysis which demonstrates overlooking from the proposed Level 3 terrace (red cone) to No. 257 Palmer Street

91. As discussed above under the heading 'Overshadowing', conditions have been recommended to delete the Level 3 terrace from the plans. The removal of this terrace and inclusion of planting in the 3m setback would limit overlooking from the development in accordance with the requirements of the Sydney DCP 2012. The new windows to the addition behind this terrace are not considered to have an overlooking impact due to the retention of the existing solid parapet and the 3m distance from the windows to the building edge.

Roof top terrace

92. The submitted visual analysis demonstrates that due to the level distance of the proposed rooftop area and adjoining residential properties across Kells Lane and Langley Street, the terrace and pool deck will not have unacceptable privacy impacts (see Figure 44).

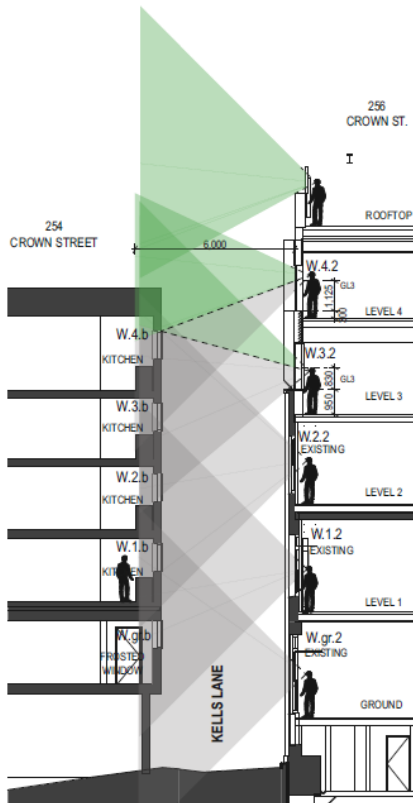


Figure 44: Extract from visual privacy analysis showing likely view cone from the rooftop terrace across Kells Lane

93. The conditioned proposal is considered to provide appropriate visual privacy for neighbouring residents in accordance with the Sydney DCP 2012 controls.

Setbacks and bulk of the level 3 terrace

94. As discussed above in the assessment tables, a street frontage height of 3 storeys is required by the controls, with additional storeys set back a minimum of 3 metres.
95. Due to the narrowness of the site on Crown Street, strict compliance to the setback controls would result in the proposed additions tapering to a chamfered edge at the western end of the building which is not an appropriate heritage outcome.
96. The existing building to be retained is 3 storeys in height. The new two storey addition is setback 3m to Kells Lane, tapering to a nil setback towards and along Crown Street. A 3m setback to Langley Street (which adjoins residential dwellings) and a nil setback to Foley Street (which adjoins commercial development) is provided.
97. A 3m setback from the new addition to Langley Street is considered important in retaining a street wall height that reinforces the human scale along a street which is adjoined by 2 and 3 storey residential terraces. The proposal to incorporate the level 3 terrace, with a high acoustic barrier and overhead baffles along the boundary of this frontage is considered to add unnecessary bulk to the new additions and does not provide a true 3m setback to Langley Street (see Figures 45 and 46).

