

Item 5.**Modification Application: 256 Crown Street, Darlinghurst - D/2023/265/B****File Number:** D/2023/265/B**Summary****Date of Submission:** 19 February 2025**Applicant:** Hamptons Property Services Pty Ltd**Owner:** 256 Crown Street Pty Ltd**Planning Consultant:** Kristy Hodgkinson - Hamptons Property Services Pty Ltd**Cost of Works:** \$0.00**Zoning:** The site is located within the MU1 - Mixed Use zone.

The approved development 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.

This is permissible with consent in the zone under the Sydney Local Environmental Plan 2012.

Proposal Summary: The application is a Section 4.55(2) modification of consent seeking to amend conditions relating to hours of operation, to include trading on Sunday. Proposed internal hours of operation on Sunday are 7.00am to 12 midnight, and proposed external hours of operation on Sunday are 8am to 10pm. Proposed hours are in line with the hours of operation already approved for Monday to Saturday. No increase to patron numbers is proposed.

The application is referred to the Local Planning Panel as it is a Section 4.55(2) modification of development consent granted by the panel, which proposes amendments to conditions of the original development consent recommended in the council assessment report but which was amended by the panel.

The application was notified for 14 days between 26 February 2025 and 13 March 2025. One submission was received, which relates to noise impacts. The issues raised

in the submission have been considered during this assessment.

The proposed modifications are considered to result in a development that is substantially the same as previously approved. Subject to the recommended conditions, the proposed modification will not result in significant impacts to the amenity of surrounding sites and is considered acceptable.

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

Attachments:

- A. Amended Conditions of Consent
- B. Plan of Management
- C. Submission

Recommendation

It is resolved that consent be granted to Section 4.55(2) Application Number D/2023/265/B to allow for trading on Sunday and that Conditions 8 and 9 of the consent be amended, with modifications shown in ***bold italics*** (additions) and ~~striketrough~~ (deletions), as follows:

8) INTERNAL HOURS OF OPERATION

The internal hours of operation are regulated as follows:

- (a) The base internal hours of operation must be restricted to between 10.00am and 10.00pm Monday to ~~Saturday~~ ***Sunday*** inclusive.
- (b) Notwithstanding (a) above, the use may operate between 7.00am and 10.00am and 10.00pm and 12 midnight for a trial period of 1 year from the date of issue of Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au. No alcohol is to be served prior to 10.00am.
- (c) Should the operator seek to continue the extended operating hours outlined in (b) above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

Reason

To ensure the premises operates within the approved hours of operation.

(9) EXTERNAL HOURS OF OPERATION - ROOFTOP

The external hours of operation are regulated as follows:

- (a) The base internal hours of operation must be restricted to between 10.00am and 8.00pm Monday to ~~Saturday~~ ***Sunday*** inclusive.
- (b) Notwithstanding (a) above, the use may operate between 8.00am and 10am and 8.00pm and 10.00pm for a trial period of 1 year from the date of issue of Occupation Certificate. No alcohol is to be served prior to 10.00am.
- (c) Should the operator seek to continue the extended operating hours outlined in (b) above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

Reason

To ensure the premises operates within the approved hours of operation.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2) of the Environmental Planning and Assessment Act 1979.
- (B) The proposal, subject to conditions, is consistent with the objectives of the MU1 Mixed Use zone.
- (C) The proposal continues to be consistent with the aims, objectives and relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (D) The development, subject to conditions, will facilitate the orderly operation of the venue and will not unreasonably compromise the amenity of the locality.
- (E) The development, as modified and conditioned, is in the public interest.

