

Item 4.**Development Application: 37-41 Oxford Street, Surry Hills – D/2024/1027****File Number: D/2024/1027****Summary****Date of Submission:** 19 November 2024**Applicant:** The Trustee for Cirillo Planning Trust**Architect/Designer:** SRH Architecture Pty Ltd**Owner:** ELLI Pty Limited**Planning Consultant:** Planning Lab**Heritage Consultant:** City Plan Heritage Pty Ltd**Cost of Works:** \$1,742,832.00**Zoning:** MU1 Mixed Use zone. The restricted premises use of the site is proposed to be retained and is permitted with consent in this zone.**Proposal Summary:** Consent is sought for alterations and additions to an existing adult entertainment venue. The existing approved trading hours of the venue are 12pm midday to 5am Monday to Sunday.

The proposed alterations and additions include a new addition on the second floor behind the existing building, new structural works, reconfiguration of the existing ground floor Oxford Street tenancy and mezzanine level, and other associated alterations.

The proposal results in the relocation of private rooms to the new second floor addition, the use of the mezzanine for additional seating, and no change to the existing patron capacity or hours of operation.

The site contains a local heritage item known as the "Former Commonwealth Bank including interior" (Item No. 1583). The site is a contributing building within the Oxford Street heritage conservation area (C17).

The application was notified for 21 days between 26 November 2024 and 18 December 2024. As a result, 10 submissions were received. Nine submissions were in objection to the proposal, and one was in support.

The concerns raised in the objections include late night trading hours, anti-social behaviour from patrons, the nature of the use of the restricted premises and potential overshadowing impacts from the second storey addition.

Concerns regarding the structural additions to the building to support the new addition above have been addressed through amended plans to relocate and minimise the bulk of the structural supports.

This application has been referred to the Local Planning Panel as it involves development for the purpose of a restricted premises.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Biodiversity and Conservation) 2021
- (iv) City of Sydney Affordable Housing Program
- (v) Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024
- (vi) City's Oxford Street LGBTIQ+ Social and Cultural Place Strategy

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Current Development Consents
- D. Submissions

Recommendation

It is resolved that consent be granted to Development Application Number D/2024/1027 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development is consistent with the objectives of the MU1 Mixed Use zone.
- (B) The design of the second storey addition and Oxford Street interface appropriately respond to the scale of surrounding buildings with acceptable impacts on amenity.
- (C) The development will safeguard neighbourhood amenity and will promote the orderly operation of the premises.
- (D) The development will not adversely impact upon the building which is listed as a heritage item under the Sydney LEP 2012 and is a contributing building to a heritage conservation area.
- (E) The proposal exhibits design excellence in accordance with the requirements contained in Clause 6.21C of Sydney Local Environmental Plan 2012.
- (F) The development accords with the objectives of relevant planning instruments and controls.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP 79320 and is known as 37-41 Oxford Street, Surry Hills. It is irregular in shape with an area of approximately 448.7sqm. It has a primary street frontage to Oxford Street.
2. The site contains a part one, part three storey building with basement and mezzanine levels.
3. An original portion of the three-storey building fronting Oxford Street was constructed around the 1880s which has been partially retained and comprised three attached buildings with hipped roofs comprising commercial uses. Significant alterations were made to the building in 1937, including the erection of the Commonwealth Bank chamber and its ceiling, curved pilasters and engaged columns. These are located behind the three-storey Oxford Street building. New toilets in the rear and the mezzanine were constructed within the bank chamber in 2005. Other minor modifications have also taken place over time.
4. The surrounding area is characterised by a mixture of land uses, primarily being commercial, adult entertainment venues, and residential. The site is adjoined by a seventeen-storey mixed use building to the north-east, a two-storey commercial building (with approval for a four-storey commercial building) to the north-west, a twelve-storey mixed use building to the south-west, and two-storey commercial development to the south-east. The apartments within the mixed use building to the south-west at 1-7 Pelican Street are the nearest residential uses.
5. The site is a local heritage item known as I1583 - 'Former Commonwealth Bank' and is a contributing building within the Oxford Street Heritage Conservation Area (C17).
6. The site is not identified as being subject to flooding.
7. Site visits were carried out on 2 December 2024 and 13 February 2025. Photos of the site and surrounds are provided below:

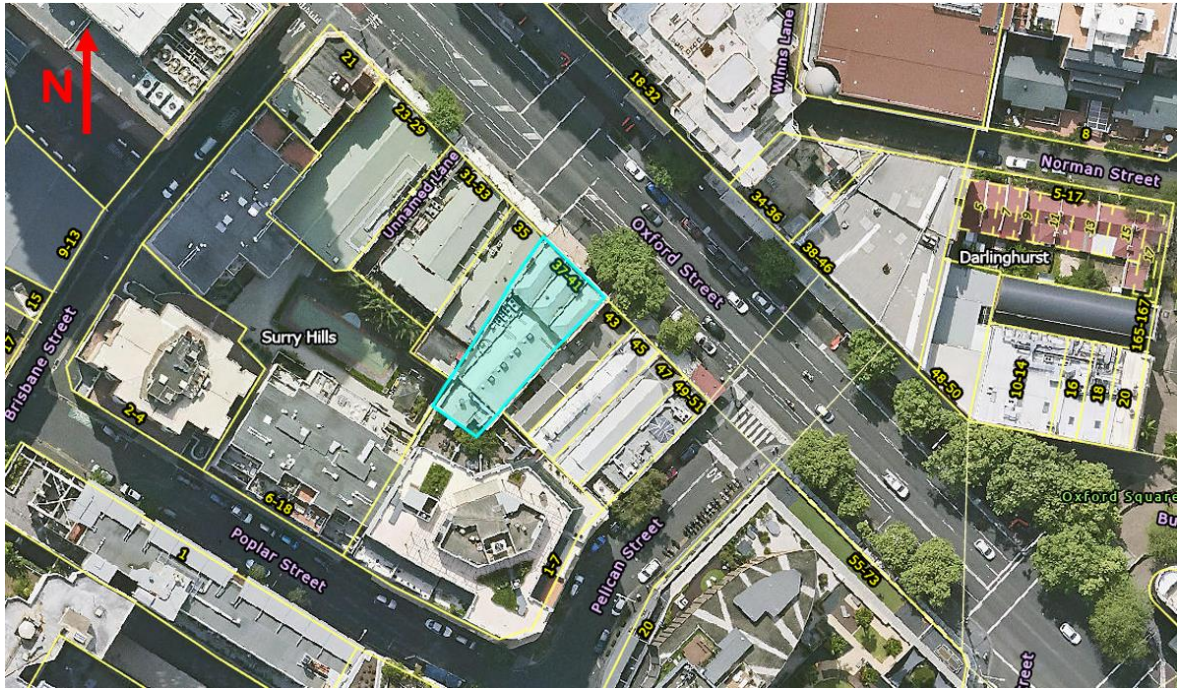


Figure 1: Aerial view of the site and surrounding area



Figure 2: Site viewed from Oxford Street facing south-west



Figure 3: Ground floor performance and bar area viewed from main entry



Figure 4: Ground floor performance and bar area viewed from rear



Figure 5: Mezzanine level private room



Figure 6: First floor office space



Figure 7: First floor bathroom



Figure 8: Second floor store room



Figure 9: Bank chamber ceiling area

History Relevant to the Development Application

Development Applications

8. The following history and applications are relevant to the current proposal:

- D/2002/539 - Development consent was granted on 19 October 2002 for the fit out and use of the basement and ground floor tenancy fronting Oxford Street as a coffee shop. Modification 'A' included consent for indoor operating hours between 6am and 12 midnight Monday to Sunday.
- D/2004/470 - Development consent was granted by the Land and Environment Court on 19 May 2005 for the use of the ground and upper floors of the site as a cabaret lounge and nightclub. Modifications were later made to this application.
- D/2016/810 - Development consent was refused on 10 November 2016 for the use of the ground, mezzanine and first floor level as a restricted premises in the form of a strip club and associated internal alterations. This refusal was subsequently appealed to the Land and Environment Court where the appeal was upheld and consent granted on 25 January 2018 (LEC 2016/00375440). Relevant conditions of this consent are as follows:
 - Condition 2 confirming that the approved use is a restricted premises (as defined in the LEP) and a striptease club (as defined in the DCP)
 - Condition 3 stating that sex services (as defined in the LEP and DCP) are not to be provided on the premises
 - Condition 4 which restricts customers accessing levels 1 and 2, the provision of beds within levels 1 and 2, provision of CCTV surveillance cameras, and provision of fixed blinds to the level 1 and 2 windows (in a reversible manner)
 - Condition 5 which allows a maximum of 320 persons (including staff, patrons and performers) on the premises, with the ground floor restricted to a maximum of 248 patrons and the mezzanine to 52 patrons
 - Condition 6 which allows hours of operation between 12.00pm (midday) and 12.00am (midnight) daily, with extended hours until 2.00am for a one-year trial period from the date of issue of an Occupation Certificate
 - Condition 7 which requires compliance with a Plan of Management
 - Conditions 11 and 12 relating to entertainment noise and general noise
- D/2016/810 (as amended) - this consent has been modified 4 times (Modifications A, B, C and E) with another application (Modification D) withdrawn. The relevant changes to the conditions are as follows:
 - Condition 5 which reduced the overall capacity to 319 persons (including staff, patrons and performers) on the premises, with the ground floor restricted to 249 patrons and the mezzanine to 27 patrons (Modification B - 8 September 2021)

- Condition 6 which allows hours of operation between 12.00pm (midday) and 12.00am (midnight) daily, with extended hours until 4.00am for a one-year trial period from 2 February 2024 (Modification E - 2 February 2024)
- Condition 7 which requires compliance with an updated Plan of Management (Modification E - 2 February 2024)
- Condition 7A which required compliance with a 2023 acoustic report (Modification E - 2 February 2024)
- Condition 11 which updated the 'Noise - Entertainment Venue' Condition (Modification E - 2 February 2024)
- Conditions 12A and 12B which relate to 'Noise - Commercial Plant / Industrial Development' and 'Noise - Installation, Setup, Testing and Calibration of Limiter/s, prior to commencement of extended hours' (Modification E - 2 February 2024)
- D/2018/474 - Deferred commencement consent was granted on 10 April 2019 for alterations to and a 3 storey addition above the former banking chamber. The deferred commencement condition required further structural details and how these will not affect the heritage ceiling in the former banking chamber. The approved uses were a boutique hotel (19 rooms) within most of the front 3 storey portion of the existing building and in the new addition, and the retention of the cabaret lounge/nightclub use (2004 DA) within the basement, balance of the ground floor, and the mezzanine level. The deferred commencement condition was not satisfied and the consent has subsequently lapsed.

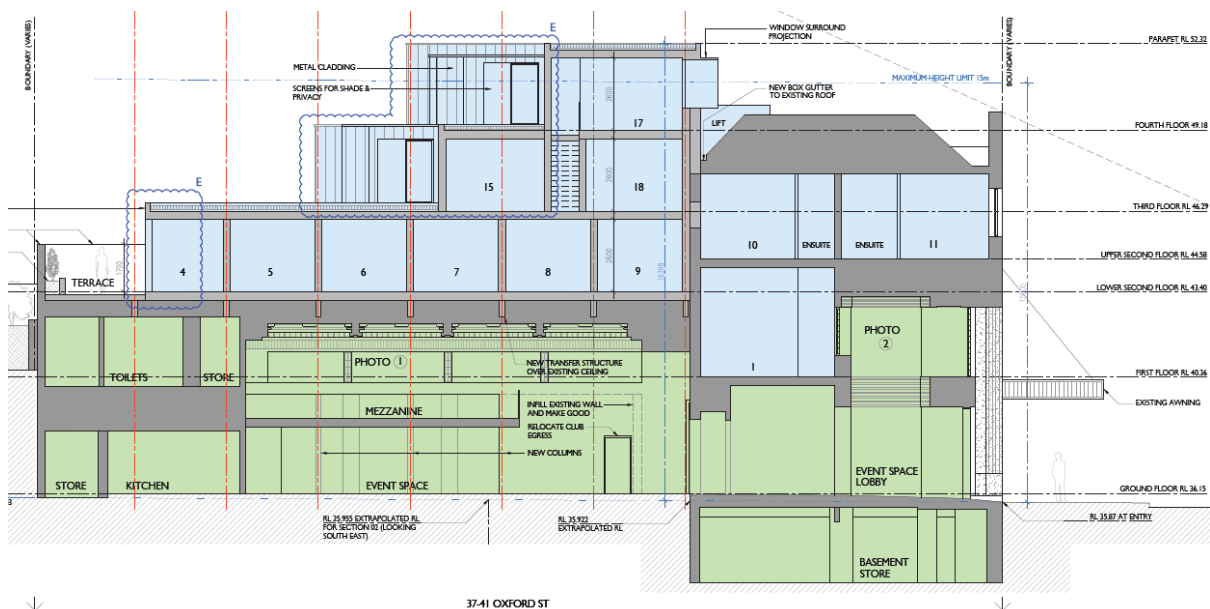


Figure 10: Section drawing of approved hotel addition under D/2018/474

- D/2022/1055 - Instead of lodging a s4.55(2) application to modify the approved trading hours associated with the base consent D/2016/810, the applicant instead lodged a separate development application. This DA was subsequently approved on 16 December 2022 and had the effect of modifying the approved trading hours approved as part of D/2016/810/C to allow one additional hour of trading between 2.00am and 3.00am Monday to Sunday for a 2 year trial period. Relevant conditions of this consent are as follows:
 - Condition 2 confirming that the approved use is a restricted premises (as defined in the LEP) and a striptease club (as defined in the DCP)
 - Condition 3 stating that sex services are not to be provided on the premises
 - Condition 5 stating that the use is to be in accordance with D/2016/810 as amended
 - Condition 11 which restricts customers accessing, and the provision of beds within levels 1 and 2
 - Condition 14 which requires compliance with a 2022 acoustic report
 - Condition 22 which allows hours of operation between 12.00pm (midday) and 12.00am (midnight) daily, with extended hours until 3.00am for a 2 year trial period
 - Condition 24 which allows a maximum of 319 persons (including staff, patrons and performers) on the premises, with the ground floor restricted to a maximum of 249 patrons and the mezzanine to 27 patrons
 - Condition 29 which requires compliance with a Plan of Management
 - Condition 34 which requires the provision of security in accordance with the Plan of Management
 - Conditions 36 and 37 relating to entertainment noise and plant noise
- D/2022/1055/A - Approval was granted on 19 December 2024 to modify Condition 22 to extend the hours to 5.00am for a one year trial period. As part of this modification, Condition 14 was updated to reference a new acoustic report, and Condition 29 was updated to reference a new Plan of Management.

Amendments

9. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 15 January 2025 and on 28 February 2025.
10. The following additional information and amendments were requested:
 - (a) Details on how the heritage significant elements of the former bank chamber including the ceiling, curved pilasters and engaged piers would be protected whilst accommodating the required structural works for the proposed second floor addition. Reflected ceiling plans of the affected areas were requested. Details of the structural support materiality were requested.