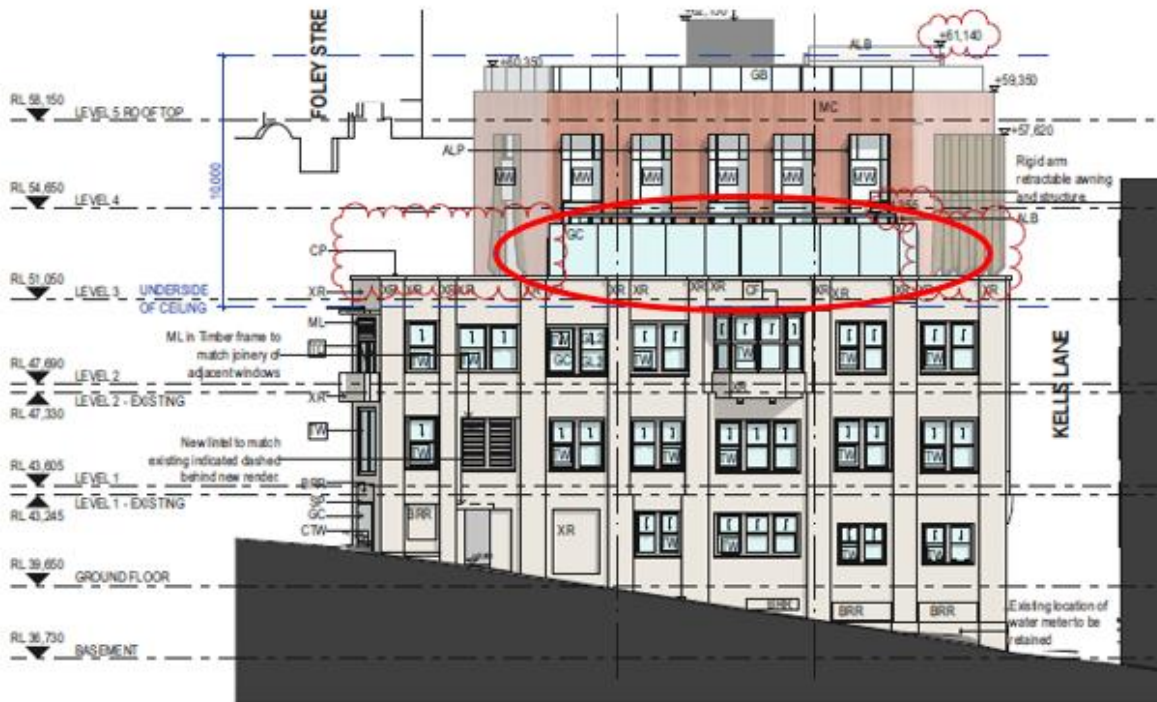


Figure 45: Proposed Langley Street elevation showing bulk of level 3 terrace and associated noise attenuation structures