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 is identified in the Sydney Local Environmental Plan 2012 as forming 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, with retail and commercial premises on the ground level fronting Crown Street.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential accommodation and commercial premises.
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 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 6 March 2025.
9. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Crown Street, facing east



Figure 3: Site viewed from Foley Street, facing northwest



Figure 4: Site viewed from Langley Street, facing south



Figure 5: View of Langley Street, facing east and towards submitter's property (40 Langley Street/ 257 Palmer Street, marked in red)

History Relevant to the Development Application

Development Applications

10. **D/2023/265** – Development consent was granted on 12 June 2024 by the City of Sydney Local Planning Panel for the partial demolition, excavation and alterations and additions, including a two-storey addition to the existing building for use as private members club Soho House. The approved uses include food and drink premises (comprising a restaurant, bar and entertainment area), an entertainment facility (comprising cabaret entertainment), rooftop terrace and pool.
11. The DA was approved by the Local Planning Panel subject to conditions. These include internal and external hours of operation under Conditions (8) and (9) respectively.
12. During the meeting, the Panel resolved to modify the recommended conditions of consent to permit trading outside of the extended trading hours identified in section 3.15.4 of the DCP. This was in response to the applicant's request to allow morning trading at the premises. Conditions 8 and 9 were modified by the Panel as follows:

Condition (8) Internal hours of operation

- (a) Council recommended base internal hours be restricted to between 10am and 10pm Monday to Saturday inclusive, with extended hours between 10pm and 12 midnight for a 1-year trial period.

- (b) The Panel resolved to modify the recommended extended hours to permit operation between **7am and 10am and** 10pm to 12 midnight for a 1-year trial period, **subject to no serving of alcohol prior to 10am.**

Condition (9) External hours of operation - rooftop

- (a) Council recommended base external hours be restricted to between 10am and 8pm Monday to Saturday inclusive, with extended hours between 8pm and 10pm for a 1-year trial period.
 - (b) The Panel resolved to modify the recommended extended hours to permit operation between **8am and 10am and** 8pm to 10pm for a 1-year trial period, **subject to no serving of alcohol prior to 10am.**
13. **D/2023/265/A** – Development consent was granted on 10 December 2024 for a Section 4.55(1A) modification application to stage the works approved under the original development consent D/2023/265.

Compliance Action

14. The site is not subject to any ongoing compliance action.

Amendments

15. Following a preliminary assessment of the proposed development by Council Officers, a request for amendments to the submitted Plan of Management (POM) was sent to the applicant on 21 March 2025. The request required the POM be updated to reflect the following:
- (a) the approved maximum capacity of persons in accordance with Condition (10)(a)
 - (b) the deletion of the eastern terrace on Level 3, as required by Condition (4)(a)
 - (c) items required by Conditions (4) and (5), relating to design modifications for the green room/dressing room on Level 3 and further operational details of the cabaret space and Level 3 entertainment space
 - (d) details of the approved Liquor Licence number and requirements if a Liquor Licence has been obtained from the Liquor and Gaming NSW
16. The applicant responded to the request on 25 March 2025 and 26 March 2025, and submitted the following information:
- (a) updated POM reflecting the approved maximum capacity and Level 3 eastern terrace deleted and
 - (b) a statement that the remaining items will be provided prior to the issue of the relevant Construction Certificate as per the relevant conditions

Proposed Development

17. The application seeks consent for the following:

- Modification of consent to include trading on Sunday. Proposed internal hours of operation on Sunday are 7.00am to 12 midnight, and proposed external hours of operation on Sunday are 8.00am to 10.00pm, in line with the hours of operation already approved for Monday to Saturday by the original development consent (D/2023/265).
- Associated amendments to Conditions (8) 'Internal hours of operation' and (9) 'External hours of operation - rooftop'.
- The subject application does not propose any increase to the patron numbers approved by the original consent, changes to the approved built form, or changes to an existing commercial tenancy located on the ground floor level.

Assessment

18. 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 (Transport and Infrastructure) 2021

19. 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

20. The application is not subject to Clause 2.122 of the SEPP as the proposal is for the modification to operating hours only. No alterations and additions to the development as approved by original development consent D/2023/265 are proposed.

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

21. 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.

22. 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.
23. Conditions relating to the management of stormwater and erosion and sediment control as imposed by the original development consent continue to apply.

