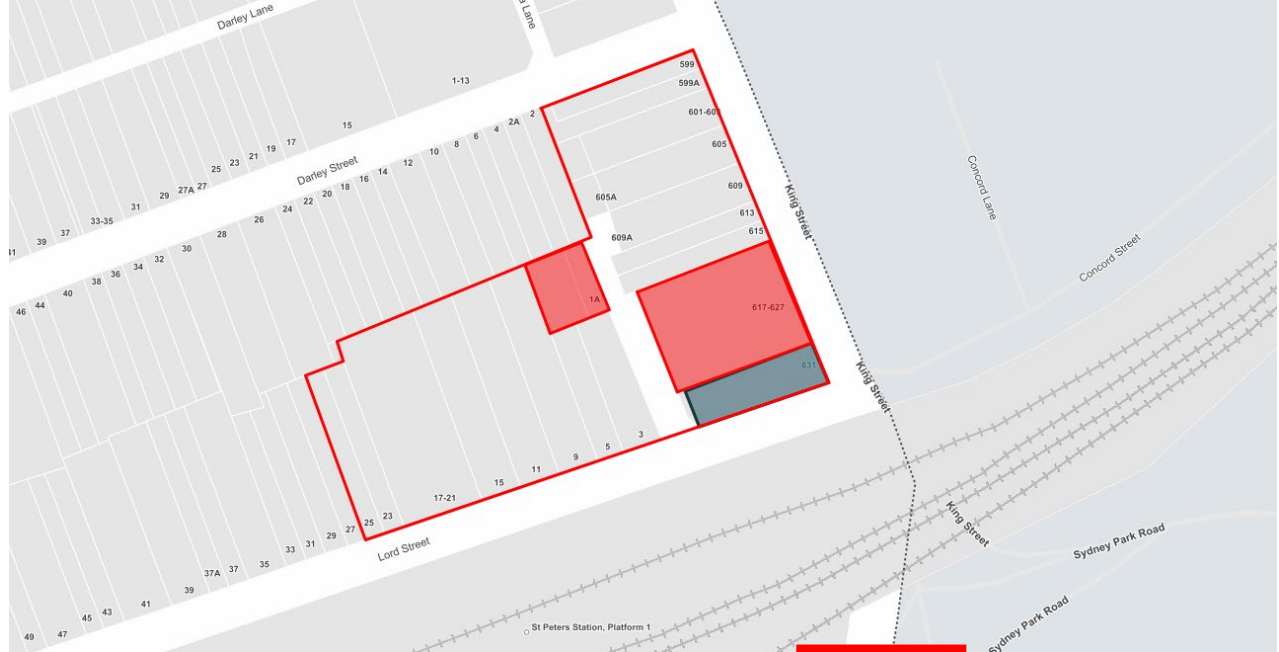




 <h1>INNER WEST COUNCIL</h1>	
DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA201900186
Address	631 King Street Newtown
Proposal	To erect a new raised and covered deck on the rooftop level of the hotel including new toilets to be used in conjunction with the existing hotel
Date of Lodgement	6 June 2019
Applicant	Elaine Richardson Architect
Owner	Aalhuizen Nominees Pty Limited & Sph Partner Pty Limited
Number of Submissions	4 submissions
Value of works	\$200,000
Reason for determination at Planning Panel	FSR variation exceeds 10%
Main Issues	Accessibility; FSR; Acoustic Impacts; Amenity
Recommendation	Approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Statement of Heritage Significance
	
Subject Site	
Notified Area	
Objectors	
Supporters	

1. Executive Summary

This report is an assessment of the application submitted to Council to erect a new raised and covered deck on the rooftop level of a hotel including new toilets to be used in conjunction with the existing pub known as the Sydney Park Hotel at 631 King Street, Newtown. The application was notified to surrounding properties and 4 submissions were received.

The main issues that have arisen from the application include:

- A breach to the floor space ratio development standard of 15.5%;
- The lack of disabled access to the roof top; and
- Potential acoustic and amenity impacts to nearby residents arising from the use of the rooftop space.

The proposal generally complies with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered acceptable given the context of the site and the desired future character of the precinct or can be effectively controlled by conditions of consent. The application is therefore recommended for approval.

2. Proposal

Approval is sought to erect a new raised and covered deck on the rooftop level of the hotel including new toilets for the hotel, and more specifically includes the following:

- Construction of a roof top deck of approximately 132sqm in area which includes the provision of structural works to suspend a new floor above the existing roof to support the loads of the new construction and use;
- Construction of a new acoustic awning structure covering a majority of the roof top deck with an approximate height of 3.3 metres above the existing roof of the building;
- Construction of new acoustic walls at the northern, eastern and western elevations of the roof top deck;
- Construction of bathroom facilities at the north-western corner of the roof of approximately 17.5sqm in area;
- Construction of a new wall and doors at the south-western corner of the roof; and
- Construction of a new covering structure to the southern side of the roof adjoining the existing parapet to conceal existing parapet structural supports.

The rooftop is proposed to be used in conjunction with the existing ground floor of the hotel, being an extension of the existing ground floor operations. Patrons and staff are proposed to move between the ground floor and rooftop, and food and drinks purchased at the ground floor bar will be able to be consumed on the rooftop.

The primary purpose of the existing ground floor bar is the service of food and drink and to provide a dining and drinking space. The intervening level (first floor) contains accommodation also operated by the pub. As the rooftop is proposed to be an extension of this use, the rooftop will primarily be a place for dining and drinking the food and drink

currently being offered by the hotel. It is not proposed to use the rooftop as a separate function space or for the rooftop to be separately leased and operated by another business.

The rooftop is proposed to be limited to a maximum of 100 patrons at any time and to operate from 10.00am to 6.00pm Mondays and Tuesdays, 10.00am to 10.00pm Wednesdays to Saturdays and 12.00pm to 9.00pm Sundays and Public Holidays.

3. Site Description

The subject site is located on the western side of King Street at the intersection of King Street and Lord Street, Newtown. The site consists of 1 allotment and is generally rectangular in shape with a total area of 321 square metres and is legally described as Lot 1 in DP 956255.

The site has a frontage to King Street of 10.19 metres and a secondary frontage of approximate 33.575 metres to Lord Street.

The site contains a two storey building containing a hotel known as the Sydney Park Hotel. The surrounding streetscape consists of three to four storeys mixed use commercial and residential buildings fronting King Street and low density residential dwellings to the west fronting Lord Street. St Peters Railway Station and a rail corridor are to the south of the site. The site is adjoined by 617-623 King Street which contains a three part four storey shop top housing development.

The subject site is a listed heritage item under MLEP 2011, namely St Peters Hotel (I159) and is located within the King Street and Enmore Road heritage conservation area (C2).



Image 1: View of the Site from the intersection of King Street and Lord Street

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site.

Application	Proposal	Decision & Date
200000748	To continue the extended hours of operation of the hotel and to provide live entertainment	Approval – 7 February 2001
200300468	To erect a canopy over part of the roof of the Hotel	Approval – 28 October 2003 (lapsed 28 October 2008)
200700150	To demolish part of the premises and carry out alterations and additions to the Sydney Park Hotel including the creation of an outdoor area for smoking	Deferred Commencement – 7 November 2007 (made active 6 December 2007)
201200259	To fit-out and use an area at the rear of the hotel fronting Lord Street as a takeaway coffee outlet	Approval – 13 March 2013
200000748.02	Application under Section 4.55 of the Environmental Planning and Assessment Act to modify Determination No.200000748 dated 7 February 2001 to extend the hours of operation of the Sydney Park Hotel to 5:00am to 3:00am Mondays to Saturdays and 10:00am to 12:00am Sundays	Deemed Refusal – 4 December 2018 (under appeal to LEC)
DA201800353	To construct a roof deck with an associated awning and new bathroom facilities on the roof of the Sydney Park Hotel.	Withdrawn – 22 March 2019

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
14 August 2019	Amended plans requested by Heritage Specialist for minor design amendments to improve the design/presentation of the awning structure.
16 August 2019	Amended plans submitted addressing the above

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy (Infrastructure) 2007*
- *Marrickville Local Environmental Plan 2011*

The following provides further discussion of the relevant issues:

5(a)(v) *State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)*

Rail Corridors (Clause 85-87)

SEPP Infrastructure provides guidelines for development immediately adjacent to rail corridors. The development involves the construction of a roof top terrace and awning on an existing building adjacent to the rail corridor and will not impact the rail corridor or result in safety impacts.

Development with frontage to classified road (Clause 101)

The site has a frontage to King Street, a classified road. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

Vehicular access to the property is provided from Lord Street and as such is provided by a road other than the classified road. The development would not affect the safety, efficiency and ongoing operation of the classified road and is acceptable in this regard.

5(a)(vi) *Marrickville Local Environment Plan 2011 (MLEP 2011)*

The application was assessed against the following relevant clauses of the *Marrickville Local Environmental Plan 2011*:

- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.5 - Development in areas subject to aircraft noise

The following table provides an assessment of the application against the development standards:

Standard	Existing	Proposal	non compliance	Complies
Height of Building Maximum permissible: 14 metres	12.7 metres	12.7 metres (works not higher than existing building)	NA	Yes
Floor Space Ratio Maximum permissible: 1.5:1 or 481.5 sqm	1.67:1 538.68 sqm	1.73:1 556.23 sqm	74.73 sqm 15.5%	No

(i) Land Use Table and Zone Objectives (Clause 2.3)

The property is zoned B2 – Local Centre under the provisions of MLEP 2011. Commercial premises (including a *Pub*) are permissible with consent within the zone.

The development is considered acceptable having regard to the objectives of the B2 – Local Centre zone.

(ii) Height (Clause 4.3)

A maximum building height of 14 metres applies to the property as indicated on the Height of Buildings Map that accompanies MLEP 2011. The proposed development has a maximum building height of 12.7 metres which complies with the height development standard.

(iii) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 1.5:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

Currently, the existing building represents a breach to the FSR development standard of approximately 57.18sqm or 11.8%. The proposal results in a small amount of additional gross floor area at the site due to the proposed bathroom facilities on the roof. This additional area is approximately 17.55sqm.

As such, the development has a gross floor area of 556.23sqm, which equates to a FSR of 1.73:1 on the 321sqm site, resulting in a development further in excess of the FSR development standard.

The development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011. The application was accompanied by a written submission in relation to the contravention of the development standard in accordance with Clause 4.6 of MLEP 2011, which is discussed below.

