



Mercantile Hotel Refurbishment and Rooftop Terrace

*State Significant
Development Assessment
(SSD 8665)*



November 2019

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Cover photo

Visualisation of proposed development at the Mercantile Hotel (Source: Applicant's Design Statement)

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
Applicant	HBMS NSW Pty Ltd
Application	SSD 8665
BCA	Building Code of Australia
CIV	Capital Investment Value
Consent	Development Consent
Council	City of Sydney
Department	Department of Planning, Industry and Environment (Planning and Assessment Group)
EESG	Environment, Energy and Science Group of the Department of Planning, Industry and Environment (former NSW Office of Environment and Heritage)
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
Heritage Division	Heritage Division of the Department of Premier and Cabinet (former Heritage Division of the Office of Environment and Heritage)
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Place Management	Place Management Division of the Department of Planning, Industry and Environment (formerly Property NSW)
RtS	Response to Submissions
SCRA Scheme	Sydney Cove Redevelopment Authority Scheme
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
TfNSW	Transport for New South Wales
TfNSW (RMS)	Transport for New South Wales (RMS)



Executive Summary

This report provides an assessment of a State Significant Development (SSD) application for the refurbishment of the Mercantile Hotel, including a new rooftop bar. The Applicant is HBMS NSW Pty Ltd and the site is located at 25-27 George Street, The Rocks, within the Sydney local government area.

The refurbishment works include a new rooftop bar and restaurant, associated roof structures and a new external glass lift, internal refurbishment, new ground floor amenities building, service upgrades, and creation of a new ground floor courtyard space in the south-western corner of the site.

The works require a variation to the Sydney Cove Redevelopment Authority Scheme (SCRA Scheme) to enable development consent to be granted, as the rooftop elements and lift exceed the prescribed building envelope.

Engagement

The application and SCRA Scheme variation were publicly exhibited concurrently between 28 June and 25 July 2018. The Department received a total of 17 submissions, comprising a submission from City of Sydney Council (Council) making comments on the proposal, eight submissions from Government agencies and eight submissions from the public.

In its Response to Submissions (RtS), the Applicant provided details of the proposed kitchen exhaust, as requested by Council. This required further alterations to the previously exhibited SCRA Scheme variation. The Department publicly exhibited the amended SCRA Scheme variation and the RtS between 2 May 2019 and 31 May 2019. The Department received a further 10 submissions, comprising a submission from Council making comments on the proposal, five submissions from Government agencies, and four submissions from the general public.

The Heritage Division and Place Management both stated the works will have a positive impact overall and that the lift and rooftop would not have an adverse heritage or visual impact. Council supported the proposal, however it requested further information regarding internal alterations and materials and finishes.

The key concerns raised in public submissions include noise, hours of operation and air quality.

Assessment

The key assessment issues for the proposed development are built form and heritage, visual and view impacts, and operational impacts, including hours of operation and noise.

The Department has carefully considered the proposal, as well as the issues raised in submissions and is satisfied the proposal is acceptable for the following reasons:

- the works would not have adverse heritage impacts because the proposed materials and finishes have been carefully selected to complement the existing building. Further, the scale, massing and form of the external works are sympathetic to the existing building and surrounding area. The Department has also recommended conditions to manage any residual heritage impacts, including requirements for a conservation architect to monitor the works, archival recording and preparation of a Heritage Interpretation Strategy
- it would not result in any significant visual impacts as the rooftop additions are setback from the western edge of the building, and views towards the additions would only be temporarily glimpsed by pedestrians using Gloucester Walk to the rear of the site

- views from the majority of the Sirius Building would not be affected by the proposed rooftop additions. However, the works would result in moderate – high view impacts on one unit in the Sirius Building. The Department considers the view loss is acceptable because the views are acute, upward looking, and the significant existing views are already partially obscured
- to ensure operational and noise impacts are appropriately managed, the Department has recommended a three-year trial period for rooftop operating hours of between 10 am and 10 pm (outdoors), with the enclosable area to be shut at 10 pm. It is also recommended that the capacity of the rooftop be limited to 100 persons (indoor), 70 persons (outdoor) and a total of 150 persons, and an Operational Noise and Vibration Management Plan be prepared
- the works would improve accessibility and the standard of facilities offered to patrons, and would promote Sydney's heritage by upgrading an existing State heritage listed building to provide social and cultural benefits and improve its commercial viability, as well as provide for 185 construction jobs and 102 operational jobs
- all other issues associated with the proposal have been assessed, and appropriate conditions recommended, where necessary, to ensure the impacts of the development are appropriately mitigated and/or managed and community concerns are addressed.

Conclusion

The Department considers the proposal is consistent with the requirements of relevant environmental planning instruments and policies, and would promote Sydney's heritage by upgrading the Mercantile Hotel, which is an existing State heritage listed building, improving its commercial viability and providing social and cultural benefits.

The Department is also satisfied the potential impacts associated with the proposal can be appropriately mitigated or managed through the recommended conditions of consent.

The Department's assessment therefore concludes the proposal is in the public interest and recommends the SCRA Scheme variation is made and the application approved, subject to the recommended conditions.



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1. Introduction

1.1 Background

HBMS NSW Pty Ltd (the Applicant) proposes to refurbish the Mercantile Hotel in The Rocks, and construct a new rooftop bar (the project). The lift and rooftop works are located outside the building envelope in the Sydney Cove Redevelopment Authority Scheme (SCRA Scheme), and therefore require a variation to this scheme.

The Applicant proposes to upgrade the existing premises to improve accommodation by providing more ensuite bathrooms and increase focus on the service of food through improvements to the current kitchen and back-of-house arrangements.

1.2 The site

The site is located at 25-27 George Street in The Rocks heritage precinct, and is legally described as Lot 10 in DP 258607. The site is triangular in shape and has an area of approximately 420 m². The site is listed on the State Heritage Register (SHR 01560) and is located in the Sydney local government area (**Figure 1**).



Figure 1 | Local Context Map showing site outlined in red (Base source: Nearmap)

The Mercantile Hotel (25 George Street) was built in 1914, with a separate shop to the south with residential accommodation above (27 George Street), which has since been integrated with the hotel (**Figure 2**). Access is provided between numbers 25 and 27 George Street on ground and first floors. The internal configuration of the building has been modified several times.



Figure 2 | Mercantile Hotel viewed from George Street (Base source: DPE Photograph)

The premises are accessible from George Street and contains a kitchen, bar, dining area and gaming area on the ground floor. The kitchen, storage areas and amenities are contained in outbuildings and sheds to the rear of the property were added in the 1980s. A ground floor outdoor seating area extends along the façade of the building on the footpath adjacent to George Street. The first and second floors contain short-term stay accommodation, mostly with shared bathrooms, staff rooms, reception and storage.

The rooftop contains small structures formerly used as a laundry and storage. The rooftop has views to the north of the Sydney Harbour Bridge and to the south of the CBD. The rooftop is overlooked from the rear (west) by the Sirius Building and Gloucester Walk, which falls approximately 5 m from south to north (**Figure 3**). This walkway runs along the top of a sandstone wall that was constructed when the site was excavated prior to construction of the hotel.

1.3 Site context

The surrounding area contains predominantly office and retail uses, however also includes restaurants, commercial venues and residential buildings, including to the immediate north-east of the site at 8 Hickson Road (**Figure 4**). On the opposite side of George Street is the State Heritage listed Metcalfe Bond building, which contains commercial/office premises. The State Heritage listed Sergeant Majors Row terraces to the south are mostly used as restaurants and commercial premises. To the rear of these terraces is an outdoor courtyard used for alfresco

dining. The site is also surrounded by several State listed heritage items including the former Mining Museum Building to the north and Old Bushells Factory to the south-east (**Figure 4**).



Figure 3 | Mercantile Hotel viewed from Gloucester Walk (Base source: DPE Photograph)

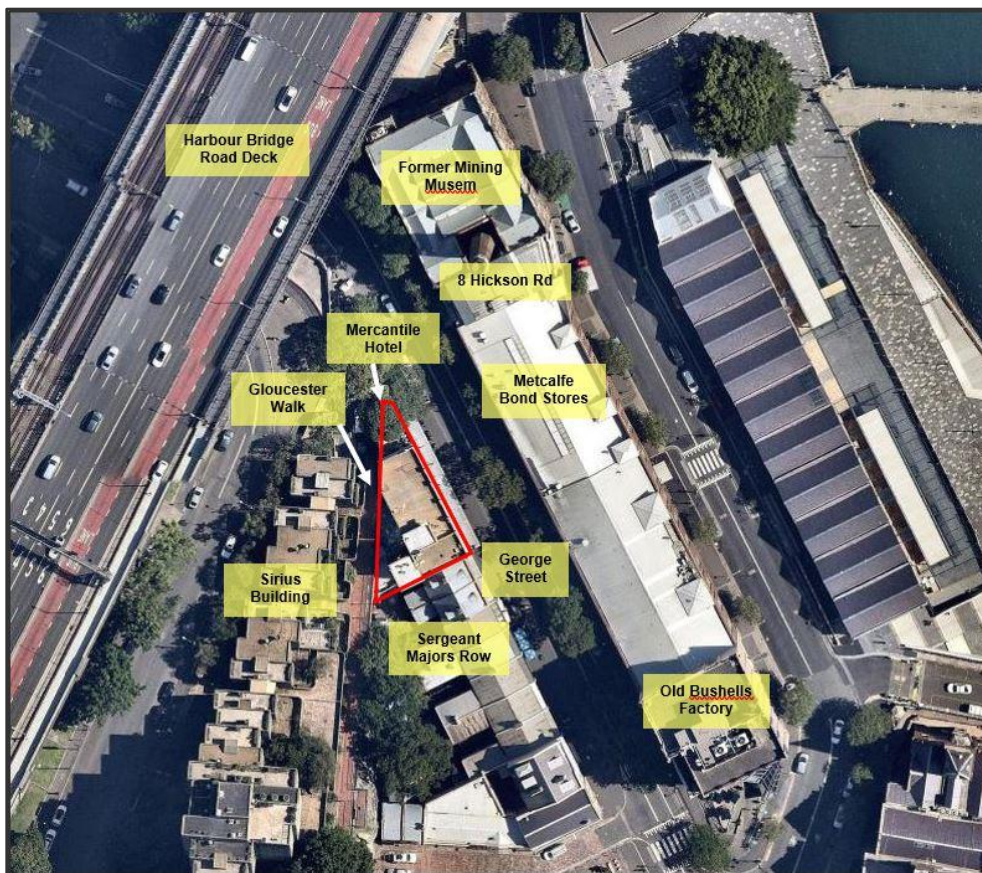


Figure 4 | Site Location Map showing site outlined in red (Base source: Nearmap)



2. Project

2.1 Description of proposal

The Applicant seeks approval for the refurbishment of the Mercantile Hotel including the construction of a new rooftop bar. The major components of the development, as refined in the Response to Submissions (RtS) and Revised Response to Submissions (RRtS) are summarised in **Table 1** and depicted in **Figure 5** and **Section 6**, where they are assessed in relation to the key issues they are associated with.

Table 1 | Main Components of the Project

Aspect	Description
Use	<ul style="list-style-type: none">• Extension of existing liquor licence area to include the entire rooftop. The existing overall hotel capacity of 431 persons is not proposed to increase.• Current hours of operation (note this is not proposed to change and does not form part of the application):<ul style="list-style-type: none">○ Ground floor bar: 5 am to 1 am Monday to Saturday and 10 am to 12 midnight Sunday○ George Street footpath: 10 am to 12 midnight Monday to Saturday and 10 am to 10 pm Sunday.• Proposed Rooftop bar hours of operation:<ul style="list-style-type: none">○ Monday to Saturday: 10 am to 1 am*○ Sunday: 10 am to 12 midnight. <p>*At 12 midnight the doors to the enclosable area of the rooftop would be shut and no patrons would be permitted in the outdoor area.</p>
External works	<ul style="list-style-type: none">• Conversion of existing rooftop laundry and storage area into an enclosable rooftop bar and restaurant, including amenities, kitchen server area and open roof terrace.• The total rooftop capacity would be 150 patrons.• Planter boxes to the western side of the rooftop.• Open plant area and bin store on south-eastern area of roof.• Fire egress stair connecting rooftop to existing stair lobby on second floor.• Formalisation of existing egress stair to Gloucester Walk at first floor level.• Steel-framed lift with glazed facades to the north and south at rear of building, and metal clad blades to the east and west, including excavation for lift pit measuring 1.3 m deep and approximately 2.2 m x 2.7 m.• Demolition of non-original lean-to structures and sheds at ground floor, containing the kitchen, storage and amenities, and replacement with concrete ground floor amenities building with green roof and adjoining glazed roof accessway.• New outdoor seating area in ground floor rear courtyard in south-western corner of the site with capacity for 16 people.