- (b) Amendments to the form and materiality of the second storey addition to be of a higher quality than a "shed-like form". Its envelope was requested to have a consistent flat parapet wall height with concealed roof behind and associated box gutters to enable a neater presentation. The rooftop parapet and box gutter were to adequately address stormwater drainage and be accurately depicted on the existing and proposed plans.
 - (c) Lift manufacturing details demonstrating the lift overrun can be contained within the existing roof, that no lift pit is required in the basement and a methodology of how the lift core will be constructed and lift installed into the heritage listed building.
 - (d) Detailed cross sections and an Oxford Street elevation to provide details of the proposed fire booster assembly to Oxford Street and the proposed new door that is referenced only in the heritage impact statement.
 - (e) The fireplace and chimney breast within the wall of the ground floor between the ground floor tenancy and main foyer were omitted from the proposed plans but referenced in the 2018 heritage impact statement by Urbis submitted for D/2018/474.
 - (f) Amendments to the Oxford Street facade on ground level including windows, doors and fire boosters for a higher quality design more akin to its active street frontage location.
 - (g) Rooms on the existing plans were requested to be labelled in accordance with the nomenclature used under Appendix 1 of the heritage impact statement submitted by Urbis.
 - (h) Simplification and removal of awning conduits and lights.
 - (i) Additional details on the proposed structural design and subterranean footings.
11. The applicant responded to the requests on 7 February 2025 and 14 April 2025 and submitted the requested information.

Proposed Development

12. The application, as amended, seeks consent for alterations and additions to a restricted premise including the following:
- partial demolition including internal and external walls and joinery
 - construction of a new second floor addition located behind the existing second floor and above the former bank chamber
 - reconfiguration of the existing space including the relocation and addition of private rooms from the mezzanine level to the first and second floors
 - facade works to the existing storefront on Oxford Street

- [illegible]

SCHEDULE OF AMENDMENTS

- STRUCTURAL COLUMNS TO BE GRouted AND REINFORCED IN ACCORDANCE WITH STRUCTURAL.

REFER TO SCHOLERS LIFT SPECS FOR DETAILS AND STRUCTURALS FOR CONSTRUCTION METHODOLOGY

NEW EXIT DOOR UPGRADED WITH PUSH BAR IN ACCORDANCE WITH D0026 (S)

COLUMN CROSS BRACING. REFER TO STRUCTURALS

NEW STEEL COLUMNS TO EXISTING WALL FOOTING AND COATED WITH INTUMESCENT PAINT TO MEET FIRE REQUIREMENTS. EXISTING FOOTINGS TO BE REINFORCED PRIOR TO CONSTRUCTION OF NEW COLUMN FOOTINGS. REFER TO STRUCTURALS

EXISTING STAFF BATH UNDER EXISTING STAIR

EXISTING STAIR

SITE BOUNDARY

EX WC

EX ACCESS TOILET

EX COOLROOM

EX GARBAGE STORE

EX KITCHEN

EX BAR

CLUB RL 96.150

EX STAGE

RECEPTION AREA

COLUMN CROSS BRACING

NEW STEEL COLUMNS ON PILES TO UNDERLYING SHALE. STEEL COLUMNS TO BE COATED WITH INTUMESCENT PAINT TO MEET FIRE REQUIREMENTS. REFER TO STRUCTURALS

COLUMN CROSS BRACING. REFER TO STRUCTURALS

1500mm WIDE NEW STAIR

REFER TO FIRE ENGINEERING DETAILS

FIRE BOOSTER ASSEMBLY 1000 LONG X 400 DEEP

Oxford Street

EMERGENCY EXIT

EXISTING

UNSEX ACCESSIBLE BATH

MALE WC

AMBIANT WC MALE

RL 96.110

EXISTING STAIR

EX RL 96.110

EX RL 96.030

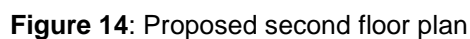
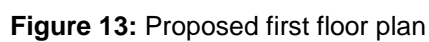
EX ENTRY FOYER