(iv) Exceptions to Development Standards (Clause 4.6)

As outlined in table above, the proposal results in a breach of the following development standard:

- Clause 4.4 - Floor space ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of Marrickville Local Environmental Plan 2011 by 15.5% (74.73sqm).

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of Marrickville Local Environmental Plan 2011 below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of Marrickville Local Environmental Plan 2011 justifying the proposed contravention of the development standard, which is summarised as follows:

- The additional built form (ie the toilets) arising from the variation will not be obvious when viewed from the public domain or private lands and is of equal or lesser bulk when compared to neighbouring properties;
- The maximum height of the proposed building is less than 12.7 metres and therefore, well below the 14 metres maximum height permissible under MLEP 2011;

- The height control contemplates a building of greater scale when compared to neighbouring sites, particularly considering the corner nature of the site and height of adjoining buildings, indicating the bulk of the proposal is appropriate to the desired future character of the area;
- The upper storey of the building, which accommodates the proposed amenities, does not consume the whole of the footprint and only partially occupies the roof level floor plate; and
- The additional floor area proposed is minor in the context of the existing building and as a minor increase to the existing non-compliance with FSR.

The applicant's written rationale adequately demonstrates compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the B2 – Local Centre, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The proposal involves a use which serves the needs of people who live in, work in and visit the local area and the uniqueness of the space proposed contributes to the provision of a range of business uses in the zone and maintains the viability of the existing hotel; and
- The proposal provides increased employment opportunities in a location that is readily accessible by railway and bus services.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The building density and bulk of the resultant building form is acceptable in the context of surrounding development and achieves the desired future character of the area by facilitating a new use at the site; and
- The additional built form is unlikely to result in any adverse amenity impacts for surrounding properties, is not readily visible from the public domain and provides sympathetic alterations to the heritage item without impacting the positive contribution of the existing building to the streetscape.

The concurrence of the Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of Marrickville Local Environmental Plan 2011. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the FSR development standard and it is recommended the Clause 4.6 exception be granted.

(v) Heritage Conservation (Clause 5.10)

The site has a number of heritage affectations which are as follows:

- The site is listed as a heritage item under MLEP 2011, namely St Peters Hotel (Item I159);
- The site is located within the vicinity of a heritage item, namely St Peters Railway Station group, including interiors (Item I272); and
- The site is located within a Heritage Conservation Area under MLEP 2011 (Heritage Conservation Area C2 – King Street and Enmore Road).

The application was accompanied by a Heritage Impact Statement prepared by Weir Phillips Heritage.

The application was reviewed by Council's Heritage Specialist who raised no concerns with the proposal given the proposed awning structure will have minimal visibility from the street and is subordinate to the heritage item.

As such, the application has satisfied the objectives of Clause 5.10 of MLEP 2011.

5(b) Draft Environmental Planning Instruments

The application has been assessed against the relevant Draft Environmental Planning Instruments listed below:

- *Draft Marrickville Local Environmental Plan 2011 (Amendment 4)*

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The Draft LEP Amendment contains two matters affecting the subject site being the following:

- That all land reserved on the Land Reservation Acquisition Maps be zoned commensurately on the Land Zoning Map for the property; and
- Change of the heritage item name listing of hotel (heritage item I159) to Sydney Park Hotel (from St Peters Hotel which is the hotel's former name).

The above amendments are housing keeping amendments only and do not impact the current proposal to use the rooftop area.

Accordingly, the development is considered acceptable having regard to the provisions of the Draft LEP Amendment.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

Part	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	No – see discussion
Part 2.6 – Acoustic and Visual Privacy	Yes – see discussion
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.8 – Social Impact	Yes
Part 2.16 – Energy Efficiency	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 5 – Commercial and Mixed Use Development	Yes – see discussion
Part 8 – Heritage	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

(iv) Equity of Access and Mobility (Part 2.5)

Part 2.5 of MDCP 2011 requires consideration to be given to accessibility before granting development consent.

The proposed rooftop area is not accessible, being only accessible via stairs, and therefore does not strictly comply with the requirements of MDCP 2011.

The application has been supported with an Access Report completed by Code Performance which contends that in the circumstances the rooftop works do not trigger the need to make the area accessible. The report also provides an assessment of what aspects of the building will need to be upgraded with regard to access, all of which are minor improvements, such as installing signage, tactile and non-slip material to the stairway.

However, it is considered that the requirements of the BCA are a minimum standard are not necessarily the best measure for providing equitable access to publicly accessible areas. Additionally, the Access Report and other documentation submitted fails to address the access requirements of MDCP 2011; undertake an analysis of what accessible options are available; whether these options are feasible in the context of the site; and what impact any potential works to provide access (such as an elevator or stair lift) would have on the heritage fabric of the building.

Further information has been requested from the applicant regarding access to the premises which will be presented in a supplementary report to prior to the consideration of the application at the Panel meeting.

However, in order to address this matter the Panel could consider the imposition of deferred commencement conditions providing accessibility to the roof top.

(v) Acoustic and Visual Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains objectives and controls relating to acoustic and visual privacy.

Control 7 requires consideration to be given to the potential noise and amenity impacts of commercial and industrial development on residential areas. The roof top is surrounded by residential uses on Lord Street and King Street. As such, the potential impacts of a roof top space to be used in conjunction with the existing hotel within close proximity of residential development must be considered.

The application was supported by an Environmental Noise Assessment completed by Day Design P/L which assessed the potential noise impacts of the roof top use. The assessment determined that the roof top could comply with the relevant acoustic criteria subject to solid barrier walls being erected along the northern, eastern and western sides of the roof top terrace, with a roof above. This is the proposed awning structure depicted on the plans provided. The report also makes a number of other noise controls recommendations including:

- Lining the roof of the awning structure with sound absorptive panels;
- Limiting the audio system to background music only, including location of speakers and sound pressure level;
- Limiting the number of patrons on the rooftop to 100 at any time; and
- Limiting the operation of the rooftop to no later than 10.00pm daily.

The recommendations of the acoustic report are included as conditions in Attachment A. Council's Environmental Health Officer has reviewed the application and is satisfied the proposal complies with the relevant acoustic criteria, subject to the imposition of the above restrictions by condition.

Given the above, the development is considered acceptable having regard to the objectives and control contained within Part 2.6 of MDCP 2011. The application has demonstrated compliance with the relevant acoustic criteria and will not adversely impact the acoustic amenity of nearby residents.

A number of submissions received raised concerns of acoustic impacts as a result of the proposed rooftop to existing apartments at 617-623 King Street, some of which overlook the roof top with balconies and windows. While the rooftop is in reasonably close proximity to some neighbouring apartments, the acoustic walls and awning structure have been designed to shield these properties from noise, with the only open side of the structure being located on the southern side facing Lord Street. Additionally, the acoustic report presented demonstrates compliance with the relevant acoustic controls and appropriate conditions have been included to minimise potential noise impacts and facilitate ongoing management of the rooftop. Conditions have also been imposed to limit the operating hours of the rooftop, which will further assist in minimising potential noise impacts (discussed in greater detail later in this report). As such, the proposal is considered acceptable having regard to acoustic privacy.

Submissions also raise concerns of potential visual privacy impacts to neighbouring apartments at 617-623 King Street from people using the rooftop. The usable roof top area is contained within the awning structure which has a solid roof and northern wall and as such sightlines from the roof top to the northern neighbouring apartments will be limited. Additionally, the roof top structure will sit below the floor level of neighbouring apartment balconies and will have physical separation from the neighbouring building, limiting the potential for any views from persons on the roof top to the neighbouring balconies above. This is illustrated in Image 2 below. As such, the development is considered acceptable having regard to visual privacy.

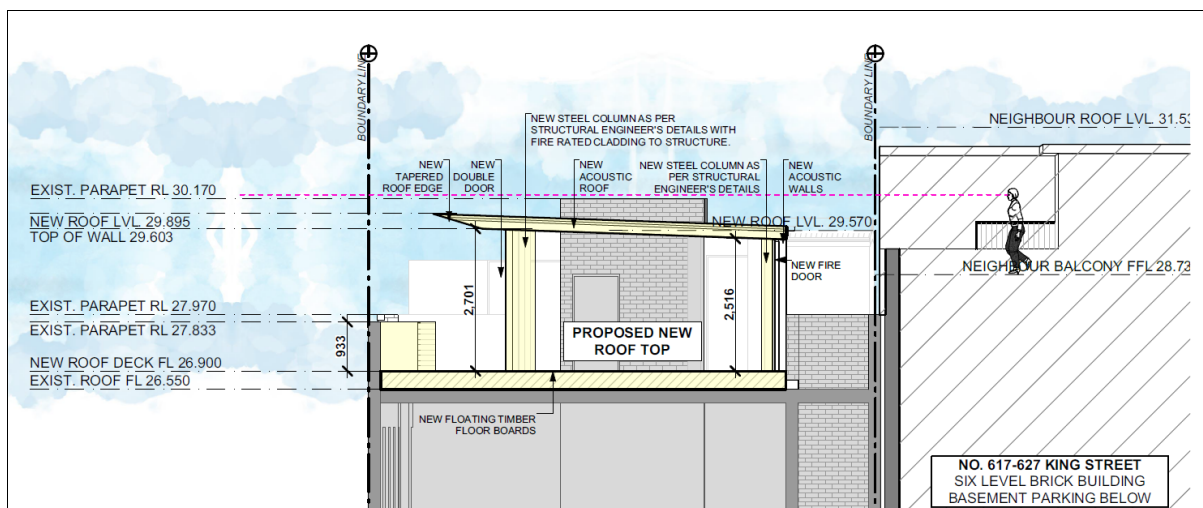


Image 2: Extract from plans showing the relationship of the awning and rooftop to neighbouring balconies

(vi) Plan of Management (Part 5.3.1.1)

A Plan of Management (POM) was submitted with the application, which is generally acceptable having regard to the requirements of Part 5.3.1.1 of MDCP 2011, and is

considered suitable to manage the proposed use and minimise impacts on the surrounding area.

Importantly, the POM proposes to limit the number of patrons on the rooftop to 100 persons at any one time. The proposed number of patrons is considered acceptable given the size of the rooftop space (being 132sqm). Additionally, the acoustic report assessed the potential noise impacts of 100 rooftop patrons and determined noise generated is acceptable in the context of the acoustic criteria. As such, a maximum of 100 patrons is considered reasonable.