Local Environmental Plans

Sydney Local Environmental Plan 2012

24. 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 the MU1 Mixed Use zone.</p> <p>The development is for a private members club (commercial premises), which comprises a restaurant, bar and entertainment area (food and drink premises) and a cabaret area (entertainment facility).</p> <p>The uses are permissible with consent in the zone.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 5 Site specific provisions		
6.60D Oxford Street Cultural and Creative Precinct	Yes	<p>The application does not propose modification to the spaces approved for cultural and creative purposes under the original consent. The proposed additional trading on Sunday further activates the locality during weekends, which supports relevant objectives of the division as a Cultural and Creative Precinct.</p> <p>Conditions to ensure maintenance of neighbourhood amenity and the continued use of dedicated floor space for a cultural or creative purpose as</p>

Provision	Compliance	Comment
		imposed by the original development consent continue to apply.

Development Control Plans

Sydney Development Control Plan 2012

25. 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

26. The site is located within the East Sydney locality. The proposed modification does not include changes to the design as approved under the original development consent and continues to be compatible with the unique character and design principles of the East Sydney locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.15 Late Night Trading Management	Partial compliance	The proposed hours of operation partially comply with Section 3.15 of the DCP with regard to Category A premises outside of a late night trading area. See further details in the 'Discussion' section below.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.11 Acoustic privacy	Yes	An acoustic assessment report has been provided for the subject application, which assesses noise impact during the proposed hours of operation on Sunday and provides noise control recommendations and management measures. Apart from proposed modification to the hours of operations to allow trading for an additional day, conditions relating to

Provision	Compliance	Comment
		<p>noise control measures, an updated Plan of Management, and design modification specifying minimum acoustic performance of glazing assembly for level 3 performance space as imposed by the original development consent continue to apply.</p> <p>Council's Environmental Health Officer has reviewed the application and raised no issues with the proposed modification subject to conditions.</p>

Section 5 – Specific Areas

Provision	Compliance	Comment
5.11 Oxford Street Cultural and Creative Precinct	Yes	<p>The application proposes modification to the hours of operation only and does not result in a change to the built form or dedicated cultural and creative floor space as approved under the original consent D/2023/265.</p> <p>The proposed development maintains consistency with the outcomes and principles of the locality statement, compatibility with the heritage conservation area and nearby heritage items, and activation of frontages facing Crown Street and Foley Street.</p> <p>The proposed additional trading on Sunday supports the realisation of the Oxford Street Cultural and Creative Precinct and further contributes to the activation of Oxford Street and the day and night-time economies.</p> <p>Conditions to ensure maintenance of neighbourhood amenity and the continued use of dedicated floor space for a cultural or creative purpose as imposed by the original development consent continue to apply.</p>

Discussion

Section 3.15 of Sydney DCP 2012 - Late Night Trading Management

27. The application proposes modification to the hours of operation only, by including trading on Sunday.
28. The hours of operation as approved for Monday to Saturday by the original development consent (D/2023/265) are as follows:
 - (a) Internal hours of operation are 7.00am to 12 midnight; and
 - (b) External hours of operation (rooftop) are 8.00am to 10.00pm.
 - (c) The extended hours of operation for internal areas (10.00pm to 12 midnight) and for external (rooftop) (8.00pm to 10.00pm) were approved on a trial period of 1 year.
29. The proposed hours of operation on Sunday seek to match the approved indoor and outdoor trading hours already approved for Monday to Saturday.
30. 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. As per Table 3.7 of the DCP, extended hours of operation for the premises are as follows:
 - (a) Internal extended hours are 10.00am to 12 midnight; and
 - (b) External extended hours are 10.00am to 10pm.
31. The proposed modification does not comply with the DCP control due to proposed morning trading prior to 10.00am.
32. Notwithstanding, the proposal is considered acceptable for the following reasons:
 - (a) The proposed Sunday hours of operation are in line with the hours for Monday to Saturday as approved by the original consent. Conditions prohibiting serving of alcohol prior to 10.00am on premises continue to apply.
 - (b) As discussed above in the history of the original development consent D/2023/265, the Local Planning Panel resolved to modify the extended hours of operations for internal areas and external (rooftop) to allow morning trading prior to 10am, which is outside of the permissible extended hours specified by Table 3.7 of the DCP. The subject modification continues this departure as modified by the Panel in the original consent.
 - (c) The proposal will not unreasonably compromise the amenity of the neighbourhood, subject to the original DA conditions relating to noise control measures, an updated Plan of Management, and design modification specifying minimum acoustic performance of glazing for level 3 performance space.