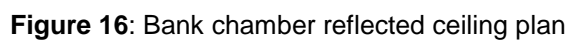
EX RECEPTION

EX COAT STORE

PROVIDE CLEAR / TRANSPARENT SCREENING TO EXISTING HERITAGE BALUSTRADE

13





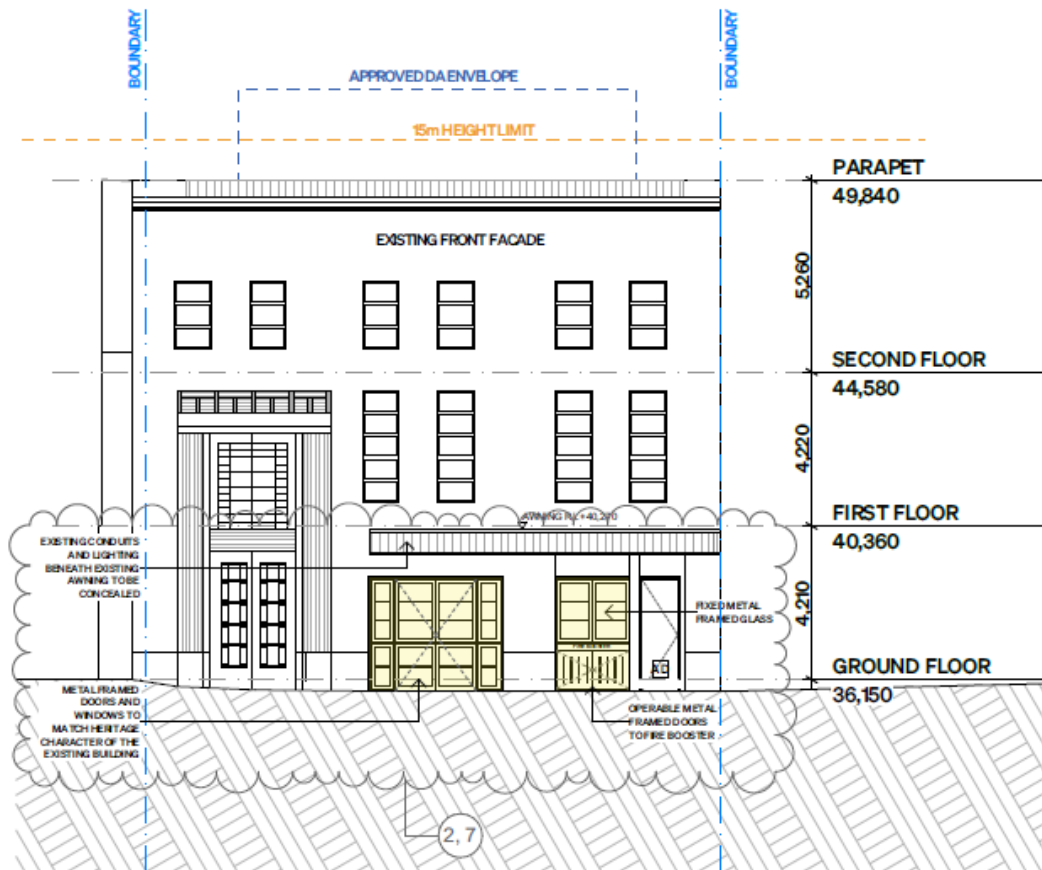


Figure 17: Proposed north-east (Oxford Street) elevation

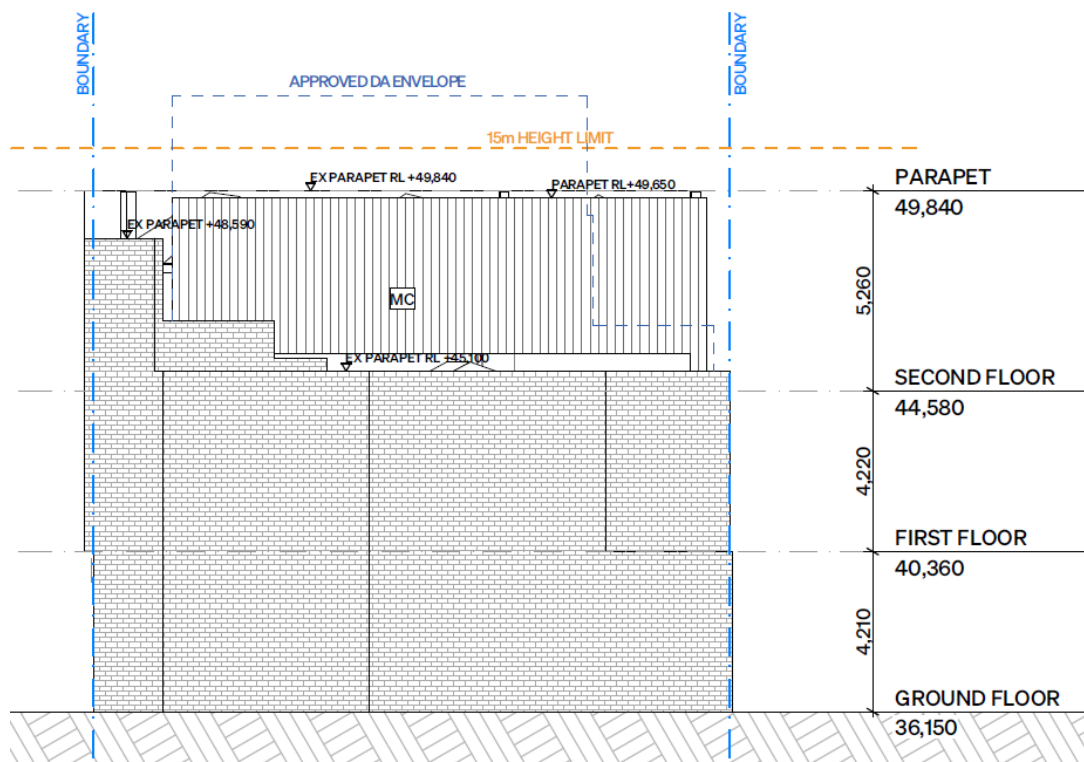


Figure 18: Proposed south-west (rear) elevation

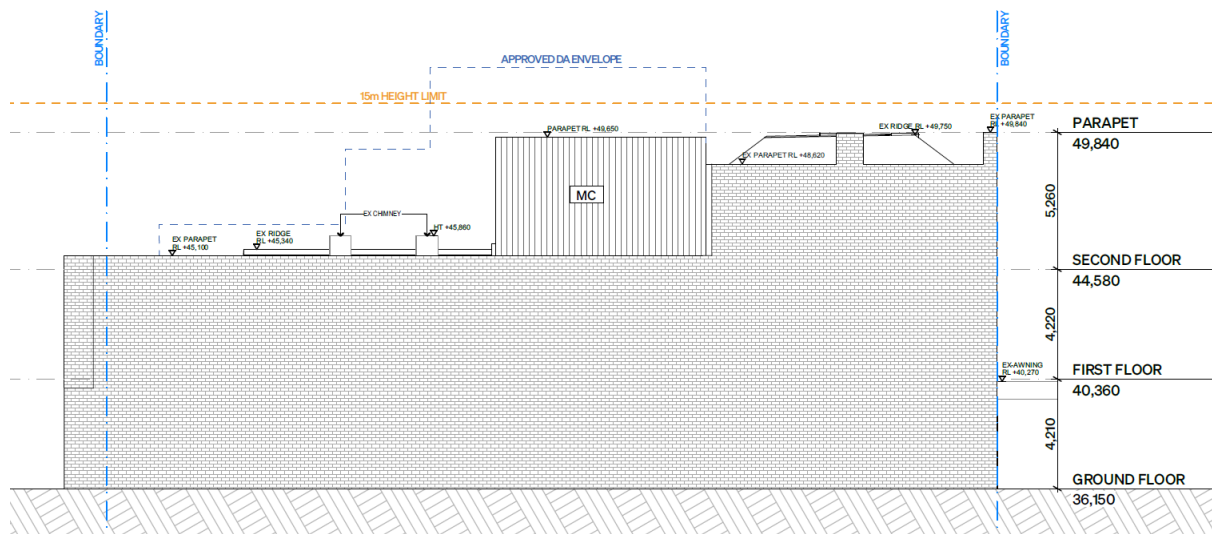


Figure 19: Proposed south-east (side) elevation

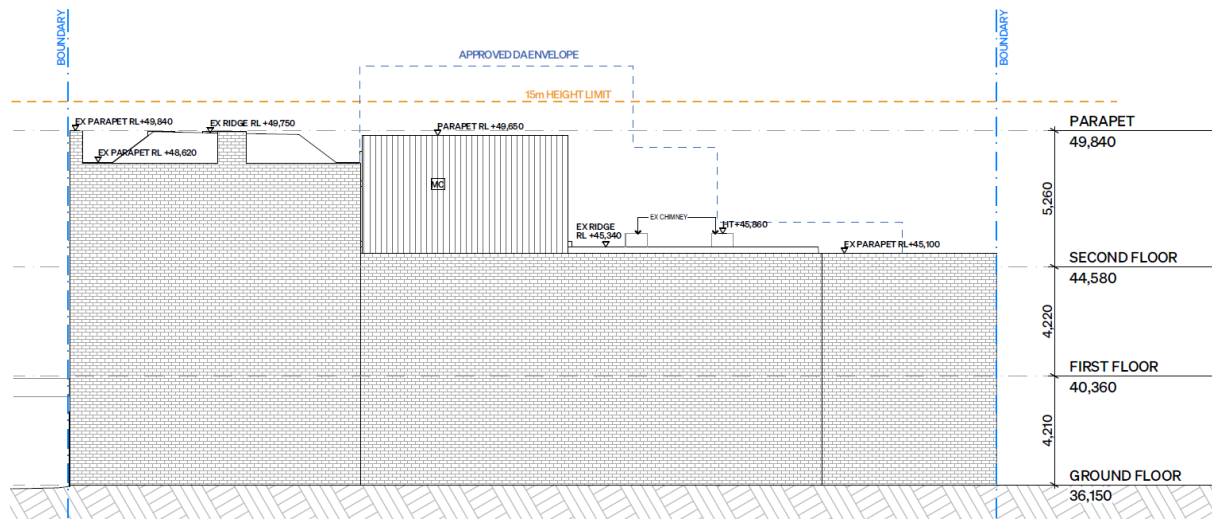


Figure 20: Proposed north-west (side) elevation

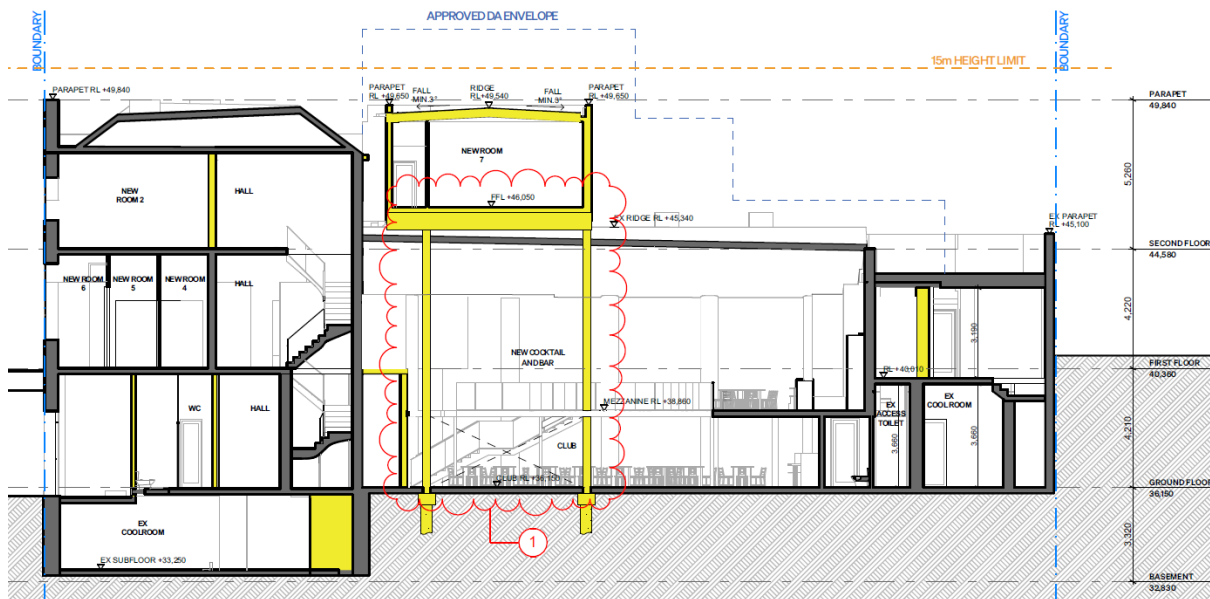


Figure 21: Proposed section

Assessment

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

State Environmental Planning Policies

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

17. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of this 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.
18. 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. The development will not adversely impact on the matters identified in Division 2 of the SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