Submissions received raised concerns regarding the management procedures and the potential for anti-social behaviour by patrons, including use of the rear lane. The POM submitted includes CCTV and an additional security guard for the rooftop on Friday and Saturday night trade, in addition to the current security guards required for the ground floor of the Hotel under existing consents. The additional security guard, CCTV and management procedures set out in the POM are suitable to manage the potential impacts of the use.

The application was also reviewed by NSW Police who raised no concerns regarding the use of the rooftop, subject to conditions which are included in Attachment A.

(vii) Hours of Operation (Part 5.3.1.4)

Part 5.3.1.4 of MDCP 2011 contains objectives and controls relating to hours of operation.

Controls 86 and 87 states that hours of operation beyond traditional business hours must not unreasonably effect the amenity of nearby residents and must demonstrate the operating hours proposed are suitable with regards to noise and other potential amenity impacts.

The following hours of operation are proposed for the rooftop:

Day	Proposed Hours of Operation
Mondays and Tuesdays	10.00am to 6.00pm
Wednesdays to Saturdays	10.00am to 10.00pm
Sundays	12.00pm to 8.00pm

The proposal includes the late night operation of the roof top from Wednesday to Saturday nights and such extended trading of an outdoor commercial area within very close proximity of residential properties is likely to result in adverse amenity impacts.

While the proposal demonstrates compliance with the relevant acoustic criteria, concern remains that the extended operating hours proposed may result in adverse amenity impacts due to the nature of the roof top space being generally external and its close proximity to residences.

An assessment of the hours of operation of other premises in the vicinity of the site was undertaken to contextualise the proposal with approved commercial development surrounding King Street:

Address	Determination No.	Date of Approval	Approved Use	Trading hours
597 King Street	200000045	9 June 2000	Hotel (Botany View Hotel)	10.00am to 12.00 midnight Mondays to Saturdays and 10.00am to 10.00pm Sundays
599a King Street	200900474	26 May 2010	Laundromat	7:30am to 6:00pm Mondays to Fridays and 7:30am and 8:00pm Saturdays only.
9/605 King Street	201500705	1 June 2016	Café / Restaurant	7.00am to 10.30pm Monday to Saturday and 7.00am to 10.00pm on Sundays
609 King Street	13051	1 May 1990	Chiropractic Surgery	8.00am to 6.00pm Mondays to Wednesdays, Fridays and Saturdays and 8.00am to 9.00pm Thursdays only.
613 King Street	10100	2 October 1985	Shop and picture gallery	8.30am to 5.30pm Mondays to Fridays and 10.00am to 5.00pm Saturdays and Sundays
615 King Street	200800502	11 March 2011	Retail Shop	7:00am to 11:00pm Mondays to Sundays
27/617-623 King Street	201000271	30 July 2010	Bridal Shop	11.00am to 6.00pm Mondays, Tuesdays, Wednesdays and Fridays and 1:00pm to 9:00pm Thursdays and Saturdays and 1:00pm to 6:00pm Sundays
28/617-623 King Street	201000462	5 November 2010	Retail Shop	8:30am to 8:00pm Mondays to Wednesdays and Fridays, 8:30am to 9:00pm Thursdays, 8:30am to 6:00pm Saturdays and Sundays
631 King Street	200000748	7 February 2001	Hotel (Sydney Park Hotel)	5.00am to 12.00am Mondays to Saturdays and 10.00am to 10.00pm Sundays

It is considered that the hours proposed are generally inconsistent with the operating hours of other commercial premises at this edge of King Street. While there are some businesses that exhibit late night trading until 10.00pm, these uses are much less likely to result in amenity impacts and are smaller scale commercial operations which operate within the confines of a building. Additionally, a number of businesses exhibit earlier closing times on weekday evenings with later trading being more prevalent on Thursdays to Saturdays.

The late night trading proposed, particularly on weekday evenings, has the potential to result in adverse impacts to neighbouring residents as the noise generated by the use is more difficult to manage than traditional shopfront premises, given the outdoor nature of the space. Furthermore, the inconsistency of the operating hours proposed with nearby businesses within this portion of King Street indicates that the hours are not suitable for the

locality and should be reduced and placed on a trial period to allow the ongoing management of the use in light of its performance.

In light of the above assessment, the core hours of operation should be limited as follows:

Day	Core Hours
Mondays to Saturdays	10.00am to 6.00pm
Sundays	12.00pm to 6.00pm

Notwithstanding, a trial period is considered acceptable to allow some extended trading of the rooftop and manage the use in light of its performance. The trial hours of operation should be limited to a period of 12 months and as follows:

Day	Trial Hours (12 months)
Mondays to Wednesdays	10.00am to 6.00pm
Thursdays to Saturdays	10.00am to 10.00pm
Sundays	12.00pm to 9.00pm

A number of submissions received raised concerns regarding the operating hours of the rooftop and the extended late night trading. As discussed above, the hours of operation are generally limited to daytime hours with a 12 month trial period for late night operations on Thursdays to Sundays. This allows Council to review of the operating hours in light of their performance and ensure that if adverse impacts arise from late night trading and management of the premises, that these impacts are not permanently ongoing.

The restricted trading hours of the rooftop included in the recommendation aim to balance reasonable operation of the premises with protection of the acoustic privacy and amenity for the surrounding residents.

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

5(e) The suitability of the site for the development

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was notified in accordance with Marrickville Development Control Plan 2011 for a period of 14 days to surrounding properties. A total of 4 submissions were received.

The following issues raised in submissions have been discussed in this report:

- Acoustic Privacy, Noise and Noise Assessment – see Section 5(c)(i)
- Management Procedures, Anti-social behaviour, Patrons and Use of rear lane – see Section 5(c)(ii)
- Hours of Operation – see Section 5(c)(iii)

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: Safety and Security – 617 King Street

Comment: Concerns were raised regarding potential safety and security of the apartments that have balconies and windows overlooking the rooftop. The rooftop space is to be managed by the operator of the premises and contained within the awning structure, which will not allow easy access to neighbouring buildings and it is unlikely security or safety of neighbouring residents will be adversely impacted in this regard.

Issue: Compliance with conditions – ongoing

Comment: Concern is raised about ongoing compliance with conditions of consent and concerns that if tight management and operation controls are imposed, they may be altered by a future amendment. An applicant has a legal right to seek amendment of an approved application under Section 4.55 of the *Environmental Planning and Assessment Act 1979*. However, such applications are assessed under the same requirements and having regard to the original assessment and any proposed modifications will be assessed at that time.

Issue: Hygiene Factors

Comment: Concern is raised about possible hygiene impacts but no specific matters were raised. In any case, the premises is required to comply with the Food Act 2003 and other legislation concerning food related premises. Additionally, conditions are included in the recommendation for the ongoing management of waste and other activities, which may present a hygiene concern.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Heritage Specialist
- Environmental Health Team Leader
- Building Surveyor

6(b) External

The application was referred to the following external body and no issues were raised subject to the imposition of conditions which are included in the recommendation.

- NSW Police

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$1000.00 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

The development is unlikely to result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. 201900186 to erect a new raised and covered deck on the rooftop level of the hotel including new toilets to be used in conjunction with the existing hotel at 631 King Street Newtown, subject to the conditions listed in Attachment A below/for the following reasons.

Attachment A – Recommended conditions of consent

Conditions of Consent

Fees

1. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the Environmental Planning and Assessment Act and in accordance with the relevant current contributions plan:

“Marrickville Section 94/94A Contributions Plan 2014”

Note:

Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:

\$1000.00

*Indexing of the Section 7.12 contribution payment:

Former Ashfield LGA & Former Marrickville LGA:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either in cash; by unendorsed bank cheque (from an Australian Bank only); via EFTPOS (Debit only); or credit card (to a maximum of \$10,000 -

1

Note: A 1% credit card transaction fee applies to all credit card transactions). It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions.

2. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

3. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$2,152.50
Inspection Fee:	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

General Conditions

4. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
1 of 16	Site Plan	05.06.2018	Elaine Richardson Architect
3 of 16	Roof Floor Plan	05.06.2018	Elaine Richardson Architect
4 of 16	Roof and Stormwater Plan	05.06.2018	Elaine Richardson Architect
5 of 16	South Elevation	05.06.2018	Elaine Richardson Architect
7 of 16	East and West Elevations	05.06.2018	Elaine Richardson Architect
8 of 16	Long Section	05.06.2018	Elaine Richardson Architect
9 of 16	Cross Section	05.06.2018	Elaine Richardson Architect
17 of 16	Schedule of Finishes	05.06.2018	Elaine Richardson Architect
-	Plan of Management	May 2019	Sydney Park Hotel
D2017-SPH: Rev 2	BCA report	25.05.2019	Technical Inner Sight
6534-1.1 Rev C	Environmental Noise Assessment	23.05.2019	Day Design P/L

As amended by the conditions of consent.

5. Noise – Consultant's Recommendations

The recommendations contained in Section 7.0 of the acoustic report prepared by Day Design Pty Ltd, reference 6534-1.1R Rev C dated 23 May 2019 must be implemented.

6. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

7. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

8. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

Prior to any Demolition**9. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining 617-623 King Street to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

10. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

11. Asbestos Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide an asbestos survey to Council. The survey shall be prepared

by a suitably qualified Occupational Hygienist and is to incorporate appropriate asbestos removal and disposal methods in accordance with the requirements of SafeWork NSW. A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

Prior to Construction Certificate

12. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

13. BCA compliance

Prior to the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction illustrating the recommendations within the BCA Compliance Assessment dated 22 May 2019 by Technical Inner Sight being incorporated into the development.

14. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

During Demolition and Construction

15. Construction Hours – Class 2-9

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a) 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

8:00am to 12:00pm, Monday to Saturday; and

2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

"Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

16. Stormwater Drainage System

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

Prior to Occupation Certificate

17. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of *the Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Industrial Noise Policy and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

18. Acoustic Report – Compliance

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a) Conditions of development consent; and
- b) Recommendations of acoustic report prepared by Day Design Pty Ltd, reference 6534-1.1R Rev C dated 23 May 2019 must be implemented.

On-going

19. Existing consents relating to the hotel

The conditions of this consent do not preclude the conditions of any other valid and current development consent relating to this property in relation to the operation of the venue.