Internal works	<ul style="list-style-type: none"> • Rearrangement of bedrooms and bathrooms and provision of nine additional bathroom 'pods' to provide all rooms with ensuites. • Reduction in number of hotel rooms from 16 to 11 (one to be replaced by lift reception area, two by the extended kitchen area and two by new bathrooms). • Restoration, maintenance and internal refurbishment, including to main bar area and amenities. • Upgrades to fire, electrical, mechanical and hydraulic services.
Gross Floor Area	<p>Overall increase of 62.7 m² from 832.9 m² to 895.6 m², comprising:</p> <ul style="list-style-type: none"> • Increase in restaurant/pub area by 51.8 m² from 253.8 m² to 305.6 m². • Increase in total rooftop GFA by 91.6 m² from 26.5 m² to 118.1 m². • Reduction in hotel accommodation by 157.2 m² from 394.7 m² to 237.5 m². • Increase in back-of-house/office/kitchen/amenities and circulation space by 168.1 m² from 184.4 m² to 352.5 m².
Employment	<ul style="list-style-type: none"> • 185 construction jobs and 102 operational jobs.
CIV	<ul style="list-style-type: none"> • \$4,723,767.

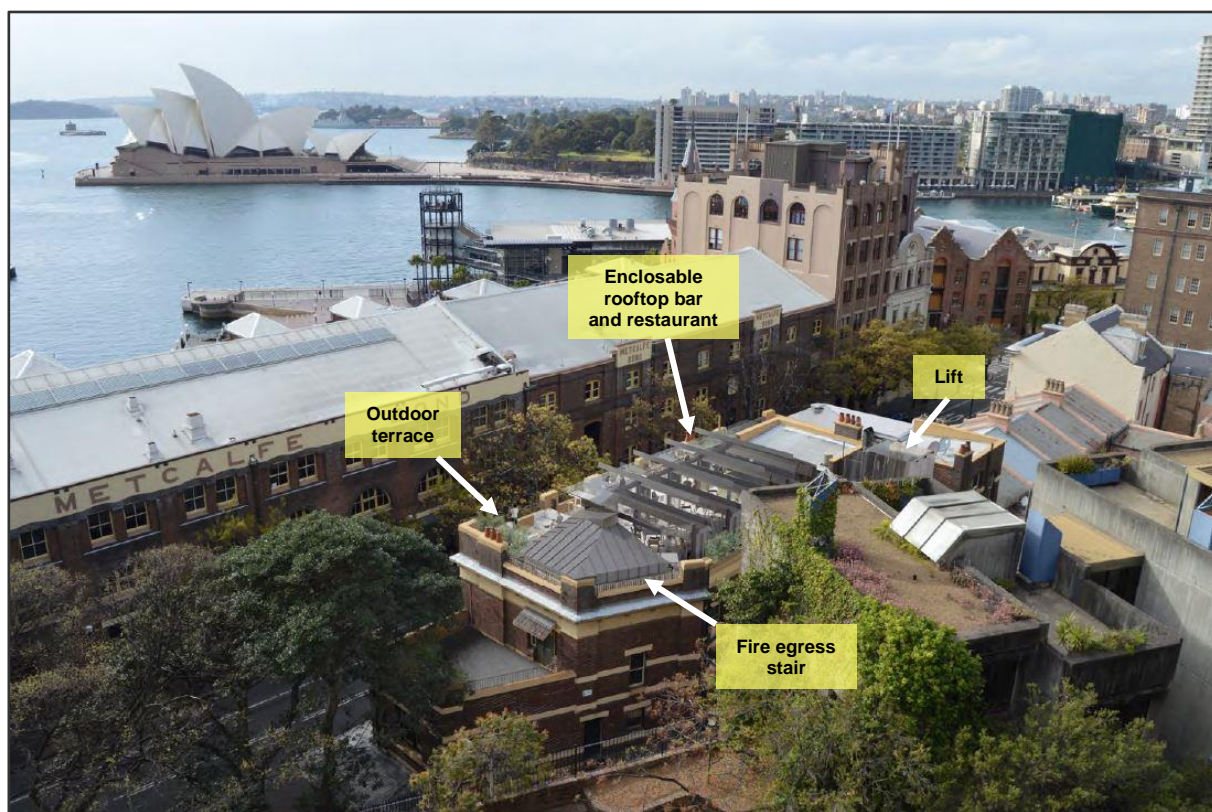


Figure 5 | The proposed development (Base source: Applicant's Design Statement)

2.2 Variation to the SCRA Scheme

The works require a variation to the SCRA Scheme to enable development consent to be granted, as the lift and additions to the rooftop are outside of the prescribed building envelope. Due to the requirement for the SCRA Scheme variation, the project is SSD. The existing and proposed SCRA Drawings are illustrated in **Figures 6** and **7**.

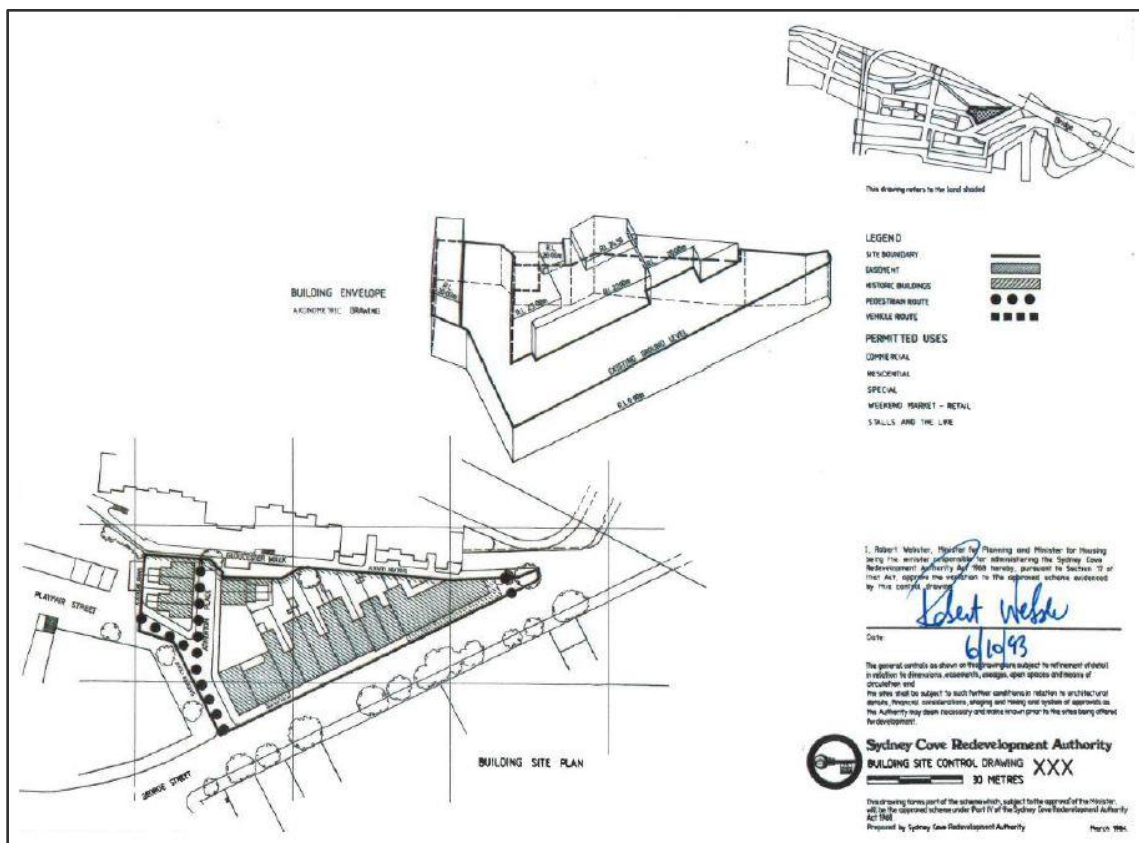


Figure 6 | Current SCRA Scheme Drawing XXX (Source: EIS)

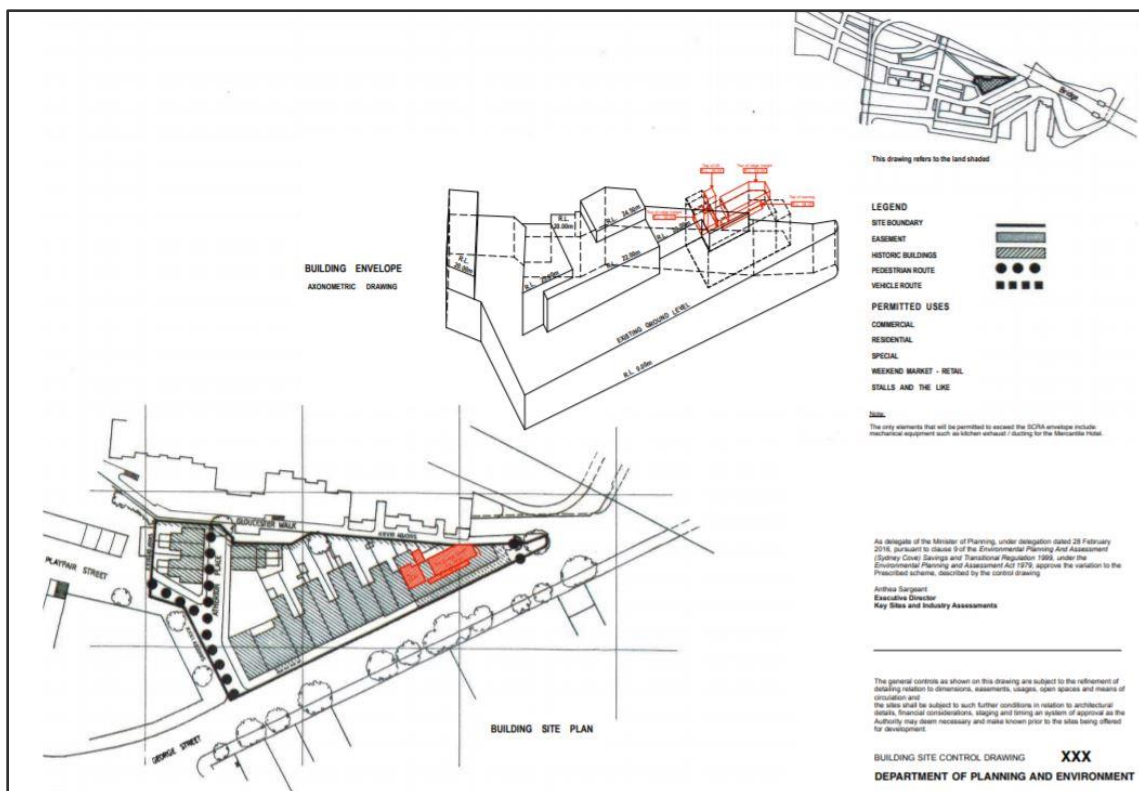


Figure 7 | Proposed SCRA Scheme Drawing XXX (Source: RtS)



3. Strategic Context

3.1 Greater Sydney Region Plan

The Greater Sydney Region Plan (GSRP) supports a 40-year vision for a metropolis of three cities that would rebalance growth and deliver its benefits more equally and equitably to residents across Greater Sydney. The site is located in the Eastern Harbour City and more broadly encompassed within the Eastern Economic Corridor.

The proposed development supports the directions and objectives of the GRSP by:

- providing social and economic benefits by supporting the tourism identity of The Rocks
- promoting Sydney's heritage by upgrading an existing heritage listed building to improve its commercial viability
- providing for 185 construction jobs and 102 operational jobs in a connected and highly accessible area.

3.2 Eastern City District Plan

The Greater Sydney Commission's (GSC) role is to coordinate and align planning to shape the future of Metropolitan Sydney. The GSC has prepared District Plans to inform local council planning and influence the decisions of State agencies. The aim of the District Plans is to connect local planning with the longer-term metropolitan planning for Greater Sydney. The site is located within the Eastern City District.

The proposal supports the directions and objectives of the District Plan by:

- promoting Sydney's heritage by upgrading an existing heritage listed building to provide social and cultural benefits and improve its commercial viability
- providing for 185 construction jobs and 102 operational jobs in a connected and highly accessible area.



4. Statutory Context

4.1 State Significant Development

The project is deemed State significant development (SSD) under section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This is because it triggers the criteria in clause 6 of Schedule 2 of State Environmental Planning Policy (State and Regional Development) 2011, as it is development on land within The Rocks Site that does not comply with the Sydney Cove Redevelopment Authority Scheme (SCRA Scheme).