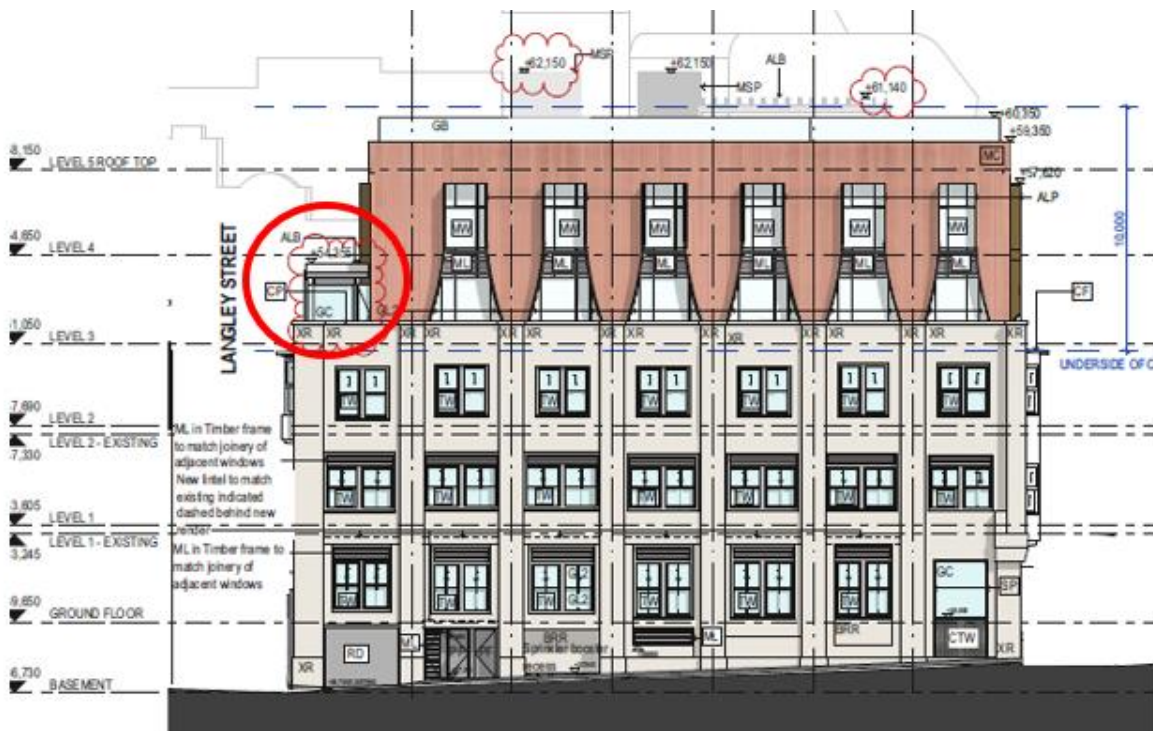


Figure 46: Proposed Kells Lane elevation showing bulk of level 3 terrace and associated noise attenuation structures

98. As discussed above, a design modification condition has been recommended to remove the proposed level 3 terrace, including the acoustic baffling and acoustic glass along the Langley Street elevation. This will assist in reducing the bulk of the upper-level addition as well as reducing overshadowing and privacy impacts in line with the controls.

Noise Management

99. Following a request for further information regarding noise management of the proposed premises and outdoor spaces, the applicant submitted a more detailed Noise Impact Assessment report, updated Operational Management Plan and amended plans.
100. Noting the recommended deletion of the level 3 terrace above, the following further design and management measures are proposed and conditioned in the amended scheme to ensure that the acoustic amenity of neighbouring properties is maintained during operation:
- (a) The rooftop terrace is to cease operations at 8pm with a 1-year trial until 10pm and indoor areas are to close at 10pm with a 1-year trial until 12midnight.
 - (b) Internal fit out design to the level 1, level 3 and level 4 activity spaces shall incorporate soft furnishings and absorptive treatment to the underside of the ceiling. Acoustic panels are to be installed to at least 60 per cent of ceiling area across each level, to control reverberant noise build-up within the space.
 - (c) Amplified music within the level 1 cabaret room, level 2 studio and level 3 club lounge are to be limited to maximum specified decibels.
 - (d) All windows are to remain closed at all times of operation.
 - (e) 12.5mm Hush Glass is to be installed to the entertainment spaces. A further design modification condition is recommended to ensure that the level 3 entertainment space incorporates double glazing consistent with the glazing system to be incorporated in the cabaret space.
 - (f) The maximum capacity of the roof terrace is 40 patrons until 6pm and 60 patrons between 6pm and 10pm. The maximum capacity of the pool and pool deck is 16 patrons between 10am and 6pm and 20 patrons between 6pm and 10pm. A 2.2m high solid continuous noise screen is to be installed around these areas.
 - (g) All loading dock operations and waste collection must be restricted to between the hours of 7am to 6pm.
 - (h) The acoustic report recommended that only low background music be permitted in the terrace. However, it is recommended that a condition restricting speakers and music on the rooftop be included in the conditions of consent to further reduce noise impacts.
101. The submitted acoustic report concluded that, provided the above acoustic treatments and management measures are adopted, noise emissions will comply with the City's relevant project noise criteria.

102. The City's Health Specialist reviewed the proposal and concurred that subject to conditions requiring compliance with the noise report recommendations, the proposal is acceptable from a noise perspective.
103. Noise management conditions in line with the above acoustic recommendations have been included within the recommended conditions of consent and the conditioned proposal.

Shady Pines Tenancy

104. Development consent was granted under D/2008/1594 on 16 December 2008 for fit out and use of shops 4 and 5 on the ground level of the subject building for a bar (known as Shady Pines Saloon). A number of modifications to the consent have been approved (A-N) involving hours of operation and patron capacity.
105. The premises currently has approval for 115 patrons on a trial basis until October 2024. Base hours of operation are between midday and 11pm 7 days a week with a trial period until 1.30am which ends 29 July 2024. The existing approved layout of the tenancy is provided in Figure 47 below.