20. Trial Hours

- a) The hours of operation of the rooftop must not exceed the following:

Day	Hours
Mondays to Saturdays	10.00am to 6.00pm
Sundays	12.00pm to 6.00pm

- b) For a period of not more than 12 months from the issue of the Final Occupation Certificate for the rooftop area approved in this consent, the hours of operation of the premises must not exceed the following:

Day	Hours
Mondays to Wednesdays	10.00am to 6.00pm
Thursdays to Saturdays	10.00am to 10.00pm
Sundays	12.00pm to 9.00pm

- c) A continuation of the extended hours will require a further application under the *Environmental Planning and Assessment Act 1979*.

21. Noise General

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

22. Noise – Licensed Premises (7am – 12midnight)

The LA10 noise level emitted from the premises, measured between the hours of 7am and 12 midnight, is not to exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive) by more than 5 dB, when measured at the boundary of any adjoining residence.

23. Licensed Premises – Plan of Management - Operation

The operation of the premises complying at all times with the approved Plan of Management. The Plan of Management is not to be further amended without the prior written approval of the Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency.

24. Complaints Register

A complaints register shall be maintained and provided to Council Officers, Environmental Protection Authority Officers and Police Officers upon their request. The complaints register is to include:

- Contact details of all complainants
- Time and date the complaint is received
- Description of the complaint
- Description of the activities occurring which gave rise to the complaint
- Action taken to resolve the issue/complaint.

25. Additional Management Controls

- a) No live music or entertainment is to be provided within the rooftop area at any time.
- b) Any amplified music on the rooftop must be restricted to background music only and in accordance with the levels prescribed in Section 7.0 of the acoustic report prepared by Day Design P/L
- c) The number of patrons using the rooftop is restricted to a maximum of 100 patrons at any one time.
- d) No glass is to be utilised in the rooftop area at any time.
- e) Deliveries shall occur during daytime between 7.00am and 6.00pm.
- f) Rubbish, including used glass bottles, shall not be disposed of within the bins after 10.00pm.
- g) The staff and security must ensure that patrons do not loiter outside neighbouring properties on King Street or within the rear lane.

26. Security

The venue must employ the services of one (1) licensed security guard in connection with the rooftop use and from 7.00pm until 15 minutes after the last person leaves the rooftop Fridays and Saturdays. This security requirement is in addition to any security required by other development consents for the ground floor hotel use.

27. Incident Register

The manager/licensee must ensure that all incidents involving staff members (including security personnel) are recorded in the incident register maintained on site, including incidents involving physical contact between staff and patrons, physical restraint of patrons and/or the ejection of patrons from the premises

28. Crime Scene Preservation

The manager/licensee must ensure that immediately after the licensee or a staff member becomes aware of any incident involving an act of violence causing an injury to a person on the premises, the following is adhered to:

- a) The manager/licensee and/or staff take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police.
- b) The manager/licensee and/or staff make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident; and
- c) The manager/licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

29. CCTV

- a) The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements
- b) The system must record continuously from opening time until one hour after the last person (including employees/contractors) have left the premises.
- c) Recording must be in digital format and a minimum of 15 frames per second
- d) Any recorded image must specify the time and date of the recorded image; and the system's camera must cover the following areas (i) all entry and exit points on the premises, (ii) the footpath immediately adjacent to the premises, (iii) all publicly accessible areas (other than the toilets) on the premises.
- e) The Licensee must also keep all recordings made by the CCTV system for at least 30 days and ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage and provide any recordings

made by the system to a police officer or inspector within 24 hours of any request by a Police officer or Inspector to provide such recording.

Advisory notes

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a) the Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b) a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Toilet Facilities

The following facilities must be provided on the site:

- a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones

respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

Failure to comply with conditions

Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a) Application for any activity under that Act, including any erection of a hoarding.
- b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
- d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
- e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
- f) Development Application for demolition if demolition is not approved by this consent.

- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

National Construction Code (Building Code of Australia)

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

Notification of commencement of works

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Permits from Council under Other Acts

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Health Premises Registration – Generic

The premises are required to be registered with Council's Environment Health Team in accordance with the following relevant legislation:

- a) Food Shop - Food Act 2003
- b) Hairdressing Salon / Barber - Public Health Act 2010 and the Local Government (General) Regulation 2005
- c) Skin Penetration - Public Health Regulation 2012.

- d) Cooling Tower / Warm Water System - Public Health Act 2010 and Public Health Regulation 2012
- e) Boarding House / Shared Accommodation - Boarding Houses Act 2012 and the Local Government (General) Regulation 2005

Food Premises Certification

The food premises design, construction and operation is in accordance with the:

- a) Food Act 2003
- b) Food Regulation 2010
- c) Australia and New Zealand Food Standards Code
- d) Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises)
- e) Australian Standard AS 1668 Part 1 – 1998
- f) Australian Standard AS 1668 Part 2 – 2012; and
- g) Building Code of Australia

Food Premises Waste Storage Area

To ensure adequate storage and collection of waste from the food premises, all garbage and recyclable materials must be stored in a designated waste storage area. The designated waste storage area must be designed and constructed in accordance with the Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

Mechanical Ventilation System Certification

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the:

- a) Building Code of Australia,
- b) Australian Standard AS 1668 Part 1 – 1998,
- c) Australian Standard AS 1668 Part 2 – 2012,
- d) Australian Standard 3666.1 – 2011,
- e) Australian Standard 3666.2 – 2011; and
- f) Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the

approved plans required to house the system must be the subject of further approval from Council.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Fire Safety Certificate

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

Dial before you dig

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"

Long Service Payments Corporation	131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneypwater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	

www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development



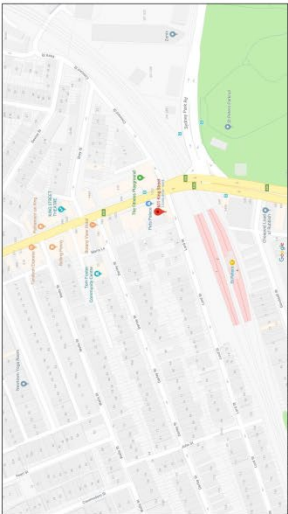
ELAINE
RICHARDSON
ARCHITECT

DEVELOPMENT APPLICATION

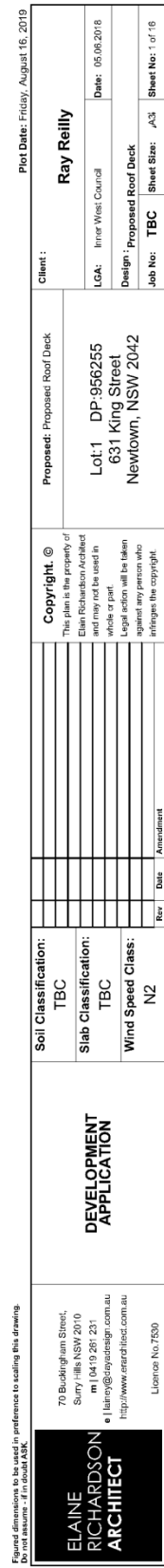
INNER WEST COUNCIL

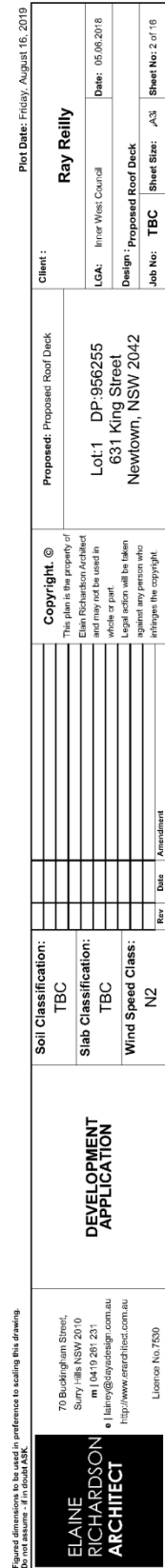
PROPOSED ROOF DECK AT
ADDRESS: 631 KING STREET,
NEWTOWN NSW 2042
SITE: LOT 1 | D.P.: 956255
AREA: 321.00 sq.m.

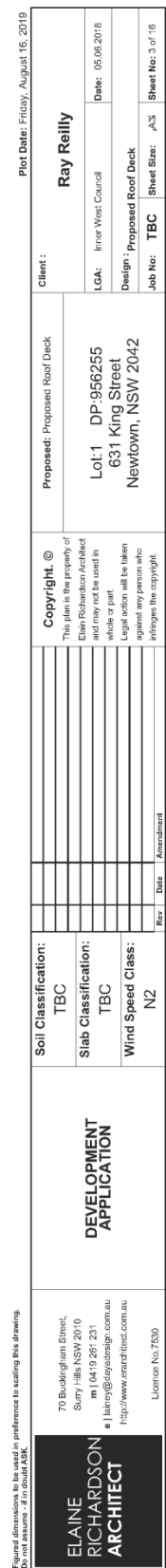
Page No:	Description
	Cover Page
1	Site Plan
2	Site Analysis Plan
3	Floor Plan
4	Roof Plan & Stormwater Drainage Plan
5	South Elevation (Lord Street)
6	South Elevation (Lord Street)
7	East (King Street) & West (Laneway) Elevations
8	Longitudinal Section
9	Cross Section
10	Shadow Analysis Plan 21st June 9am
11	Shadow Analysis Plan 21st June 10am
12	Shadow Analysis Plan 21st June 11am
13	Shadow Analysis Plan 21st June 12nn
14	Shadow Analysis Plan 21st June 1pm
15	Shadow Analysis Plan 21st June 2pm
16	Shadow Analysis Plan 21st June 3pm
17	Schedule of Materials and Finishes