A SCRA Scheme variation is being concurrently sought to enable development consent to be granted.

4.2 Permissibility

The SCRA Scheme is the relevant EPI regulating development in The Rocks and prescribes building height limits, envelopes and permitted uses. Development within The Rocks area must be consistent with the relevant controls of the SCRA Scheme.

The Mercantile Hotel is located on Building Site Control Drawing 'XXX' under the provisions of the SCRA Scheme, which includes 'Commercial' land uses as permissible on the site. The proposal does not seek a change of use, and proposes to upgrade the restaurant/pub and associated accommodation that is considered a 'Commercial' use, which is permissible under the SCRA Scheme.

4.3 Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999

The *Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999* (Regulation) is the regulatory mechanism that outlines the process for amending the SCRA Scheme and the mandatory matters the Minister (or delegate) must consider whether to make a proposed variation to the SCRA Scheme.

The Regulation requires the Applicant to apply to the Minister for a variation to the approved SCRA Scheme to enable development consent to be granted to the proposed development. The application must describe the elements of the development that do not comply with the approved SCRA Scheme, set out the reasons for the variation to the SCRA Scheme and address the matters that the Minister must consider.

The Department notes the existing Mercantile Hotel exceeds the SCRA Scheme envelope height of RL 20 by 9.55 m. The Department notes the reason for this is unknown, however the hotel has been in operation since 1915, which pre-dates the current SCRA Scheme drawing made in 1993. The proposed rooftop extension, including associated structures, and lift would therefore also exceed the SCRA Scheme envelope. The proposal would increase the current building heights from RL 26.74 at the George Street parapet and RL 28.72 at the rear of the building (whilst noting the existing chimney height is RL 29.55) to a maximum of RL 29.55 at the top of the lift and rooftop bar, meaning the maximum height of the extension would not exceed the existing maximum height of the building.

The Applicant has therefore concurrently applied to vary the SCRA Scheme to enable development consent to be granted to the proposed development. The variation would also correct an inconsistency between the existing building and SCRA Drawing. The proposed variation to the SCRA Scheme is considered in more detail in **Appendix D**.

4.4 Consent Authority

Determination of Application

The Minister for Planning and Public Spaces is the consent authority. However, the Executive Director, Compliance, Industry and Key Sites may determine the application under delegation as:

- the relevant Council has not made an objection
- there are less than 25 public submissions in the nature of objection
- a political disclosure statement has not been made.

SCRA Scheme Variation

On 28 February 2016, the Minister delegated the functions under clause 9 of the Sydney Cove Regulation in relation to a draft variation to the SCRA Scheme, to the delegate also determining the development application in relation to which the variation was submitted.

As the Executive Director, Compliance, Industry and Key Sites is determining the development application in relation to which the variation was submitted, the variation to the SCRA Scheme can also be made by the Executive Director, under delegation.

4.5 Secretary's Environmental Assessment Requirements

On 1 September 2017, the Department notified the Applicant of the Secretary's Environmental Assessment Requirements (SEARs) for SSD 8665. These were updated on 8 December 2017. The Department is satisfied the EIS had adequately addressed compliance with the SEARs to enable the assessment and determination of the application.

4.6 Mandatory Matters for Consideration

Section 4.15 of the EP&A Act outlines the matters that a consent authority must take into consideration when determining development applications. These matters could be summarised as:

- the provisions of environmental planning instruments (including draft instruments), development controls plans, planning agreements, and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation)
- the environmental, social and economic impacts of the development
- the suitability of the site
- any submissions, and
- the public interest, including the objects in the EP&A Act and the encouragement of ecologically sustainable development (ESD).

The Department has considered all of these matters in its assessment of the project, as well as the Applicant's consideration of environmental planning instruments in its EIS, as summarised in **Section 6** of this report. The Department has also given consideration to the relevant provisions of the EP&A Act, including environmental planning instruments in **Appendix C**.



5. Engagement

5.1 Department's Engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the application and SCRA Scheme variation concurrently from Thursday 28 June 2018 until Wednesday 25 July 2018 (28 days). The application was made publicly available on the Department's website and at NSW Service Centres, and exhibited at Council.

The Department placed a public exhibition notice in the Sydney Central Courier on Wednesday 27 June 2018, and notified adjoining landholders, Council and relevant Government agencies in writing.

All notification and public participation statutory obligations have been satisfied.

The Department has considered the comments raised in Council, Government agencies and public submissions during the assessment of the applications (**Section 6** and **Appendix B**) and by recommended conditions in the consent at **Appendix E**.

5.2 Summary of Submissions

The Department received 17 submissions on the proposal, comprising a submission making comments from Council, eight submissions making comments from Government agencies, and eight submissions from the general public, with two objecting, one supporting and five commenting.

A link to all submissions is provided in **Appendix A**.

5.3 Key Issues – Government Agencies

The Department received eight submissions from Government agencies, all of which provided comments. The key issues raised are summarised in **Table 2** below.

Table 2 | Government agency submissions

Heritage Division of the Department of Premier and Cabinet (former Heritage Division of the Office of Environment and Heritage) (Heritage Division)

Heritage Division made the following comments:

- the roof terrace should not have planter beds and plants
- materials and colours should take inspiration from the existing building
- additional information is required to enable a full assessment of impacts on the following:
 - provision of services
 - structural integrity of new walls, floors and the dumb waiter
 - lift foundations
 - ensuite pods
 - wet areas, kitchen and new bars
 - stormwater drainage
 - salvage and storage of significant materials proposed to be removed.
- conditions are recommended to ensure site personnel are informed of their obligations and requirements about historical archaeology and Aboriginal objects.

Place Management Division of the Department of Planning, Industry and Environment (formerly Property NSW) (Place Management)

Place Management provided the following comments:

- the proposal is of minimal impact, respects the building's heritage fabric and will enhance its functionality, as well as the heritage character of The Rocks
- the impacts will not be visible from the Sydney Opera House and have very limited and acceptable impacts from the Sydney Harbour Bridge and Gloucester Walk
- in order to fully assess the heritage impacts of the proposal, further information is required regarding: services and fire engineering documentation and architectural documentation; materials and colour sample board; building fabric or items to be removed as part of demolition works, how these will be stored on site for future reinstatement, and how this is proposed to be undertaken
- the Heritage Impact Statement must be revised to address the following proposed works and their associated impacts:
 - proposed kitchens and bathrooms and associated services and exhausts and vents
 - air conditioning and fire-related upgrades
 - archaeological impacts of basement works
 - additional services elements
 - proposed changes to the ground floor main bar
 - proposed materials and colours
 - proposed signage.

Transport for NSW (TfNSW)

TfNSW provided the following comments:

- the risk of the proposed works on the CBD Rail Link Corridor is considered to be negligible
- a number of aspects of the proposed methodology in the Construction Pedestrian and Traffic Management Plan (CPTMP) are not supported and a condition should require the CPTMP to be updated. This should include consideration of the cumulative transport impacts of all activities in the surrounding area.

Transport for NSW (Roads and Maritime Services) (Transport for NSW (RMS))

Transport for NSW (RMS) supported the comments made by TfNSW in relation to the CPTMP and requested the CPTMP be submitted to Council prior to the issue of a Construction Certificate.

Liquor and Gaming NSW

Liquor and Gaming NSW stated the proposal will require the Applicant to lodge a liquor licence change of boundaries application, which cannot be issued during the current licence freeze period if it is likely to result in an increase in the patron capacity of the premises.

NSW Police

NSW Police raised concerns regarding violence, crime and saturation of licensed premises. NSW Police recommended a number of conditions, including in relation to social impact, amenity, signage, and provision of a Plan of Management.

Environment, Energy and Science Group of the Department of Planning, Industry and Environment (former NSW Office of Environment and Heritage) (EESG)

EESG advised the proposed excavation works are minor and stated that in addition to the recommendations contained in the Aboriginal Archaeological Assessment, conditions should be included requiring:

- an inspection by a qualified archaeologist of the ground surface underlying the existing slab/bitumen to confirm areas historical disturbance
- works to cease in the vicinity of any Aboriginal objects or evidence of occupation, if such things are uncovered, and further advice be sought from a qualified archaeologist.

EPA advised it is not the regulatory authority for the proposal and made no further comment.

5.4 Key Issues – Council/Community

5.4.1 Council key issues

In noting there is no proposed increase in patron capacity, Council supported the proposal subject to the following issues being addressed:

- consideration of a more slender and lower lift, and reduction in the extent of the roof overhang and height of the roof pitch
- provision of further information in relation to services, kitchen mechanical exhaust and ducting, materials, finishes and colours, in order to fully assess heritage impacts
- the recommendations in the Statement of Heritage Impact being imposed as conditions of consent, in relation to archival photographic recording, the requirement for a Heritage Interpretation Plan, use of skilled trades people, storing of removed fabric and the commissioning of a conservation architect to monitor works.

5.4.2 Community issues

The Department received eight public submissions, with two objecting, one supporting and five commenting. All submissions were received from people located within 1 km of the site.

Two public submissions acknowledged the need to refurbish the premises, however objected on the following grounds:

- noise related to amplified music (particularly in relation to outdoor areas), operating hours, and the mechanical exhaust system
- air quality in relation to the mechanical exhaust system
- potential impacts on property value.

Five public submissions did not object to the proposal but raised the same concerns as those objecting in relation to air quality, and made the following key comments in relation to noise:

- the roof terrace should be screened by planter boxes at its northern end and have a maximum capacity of 100
- use of the open area of the roof terrace should cease by 10 pm
- restrictions should be placed on the number of large event celebrations and operating hours for live music
- outdoor areas should not have amplified music or be used for functions, and internal use of speakers should be minimised
- the main entry and mechanical exhaust system should be located at the southern end of the building
- the ground floor elevation facing George Street should be acoustically treated
- consideration should be given to cumulative noise impacts, including the setting up of The Rocks Market.

One public submission supported the proposal, however raised similar concerns to those raised in objections and comments in relation to noise and air quality.

5.5 Response to Submissions

Following exhibition of the application, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in the submissions.

On 8 April 2019, the Applicant submitted its a Response to Submissions (RtS). In conjunction with the RtS report, the Applicant removed the freestanding planters on the northern and southern sides of the terrace from the proposal, made amendments to the rooftop air conditioning, and provided additional details regarding the proposed materials, services, signage and kitchen exhaust. As the amendment to the kitchen exhaust required alterations to the previously exhibited SCRA Scheme variation, the Department publicly exhibited the RtS and amended SCRA Scheme variation from 2 May 2019 until 31 May 2019 (30 days) and notified previous submitters and relevant Government agencies.

The Department received 10 submissions on the proposal, comprising a submission making comments from Council, five submissions making comments from Government agencies, and four submissions from the general public, with one objecting, one supporting and two commenting.

A summary of issues raised in the Government agency and Council submissions is provided at **Table 3** and a link to all submissions is provided at **Appendix A**.

Table 3 | Government agency submissions to the RtS

Heritage Division of the Department of Premier and Cabinet (former Heritage Division of the Office of Environment and Heritage) (Heritage Division)
<p>Heritage Division advised its previous concerns about potential adverse impacts on the historic layout and internal fabric of the building have been adequately addressed, subject to recommended conditions.</p> <p>The Heritage Division provided suggested conditions with regards to mitigating and managing archaeological impacts, and no approval being granted for the proposed rooftop planter beds.</p>
Transport for NSW (TfNSW)
<p>TfNSW reiterated its position that a condition of consent should require the CPTMP to be updated prior to the commencement of works.</p>
Transport for NSW (Roads and Maritime Services) (Transport for NSW (RMS))
<p>Transport for NSW (RMS) reiterated its previous comments that a CPTMP should be submitted prior to the issue of a Construction Certificate.</p>
Environment, Energy and Science Group of the Department of Planning, Industry and Environment (former NSW Office of Environment and Heritage) (EESG)
<p>EESG reiterated its position that in addition to the recommendations contained in the Aboriginal Archaeological Assessment, conditions should be included requiring:</p> <ul style="list-style-type: none">• an inspection by a qualified archaeologist of the ground surface underlying the existing slab/bitumen to confirm areas historical disturbance• works to cease in the vicinity of any Aboriginal objects or evidence of occupation, if such things are uncovered, and further advice be sought from a qualified archaeologist.
Environment Protection Authority (EPA)
<p>EPA advised it is not the regulatory authority for the proposal and made no further comment.</p>

Place Management did not provide a submission on the RtS, but provided a letter to the Applicant giving land owner's consent for the project. This letter raised no objection to the proposal and provided the following comments:

- sufficient information has been provided regarding the schematic design for services, however full documentation should be provided prior to issuing of a Construction Certificate. Documentation of services and fire protection measures is to be established in consultation with Place Management heritage officers
- insufficient details have been provided regarding the kitchen fitout and external signage and these should therefore be the subject of a separate application
- a Conservation Works Schedule and Maintenance Plan and further construction documentation, including in relation to structural design and certification, are to be provided to Place Management's heritage officer for review prior to issue of a Construction Certificate
- the proposed George Street outdoor seating area is to accord with the existing George Street Master Approval for outdoor seating and the requirements of Place Management's Outdoor Seating Policy and Technical Manual for The Rocks
- details of any proposed rooftop umbrellas are to be submitted to Place Management for approval prior to the issue of a Construction Certificate and shall comply with Place Management's Outdoor Seating Policy and Technical Manual for The Rocks
- any proposed planters along George Street shall be consistent with the standard Place Management grey finish planter already in use along George Street.