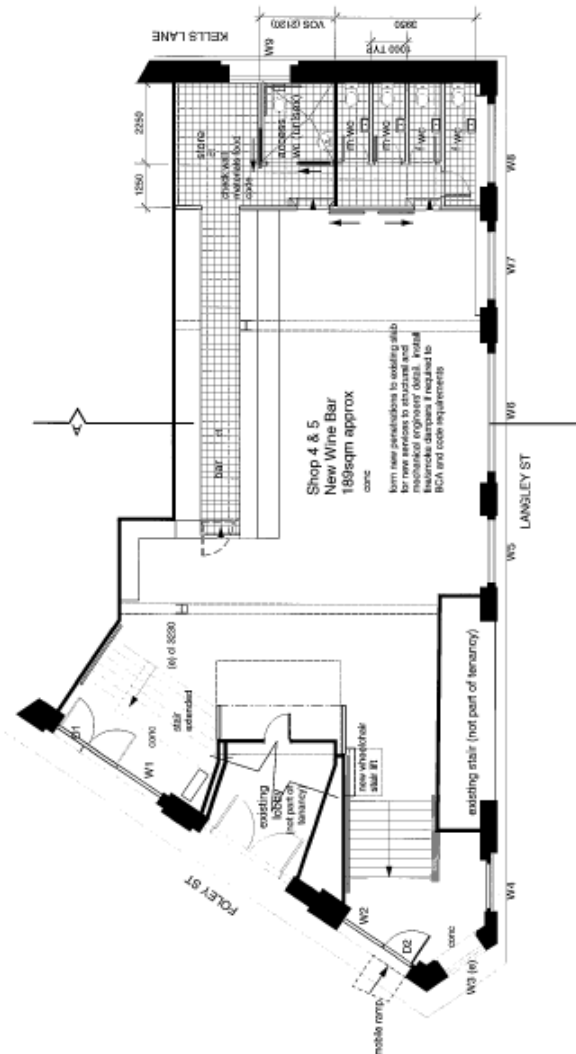


Figure 47: Extract from approved layout of the Shady Pines bar

106. The subject application states that the Shady Pines tenancy will continue to occupy the ground level of the building. Whilst the proposed size and provision of sanitary facilities within the tenancy remains similar to what was approved under D/2008/1594 (as modified), some changes to the layout of the tenancy are proposed as part of the redevelopment of the site (see Figure 48).