19. 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 located in a MU1 Mixed Use zone. The restricted premises use of the site would be retained which is permitted with consent in the zone.</p> <p>See the 'Discussion' section of this report for further information on definitions relating to restricted premises.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 15m is permitted. The existing building has a maximum height of 13.69m. The highest point of the proposed second floor addition is 13.5m. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 4.5:1 or 2,019.15sqm is permitted. The existing building has a floor space ratio of 1.88:1 or 841.28sqm. A floor space ratio of 2.04:1 or 914.67sqm (net increase of 73.39sqm) is proposed. The proposed development complies with the maximum floor space ratio development standard.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a local heritage item ("Former Commonwealth Bank including interior" - Item No. 1583).</p> <p>The site is located within the Oxford Street heritage conservation area (C17).</p> <p>Subject to the recommended conditions the proposed development will not have detrimental impact on the heritage</p>

Provision	Compliance	Comment
		<p>significance of the heritage item or the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development uses materials and detailing which are compatible with the existing building and the streetscape and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>
6.60D Oxford Street Cultural and Creative Precinct	Yes	<p>The subject site is located within the Oxford Street Cultural and Creative Precinct. The controls include provisions for additional floor space and building height to certain uses, however it is noted that the development does not propose to utilise these bonuses.</p> <p>The proposed development will contribute to attracting pedestrian traffic along the ground floor frontages of Oxford Street and will not detrimentally impact the availability of floor space to be used for cultural or creative purposes.</p>

Development Control Plans

Sydney Development Control Plan 2012

20. 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

Provision	Compliance	Comment
2.4.10 Oxford Street, Darlinghurst special character area	Yes	<p>The site is located within the Oxford Street, Darlinghurst special character area which is located within the City East area.</p> <p>The proposed development is in keeping with the unique character and design principles of the special character area in that it reinforces the nature of the street as a significant entertainment and business centre by retaining its existing restricted premises strip club use with ancillary retail services (subject of a separate DA or CDC), whilst retaining both day and late-night activities for the vibrant Oxford Street strip.</p> <p>Furthermore, the proposed scale of the built form respects the site and surrounding area whilst also maintaining the heritage significance of the site along the Oxford Street frontage.</p>

Section 3 – General Provisions

Provision	Compliance	Comment
3.2.3 Active frontages	Yes	<p>The Oxford Street frontage of the site is designated to contain an active street frontage. The proposal provides adequate street frontage activation and width. The facade design provides suitable windows for visibility of the proposed retail tenancy and is a high-quality design.</p>
3.9 Heritage	Yes	<p>The site is a local heritage item known as "Former Commonwealth Bank including interior" (Item No. 1583).</p> <p>The site contains a contributing building and is located within the Oxford Street heritage conservation area (C17).</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage item and the heritage conservation area subject to the recommended conditions.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	<p>The development is located in close proximity to a variety of public transport offerings including a number of bus stops along Oxford Street and</p>

Provision	Compliance	Comment
		Museum Train Station. Oxford Street is currently being upgraded to provide additional bicycle infrastructure which will further benefit sites in the area. The existing and proposed transport and parking offerings are appropriate to manage the demands of the development. The development generally complies with the control.
3.12 Accessible Design	Yes	<p>Accessible design requirements are required to be complied with at the construction certificate stage.</p> <p>Accounting for the building's heritage item listing, the proposed amended drawings indicate the majority of the performance area and private rooms would be accessible for all persons. It is noted some private rooms forming part of the second storey addition would not be accessible but is constrained by heritage elements.</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> <p>See related discussion under "Section 4.4.6.2 Design of premises" below.</p>
3.14 Waste	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	<p>Trading hours</p> <p>The premises is located in a Late Night Management Area and while the use does not strictly meet the definition of a category A high impact premises, the characteristics of the premise are consistent with that of a category A premise.</p> <p>The development has existing approval to operate between 12pm (midday) and 12am (midnight), with approved trial hours of operation between 12am midnight and 5am, daily.</p> <p>The Sydney DCP 2012 provides for base hours of operation between 6.00am and 12 midnight and extended hours of operation on a trial period basis, up to 24 hours.</p> <p>D/2022/1055/A approved trial trading hours until 5am on a one year trial basis for the existing</p>

Provision	Compliance	Comment
		<p>building configuration. These trial hours expire on 19 December 2025. Trading hours up to 12 midnight were approved on a permanent basis.</p> <p>The development does not propose to alter the existing approved trading hours or operational details.</p> <p>Patron capacity</p> <p>As previously discussed, the proposed development maintains the existing maximum number of persons within the site, being a total of 319 persons, comprising 276 patrons and 43 staff including security, service staff and entertainers. Despite the increase in physical space by converting office spaces to private rooms and the creation of the rear second storey addition, the intensity and amenity impacts of the site are not expected to be exacerbated.</p> <p>Management plans</p> <p>A Plan of Management and Acoustic Report were submitted and reviewed by council officers and are acceptable. Conditions of consent are recommended requiring compliance with the Plans.</p>
3.16 Signage and Advertising	Yes	<p>No changes are proposed to the business identification signage.</p> <p>Fire safety signage is proposed to the new fire safety assembly area and doors fronting Oxford Street in accordance with AS 2419.1-2005 Fire Hydrant Installations which is acceptable.</p>
3.18 Acoustic Amenity	Partial Compliance	<p>This section of the DCP came into effect on 1 April 2025 and introduces new acoustic criteria for entertainment sound which applies to new or substantially changed venues, and to new residential development near mapped existing venues. It aims to provide better coexistence of live music and entertainment venues with residential dwellings, by ensuring they are designed and built to mitigate noise issues from the outset.</p> <p>There are no savings or transitional provisions and this new control applies to this DA.</p> <p>The existing use is an 'entertainment sound generating activity' as defined. While this DA will</p>

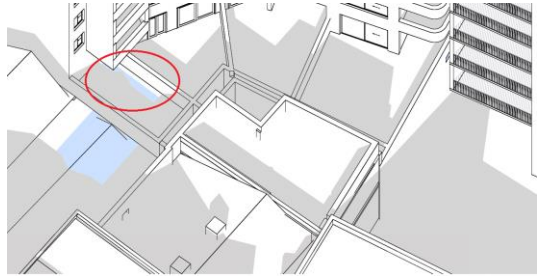
Provision	Compliance	Comment
		<p>rely on separate approvals and does not seek to change the approved hours and venue capacity, it nevertheless seeks to physically expand the venue and thus 'extend' the approved hours into the new space.</p> <p>A noise impact assessment report from a suitably qualified acoustic consultant was submitted with the application. The report addresses the external sound criteria of the controls, however fails to assess the internal sound criteria of the nearest sensitive receiver.</p> <p>It is noted that the proposed development does not result in significant changes to the old banking chamber where the entertainment noise is generated. The proposed alterations and additions are unlikely to result in increased entertainment noise to the nearest sensitive receiver (being the residential apartments at 1-7 Pelican Street). The proposed addition to level two does not include any new openings and can be appropriately sound treated so as not to result in additional entertainment noise to nearby sensitive receivers.</p> <p>While noise from the establishment was raised as an issue in the submissions received, no recent substantiated noise complaints have been received by Council regarding the premise. In addition, it is noted that the premise is already subject to conditions of consent imposing noise criteria consistent with the controls.</p> <p>Conditions of consent are recommended requiring compliance with the recommendations of the acoustic report, acoustic treatment of the new addition, and compliance with the relevant noise criteria. It should be noted that any required acoustic treatment is to be provided internally within the proposed addition.</p> <p>Noting the above, the proposed development is considered to be consistent with the objectives of the control.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

21. This section addresses potential amenity issues relating to the neighbouring residential apartment buildings to the rear of the property being 2-4 Poplar Street, 6-18 Poplar Street and 1-7 Pelican Street, Surry Hills).