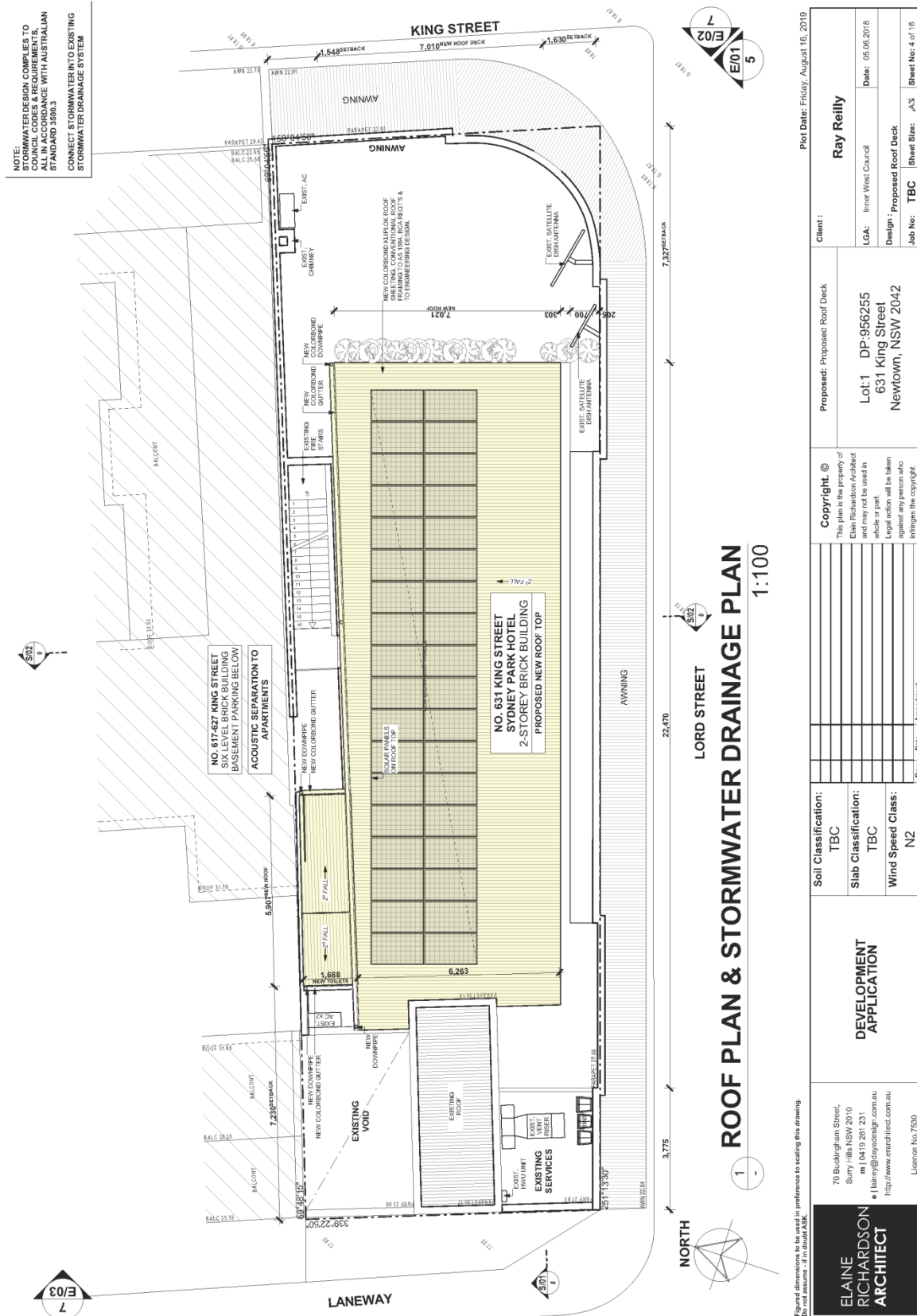


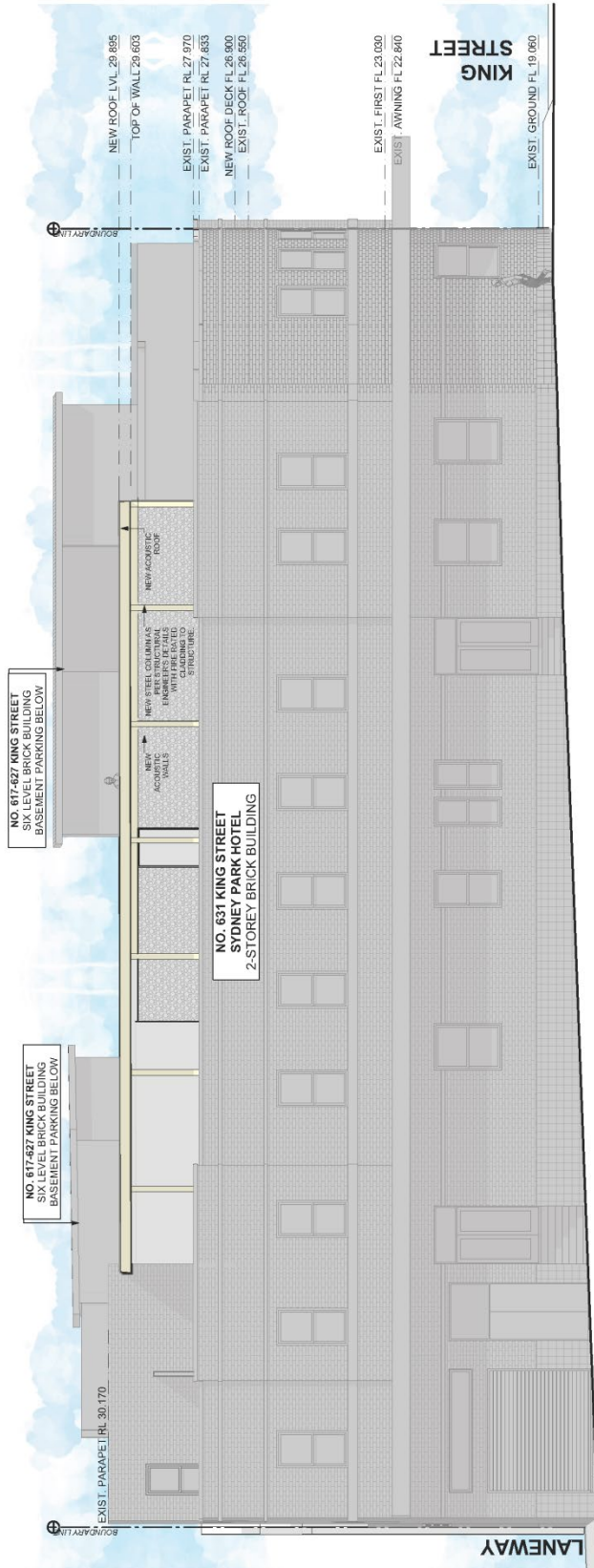
PROJECT LOCATION PLAN









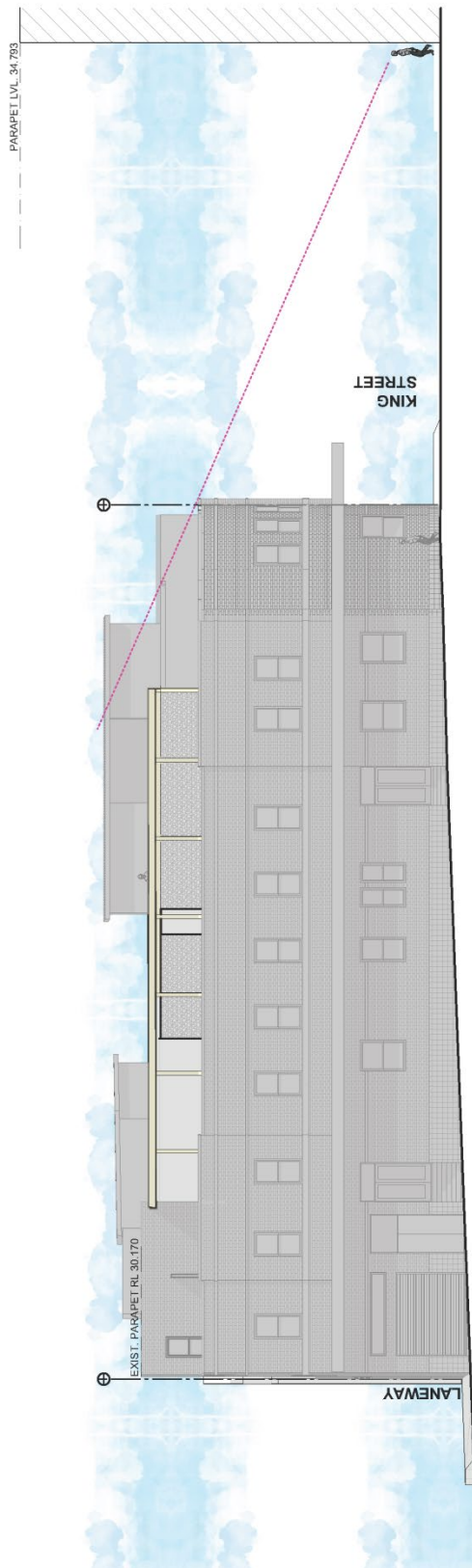


SOUTH ELEVATION (Lord Street)
1:100

1

Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

<div>70 Buckingham Street, Surry Hills NSW 2010</div> <div>Elaine Richardson Architect</div> <div>elaine@elaineandrichardson.com.au http://www.elaineandrichardson.com.au</div> <div>Licence No. 7530</div>	<div>DEVELOPMENT APPLICATION</div>	Soil Classification: TBC				<div>Copyright. ©</div> <div>This plan is the property of Elaine Richardson Architect and may not be used in whole or part. Legal action will be taken against any person who infringes the copyright.</div>	Proposed: Proposed Roof Deck	Client: Ray Reilly	Plot Date: Friday, August 16, 2019
		Slab Classification: TBC							
		Wind Speed Class: N2							



1 SOUTH ELEVATION (Lord Street) 1:150

<div>ELAINE RICHARDSON ARCHITECT</div> <div>70 Buckingham Street, Surry Hills NSW 2010 Surry Hills NSW 2010 M 04 19 291 231 E lair@e-richardson.com.au http://www.e-richardson.com.au</div> <div>Licence No 7520</div>	<div>DEVELOPMENT APPLICATION</div>	<div>Soil Classification:</div> <div>TBC</div>	<div>Slab Classification:</div> <div>TBC</div>	<div>Wind Speed Class:</div> <div>N2</div>	<div>Copyright. ©</div> <div>This plan is the property of Elaine Richardson Architect and may not be used in whole or part. Legal action will be taken against any person who infringes the copyright.</div>	<div>Proposed: Proposed Roof Deck</div>	<div>Client :</div> <div>Ray Reilly</div>	<div>Plot Date: Friday, August 16, 2019</div>	
					<div>Lot:1 DP-956255 631 King Street Newtown, NSW 2042</div>	<div>LGA: Inner West Council</div>	<div>Date: 05.09.2018</div>		
						<div>Design: Proposed Roof Deck</div>	<div>Job No: TBC</div>	<div>Sheet No: 6 of 16</div>	