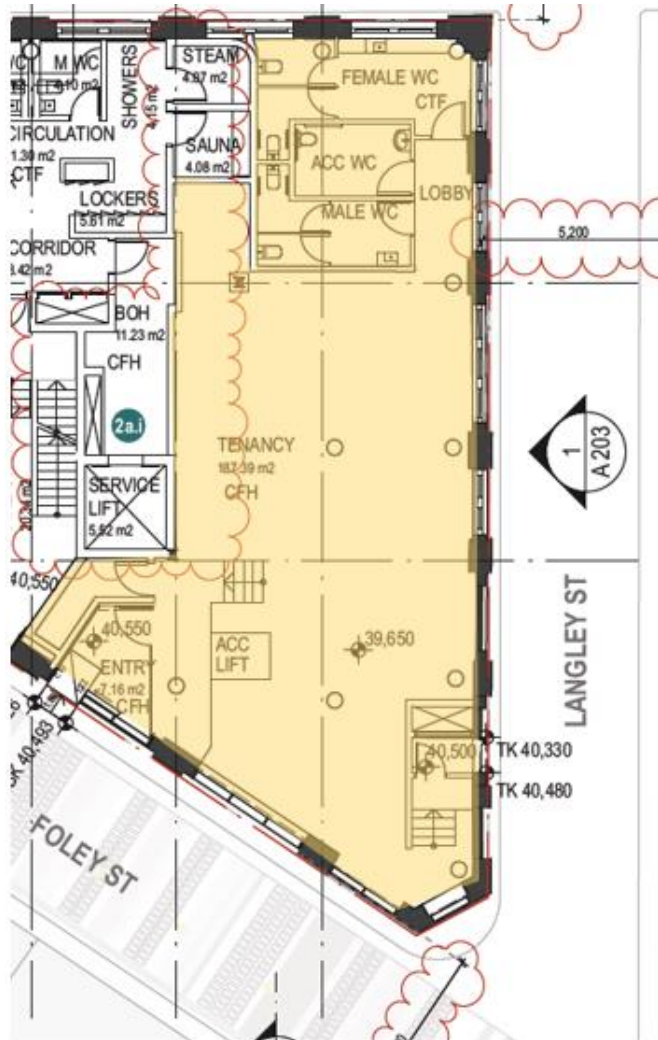


Figure 48: Extract from proposed layout of the ground level tenancy (highlighted in yellow)

107. A condition of consent is therefore recommended to ensure that D/2008/1594 (as amended) is amended to be consistent with the subject consent prior to issue of an Occupation Certificate for the subject premises.

Consultation

Internal Referrals

108. The application was discussed with Council's;

- (a) Building Services Unit;
- (b) Health Unit;

- (c) Cultural Strategy Unit;
- (d) Public Art Unit;
- (e) Licensed Premises Unit;
- (f) Heritage and Urban Design Unit;
- (g) Public Domain Unit;
- (h) Safe City Unit;
- (i) Ecologically Sustainable Development Unit;
- (j) Surveyors;
- (k) Traffic and Transport Unit;
- (l) Landscape and Tree Management Units; and
- (m) Waste Management Unit;

109. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Transport for NSW

110. Pursuant to Clause 2.122 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
111. Comments were received on 23 May 2023. Transport for NSW advised that they raise no objection as the development is not expected to have a significant impact on the classified road network.

Advertising and Notification

112. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 19 April 2023 and 18 May 2023. A total of 576 properties were notified and eleven (10) submissions were received. Three (3) submissions were in support of the proposal and seven (7) raised objections.
113. The submissions raised the following issues:
- (a) **Issue:** Noise impacts from the proposed use and outdoor areas.

Response: As discussed above under the heading 'Noise Management', the applicant submitted a detailed Noise Impact Assessment report following Council's request for further information. The report recommended design and management conditions required in order for the development to comply with Council's noise criteria. A condition is recommended to ensure that these measures are incorporated into the development. Subject to recommended conditions, the proposal is considered acceptable.

- (b) **Issue:** Drunk and unruly behaviour of patrons and smoking outside.

Response: An amended Plan of Management was submitted as part of the amended documents. Security is proposed to be provided at the premises. Security guards will be required to patrol the footpaths surrounding the premises to ensure that patrons disperse from the premises.

- (c) **Issue:** Waste management and servicing impacts

Response: A waste management plan was submitted with the proposal. It is proposed that waste collection will be wheel-out-wheel-in utilising a private contractor. Waste bins will not be able to be placed on the kerb and a condition to this effect has been recommended within the conditions. A condition to ensure all waste and servicing occurs between the hours of 7am to 6pm to minimise noise impacts on adjoining residents.

- (d) **Issue:** Vermin during excavation and demolition

Response: A condition is recommended to ensure that prior to the commencement of any demolition and/or excavation works, a programme of baiting and monitoring of rodent activity is to be put in place at the site.

- (e) **Issue:** Inconsistency between the architectural plans and constructability report in relation to position of Cabaret room.

Response: Following a request for further information it was confirmed that the Cabaret room is proposed to be located on Level 1 of the development. Amended plans submitted confirm this.

- (f) **Issue:** Building height in storeys and setbacks will cause view loss

Response: Following a request for amendments by Council, amended plans were submitted which reduced the proposed addition to two storeys and 10m (except for lift core and plant). The proposal also remains below the alternative 23m height control under the Sydney LEP 2012. Section 5.11.5.1(5) of the DCP states that the cumulative impacts on views from additional storeys in accordance with the Alternative Height of Buildings control in Sydney LEP 2012 is acceptable. Subject to conditions, the proposed form and height of the building is acceptable.