The Department notes the proposal does not include rooftop umbrellas or alterations to the existing George Street outdoor seating area, including planters.

5.5.2 Council key issues

Council made the following additional comments:

- it is acknowledged the lift will have an impact, however it is noted the Applicant has stated it is not possible to reduce its size, and that its visual prominence has been mitigated through the use of light-weight materials and glazing and its location at the rear of the building. Council stated this would be an improvement on the current presentation and usage of this area rather than the ad hoc services located across the rear boundary
- the advice on the EIS that a full schedule of materials, finishes and colours should be provided has not been addressed. The Department should require this detail and should audit the Quantity Surveyor's report to ensure it allows for high-level materials and finishes.

5.5.3 Community issues

The Department received four public submissions, with one objecting, one supporting and two commenting. All submissions were received from people located within 1 km of the site.

One public submission objected to the proposed opening hours in relation to noise, stating areas in the hotel should not be open seven-days-per-week from 5 am until 1 am.

Two public submissions commented on the proposal, reiterating their comments on the EIS and making the following additional comments:

- any consent should limit the hours of operation of the existing premises to the existing actual hours of up to 11 pm Sunday to Thursday, and up to 1 am on Friday and Saturday nights, with any future extension to

be the subject of a future application (the Department notes a different submission stated the premises are currently open until 12 midnight Sunday to Friday and to 1 am on Saturday night)

- acoustic insulation should be applied to the entire premises to reduce noise from amplified music and patrons in the ground floor bar and adjacent George Street footpath area, based on an assessment of impacts from this area between 10 pm and 2 am
- no exemptions from noise limits should be provided, with the exception of New Year's Eve
- the Noise Assessment does not clarify the meaning of background noise level
- the acoustic impact on the residential building at 66-68 George Street has not been assessed
- further details on the mechanical plant should be provided as part of this application rather than prior to the commencement of construction to ensure there are no acoustic impacts
- impacts associated with the reflectivity of the rooftop extension should be considered on the building at 8 Hickson Road, particularly the upper levels.

One public submission supported the proposal, however stated there should be no increase to operating hours or patron capacity, acoustic insulation should be applied to the entire premises, and additional lighting should be provided to improve security on the section of George Street between Hickson Road and Lower Fort Street.

5.6 Applicant's Revised Response to Submissions

Following exhibition of the RtS, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in the submissions.

On 8 July 2019, the Applicant provided a Revised Response to Submissions (RRtS) (**Appendix A**). The RRtS made clarifications regarding noise and visual impacts and removed the kitchen fitout and external signage from the scope of the application. The Applicant provided supplementary information on 18 July 2019 to respond to the key issues raised during exhibition of the RtS, and on 25 October 2019 to assess view impacts on the Sirius Building. The RRtS was made publicly available on the Department's website.

The Department met with residents on-site on 10 July 2019, following exhibition of the RtS. The key concerns raised related to noise, hours of operation and air quality. The Department received one submission raising concerns about noise, in particular requesting a condition of consent prohibiting any amplified music from the rooftop or elsewhere in the premises after 10 pm.



6. Assessment

6.1 Key issues

The Department has considered the proposal, the issues raised in submissions and the Applicant's RtS and further information in the assessment of the application. The Department considers the key issues associated with the proposal are:

- built form and heritage impacts
- visual and view impacts
- operational impacts, including operating hours and noise.

Each of these key issues is discussed in the following sections of the report. The Department's consideration of other issues relating to this application are addressed in **Section 6.5** of this report.

6.2 Built form and heritage impacts

The Mercantile Hotel is listed on the State Heritage Register (SHR 01560) and located within The Rocks Conservation Area, as listed on the Sydney Harbour Foreshore Authority's (now Place Management) section 170 Heritage and Conservation Register. The building and site is of State heritage significance for its historical and aesthetic cultural values and contribution to The Rocks area. The Hotel has been in operation since 1915.

The Applicant proposes works to both the interior and exterior of the building, in order to upgrade and expand the premises to provide for the hotel's ongoing viability. These works have the potential to impact on the heritage values of the site and surrounding area, and are considered below. No public objections were received with regards to heritage.

6.2.1 External works and visual impact

The Applicant proposes a number of external alterations to the building, including a new rooftop terrace adjacent to an enclosable bar and restaurant, a lift at the rear of the building, and ground floor amenities building. As discussed in **Section 4.3**, and further discussed at **Appendix D**, the lift and rooftop works would require a variation to the SCRA Scheme. The Department has assessed the impact of the specific elements of these works below.

Rooftop works

The Applicant proposes a new enclosable rooftop bar and restaurant, with an adjacent open terrace (**Figure 8**). Other rooftop works include associated amenities, a kitchen servery, and an open plant area to the south of the open terrace, including bin storage and kitchen mechanical exhaust and associated ducting. The Applicant also proposes to extend the stair at the northern end of the building from the second floor to the rooftop to provide for fire egress, and convert an existing door to Gloucester Walk at first floor level into a fire egress (**Figure 9**).

The enclosable bar and restaurant area and would be constructed of glass and standing seam zinc, with a glass awning extending out from its northern and eastern edges. The structure would stand 4.23 m above the existing roof level. The eastern wall of the enclosable area would be approximately 2.4 m high and incorporate sliding doors that would open onto an adjacent roof terrace.

The enclosable part of the rooftop bar would have a capacity of 70 patrons and the outdoor terrace area would have a capacity of 100 patrons. However, the maximum number of patrons permitted in these two areas combined at any one time would be 150. The existing overall hotel capacity of 431 persons is not proposed to increase.

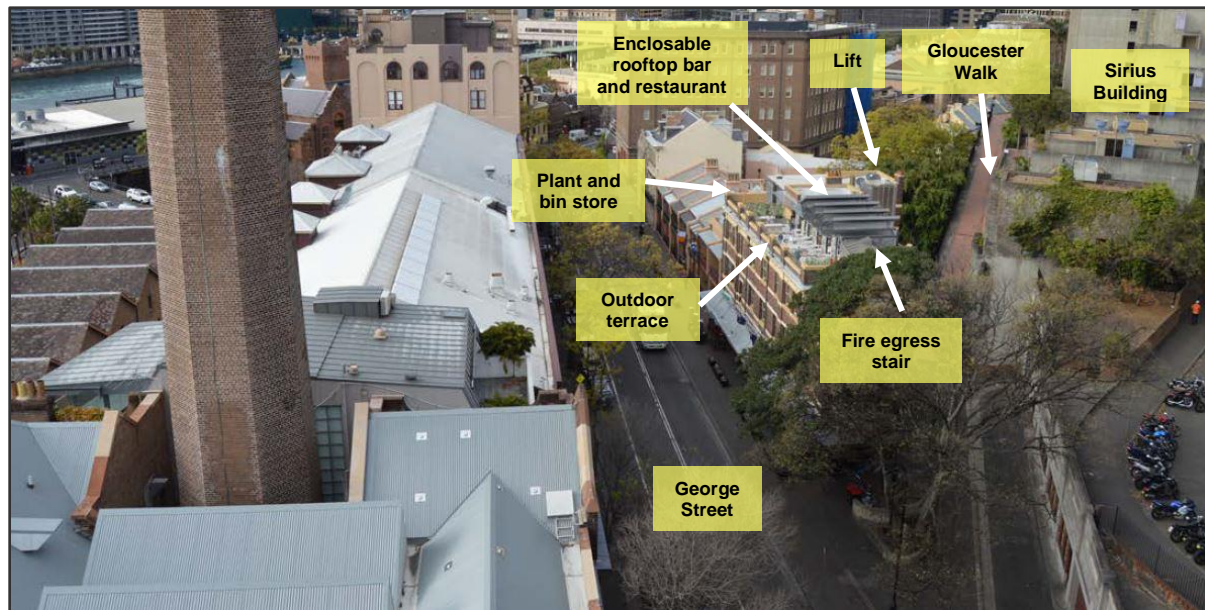


Figure 8 | Proposed rooftop works viewed from north of the site (Base source: Applicant's VIS)

The Department notes Policy 7.2 of the Conservation Management Plan (CMP) for the building states external alterations or additions should be discouraged, however, if required to meet approved interpretation, re-use or cultural tourism requirements, these should be of a minor nature, and subservient to the primary architectural features and composition of the existing structure.

The Heritage Division raised no concerns about the proposal, but requested all rooftop planter beds and plants be removed, as they are incompatible with the architecture of the premises.

Council stated the roof overhangs add unnecessary bulk of the rooftop additions, which will be seen from a number of vantage points, and suggested reducing the height of the pitch of the roof and the overhang to minimise visual impact. Council also stated a full schedule of materials, finishes and colours should be provided for review, and that the Quantity Surveyor's report should be audited to ensure it allows for high-level materials and finishes. Council also requested further details regarding the kitchen mechanical exhaust.

In response to comments from the Heritage Division and Council, the Applicant:

- removed the freestanding planter beds and plants from the northern and southern ends of the roof terrace, but proposed to retain the planters on the western side
- considers the spacing of each element of the saw-tooth roof is consistent with the ribs of the existing parapet walls, and the width of the gutter in between each element of the roof aligns with the parapet
- considers the rooftop has been designed to minimise reflection and has been broken up so as to minimise the effect of bulk
- indicated a nominal height of 1.2 m on the plans, with details to be refined as part of the selection of equipment during a future application for the fit out of the kitchen.

The Department considers the works would not have an adverse impact on this building or The Rocks Conservation Area. The works have been designed within existing spaces and are fully reversible and capable of being removed without significant damage to the building fabric, and would modernise and support the continuing use of the

historic hotel without adversely impacting on its appearance or confusing the understanding of its historic development. The Department also notes the rooftop addition has been appropriately configured and set back to minimise its visual impact on the hotel's elevations facing George Street.

The Department considers the saw-tooth design of the roof would allow for views to and from the Harbour Bridge, and the glazing would allow for lightness and transparency. The overhangs would provide shade from the summer sun to the north and minimise reflectivity when viewed from the Harbour Bridge and surrounding areas. The scale, massing and articulated rooftop form of the extension would be sympathetic to the surrounding area and would not compete with the solid massing of the existing building. The Department also considers the proposed planters on the western edge are acceptable as they are compatible with the architecture of the rooftop and would integrate successfully with the proposed extension and provide privacy to neighbouring residential properties.

The Department also considers the external colours and finishes are appropriate to the heritage context of the site and would be easily discernible as contemporary elements, therefore retaining the hotel's character. The Department notes Council's comments requesting materials details be submitted, however considers that a high quality of materials and finishes would be provided, and the Department recommends a condition requiring the Applicant to avoid construction materials that include highly reflective surfaces.

The Department also considers the kitchen exhaust is acceptable as it is located within the designated back-of-house area, would not exceed the overall height of the rooftop works, and consistent with the rooftop extension's materials. The Department considers the proposal would be structurally adequate, as the existing property could support the additional loads imposed by the proposed works, including the lift and dumb waiter structure.

Finally, the Department considers the proposed restoration works, including to the parapet walls and railings, windows and doors, would have a positive impact on the heritage values of the building and enhance the inter-connectivity with other historic elements in the surrounding area, including the courtyard behind the adjacent Sergeant Majors Row terraces.

Lift

The Applicant proposes a new steel-framed lift at rear of building that would provide access to all floors, including the new rooftop, and would require penetrations into the brickwork of the building and removal of three windows (**Figure 9**).

Council acknowledged the lift will have a visual impact, however noted the Applicant has stated it is not possible to reduce its size, and that its visual prominence would be mitigated through its location and use of light-weight materials and glazing.

The Heritage Division considers the lift is an important new facility that would help future-proof the hotel and its historic use.