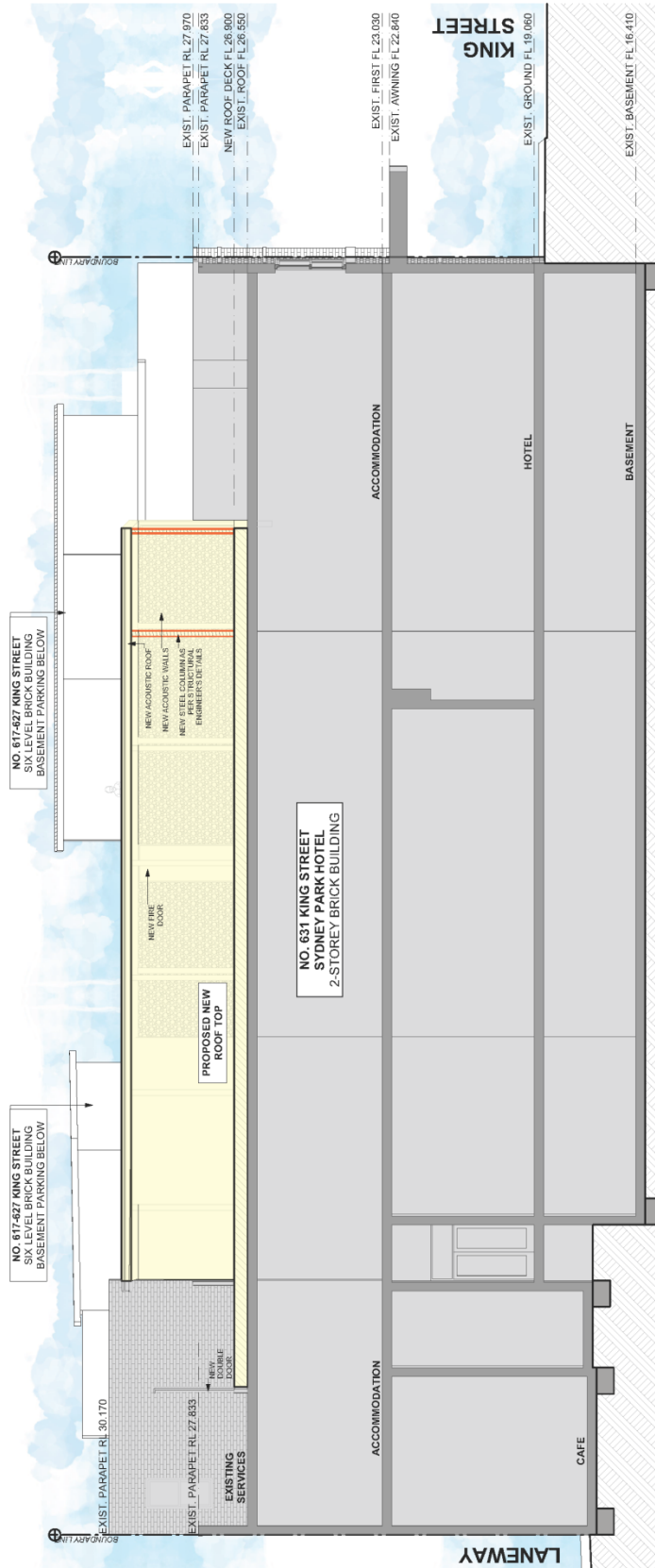


EAST ELEVATION (King Street)
1:100

WEST ELEVATION (Laneway)
1:100

Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

ELAINE RICHARDSON ARCHITECT 70 Buckingham Street, Surry Hills NSW 2010 m 04 91 281 231 e laine@sydneypark.com.au http://www.enrarchitect.com.au License No 7530	DEVELOPMENT APPLICATION		Soil Classification: TBC		Copyright. © This plan is the property of Elaine Richardson Architect and may not be used in whole or part. Legal action will be taken against any person who infringes the copyright.		Client: Ray Reilly		Plot Date: Friday, August 16, 2019	
	Slab Classification: TBC		Proposed: Proposed Roof Deck Lot 1 DP-956255 631 King Street Newtown, NSW 2042		LGA: Inner West Council Date: 05.08.2018		Design: Proposed Roof Deck		Job No: TBC Sheet No: 7 of 16	
	Wind Speed Class: N2		Rev		Date		Amendment			

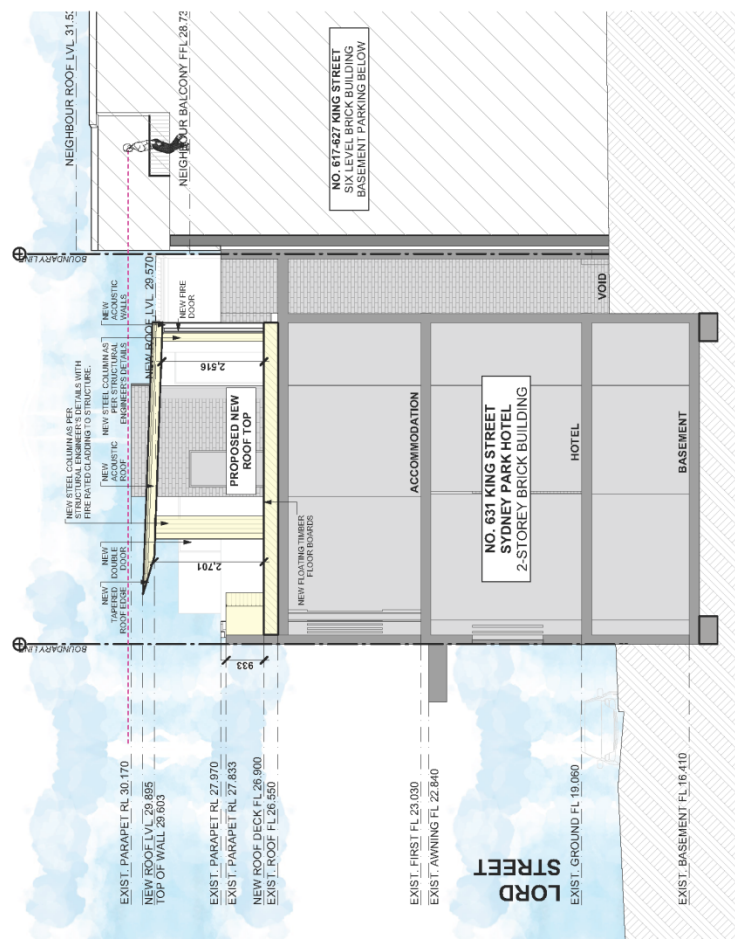


LONGITUDINAL SECTION

1:100

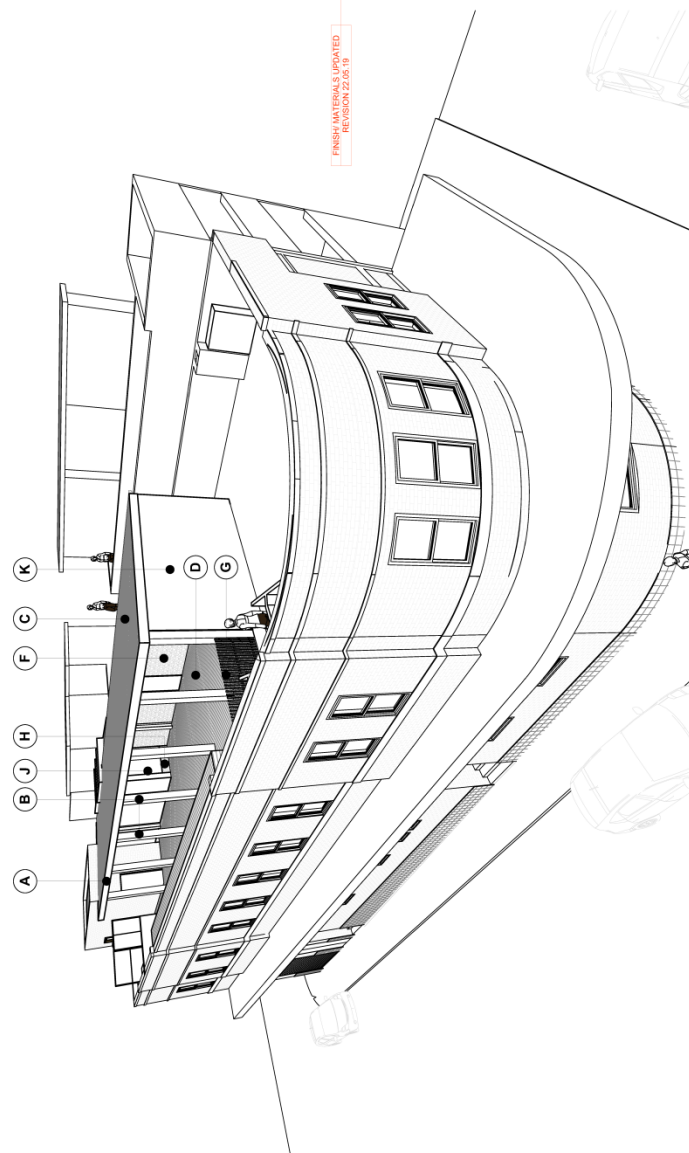
Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

<div>ELAINE RICHARDSON ARCHITECT</div> <div>70 Buckingham Street, Surry Hills NSW 2010</div> <div>• lairey@sydneyarchitect.com.au http://www.elaine-richardson.com.au</div> <div>Licence No. 7530</div>	<div>DEVELOPMENT APPLICATION</div>	<div>Soil Classification:</div> <div>TBC</div>	<div>Copyright. ©</div> <div>This plan is the property of Elaine Richardson Architect and may not be used in whole or part. Legal action will be taken against any person who infringes the copyright.</div>	<div>Proposed: Proposed Roof Deck</div>	<div>Client :</div>	<div>Plot Date: Friday, August 16, 2019</div>	
		<div>Slab Classification:</div> <div>TBC</div>		<div>Lot:1 DP:956255 631 King Street Newtown, NSW 2042</div>	<div>LGA:</div> <div>Inner West Council</div>	<div>Ray Reilly</div>	<div>Date: 05.08.2018</div>
		<div>Wind Speed Class:</div> <div>N2</div>			<div>Design :</div> <div>Proposed Roof Deck</div>	<div>Job No:</div> <div>TBC</div>	<div>Sheet Size:</div> <div>A3</div>
							<div>Sheet No: 8 of 16</div>