- (g) **Issue:** Impacts of construction on surrounding streets and development

Response: Conditions are recommended for submission of a Construction Traffic Management Plan to be submitted and approved by Council prior to issue of Construction Certificate. A condition requiring implementation of this plan is also recommended.

- (h) **Issue:** Visual privacy impacts from the proposed Langley Street terrace

Response: As discussed above under the heading 'Visual Privacy', a number of design modification conditions are recommended to ensure that where there is a potential for overlooking, obscure glass is used to mitigate the impact. A condition is also recommended to delete the Level 3 terrace to Langley Street which will further mitigate any privacy impacts from the proposal.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

114. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.
115. Credits have been applied for the most recent past uses of the site. Including:
- (a) 188sqm food and drinks premises (Shady Pines)
 - (b) 460sqm business premises (yoga studio on level 1 and hairdresser on ground level facing Crown Street)
 - (c) 65sqm shop (ground floor shop facing Crown Street)
 - (d) 485sqm office premises
116. Proposed uses include 1,879sqm of food and drink premises (bar and entertainment areas) and 84sqm entertainment facility (cabaret area).
117. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contributions to be paid prior to the issue of a construction certificate.

Contribution under clause 7.13 of the Sydney Local Environmental Plan 2012

118. The site is located within the Residual Lands affordable housing contribution area.
119. Pursuant to clause 7.32 of the Environmental Planning and Assessment Act (1979), 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.
120. Sections (a), (b) and (c) are applicable to the proposed development.
121. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to the consideration of the following:
- (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
 - (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and
 - (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.
122. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.
123. As the proposed development includes the creation of more than 200sqm of additional non-residential floor space, a contribution is required pursuant to Clause 7.13(1)(a) of the Sydney LEP 2012 at a rate of \$11,176.22 per square metre of total non-residential floor area (2,673sqm), totalling \$298,740.42. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

124. Environmental Planning and Assessment Act 1979.

Conclusion

125. The application seeks development consent for partial demolition, excavation and alterations and additions, including a two-storey addition to the existing building for use as private members club Soho House. Proposed uses include food and drink premises (restaurant, bar and entertainment area), entertainment facility (cabaret) and associated level 3 terrace, rooftop terrace and pool.

126. The application is referred to the Local Planning Panel for determination as the development is for the purposes of a new licenses premises that may require an on-premises licence for public entertainment venues or a hotel (general bar) licence under the Liquor Act 2007.
127. Following an assessment of the application, the applicant was requested to address a number of issues relating to proposed cultural and creative floor space, heritage impacts, height and setbacks, materiality, noise amenity, overshadowing, contamination, tree management, licensing, public art the interface with the public domain.
128. Amended plans and information were submitted to address Council's concerns on 11 November 2023, 11 March 2024, 1 May 2024 and 14 May 2024. The development was reduced in height and scale and additional information regarding neighbouring amenity and the provision of cultural and creative uses was submitted.
129. Subject to conditions, the development provides 10 per cent cultural and creative floor space within the development and complies with the 23m alternative height of building standard for the site under Clause 6.60D of the Sydney Local Environmental Plan 2012.
130. The proposed density of the development complies with the maximum floor space ratio (FSR) control of 5:1 under Clause 4.4 of the Sydney Local Environmental Plan 2012.
131. As a result of the modifications made to the proposed development and subject to conditions, the amended proposal presents an improved outcome and comprises a satisfactory response to the conditions of the site and locality. The amended proposal is generally acceptable with regard to the applicable planning controls, results in a form and scale that achieves the desired future character of the area and exhibits design excellence. Subject to recommended conditions the development also promotes the realisation of the Oxford Street Cultural and Creative Precinct as a centre for cultural and creative purposes.

ANDREW THOMAS

Executive Manager Planning and Development

Julia Errington, Senior Planner