The Department acknowledges the Applicant has investigated options to reduce the size of the lift and notes that if the lift were to be internal, it would require significant intervention into heritage fabric of the building. The Department considers the impact of the lift is acceptable as it would align with the height of the brick capping of the existing chimneys, would be located at the rear of the building where it would have the least visual impact possible and affect only a minimal number of structural openings and windows. Further, the lift would be constructed of light-weight materials and transparent glazing, which would facilitate visual access to the chimney pots and rooftop more broadly, ensuring there are no adverse heritage impacts on the building or surrounding area. The Department considers the new lift would improve the building's compliance with modern accessibility standards and would not result in any significant heritage impacts.

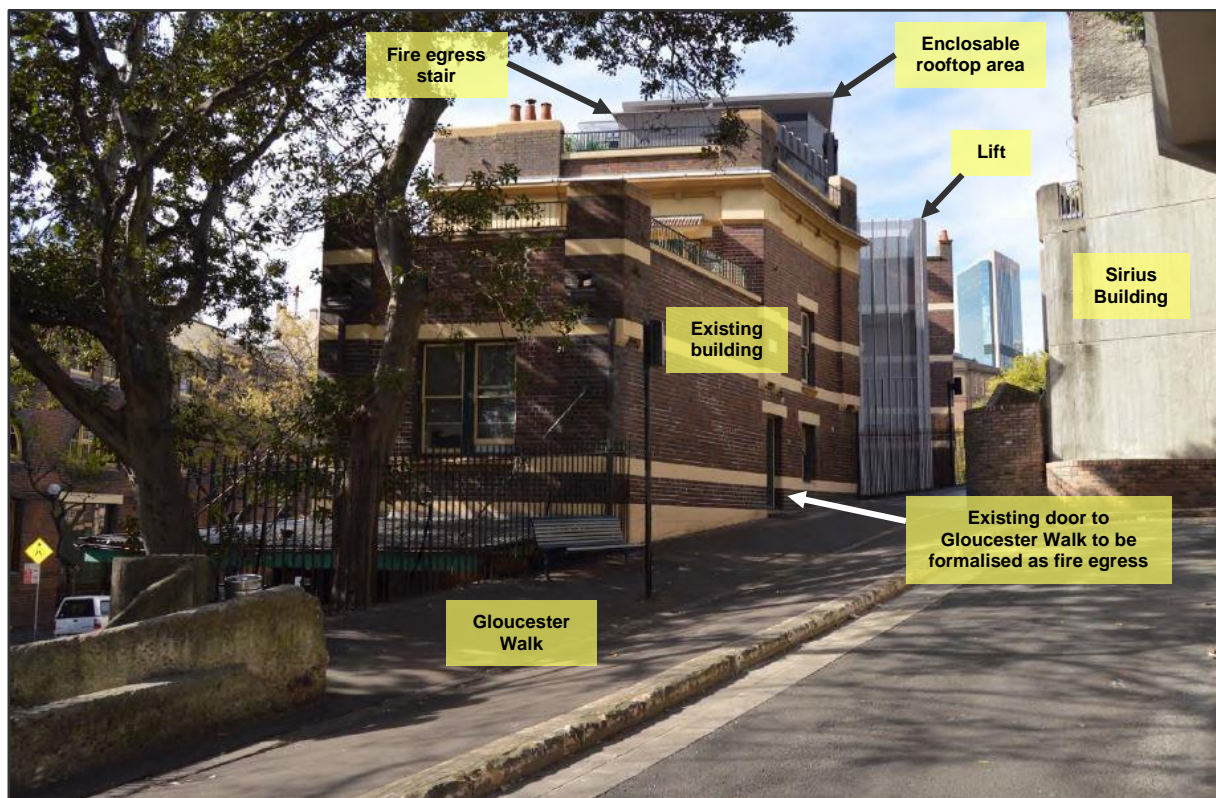


Figure 9 | Proposed external works viewed from the north of the site (Base source: Applicant's Design Statement)

Ground floor works

The Applicant proposes a new ground floor amenities building and adjoining accessway between it and the existing sandstone retaining wall at the rear of the site (**Figure 10**).

The Department considers these works are acceptable as they would require the removal of the non-original lean-to structures and sheds, and allow for the provision of outdoor seating in the ground floor rear courtyard in the south-western corner of the site. The existing structures are identified in the CMP as intrusive elements, and their removal would reveal the original sandstone wall to Gloucester Walk and improve views to the site from Gloucester Walk. The new additions would be an improvement on the current presentation and usage of this area rather than the ad hoc services located across the rear boundary.

The Department considers the proposed green roof to the ground floor amenities building acceptable as it is proposed to be landscaped with shade tolerant plant species, such as native ferns, which would soften its visual impact. The Department also considers the proposed glazed accessway and new steel awning over the courtyard doors would be sympathetic to the existing building and are therefore supported.

External works conclusion

The Department supports the external works because they would improve accessibility and the standard of facilities offered to patrons without resulting in adverse impacts on the heritage fabric of the building, enabling the premises to continue to operate and therefore preserving its heritage. Further, all exterior works are proposed on secondary elevations and areas of low heritage significance, and the proposed materials and finishes are discernible as contemporary and of high quality.

The Department also recommends a number of conditions to ensure impacts on heritage are appropriately managed, including requirements for a conservation architect to monitor works, archival recording and heritage interpretation.



Figure 10 | Existing premises showing ground floor buildings to be removed (Source: Department photograph)

6.2.2 Internal works

The Applicant proposes a range of internal works, including a reduction in the number of hotel rooms from 16 to 11 and provision of additional ensuite 'pods', restoration and internal refurbishment including internal wayfinding signage, and upgrades to services.

The Heritage Division stated the works would not result in adverse impacts on heritage fabric.

Council maintained its original comments that the alterations are acceptable in principle, however stated further information should be provided in relation to services, kitchen mechanical exhaust and ducting, materials, finishes and colours, in order to fully assess heritage impacts.

The Department considers the works would be sympathetic to the heritage fabric of the building and would have overall positive benefits through the restoration of original features and improvements to accessibility and fire safety, which would assist in ensuring the ongoing commercial viability of the building. The areas of most intervention would occur largely in those parts of the building that have been significantly altered in use and configuration.

The Department notes public submissions stated there was a need to refurbish the premises, and considers the replacement of the ground floor sports bar and gaming room with a new bistro dining area and its connection to the new rear courtyard would have a positive impact as it would return the arrangement of the rooms to their

original layout and improve circulation. The Department considers the repairs to the existing bar acceptable as they would enhance the heritage significance of the structure and surrounding space.

The Department considers openings for new doors through existing walls are designed to be sympathetic to the existing heritage fabric by proposing minimal disruption to the original building features.

The new accessible entrance at the southern end of the hotel, unisex wheelchair accessible toilets and two wheelchair accessible accommodation rooms would improve the accessibility of the building. The proposed ensuite 'pods' in the accommodation rooms would be fully reversible and capable of being installed with minimal heritage impact. The Department considers the installation of services acceptable as it would take place in walls and under floorboards rather than in the ceiling cavity, and therefore limit damage to heritage fabric.

The Department proposes conditions to ensure the works are managed to prevent any heritage impacts, including recommendations for further details on services upgrades and a Conservation Works Schedule and Maintenance Plan to be provided prior to the issue of a Construction Certificate.

The Department's assessment therefore concludes the proposed internal works would not have an adverse impact on the heritage fabric of the building, subject to the recommended conditions of consent.

6.3 Visual and view impacts

6.3.1 Visual impact

The Applicant's Visual Impact Statement (VIS) states the works would have a limited visual impact on the general precinct, however it would have a moderate to high impact on the pedestrianised Gloucester Walk and a moderate impact on George Street. The VIS states the impact on all other areas would be low to moderate, or negligible.

The Department considers the visual impact of the proposed rooftop works acceptable when viewed from George Street (**Figure 11**), Gloucester Walk and the Sirius Building to the rear (**Figure 12**), as views would be limited by the location of the eastern wall behind the parapet walls to George Street, in-line with the existing rooftop laundry structure, and the alignment of the northern and western edges of the northern stair extension with the existing parapet walls. Visual impacts would also be limited by the location of the amenities and kitchen servery below the height of the adjacent walls of the existing rooftop laundry, stairwell and store. Further, the use of materials that are lightweight and sympathetic to the existing building would appropriately minimise the visual impacts of the proposal.



Figure 11 | Proposed view before and after from George Street (Source: Applicant's VIA)

The Department considers the existing building would continue to remain the dominant feature on the site and the proposed additional elements would not significantly alter the character of the view from the Gloucester Walk. The

Department also notes views from Gloucester Walk would be predominantly gained by pedestrians passing by. Therefore, the view impacts would be of a transient rather than permanent nature.

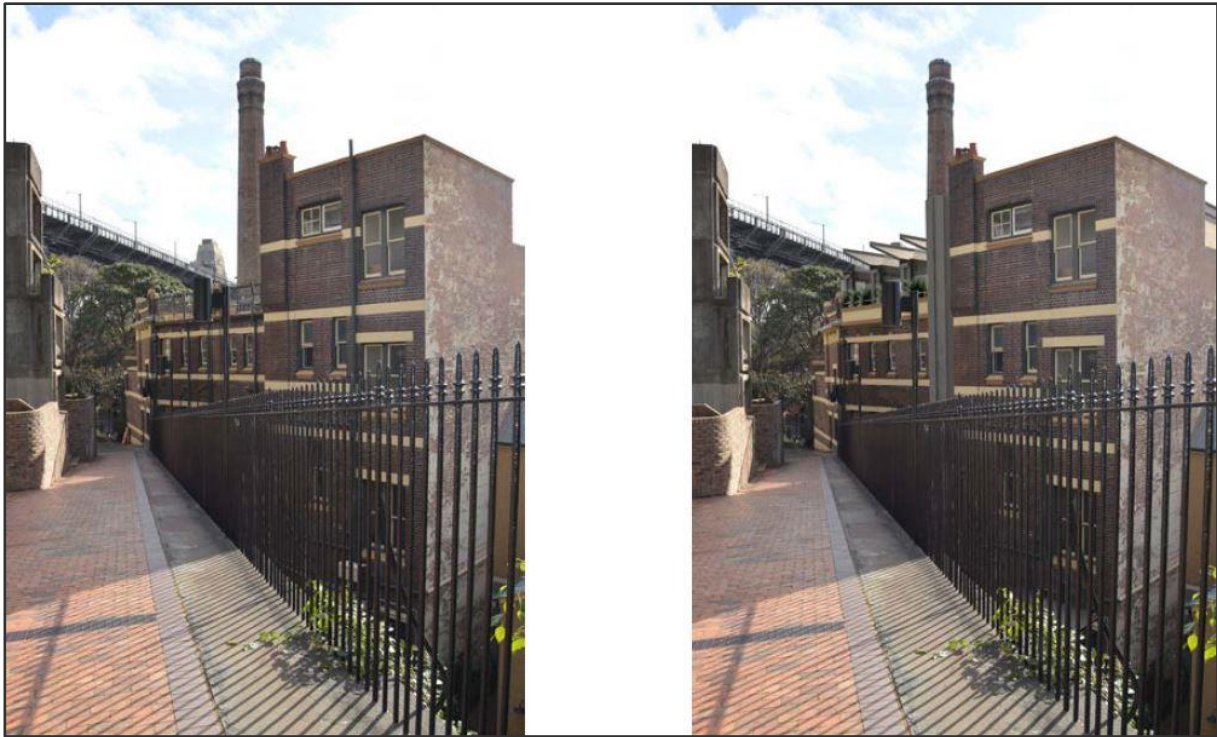


Figure 12 | Proposed view before and after from Gloucester Walk (Source: Applicant's VIA)

The Department considers the works would not have an adverse impact on the SOH world heritage buffer zone, as the Metcalfe Bond building would largely prevent the rooftop extension being visible from the Sydney Opera House. The Department also considers the new use of the rooftop would have the benefit of enhancing visual surveillance and allowing public appreciation of historic views to the surrounding precinct.

The Department's assessment concludes visual impacts are either minor when viewed from the public domain due to the minimal protrusion of the extension about the existing building, or acceptable because the views would only be temporarily glimpsed by people passing along Gloucester Walk to the rear of the site.

6.3.2 View impacts

The Applicant's View Impact Assessment (VIA) identifies the proposal will have impacts on views from Gloucester Walk (**Figure 12**) and the Sirius Building (**Figures 13 and 14**), both located to the rear of the site.