CROSS SECTION
1:100

<div>ELAINE RICHARDSON ARCHITECT</div> <div>70 Buckingham Street, Surry Hills NSW 2010 M (04) 91 261 231 e elaine@elainerichardson.com.au http://www.elainerichardson.com.au</div> <div>Licence No.7520</div>	<div>DEVELOPMENT APPLICATION</div>	<div>Soil Classification:</div> <div>TBC</div>				<div>Slab Classification:</div> <div>TBC</div>				<div>Wind Speed Class:</div> <div>N2</div>				<div>Copyright. ©</div> <div>This plan is the property of Elaine Richardson Architect and may not be used in whole or part. Legal action will be taken against any person who infringes the copyright.</div>	<div>Proposed: Proposed Road Drivk</div>	<div>Client :</div>	<div>Plot Date: Friday August 16, 2019</div>
		<div>Ray Reilly</div> <div>LGA: Inner West Council Date: 05.08.2018</div> <div>Design : Proposed Roof Deck</div> <div>Job No: TBC Sheet Size: A3 Sheet No: 9 of 16</div>															



SCHEDULE OF MATERIALS & FINISHES

Note: colours & finishes may vary slightly during construction

Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

[illegible]

Attachment C- Clause 4.6 Exception to Development Standards



CLAUSE 4.6 REQUEST FOR VARIATION TO

CLAUSE 4.4 FLOOR SPACE RATIO

OF

MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011

(2011)

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



1.0 Introduction

- Andrew Martin Planning has been engaged by the applicant to prepare a Clause 4.6 Variation Request to Clause 4.4 FSR of the MLEP 2011. The Clause 4.6 request is submitted to Inner West Council to accompany a Development Application for roof top amenities that results in a variation to the prescribed numerical FSR control.
- The subject site is No. 631 King Street, Newtown, legally described as Lot 1 DP 956255. It is occupied by the Sydney Park Hotel (SPH).
- The proposal consists of roof activation of the hotel which includes new enclosed amenities and wash area.
- In a previous DA lodged with Council (subsequently withdrawn), Council staff estimated that additional GFA associated with the amenities would result in a non-compliance with the FSR for the site. Insufficient information had been lodged to fully assess this matter and no variation request was lodged with the DA. Under the provisions of the EP&A Act Council could not statutorily be satisfied that any variation could be supported. The DA was to be refused based on this issue together with other grounds.
- The applicant has reviewed the Gross Floor Area of the existing building and the subject proposal and found that the existing and proposed GFA exceeds the numerical maximum.
- This is a written request to vary clause 4.4 (floor space ratio) of Marrickville LEP 2011 - a *development standard* pursuant to the provisions of Clause 4.6 of MLEP 2011.
- The relevant maximum floor space ratio control is 1.5:1. The existing FSR is 1.67:1. The proposal seeks approval for an additional 21.95sqm (new amenities), resulting in a total GFA variation of 57.18sqm in total. In isolation the proposed additional 17.55sqm results in 5.46% variation (FSR of 1.73:1).
- The relevant Floor Space Ratio control is a *development standard* for the purposes of the *EP & A Act 1979*.
- This request to vary the floor space ratio development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action").
- The relevant case law confirms that the consent authority does not need to be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "*only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed*".
- The objectives of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- The relevant plans relied upon are those identified as the plans prepared by Elaine Richardson Architect (GFA Calculations) dated 07.05.19.

2.0 Development Standard to be Varied – Floor Space Ratio

The relevant *development standard* to be varied is the 1.5:1 floor space ratio control under Clause 4.4. Clause 4.4 of MLEP relevantly provides:

- (1) *The objectives of this clause are as follows:*
- (a) *to establish the maximum floor space ratio,*
 - (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
 - (c) *to minimise adverse environmental impacts on adjoining properties and the public domain.*

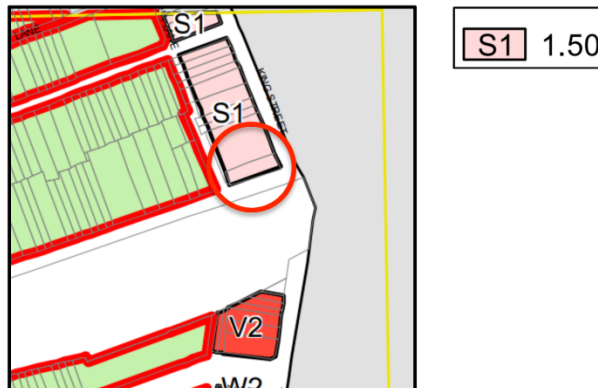
Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the *Floor Space Ratio Map*.

The relevant floor space ratio map is identified below:

The subject site is mapped “S1” – 1.5:1



3.0 Nature of Variation Sought

The requested variation is as follows:

Site area: 321sqm
Permissible GFA: 481.5sqm

Existing GFA: 538.68sqm
Exceedance: 57.18sqm or 11.8%

New GFA: +17.55sqm

Total proposed GFA: 556.23sqm
Total Variation: 74.73sqm or 15.5%

The following plans show the site plan and roof level plan of the development:

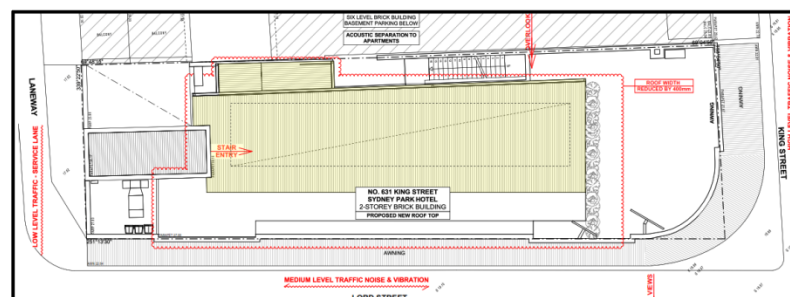


Figure A: Extract of Site Plan (Source: Elaine Richardson, 2019)

Clause 4.6 – Request for Variation - FSR
631 King Street, Newtown
Sydney Park Hotel

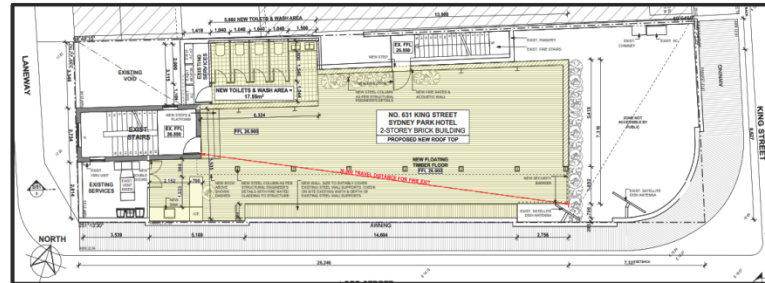


Figure B: Extract of Roof Level Plan (Source: Elaine Richardson, 2019)

4.0 Floor Space Ratio – Development Standard

A development standard is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed."

The 1.5:1 maximum floor space ratio standard is a *development standard* as defined under the *EP&A Act 1979*.

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



5.0 Clause 4.6 of Marrickville Local Environmental Plan 2011

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The FSR development standard is not expressly excluded from the operation of cl 4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)*

The proposed development does not comply with the FSR development standard pursuant to cl 4.4 of the MLEP 2011. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 7 below.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the MLEP 2011 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Sections below of this written request addresses the matters required under cl4.6(5) of the MLEP. Clauses 4.6(6) and (8) are not relevant to the proposed development and cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

5.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. There is no provision in LCLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH").

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J* identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

- (1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



(3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question – set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and

(4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)).

For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it “only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed those matters.”

6.0 **Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the “unreasonable and unnecessary” Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under **Cl. 4.6(3)(a)**.

Preston CJ at states as follows:

*“As to the first matter required by **cl 4.6(3)(a)**, I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”*

Based on the above the following identifies the first method identified in *Wehbe*:

“Ways of establishing that compliance is unreasonable or unnecessary

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**: (our emphasis).*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

COMMENT:

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the control it is necessary to identify the purpose of the FSR control and then progress to dealing with the consistency or otherwise with the FSR objectives. The

Clause 4.6 – Request for Variation - FSR
631 King Street, Newtown
Sydney Park Hotel



first consideration relates to overall scale of a building given that FSR, combined with height of the development, determines the scale of a building to another building or nature feature.

The following points are made:

- The visual fit of the building in this particular instance having regard to the variations sought is acceptable and appropriate for this site being a corner site having adjoining built form equal to or bulkier than the subject proposal.
- The maximum height of the building is less than 12m and therefore, well below the 14m maximum Height of Building permissible under the LEP.
- The upper storey of the building which accommodates the proposed amenities does not consume the whole of the footplate and in fact only partially occupies the roof level floor plate.
- The additional volume of built form (ie the toilets in this case) arising from the variations will not be obvious when viewed from the public domain or private lands. This is demonstrated in the architectural plans submitted to Council and will be apparent to the assessing officer whilst under assessment.
- The built form responds to its context having regard to its site features.
- The streetscape presentation of the building is acceptable in this instance having regard to the existing adjoining development.
- The amenities allow for a necessary incidental area that supports the historical use of the site. Without the additional FSR patrons will be at a disadvantage.
- The height control contemplates are building of greater scale when compared to neighbouring sites particularly considering the corner nature of the site and height of adjoining buildings (see Fig A below);

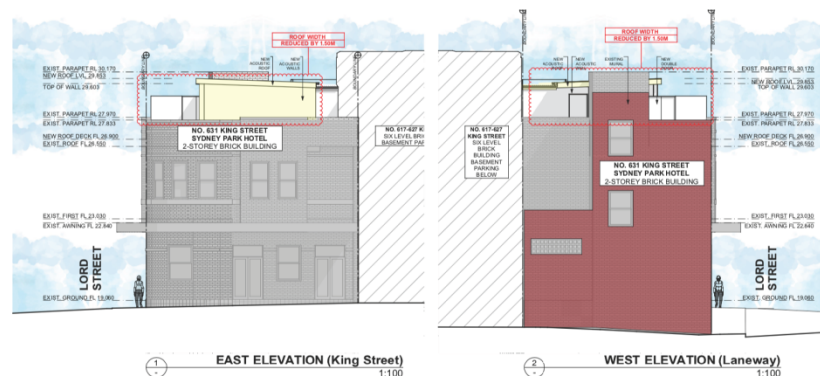


Fig A: Part plan extract

The additional GFA facilitates the amenities which provide a very subtle transition between the SPH and the 6 level adjoining development. The proposed amenities element fits with the awning roof element to provide a transition to adjoining development.

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case are weighted on the bulk and scale of the building; any environmental impacts on adjoining properties; and the public domain.

The following justification applies to the additional minor amount of FSR. The additional FSR essentially enables the development to offer a transition to the higher building to the north.