The proposed additional trading on Sunday will support the realisation of the Oxford Street Cultural and Creative Precinct and further contributes to the activation of Oxford Street and the day and night-time economies, whilst not resulting in significant impacts on the neighbouring amenity.

Consultation

Internal Referrals

33. The application was discussed with Council's:
- (a) Environmental Health Unit - Noise
 - (b) Licenced Premises Unit
 - (c) Safe City Unit
34. The above advised that the proposal is acceptable and that conditions imposed under the original DA consent are sufficient to address impacts from the use. No additional conditions have been recommended.

External Referrals

NSW Police (Kings Cross Local Area Command - licensed premises)

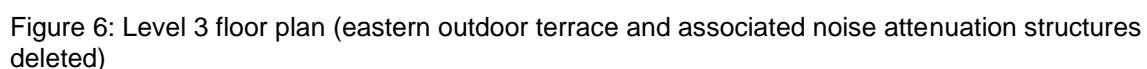
35. The application was referred to the NSW Police Service for comment on 25 February 2025.
36. The Police did not comment on the proposal..

Advertising and Notification

37. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 26 February 2025 and 13 March 2025. A total of 136 properties were notified and 1 submission was received.
38. The submission raised the following issue:
- (a) **Issue:** Noise impacts from the proposed use, particularly from the outdoor terrace.

Response: As discussed in the report above, an acoustic assessment report has been provided for the application, which assesses noise impact during the proposed hours of operation on Sunday and provides noise control recommendations and management measures. Conditions relating to noise control measures (including no speakers or music outside), an updated Plan of Management, and design modification specifying minimum acoustic performance

Further, the outdoor terrace that was proposed in the original DA (near submitter's property at No. 40 Langley Street/ 257 Palmer Street) is to be deleted and replaced with a non-trafficable roof as required by the original development consent. Figure 6 below illustrates proposed Level 3 floor plan, with initially proposed eastern outdoor terrace and associated noise attenuation structures) deleted as conditioned by the original DA (D/2023/265) (deleted area clouded and submitter's property marked in red in image below). The proposed modification is therefore considered acceptable subject to the recommended conditions.



Contribution under Section 7.11 of the EP&A Act 1979

39. The City of Sydney Development Contributions Plan 2015 applies to the site. However, the development is for the modification of hours of operation only and does not include changes to the floor area and uses as approved under the original development consent. Therefore, there is no change to the Section 7.11 local infrastructure contribution imposed under the original consent.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

40. The site is located within the Residual Lands affordable housing contribution area. However, the development is for the modification of hours of operation only and does not include changes to the floor area and uses as approved under the original development consent. Therefore, there is no change to the Section 7.3 affordable housing contribution imposed under the original consent.

Relevant Legislation

41. Environmental Planning and Assessment Act 1979.

Conclusion

42. The proposed modification to D/2023/265 is considered appropriate and generally compliant with the relevant planning controls required by the Sydney LEP 2012 and Sydney DCP 2012.
43. The proposed operation of the premises on Sunday is not considered to result in detrimental impacts to the amenity of surrounding sites subject to recommended conditions.
44. The proposed development will support the realisation of the Oxford Street Cultural and Creative Precinct as a centre for cultural and creative purposes and contribute to the activation of Oxford Street and the day and night-time economies, subject to recommended conditions including ensuring the continued use of dedicated floor space for a cultural or creative purpose.
45. Issues raised in the submission have been taken into account in the assessment, and conditions of consent to maintain neighbourhood amenity have been included in the Notice of Determination as discussed above.

ANDREW THOMAS

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