The Department has reviewed the Applicant's VIA and is satisfied it contains an accurate consideration of view impacts. The Department notes the SEARs request lodged for the redevelopment of the Sirius Building in October 2019 does not specify how many units are proposed, but notes the majority of the building will be retained. The SEARs request states some additional GFA is proposed, and that the building would be used for residential and commercial purposes, including retail and office floor space. The proposal would be subject to detailed design prior to the lodgement of an EIS.

While there is some uncertainty about the final mix of uses, for the purposes of this assessment, a continuing residential presence has been assumed and an assessment of view impacts on future occupiers has been made.

The Department did not receive any objections from the public, Council or Government agencies with regards to view loss.

To determine whether the proposed view loss impacts are reasonable, the Department has followed a four-step assessment in accordance with the principles established by Tenacity Consulting Vs Warringah [2004] NSWLEC 140. The steps/principles adopted in the decision are:

1. assess what views are affected and the qualitative value of those views
2. consider from what part of the property the views are obtained
3. assess the extent of the impact (from 'negligible' to 'devastating')
4. assess the reasonableness of the proposal that is causing the impact.

The Department's consideration of the first three principles is summarised in **Table 4**.

Table 4 | Summary of view loss impacts to the Sirius Building and Gloucester Walk

Principle	Location	Consideration
Affected views	5/36 Cumberland St	Sky views over the top of the Mercantile Hotel rooftop and Metcalfe Bond Stores. No iconic or water views are visible.
	6/36 Cumberland St	Long distance view of the Sydney Opera House main sail, over the top of the Mercantile Hotel rooftop and Metcalfe Bond Stores. No water views are visible. The view is sometimes obscured by cruise ships docking at the Overseas Passenger Terminal.
	2/38 Cumberland St	Long distance, side view to the Harbour Bridge, partially obscured by the chimney stack at the former Mining Museum Building.
	3/38 Cumberland St	Partial side view to the western elevation of the existing Mercantile Hotel and the Metcalfe Bond Stores Building beyond. No iconic or water views are visible.
	Communal view – eastern entrance of 38 Cumberland St	Side view from the eastern entrance to the block. The existing view is almost completely obstructed view to the Harbour Bridge, caused by the chimney stack at the former Mining Museum Building. No water views are visible.
	Gloucester Walk	Views of the Harbour Bridge structure, including its pylons, which are considered iconic.
Part of the property from which views are obtained	5/36 Cumberland St	Main terrace (acute view from window in living room) and secondary terrace.
	6/36 Cumberland St	Secondary terrace and bedroom.
	2/38 Cumberland St	Main terrace and top of landing leading down to terrace.
	3/38 Cumberland St	From the secondary terrace and the side of the main terrace.
	Communal view – eastern entrance of 38 Cumberland St	Eastern entrance to the block.
	Gloucester Walk	The area of the walkway to the immediate south-west of the site.
Extent of impact	5/36 Cumberland St	Low, given any iconic or water views are already obstructed.
	6/36 Cumberland St	Low, given the proposal would not obscure and of the existing Sydney Opera House view.

2/38 Cumberland St	Moderate – high, given the proposal will be highly visible and will almost completely obscure the acute view to the Harbour Bridge from the main terrace, and partially obscure it from the top of the terrace stairs.
3/38 Cumberland St	Low, given the view is already obstructed and there are no iconic or water views.
Communal view – eastern entrance of 38 Cumberland St	Low, given this is a passing view and already substantially obscured.
Gloucester Walk	Moderate impact, due to the obscuring of one of the southern Harbour Bridge pylons by the roof structures and lift.

With regards to the reasonableness of the proposal, the Department notes views would be obstructed by a proposal that breaches the SCRA envelope, however the Department considers this single-storey extension is reasonable as the extension is limited to a single storey, is only 0.83 m above the height of the existing rooftop structures, would not exceed the current maximum height of the building, and the works would provide for the ongoing commercial viability of a State heritage listed building.

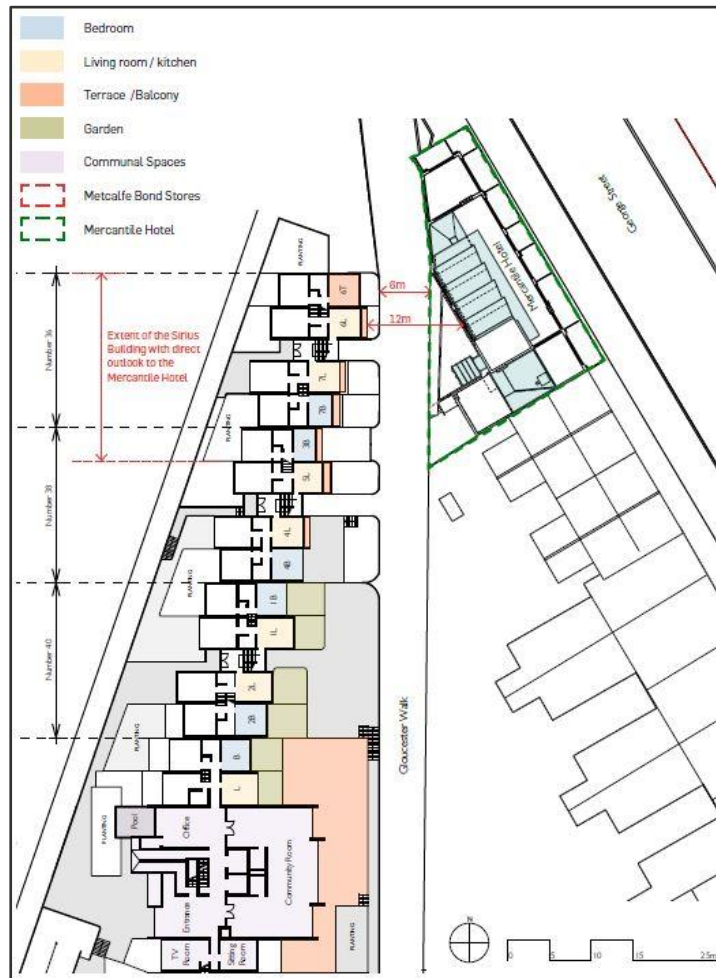


Figure 13 | Sirius Building views affected by the proposal (Source: Applicant's VIA)

The Department considers the impact on views from Gloucester Walk are acceptable as they are partial and temporarily experienced by pedestrians near the site, and therefore unaffected views of the Harbour Bridge could still be experienced from other parts of Gloucester Walk. The Department also considers enhanced views would be afforded to patrons at the rooftop extension.

The Department considers view impacts on the Sirius Building as a whole would be negligible, with views from the majority of the building unaffected by the proposal (**Figure 13**), including to the Harbour Bridge and its road deck. Viewing angles past the proposed rooftop works would be maintained, including broader, distant views to the Sydney Opera House and harbour. Views from the levels of the Sirius Building that would be affected by the proposal would not have existing views of the Sydney Opera House and harbour, as these are currently blocked by the Metcalfe Bond building on George Street.

Whilst there would be one unit in the Sirius Building with a moderate-high view impact, the Department considers this is acceptable as the views are acute, upward looking and the existing views are partially obscured. The Department also notes the views would be gained from the top of stairs moving between levels, rather than living rooms (**Figure 14**). The Department concludes the proposal would not unreasonably prevent the enjoyment of views by future occupants of the Sirius site and view impacts are reasonable and acceptable.

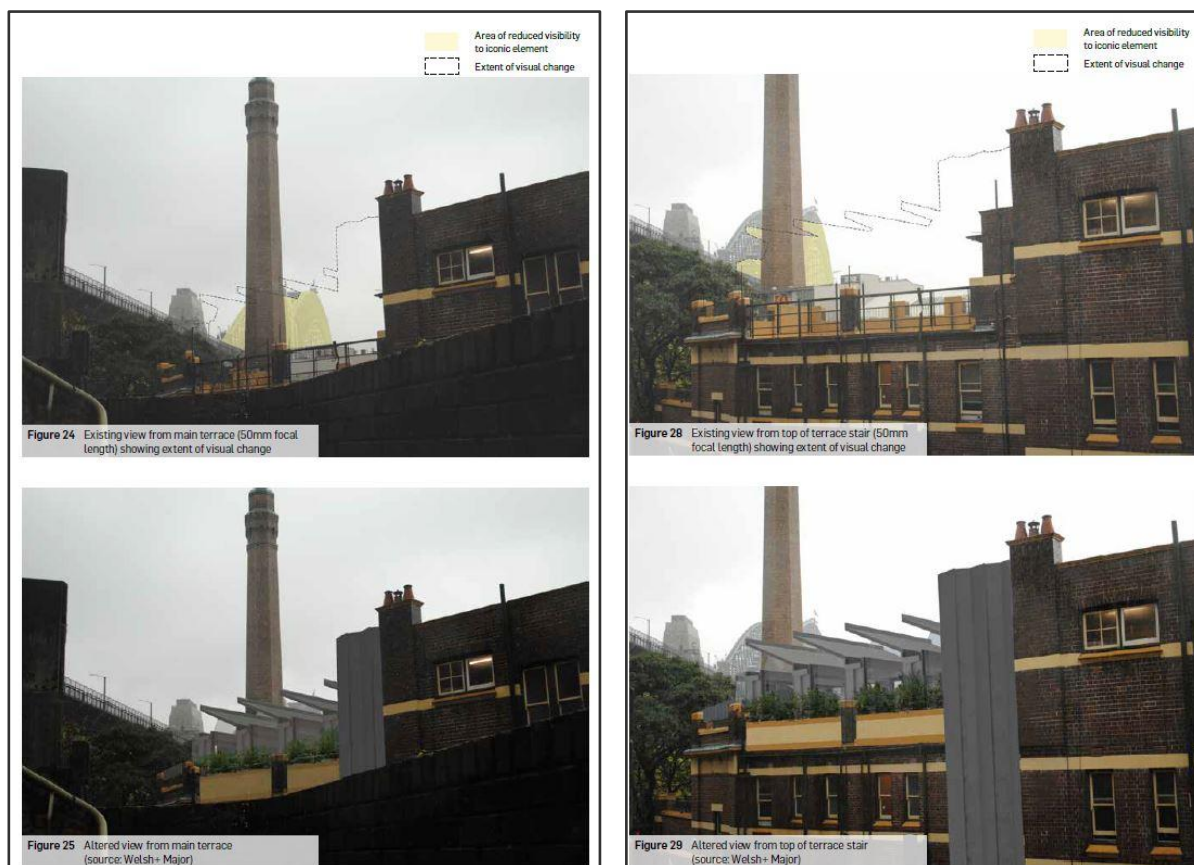


Figure 14 | Unit 2/38 Cumberland St (Sirius Building) affected views from main terrace (left) and views from top of landing leading down to terrace (right) (Source: Applicant's VIA)

6.4 Operational impacts

The Department notes the overall patron capacity is not proposed to increase from 431, however the Department considers the rooftop addition would lead to an intensification of the existing use as it would utilise an area not currently available to patrons. The Department has considered the impacts associated with this intensification below, including hours of operation and noise. Other matters associated with the intensification of the use,

including security and the requirement for an amended liquor licence, are discussed under the operational management heading in **Section 6.5**.

6.4.1 Operating hours

The current operating hours of the hotel ground floor bar are 5 am to 1 am Monday to Saturday and 10 am to 12 midnight Sunday, and for the George Street footpath area are 10 am to 12 midnight Monday to Saturday and 10 am to 10 pm Sunday.

The Applicant proposes to use the rooftop from 10 am until 1 am Monday to Saturday (with the open terrace closed and enclosable area doors shut from 12 midnight) and 10 am until 12 midnight on Sunday. These proposed hours of operation have the potential to result in impacts on the amenity of surrounding occupiers.

Council did not raise any concerns about the proposed hours of operation, although the Department received public submissions raising concerns about the proposed hours of operation. Submissions also stated the Department should limit the existing hours of operation. However, the Department notes the premises has operated since 1915, and the Applicant does not seek approval to alter their existing operating hours.

Under the Sydney Development Control Plan 2012 (the DCP), the hotel is located within a local centre area and classified as Category A – High Impact. The base trading hours in the DCP for indoor areas are 10 am to 10 pm, with extended hours until 12 midnight. The base trading hours for outdoor areas in a local centre area are 10 am to 8 pm, with extended hours of 9 am until 10 pm. The Department considers the enclosable area of the rooftop to be an indoor area and the open rooftop terrace to be an outdoor area. The DCP states a Plan of Management is required for existing Category A Premises that seek additions.

The DCP states extended hours may be approved on a trial basis. Based on the hours proposed by the Applicant, operation of the indoor area between 12 midnight and 1 am would not be permitted and a trial period would be required for its use from 10 pm to 12 midnight. Operation of the outdoor area between 10 pm and 12 midnight would also not be permitted, and a trial period would be required between 8 pm and 10 pm.