Provision	Compliance	Comment
4.2.1 Building Height	Yes	<p>The site is subject to a three storey maximum height in storeys control and the proposed development is three storeys. The site is not subject to a street frontage height control.</p> <p>The development generally complies with the controls regarding floor to ceiling heights. The proposed addition on the third storey provides a 3m floor to ceiling height which complies with the National Construction Code and minimises impacts regarding shadowing and visual impact.</p>
4.2.2 Building Setbacks	Yes	The development complies with all relevant setback requirements.
4.2.3 Amenity - Privacy	Yes	No windows or doors are proposed to the side or rear of the second storey addition. This ensures no additional privacy impacts would arise from the proposal.
4.2.3.1 Solar access	Yes	<p>The applicant has submitted hourly overshadowing diagrams between 9am and 3pm on the day of the mid-winter solstice being 21 June.</p> <p>The submitted diagrams demonstrate additional overshadowing would result on the roof space of 43 Oxford Street, however this location does not require solar access. The residential terrace in the north-western corner of the first floor of 43 Oxford Street is entirely shadowed by the existing building, and the development does not result in any additional shadowing to existing terraces, windows, or skylights.</p> <p>While it is noted 43 Oxford Street is not depicted accurately on the submitted</p>

Provision	Compliance	Comment
		<p>overshadowing diagram, the additional overshadowing remains over the roof space only.</p> <p>The other additional overshadowing would cast onto the outdoor terrace of one residential apartment on level 3 of 1-7 Pelican Street. The control states "Proposed apartments in a development and neighbouring developments must achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space area."</p> <p>The impacts are considered acceptable in this instance as the unit does not currently achieve direct sunlight over 50% of its private open space at any hour. The development results in a minor impact to the solar access of this courtyard between 11am and 12pm only. This terrace is circled in red in the 3D figure below.</p>  <p>Proposed 11am June 21st</p> <p>In addition, the proposed development is well within the permitted Height of building and Floor Space Ratio LEP controls, and the proposed shadow impacts from the addition are significantly reduced from the impacts of the approved hotel under D/2018/474, notwithstanding the lapsing of the consent.</p>
4.2.3.11 Acoustic privacy	Yes	<p>A Noise Impact Assessment Report was submitted with the application and indicates that the development will not result in unacceptable acoustic impacts to neighbouring properties. The</p>

Provision	Compliance	Comment
		development generally complies with the control. See further discussion of the acoustic impacts of the development under Part 3.18 of the DCP above.
4.2.6 Waste and recycling management	Yes	A Waste Management Plan was submitted with the application and an on-site waste storage is provided on the site. The application has been reviewed by the City's Cleansing and Waste unit who support the development, subject to conditions.
4.2.9 Non-residential development in the B4 Mixed Uses zone	Yes	<p>In granting consent for non-residential development on sites with proximity to residential uses within the B4 Mixed Uses zone, the consent authority must consider to the impacts on the amenity of existing residential uses.</p> <p>The potential impacts on the amenity of existing residential properties from the development have been considered in the assessment of the development. Impacts regarding noise, operating hours, privacy, vehicular and pedestrian traffic, vibration, and overshadowing have been discussed elsewhere in this report. The development does not result in any notable impacts to the amenity of the area regarding reflectivity and overlooking.</p>

4.4.6 Sex industry premises and adult entertainment

22. The provisions of this section of the DCP applies as the use of the site will intensify an existing restricted premises - adult entertainment premises by way of creating additional floor space.

Provision	Compliance	Comment
4.4.6.1 Location of premises	Yes	The adult entertainment use of the site is existing. No changes to the Oxford Street entrance are proposed.
4.4.6.2 Design of premises	Yes (by condition)	All access points are from Oxford Street which is a busy main road. This facilitates the safety of staff and visitors given its high visibility from public areas. It also has adequate lighting and access

Provision	Compliance	Comment
		<p>points do not enter onto a dead-end laneway or similar public space.</p> <p>The requirement to conceal the building is restricted due to the site's heritage item status. The business identification signage is being retained and only slightly prominent from the public domain. The venue does not make explicit reference to its use as a strip club which increases patron and staff safety.</p> <p>Existing signage comprises the text 'Men's Gallery'. A 'Slide' top hamper sign remains on the site referencing the earlier cabaret lounge trading name of the property. These signs do not explicitly identify the premises as an adult entertainment venue.</p> <p>The premises does not display any restricted material or nudity outside the premises or in visible locations near windows or doors. Views into the venue from the street are impeded by an existing heavy curtain set within the main entryway.</p>
4.4.6.3 Scale of sex services premises	Yes	<p>The proposed intensification of the premises resulting from the addition to the second floor and internal alterations will have relatively minor and acceptable additional impacts compared to the existing proposal in relation to noise, traffic generation and demand increases for local public transport.</p>
4.4.6.4 Health, safety and security	Yes (by condition)	<p>The premises is designed to meet the health, safety and security standards under this section of the Sydney DCP 2012. These standards are listed below and have been recommended by condition.</p> <ul style="list-style-type: none"> - The reception area would continue to be separate from entertainment and staff areas. - Alcoves and other entrapment spaces are not proposed within the building. - Staff facilities including adequate toilets, hand basins, dressing rooms,

Provision	Compliance	Comment
		<p>soaps, showers, lockers, a rest area with seating, lighting and CCTV surveillance must be provided.</p> <p>- The premise including the main entertainment spaces are separated from the street by a reception area and a heavy curtain is used to block views into the establishment from the street. The submitted Plan of Management adequately addresses the requirements for staffing and security of these areas. Relevant conditions of consent are imposed regarding the operation of the spaces.</p>
4.4.6.5 Signs	Yes (by condition)	<p>No changes to the existing business identification signage are proposed. The existing signage complies with this control in that they are static signs without flashing, flickering or similar and no signage identifying the use of the site as a restricted premises is prominent.</p> <p>The name of the person who conducts the business at the restricted premises or registered name of the business carried out at the restricted premises is required. The words "RESTRICTED PREMISES" is required on the door in capital letters and not to be more than 50mm in height.</p>
4.4.6.6 Management of operations	Yes (by condition)	<p>A Plan of Management has been submitted addressing most provisions of this section of the Sydney DCP 2012.</p> <p>It is noted that the subject application does not propose to amend the approved use or operational details of the premise.</p> <p>As the conditions of consent relating to the operation of the premise are contained in development consent D/2016/810 (as modified) and D/2022/1055 (as modified), a condition of consent is recommended requiring the modification to D/2016/810 and D/2022/1055 to refer to an updated Plan of Management consistent with this application.</p>

5.11 Oxford Street Cultural and Creative Precinct

23. The provisions of this section of the DCP apply as the site falls within the Oxford Street Cultural and Creative Precinct.

Provision	Compliance	Comment
5.11.1 Locality Statement	Yes	<p>The development achieves and satisfies the outcomes and supporting principles expressed in the locality statement.</p> <p>The development retains and conserves significant heritage fabric of the site, and the addition responds to the character of the item.</p> <p>The development provides late night entertainment use and enhances the local area's night-time offering.</p>
5.11.2 Cultural and creative spaces	Yes	The development does not result in the loss of cultural and creative spaces, or contribute to the reduction of availability of cultural and creative spaces.
5.11.4 Heritage Conservation	Yes	<p>The development maintains and conserves the heritage facade to Oxford Street, and the new addition responds to the character of the site.</p> <p>The development is consistent with the objectives and provisions of the control.</p>
5.11.5 Built form and design	Yes	The proposed built form, architectural detail, and materials of the development are consistent with the control. The existing setbacks and building alignments are maintained.
5.11.6 Active frontages and street level tenancy design	Yes	The development including ground floor retail tenancy is generally consistent with the objectives and provisions of the control. Adequate street frontage activation is maintained by the development.
5.11.8 Servicing and access	Yes	The existing servicing and access arrangements are maintained and considered to be suitable for the development.