(a) to establish the maximum floor space ratio

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



Comment: This is an administrative objective which does not account for Council's consideration of a cl 4.6 variation to the development standard prescribed in the LEP.

(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas.

Comment: The building easily complies with the 14m height limit for the site and there are no other controls that would prevent a greater FSR. Therefore, it is reasonable to expect some disparity between FSR and height in this case. The intent is to achieve "the desired future character" as opposed to maintaining the existing character. On this basis it is expected that adjoining development would achieve the height contemplated by the controls. As stated the additional height to the rear of the building acts a transition between the two sites to mediate the step up in height between the two properties. The additional GFA amounts to 17.55sqm of additional GFA. We also note that there would be little opportunity to demolish the subject building and rearrange the floor plates to achieve a higher slender building that complied with the GFA given the heritage constraints. This fact provides a site specific constraint that would not exist for all other land in the zone.

(c) to minimise adverse environmental impacts on adjoining properties and the public domain

The amenities are sited so that they do not overtake the existing building when viewed from the public domain. The amenities do not read as a third level given the proposed setbacks from the parapet edge facing the laneway, Lord Street and King Street. The amenities are fully enclosed and have no adverse impact on the adjoining properties. There are no impacts on the public domain as a result of the proposal.

7.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to floor space ratio and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned B2 Local Centre. As stated above there is no opportunity to demolish the building to achieve the height control with the permitted FSR due to the heritage listing. Further the amenities are ancillary and incidental to the existing use including the adaptive reuse of the roof as a licensed area.

The additional FSR occurs in two ways:

1. The existing GFA of the building currently exceeds the FSR development standard.
2. The proposed new amenities add a small amount of GFA to the total GFA of the building and only increase the non-compliance by 5.46%.

The environmental planning grounds provide justification for the additional gross floor area and consequential floor space ratio is provided as follows:

- There is an apparent disconnect between FSR and Height of Building for this site.
- The building is well below the permissible height limit for the site (being 14m) and is a heritage item thus limited potential to rearrange GFA.
- The proposal is a minor (5.46%) increase over the existing GFA and FSR for site.
- The proposal does not result in an undue overshadowing of neighbouring properties.

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



- Provides for a transition between the two existing properties to achieve the desired future character that is based on a 14m height control (appropriate for corner building to align with existing built form).
- Acoustic Report has been prepared and the recommendations contained in that report include measures to address the outdoor use of the roof level. The amenities add to the GFA of the building but do not necessarily add to the noise emissions from the site. In fact the amenities building provides a barrier to noise transfer between the two properties. The amenities are ancillary and incidental to the use of the building as a pub.
- The amenities structure does not dominate the existing built form which is overwhelmingly 2 storeys. The new amenities structure integrates with the non GFA structures (i.e. roof elements) to provide an appropriate urban form providing a transition with adjoining development.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant the proposed variation. Clause 1.3 of the *EP & A Act 1979* relevantly provides:

“1.3 Objects of Act

(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,**
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,**
- (c) to promote the orderly and economic use and development of land,**
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,**
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,**
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

A proposed development satisfies the objectives of under S1.3 *EP&A Act 1979*.

The plans by Elaine Richardson, Architect and specifically the additional GFA shown in the figures above satisfies the objectives in bold given that:

- It offers better and proper management of the States land resources by providing a more efficient use of the land that is currently zoned for urban purposes so as to satisfy objective A.
- It provides an appropriate adaptive use of the roof space considering the pub has existed for decades and is a permissible use in the zone.
- More efficient and design responsive outcomes promoted by the development (without any significant corresponding impacts on neighbours) which is consistent with objectives (c) and (g) to promote orderly and economic use of the land.

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



- It promotes the ongoing operation of a longstanding business within a heritage listed item in a manner that is respectful of the building's history while providing a viable future for the site.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

The new amenities are ancillary and incidental to the use of the building as a pub. They do not, by built form or use, significantly add to the overall GFA of the building and do not significantly impact on adjoining/adjacent properties or the public domain.

In summary, the FSR variation is considered to be in the public interest given its ability to preserve amenity but also because of its ability to provide the site specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case. Heritage items often require alternate design solutions to keep the existing layout in tact and to prevent more interventional works. The justification provided for this particular site would not be relevant to all lands within the zone.

Clause 4.6(4)(a)(ii) The proposed Development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variations, as one departing from the FSR standard, to reasonably satisfy the stated objectives of the zone.

B2 Local Centre

The objectives of the B2 Local Centre zone are as follows:

1 Objectives of zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.*
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*
- *To constrain parking and reduce car use.*

The following provides a review of the zone objectives:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposal achieves the stated objectives by continuing and supporting the use of the site as a hotel. The hotel is a longstanding business and for decades has provided a local entertainment and meeting place for locals, workers and visitors. It supports the local economy and provides positive contribution to the streetscape.

- *To encourage employment opportunities in accessible locations.*

Clause 4.6 – Request for Variation – FSR
631 King Street, Newtown
Sydney Park Hotel



The existing hotel provides employment opportunities in a location that is accessible by all forms of private and public transport.

- *To maximise public transport patronage and encourage walking and cycling.*

The site is located in a highly accessible location.

- *To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.*

The hotel provides onsite accommodation.

- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*

The existing hotel provides a semi-active street frontage with multiple pedestrian entry points along each frontage and ground floor external windows providing casual surveillance of the public domain areas along each frontage.

- *To constrain parking and reduce car use.*

There is no onsite public parking. The site is accessible via all forms of public and private transport.

Departure from the FSR control does not hinder the ability of the development to provide an appropriate visual fit taking into account the site's own constraints and opportunities, context and zoning objectives.

8.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the LCLEP.

The Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- the public benefit of maintaining the development standard, and*
- any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Clause 4.6 – Request for Variation - FSR
631 King Street, Newtown
Sydney Park Hotel



The proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site and this particular design by Elaine Richardson Architects is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated above, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the Floor Space Ratio development standard under cl 4.4 of MLEP 2011 where the control is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.4 of the MLEP 2011 and is consistent with the relevant objectives of the B2 zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposal will not result in unreasonable levels of environmental impact in that the amenity of neighbouring properties will be reasonably maintained and there will be no adverse impacts created by the additional GFA in terms of solar amenity, noise generation, visual privacy and streetscape of the locality emanating from the new amenities. In fact the amenities structure will provide shielding to sound generated on the roof top area;

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the FSR development standard including:

- The additional GFA relates to new amenities which are ancillary and incidental to the overall occupation and use of the site as a pub which is a heritage item.
- The new building works do not, of themselves, result in overshadowing, noise or privacy impacts on adjoining/adjacent properties or the public domain.
- There is a lack of adverse environmental amenity impacts arising from the proposed amenities.

A handwritten signature in black ink, appearing to read 'AMartin'.

Andrew Martin MPlA
Planning Consultant

Attachment D – Statement of Heritage Significance

3/19/2019

St Peters Hotel, Including Interiors | NSW Environment & Heritage


[Home](#) > [Topics](#) > [Heritage places and items](#) > [Search for heritage](#)

St Peters Hotel, including interiors

Item details

Name of item:	St Peters Hotel, including Interiors
Other name/s:	Sydney Park Hotel
Type of item:	Built
Group/Collection:	Commercial
Category:	Hotel
Primary address:	631 King Street, Newtown, NSW 2042
Local govt. area:	Marrickville

All addresses

Street Address	Suburb/town	LGA	Parish	County	Type
631 King Street	Newtown	Marrickville			Primary Address

Statement of significance:

This hotel, displaying Art deco influence, is an unusual and visually arresting starting point for the King Street Retail Precinct.

Date significance updated: 11 Jan 12

Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The State Heritage Inventory is continually being updated by local and State agencies as new information becomes available. Read the [OEHS copyright and disclaimer](#).

Description

Physical description:	A corner hotel of Art Deco influence. It features dogtooth brickwork detailing to a dappled red brick facade. The facade features a curved corner, and on either side of this the first floor is broken up into a series of bays. Each of the recessed bays has dogtooth work to the parapet, while the projecting bays have plain capped parapets with dogtooth work to the panels over the windows. The bays are tied together by vertical and end brick strings in the same yellow brickwork. The ground floor facade has been tiled in yellow, black and orange.
Physical condition and/or Archaeological potential:	Some wall tiles broken/ missing, pressed metal ceiling to awning is rusting.

Date condition updated: 14 Nov 00

<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2030122>

1/3

3/19/2019

St Peters Hotel, including interiors | NSW Environment & Heritage

Modifications and dates: Air conditioning boxes and ducting have been inserted in window openings. Bars on windows. PVC downpipes. Alsynite rooftop shed.

Current use: Hotel

Former use: Hotel

Assessment of significance


SHR Criteria a) Local
[Historical significance]

SHR Criteria c) Local
[Aesthetic significance]

SHR Criteria d) Local
[Social significance]

SHR Criteria g) Local
[Representativeness]

Integrity/Intactness: The building is relatively intact. Incorporation of unsympathetic services have compromised its design integrity to a degree.

Assessment criteria: Items are assessed against the  **State Heritage Register (SHR) Criteria** to determine the level of significance. Refer to the Listings below for the level of statutory protection.

Recommended management:

The building requires general maintenance.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan	Marrickville LEP 2011	1159	12 Dec 11	2011/645	
Local Environmental Plan	Marrickville Local Environmental Plan 2001		18 May 01	86	
Within a conservation area on an LEP	within draft cons. area Marrickville LEP 2001				
Heritage study					

Study details

Title	Year	Number	Author	Inspected by	Guidelines used
Marrickville Heritage Study	1986	2.82	Fox and Associates	November 1984	No

<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2030122>

2/3

3/19/2019

St Peters Hotel, including Interiors | NSW Environment & Heritage

Marrickville Heritage Study Review	1997	2030122	Tropman & Tropman Architects	1997-1999	Y e s
Marrickville Heritage Study Review	1997		Tropman & Tropman Architects		Y e s

References, internet links & images

None

Note: Internet links may be to web pages, documents or images.



(Click on thumbnail for full size image and image details)

Data source

The information for this entry comes from the following source:

Name: Local Government

Database number: 2030122

File number: 2.82

[Return to previous page](#)

Every effort has been made to ensure that information contained in the State Heritage Inventory is correct. If you find any errors or omissions please send your comments to the [Database Manager](#).

All information and pictures on this page are the copyright of the Heritage Division or respective copyright owners.