The Department considers the submitted Plan of Management has adequately considered and addressed any potential impacts that may arise from operations during late night trading hours and that therefore additional hours are acceptable in principle. The Department recommends a condition of consent requiring the Plan of Management to be updated to include a detailed complaints procedure and minimisation and mitigation strategies.

The Department notes the public objections and presence of residential properties in the area. However, the Department considers the proposed late-night trading hours are reasonable because the additional hours are consistent with what could reasonably be expected within The Rocks tourist and entertainment precinct and the trading hours of the existing hotel and its patron capacity are not proposed to increase.

The DCP recommends an initial one-year trial for operation outside the standard hours, and a second trial period of two years. The Department does not consider a one-year trial would provide sufficient time for the Sirius Building site to be occupied, given there is not currently an approval for its redevelopment. Therefore, meaningful feedback could not be obtained from its future occupants regarding the suitability of these hours. Instead, the Department considers a three-year trial period would be more appropriate as it would allow a review of the premises' management performance and impacts on neighbourhood amenity. The review would determine whether the existing trial hours could be renewed, or trading hours extended.

The Department therefore proposes a trial period for the use of the outdoor area of the rooftop and ground floor rear courtyard from 8 pm to 10 pm Monday to Sunday and 10 pm to 1.30 am on New Year's Eve/Day, and 10 pm to 2 am on New Year's Eve/Day for the internal area of the rooftop. While the Applicant has sought permanent

hours for the use of the internal area of the rooftop until 1 am Monday to Saturday and 12 midnight on Sundays, the Department considers that the hours should be restricted to 10 am to 12 midnight Monday to Sunday given the close proximity of the Sirius building and potential amenity impacts on residents.

6.4.2 Noise

The proposed rooftop bar/restaurant and terrace, rooftop plant and ground floor courtyard have the potential to result in noise impacts on surrounding receivers. These are discussed separately below.

Rooftop bar/restaurant and open terrace

The rooftop bar and restaurant would be enclosed on the northern, western and southern sides, with openable concertina doors facing east to the open area terrace.

Public submissions raised concerns regarding operational noise, including that the roof terrace should have a maximum capacity of 100 and be screened by planter boxes at its northern end. Public submissions also raised concerns about noise associated with the premises more generally, and cumulative noise impacts.

The Department acknowledges objections relating to noise from the existing premises, however the Department notes the premises has been operating for a number of years, including hosting live music performances, and this component of the premises would continue operating in accordance with existing approvals. Given the capacity of the premises is not proposed to increase from 431 despite a new rooftop level being provided, the Department considers noise levels in other parts of the premises could decrease, given the potential re-distribution of patrons.

The Liquor and Gaming NSW criteria requires the LA10 noise level (the noise level exceeded for 10% of the time) not to exceed the background level by 5 dB between 7 am and 12 midnight at the boundary of any affected residence. This criterion applies to both music and patrons. The Applicant's Noise Assessment (NA) states the applicable noise criteria can be met at all receivers. The Department is satisfied the NA has adequately assessed noise at nearby receptors from the rooftop bar and rooftop mechanical plant, including the Sirius Building and residential units at 8 Hickson Road.

The Department considers that given the site's context, where the ambient noise environment is dominated by road and rail traffic crossing the Sydney Harbour Bridge, the operational noise generated would not be unreasonable, also given that the Applicant proposes to play low-level pre-recorded music from speakers within the enclosable area, with no live music or disc jockeys. The Department considers any future occupiers of the Sirius site would be afforded some acoustic protection by the western wall of the enclosable area.

The Department considers the proposal would not result in adverse noise impacts and proposes to limit noise emissions from the rooftop to background level +5 dB between 7 am and 12 midnight, and to background level between 12 midnight and 2 am on New Year's Day. The Department also proposes conditions restricting the capacity of the rooftop area to 100 (indoor), 70 (outdoor) and a total of 150 when both are in operation, and prohibiting amplified music in the outdoor portion of the rooftop. The Department also recommends a condition of consent requiring an Operational Noise and Vibration Management Plan (ONVMP), to include, among other measures, regular noise monitoring at the nearest residential premises to ensure the proposed criteria are complied with. Noise impacts would also form a key consideration in the Department's consideration of a future potential extension of hours of operation.

Subject to the recommended conditions, the Department is satisfied the proposal would not result in any unreasonable noise impacts on the surrounding environment and sensitive receivers, and notes adherence to the conditions of consent would be monitored by the Department's compliance unit.

Rooftop plant

Mechanical plant for refrigeration and air conditioning would be located at the southern end of the rooftop in an area with 1.2 m high masonry balustrading to all sides.

The Department received objections from residents stating further details on the mechanical plant should be provided as part of this application rather than prior to the commencement of construction.

The nearest sensitive receivers are the Sirius Building and 8 Hickson Road, which are approximately 20 m and 45 m from the plant area respectively. The Department notes the mechanical exhaust is located at the southern end of the building, which would minimise impacts on residential receivers. The Applicant states mechanical plant could be chosen to comply with the INP night-time noise limit of 50 dBA. This would ensure the day-time (65 dBA) and evening (55 dBA) criteria could also be met. The Applicant states the selection of plant would be confirmed during the detailed design phase. The Department therefore recommends a condition requiring these details to be submitted to the certifying authority prior to the issue of a Construction Certificate, to ensure these details are confirmed prior to the installation of the equipment and confirm it would meet the noise criteria. Subject to this condition, the Department considers the noise impacts from the rooftop plant would be acceptable.

Ground floor courtyard

The new ground floor courtyard at the rear of the building would have an area of approximately 20 m². The Department considers this area would not contribute to the overall noise emissions at nearby sensitive receivers as its capacity would be 16 people. Compared to the existing operations, the noise generated by this area would not be significant and can be appropriately managed by conditions of consent, including closure of this area by 10 pm.

6.5 Other Issues

Other relevant issues for consideration are addressed in **Table 5**.

Table 5 | Summary of other issues raised

Issue	Findings	Recommended Condition
Operational management/ Liquor licence	<ul style="list-style-type: none">The Department has assessed potential impacts associated with the operational management of the proposal.The current liquor licence would need to be extended to cover the entirety of the rooftop. Despite the premises being located within the Sydney CBD Entertainment Precinct liquor licence freeze area, this is permitted as the existing overall hotel capacity of 431 persons is not proposed to increase.The Department considers the proposed works would not result in any increases in violence or crime, particularly given the total number of patrons is not proposed to increase. The Department notes the Applicant proposes two additional security guards for the rooftop area.The Department proposes conditions in accordance with some of the recommendations of NSW Police, including in relation to signage and provision of a Plan of Management.The Department notes further conditions suggested by NSW Police in relation to the types of drinks sold at the premises, however given the application seeks consent for additions rather than for a new premises, considers these conditions are not required and can in any case be	<ul style="list-style-type: none">A CCTV camera to be installed at the entrance to the premises and rooftop.The Plan of Management to be updated to address comments made by NSW Police including keeping a register of complaints.A sign is to be erected on the rooftop area stating the maximum capacity of the rooftop area is 100 persons (indoor), 70 persons (outdoor) and 150 persons (when both are in operation).

considered in any future application for an amended liquor licence.

- The Department anticipates the proposal would result in an increase in waste generation and therefore considers the proposed management of waste in accordance with existing arrangements is satisfactory.
- The Department concludes the impacts associated with the operational management of the premises are acceptable, subject to the proposed conditions.

Overlooking/ privacy

- The Department has assessed potential overlooking impacts from the rooftop and lift towards George Street, Gloucester Walk and the Sirius Building (balconies and courtyards).
- The Department did not receive any objections with regards to overlooking.
- The Department notes there are existing overlooking impacts from windows facing towards the Sirius Building.
- The Department considers potential views from the lift would be appropriately mitigated by the metal framework and notes the proposed lift is removing three existing windows in the rear of the building, from which overlooking would currently be possible.
- The Department considers overlooking at rooftop level would be mitigated by the steel walls supporting the western elevation of the rooftop extension and the proposed planter bed along the western edge of the rooftop.
- The Department concludes that the potential overlooking impacts are acceptable.
- The western planter bed is to be installed and maintained in a proper and efficient manner at all times to prevent overlooking of neighbouring properties.

Construction noise

- The Department has assessed construction noise impacts on nearby receivers.
- Construction would take place for up to 12 months in three stages. The Applicant seeks construction hours of 7 am to 5 pm Monday to Friday and 7 am to 3 pm Saturday.
- The Department has not received any objections in relation to construction noise.
- The Applicant also proposes not to undertake noisy activities for any sustained period greater than three hours without a minimum 30-minute period of respite, translating to respite periods between 9 am and 9.30 am, 12.30 pm and 1.30 pm, and after 4.30 pm.
- However, the Department proposes its standard condition of consent, which has been formed based on experience with several projects and is consistent with the amount of respite proposed by the Applicant. The Department's standard condition restricts periods of high noise activities to between 9 am and 12 pm, and 2 pm and 5 pm Monday to Friday, and 9 am to 12 pm on Saturday.
- The Department recommends conditions to ensure noise is effectively managed and that all potentially affected receivers are informed of the works prior to their commencement. Subject to the recommended conditions, the Department is satisfied the construction works would not result in any unreasonable noise
- The Applicant to update its Construction Environmental Management Plan and Construction Noise and Vibration Management Plan.

impacts on the surrounding environment and residential receivers.

Construction traffic	<ul style="list-style-type: none"> • The Department has assessed construction impacts on transport, traffic and access. • TfNSW and TfNSW (RMS) did not object to the proposal in relation to construction traffic impacts, however stated a condition should require the CPTMP to be updated prior to the commencement of works. • The Department did not receive any objections in relation to construction traffic. • The Department considers adverse impacts on the surrounding road network are unlikely, as the works would generate in the order of six vehicle trips per day during demolition and 8–12 vehicle trips per day during construction, with a maximum of two trips expected during peak hour. • The Department concludes construction traffic impacts are acceptable, and proposes conditions to ensure any impacts are appropriately managed. 	<ul style="list-style-type: none"> • The CPTMP to be updated. • The Applicant to obtain all relevant approvals from the relevant road authority, including a road occupancy licence.
Air quality (odour)	<ul style="list-style-type: none"> • The Department received public objections stating the mechanical exhaust system should incorporate electro static filtration and ozone odour treatment. • The proposed mechanical exhaust would discharge in the southern portion of the rooftop. • The Department considers the mechanical exhaust system would not have adverse impacts on air quality or odour, as no solid fuel cooking is proposed, it would be approximately 5 m above the height of the nearest adjoining building, and there are no windows facing directly onto it. • Notwithstanding, the Department has recommended a condition requiring the mechanical exhaust system to incorporate electro static filtration and ozone odour treatment, to ensure air quality is appropriately managed. 	<ul style="list-style-type: none"> • The mechanical exhaust system to incorporate electro static filtration and ozone odour treatment.
Archaeological heritage (Historical and Aboriginal)	<ul style="list-style-type: none"> • Excavation for the proposed lift, new grease trap in the rear courtyard and potential removal of the floor slab and excavation in the rear courtyard (if required for drainage and to achieve new finished floor levels) has the potential to expose archaeological material. • The Heritage Division and EESG supported the proposal and recommended conditions of consent to manage any residual impact. • The Department concludes that the archaeological potential of the site is low and proposes conditions to ensure archaeological impacts are appropriately managed. 	<ul style="list-style-type: none"> • An Excavation Director, monitoring program, and interpretation of any potential heritage items be prepared. • Inspection of exposed areas by an archaeologist to confirm historical disturbance, and for works to cease if any Aboriginal objects are uncovered.



7. Evaluation

The Department has reviewed the EIS, RTS, and all additional information, and assessed the merits of the proposal, taking into consideration advice from Council and Government agencies. Issues raised in public submissions have been considered (as outlined in **Appendix B**) and all environmental issues associated with the proposal have been thoroughly addressed.

The Department has considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development (as outlined in **Appendix C**).

As previously noted, the Mercantile Hotel has been in operation since 1915 as a pub, and the Applicant does not seek approval to vary the existing operating hours.

The works would not have adverse heritage impacts and would improve accessibility and the standard of facilities offered to patrons, enabling the premises to continue to operate and therefore preserving its heritage.

Visual and view impacts associated with the rooftop additions are acceptable, particularly from the surrounding area and Sirius Building.

Construction noise and traffic impacts are acceptable as there would be a relatively low impact on the surrounding traffic network.