City's Oxford Street LGBTIQ+ Social and Cultural Place Strategy

Diversity and Inclusion

24. A Plan of Management has been submitted to address the proposed development as it is located on Oxford Street. Details of how Diversity and Inclusion principles, guidelines and a commitment to ongoing staff training will be upheld in accordance with the Sydney DCP 2012 and the Oxford Street LGBTIQ+ Social and Cultural Place Strategy are provided. The Plan of Management has been reviewed by the City's Social Strategy team and is supported. The primary focus of these diversity priorities are for the LGBTIQ+ and Aboriginal and Torres Strait Islander communities. The Plan of Management satisfactorily addresses these priorities:

- Recognising historic LGBTIQ+ places and spaces.
- Reflecting the contemporary LGBTIQ+ community within businesses and venues.
- Increasing LGBTIQ+ cultural and social spaces.
- Increasing LGBTIQ+ visibility and identity throughout the precinct.
- Ensuring the diverse local community is safe and supported.

Discussion

Permissible Restricted Premises Use

25. The use of the site would continue as a 'restricted premises'. Restricted premises are defined under the 'Dictionary' of the Sydney LEP 2012 as:

"A premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises."

26. Section 4.4.6 of the Sydney DCP 2012 defines the proposed 'adult entertainment premises' use as:

"A premises that provides entertainment involving nude or semi-nude performers; or sells or shows restricted material but at which sex services or sexual activity between people does not occur."

27. Appropriate conditions are recommended in the attached Notice of Determination to explicitly state the use must only be within the scope of a 'restricted premises' and 'adult entertainment premises', and not as a 'sex services premises'.

Sex Services Not Permitted

28. The premises is not permitted to operate as a 'sex services premises' which is defined in the 'Dictionary' of the Sydney LEP 2012 as:

"sex services premises means a brothel, but does not include home occupation (sex services)".

29. 'Sex services' are defined in the 'Dictionary' of the Sydney LEP 2012 as:

"sex services means sexual acts or sexual services in exchange for payment".

30. An appropriate condition is recommended in the attached Notice of Determination to prohibit sex services.

Modification of existing consents

31. A number of existing development consents apply to the site and govern the operation of the premise. D/2016/810 as amended approved the use of the site and approved extended trading hours of the restricted premises until early 2025. D/2022/1055 as modified has approved extended trading hours of the restricted premises since December 2022 and currently approves hours to 5am until December 2025. D/2002/539 approves the ground floor tenancy fronting Oxford Street as a coffee shop.
32. The subject application does not propose to modify the operation of the premise, notwithstanding the amendments to the layout of the establishment.
33. Noting this, the modification of existing development consents D/2016/810 and D/2022/1055 (as modified) in accordance with Section 4.17(a)(b) of the Environmental Planning and Assessment Act 1979 is required to ensure consistency between the development consents and to allow relevant operational conditions of consent to be imposed.
34. Conditions of consent, as outlined in conditions 4, 5, and 6 in Attachment A, are recommended to require the modification of the existing consents.
35. If this DA is approved, development consent D/2002/539 would effectively be redundant as it would relate to a tenancy configuration that no longer exists. In accordance with condition 2 in attachment A, the new ground floor retail tenancy is subject to a future Development Application or Complying Development Certificate to facilitate fitout and use.

Heritage impacts

36. The proposed development has been amended at the request of Council staff to modify the facade design and reduce the bulk of proposed structural elements to reduce the impact on the existing heritage fabric.
37. The design as originally submitted included two large concrete blade walls within the banking chamber to support the new addition above. These blade walls detrimentally impacted the heritage fabric of the space including the decorative ceiling, cornices, and wall features, and was considered to be an unacceptable outcome.
38. The amended design replaces the previously proposed blade walls with four strategically placed structural columns which support the structure above. The columns maintain sightlines and the significant fabric of the space. The proposed amended facade design is high quality and appropriate for the building.
39. The proposal is considered to be an acceptable heritage outcome for the site, subject to conditions.

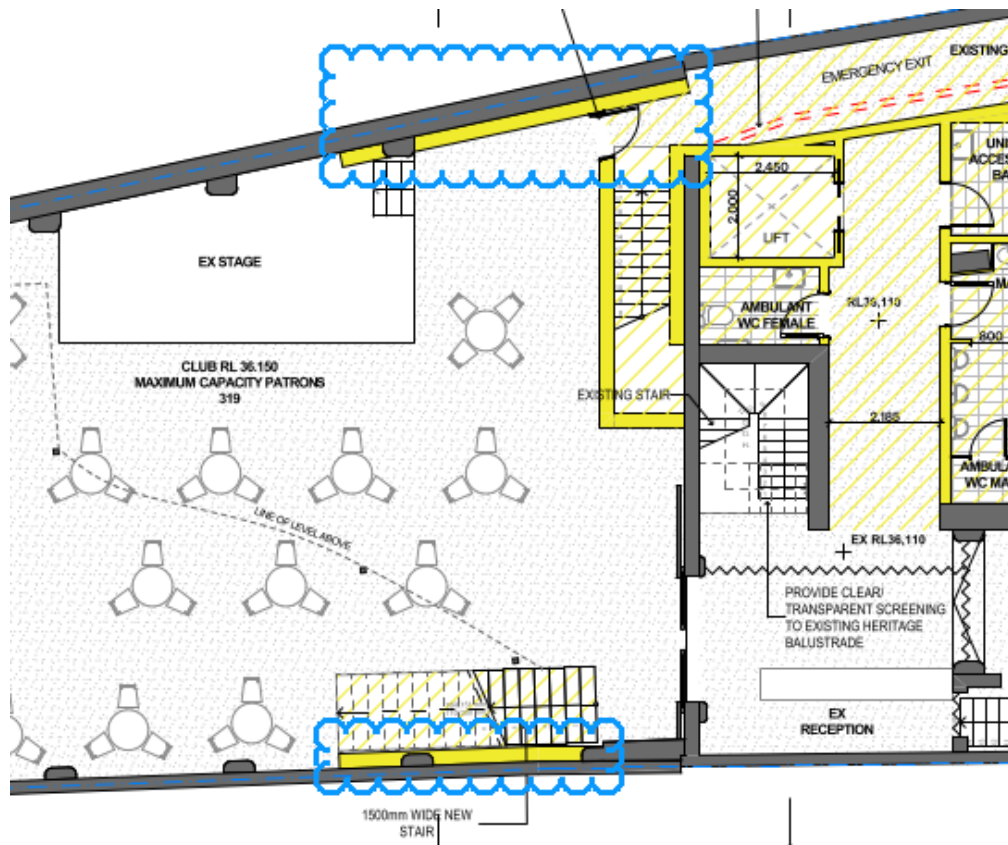


Figure 22: Original ground floor plan with proposed blade walls identified by blue clouding

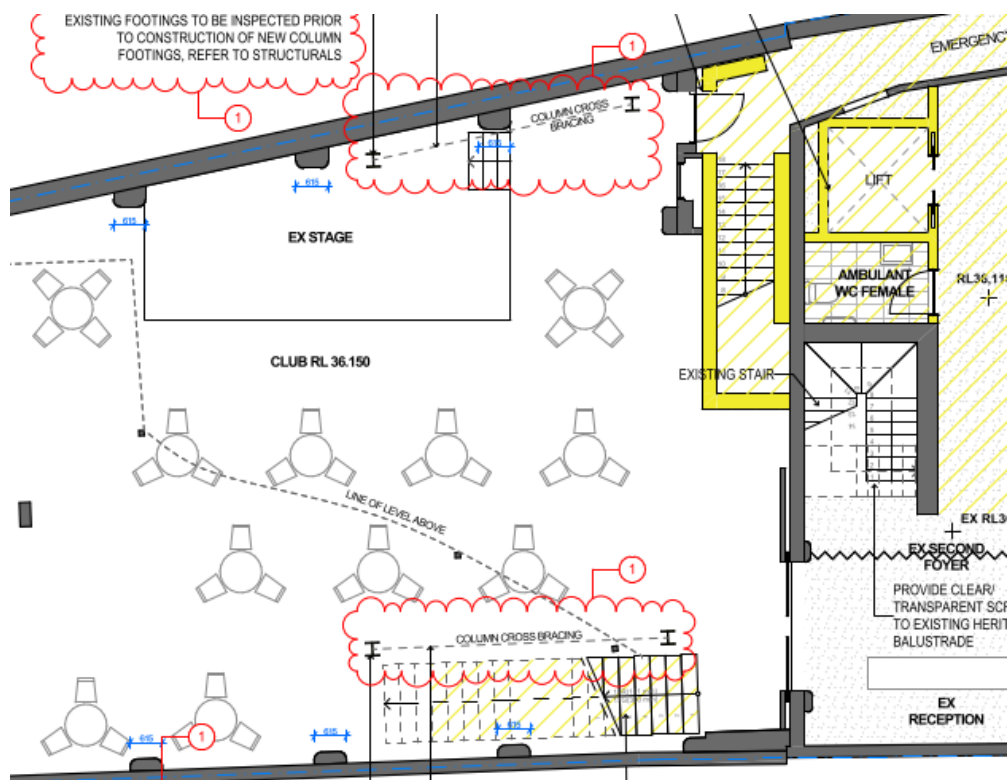


Figure 23: Amended ground floor plan with new columns identified by red clouding

Consultation

Internal Referrals

40. The application was referred to the following internal units and teams of Council:
- (a) Heritage and Urban Design
 - (b) Cleansing and Waste
 - (c) Construction and Building
 - (d) Environmental Health - Food Premises
 - (e) Environmental Health - Noise
 - (f) Licensed Premises and Late Night Trading
 - (g) Social Strategy
 - (h) Cultural Strategy - Live Music and Performance
 - (i) Safe City
41. Where relevant, the conditions recommended by internal units of Council are included in the recommended conditions in Attachment A.

External Referrals

NSW Police

42. The application was referred to the NSW Police for comment.
43. No response was received.

Advertising and Notification

44. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2024, the proposed development was notified for a period of 21 days between 26 November 2024 and 18 December 2024. A total of 1,464 properties were notified and 10 submissions were received. Nine (9) were in objection to the proposal and one (1) submission was in support. In response to requests for amendments from Council staff, amended plans of the development were submitted and accepted. The amended application did not require renotification in accordance with the plan, as the amendments do not result in increased or additional impacts to the surrounding area.
45. The submissions raised the following issues:
- (a) **Issue:** The proposed hours of operation between 12 midnight and 4am Monday to Sunday is excessive and counteracts previous progress for peace and quiet in the vicinity. The building should be made soundproof for night-time hours. The music will likely cause vibrations.

Response: The existing approved hours of operation are not proposed to be altered by the subject development. The existing operating hours are within the allowed hours of the Sydney DCP 2012, and are currently approved on a trial period until 19 December 2025. The hours were reviewed and supported by relevant teams of the City's Health and Building Unit. Relevant conditions of consent are recommended to ensure the proposal does not transmit perceivable noise or vibration levels for neighbouring premises.

- (b) **Issue:** The proposal will increase anti-social behaviour, is not compatible with the residential and commercial character of the local area and the daytime operations will impact the peaceful amenity of nearby residents.

Response: The restricted premises is the existing use of the location and not newly proposed, is permissible in the zone and is not being intensified with respect to patron capacity or operating hours. Anti-social behaviour should be reported to the NSW Police. The premises has demonstrated a good compliance record according to the City's records.

- (c) **Issue:** Parking constraints, traffic congestion and, particularly at night, public transport access would be limited for late night patrons.

Response: The City of Sydney's Neighbourhood Parking Policy 2018 discourages the use of private vehicles and encourages active and public transport which aims to discourage traffic and demands for parking. Museum railway station is within walkable distance being 372 metres from the subject site and has trains operating until 1am Sunday to Thursday nights, and until 2am Friday and Saturday nights. Additionally, buses operate directly outside the premises 24 hours each day providing direct services to the Sydney CBD and Eastern Suburbs.

- (d) **Issue:** The strip club nature of the premises reinforces the objectification and undermining of women and misogyny. Many customers of these venue types also intimidate members of the LGBTIQ+ community particularly when intoxicated.

Response: The Sydney LEP 2012 permits the proposed restricted premises and adult entertainment nature of the site subject to development consent. The use of the site is existing. Standard conditions are recommended relating to alcohol and compliance with the Liquor Act 2007 (NSW) applies to the site. Since the application was notified, the submitted Plan of Management has been amended to address the diversity and inclusion (Aboriginal and Torres Strait Islander and LGBTQAI+) principles as required under the Oxford Street Cultural and Creative Precinct DCP controls. See further detail in the assessment of Part 5.11 of the DCP above.

- (e) **Issue:** The proposal may impact upon the solar access of nearby apartments and obstruct views.

Response: Hourly overshadowing diagrams between 9:00am and 3:00pm during the mid-winter solstice has been submitted and demonstrates the amended proposal will not create additional overshadowing over the living room windows of nearby apartment blocks. Minor overshadowing would result on one outdoor terrace on Level 3 of a residential apartment which currently does not achieve a compliant amount of direct solar access. The proposed development complies with the Height of building and Floor space ratio controls. Additionally, the development will result in less additional shadowing than the previously approved built form under D/2018/474. Further discussion is provided under the 'Sydney Development Control Plan 2012' heading under Section 4.2.3.1 relating to Solar access.

- (f) **Issue:** The proposal may obstruct views.

Response: The proposed second storey addition will not impact any significant views and will be contained below the existing height of the parapet. The proposal also complies with the height controls in the LEP and DCP.

- (g) **Issue:** There has been insufficient public consultation on the application given the proposal's largely impactful nature. The development description cited alterations and additions without reference to the proposed increased building height.

Response: The application was notified to all properties within a 50-metre radius for 21 days in accordance with the City's Community Engagement Strategy and Community Participation Plan 2024. Note by way of amended plans, the height is not proposed to surpass the existing building height.

Financial Contributions

Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2021

46. The Central Sydney Development Contributions Plan 2020 applies to the site. The cost of the development is over \$250,000. The development is therefore subject to a Section 7.12 contribution under this Plan. A condition relating to this contribution has been included in the recommended conditions. The condition requires the contribution to be paid prior to the issue of any construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

47. The site is located within the Residual Lands affordable housing contribution area. As the proposed development includes alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation, a contribution is required at a rate of \$11,646.80 (for the current indexation period, being 1 March 2025 to 28 February 2026) per 1% of total non-residential floor area, being 0.73sqm, totalling \$8,547.59. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

48. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies.
49. 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.
50. Clause 222B of the Environmental Planning Assessment Regulation 2021 provides that section 7.32 of the Act applies to a development application to carry out development in the City of Sydney local government area.
51. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to 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.
52. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable. A condition of consent is recommended requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

Housing and Productivity Contribution

53. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024.

- 54. The site is located within the Greater Sydney region, the development is a type of commercial development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
- 55. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

Relevant Legislation

- 56. Environmental Planning and Assessment Act 1979
- 57. Sydney Local Environmental Plan 2012
- 58. Sydney Development Control Plan 2012
- 59. SEPP (Biodiversity and Conservation) 2021

Conclusion

- 60. Having regard to all of the above matters, the proposed development will not result in any significant adverse impacts on either the natural and built environment or the locality, is suitable for the site, and is in the public interest, subject to the recommended conditions included in attachment A.
- 61. The proposed development generally satisfies the relevant objectives and provisions of the applicable planning instruments and policies and is acceptable on this basis.
- 62. Issues raised in submissions received by the City have been considered in the assessment, and, where appropriate, conditions of consent have been included in Attachment A to address these issues.

ANDREW THOMAS

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