The Department has recommended a suite of conditions to:

- manage heritage impacts, including requirements for a conservation architect to monitor works, archival recording and preparation of a Heritage Interpretation Strategy
- manage operational impacts, including a three-year trial period for the rooftop's operating hours and limiting its capacity, and requiring the preparation of an Operational Noise and Vibration Management Plan
- manage construction impacts, including the preparation of a Construction Environmental Management Plan, Construction Pedestrian Traffic Management Plan and Construction Noise and Vibration Management Plan prior to the commencement of works.

Consequently, the Department concludes the proposal is in the public interest and recommends the SCRA Scheme variation is made and the application approved, subject to conditions.



8. Recommendation

It is recommended that the Executive Director, Compliance, Industry and Key Sites, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the application
- **agrees** with the key reasons for approval listed in the notice of decision
- **agrees** to make the proposed variation to the SCRA Scheme
- **grants consent** for the application in respect of SSD 8665, subject to the conditions in the attached development consent
- **signs** the attached development consent and recommended conditions of consent (see **Appendix E**).

Karl Fetterplace
Senior Planning Officer
Key Sites Assessments

Recommended by:

Cameron Sargent

Team Leader
Key Sites Assessments

Recommended by:

Anthony Witherdin

Director
Key Sites Assessments



9. Determination

The recommendation is: **adopted/not adopted** by:

Sargeant

Anthea Sargeant

4/12/19

Executive Director

Compliance, Industry and Key Sites



Appendices

Appendix A – List of Documents

The following supporting documents and supporting information to this assessment report can be found on the Department's website as follows:

Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/9991>

Submissions on Environmental Impact Statement

<https://www.planningportal.nsw.gov.au/major-projects/project/9991>

Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/9991>

Submissions on Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/9991>

Revised Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/9991>

Appendix B – Community Views for Draft Notice of Decision

Issue	Consideration
<p>Built form and heritage (Council issue)</p> <ul style="list-style-type: none"> the roof should be reduced in height and bulk a full schedule of materials and finishes is required, and the Quantity Surveyor's report should be audited to ensure it provides for a high level of materials and finishes recommendations in the HIS should be adhered to further information on services is required. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers the rooftop and lift would not adversely impact on the building or surrounding area as they are subservient in form and of complimentary materials that are designed to limit visual impact. The Department considers the information provided is sufficient to determine the proposed works would be of sufficient quality and notes the Heritage Division supports the works. The Department has proposed conditions in accordance with the HIS, as suggested by Council. The Department considers sufficient information has been provided to determine the works (including service upgrades) would not have an adverse impact on the heritage fabric of the building. These matters are further discussed in Section 6.2. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Requirements in accordance with the HIS, including for archival photographic recording, a Heritage Interpretation Plan, use of skilled trades people and commissioning of a conservation architect to monitor works.
<p>Hours of operation (public issue)</p> <ul style="list-style-type: none"> hours should be limited to those of the existing premises use of the open area of the roof terrace should cease and the doors to the enclosable are closed by 10 pm. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department notes the hours of operation for the existing premises are not proposed to increase. The Department proposes a three-year trial period for rooftop and rear courtyard operating hours of between 8 pm and 10 pm (outdoors), with the enclosable area to be shut at 10 pm. The Department accepts while the rooftop addition would allow for the use of an area that is not currently available to patrons, the proposed hours are not unreasonable or excessive within The Rocks tourist precinct and operation of the premises will be suitably managed as indicated in the Plan of Management and proposed conditions of consent. These matters are further discussed in Section 6.4.1. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> A three-year trial period for rooftop operating hours of between 8 pm and 10 pm (outdoors), with the enclosable area to be shut at 10 pm.
<p>Operational noise (public issue)</p> <ul style="list-style-type: none"> from patrons, particularly in outdoor areas, and the mechanical exhaust system restrictions should be placed on the number of large events and operating hours for live music, outdoor areas and those opening onto outdoor areas 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department notes the existing capacity of 431 patrons is not proposed to increase. The Department considers the noise impacts, including from the mechanical exhaust located at the southern end of the building, would comply with the relevant criteria at all receivers. This includes consideration of cumulative noise impacts, including The Rocks Market. The comments regarding the use of the George Street footpath, treatment of the northern and eastern elevations of the premises and the restriction of the capping of big events at the premises relate to existing operations and are therefore outside the scope of this application. Adherence to the conditions of consent would be monitored by the Department's compliance unit. These matters are further discussed in Section 6.4.2.
<ul style="list-style-type: none"> the capacity of the outdoor terrace 	

<p>should be restricted to 100</p> <ul style="list-style-type: none"> the ground floor elevation facing George Street should be acoustically treated. 	<p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Limiting noise emissions from the rooftop to background level +5dBA between 7 am and 12 midnight, and to background level between 12 midnight and 2 am on New Year's Day. Restricting the capacity of the rooftop area to 100 persons (indoor), 70 persons (outdoor) and a total of 150 persons when both are in operation. Prohibiting amplified music in the outdoor portion of the rooftop. Requiring an Operational Noise and Vibration Management Plan (ONVMP), to include, among other measures, regular noise monitoring at the nearest residential premises to ensure the proposed criterion is complied with. Requiring rooftop plant details to be submitted to the certifying authority prior to the issue of a Construction Certificate, to ensure these details are confirmed prior to the installation of the equipment.
<p>Air quality (public issue)</p> <ul style="list-style-type: none"> the mechanical exhaust system should incorporate electro static filtration and ozone odour treatment. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers the mechanical exhaust system would not have adverse impacts with regards to air quality, including odour, as it would be approximately 5 m above the height of the nearest adjoining building and there are no windows facing directly onto it. These matters are further discussed in Section 6.5. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Requirements for the mechanical exhaust system to incorporate electro static filtration and ozone odour treatment.
<p>Reflectivity (public issue)</p> <ul style="list-style-type: none"> impacts associated with the reflectivity of the rooftop extension should be considered on the building at 8 Hickson Road, particularly the upper levels. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers the proposal would not have an adverse impact on buildings in the surrounding area with regard to reflectivity. <p><i>Recommended Conditions/Response</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Requirements for construction materials to avoid highly reflective surfaces.
<p>Security/lighting (public issue)</p> <ul style="list-style-type: none"> additional lighting should be provided to improve security on the section of George Street between Hickson Road and Lower Fort Street. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department considers a requirement to provide additional lighting on George Street would be overly onerous, and notes existing security measures at the premises would remain in place, including personnel and CCTV, with additional security proposed for the new rooftop. The rooftop would improve passive surveillance to Gloucester Walk and George Street, and therefore the Department considers there could be a resulting improvement in security. <p><i>Recommended Conditions/Response</i></p> <p>No conditions recommended.</p>
<p>Loss of property value (public issue)</p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> Outside the scope of this application.

Appendix C – Statutory Considerations

In line with the requirements of section 4.15 of the EP&A Act, the Department's assessment of the project has provided a detailed consideration to a number of statutory requirements. These include:

- the objects found in section 1.3 of the EP&A Act
- the matters listed under section 4.15(1) of the EP&A Act, including applicable environmental planning instruments and regulations.

The Department has considered all of these matters in its assessment of the project and has provided a summary of this assessment in **Tables 1** and **2**.

Table 1 | Consideration of objects of the EP&A Act

Objects of the EP&A Act	Summary
(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	The proposal promotes the social and economic welfare of the community through the refurbishment of a State listed heritage item. The proposed works would not result in an adverse impact on natural or other resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The principles of ecologically sustainable development are considered below.
(c) to promote the orderly and economic use and development of land	The proposal promotes the orderly and economic use of land through upgrading an existing State Heritage listed building to ensure its ongoing commercial viability. The merits of the proposal are considered in Section 6 of this report.
(d) to promote the delivery and maintenance of affordable housing	The provision/maintenance of affordable housing is not relevant to the proposal.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed development would not have an adverse impact on the natural environment.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	<p>As noted, the proposal would facilitate the ongoing commercial viability of this State Heritage listed item without adverse impacts.</p> <p>The Department consulted the Heritage Division on the proposed development, who raised no objection to the revised proposal subject to conditions. Heritage issues are considered in detail in Section 6.2.</p> <p>The proposal would not have an adverse impact on Aboriginal cultural heritage.</p>
(g) to promote good design and amenity of the built environment	The Department considers the proposal would exhibit good design quality and amenity. The proposed design and amenity impacts on the surrounding environment are considered in Section 6 .
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposal facilitates the maintenance of the building. Recommended conditions would ensure the proposed development would be constructed in compliance with all relevant building codes and health and safety requirements.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The proposal is SSD and therefore the Minister is the consent authority. The Department consulted with the City of Sydney Council and relevant Government agencies on the proposal.

- (j) to provide increased opportunity for community participation in environmental planning and assessment. **Section 5** of this report sets out details of the Department's engagement on the proposal.

Table 2 | Consideration of section 4.15(1) of the EP&A Act

Section 4.15(1) Evaluation	Summary
(a)(i) any environmental planning instrument	The proposal requires a variation to the SCRA Scheme, which is addressed in Sections 4.2, 4.3 and Appendix D . The proposed development complies with the other relevant legislation, as addressed in Section 4 of this report and the consideration of other relevant EPIs provided below.
(a)(ii) any proposed instrument	Considered in the section following this table.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, Development Control Plans (DCPs) do not apply to SSD. Notwithstanding, consideration has been given to the Sydney Harbour Foreshores and Waterways Area DCP 2005 where relevant.
(a)(iia) any planning agreement	Not applicable.
(a)(iv) the regulations <i>Refer Division 8 of the EP&A Regulation</i>	The application satisfactorily meets the relevant requirements of the Regulation, including the procedures relating to applications (Part 6), fees (Part 15), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to the EIS.
(a)(v) any coastal zone management plan	Not applicable.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has assessed the likely impacts of the development and considers they are acceptable and/or have been appropriately managed by recommended conditions (refer to Section 6 and Appendix E of this report).
(c) the suitability of the site for the development	The site is suitable for the development as discussed in Sections 4 and 6 of this report.
(d) any submissions	Consideration has been given to the submissions received during and after the EIS and RtS exhibition periods (see Sections 5 and 6 of this report).
(e) the public interest	The Department considers the proposal to be in the public interest as it would ensure the ongoing commercial viability of a State Heritage listed item. The proposal would provide social and economic benefits by contributing to the local and tourism identity of The Rocks.
Biodiversity values exempt if: (a) On biodiversity certified land (b) Biobanking Statement exists	Not applicable.
The likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report. (Section 7.14 of the <i>Biodiversity Conservation Act 2016</i>)	The Department has consulted with EESG and considers the proposal would not have any adverse impact on biodiversity values as it relates additions to and refurbishment of an existing building.

Ecologically Sustainable Development

The Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1997*. Section 1.3(b) of that Act states that ESD requires the effective integration of economic, environmental and social considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle

- (b) inter-generational equity
- (c) conservation of biological diversity and ecological integrity
- (d) improved valuation, pricing and incentive mechanisms.

The Department has assessed the proposed development in relation to the ESD principles and has made the following conclusions:

- **Precautionary Principle** – the extensions and refurbishment of this building would not result in any serious or irreversible environmental damage.
- **Inter-Generational Equity** – the proposal would ensure the ongoing commercial viability of a State Heritage listed item, allowing for its continued enjoyment by future generations.
- **Biodiversity Principle** – the proposal would not have any adverse impacts on biodiversity.
- **Valuation Principle** – the proposal includes a number of measures to limit the ongoing cost, resource and energy requirements of the development. These include re-utilising existing building fabric and materials, using high quality materials with long lifespans and minimal maintenance requirements, using sustainably sourced materials, energy efficient heating, water efficient building services, and upgrading ageing services.

ENVIRONMENTAL PLANNING INSTRUMENTS

Controls considered as part of the assessment of the proposal are:

- State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)
- Sydney Cove Redevelopment Authority Scheme (SCRA Scheme)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- Draft State Environmental Planning Policy for the Remediation of Land (draft Remediation SEPP)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SHC SREP)
- Draft State Environmental Planning Policy (Environment) (draft Environment SEPP)
- State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)
- Other Plans and Policies:
 - o Sydney Harbour Foreshores and Waterways Area DCP 2005.

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The SRD SEPP aims to identify development that is of State significance due to its size, economic value or potential impact. The proposed development constitutes State significant development under clause 6 of Schedule 2 of the SRD SEPP as it is development on land within The Rocks Site that does not comply with the Sydney Cove Redevelopment Authority Scheme (SCRA Scheme).

Sydney Cove Redevelopment Authority Scheme (SCRA Scheme)

The Mercantile Hotel is located within Site XXX under the provisions of the SCRA Scheme, which includes 'Commercial' land uses as permissible on the site. The proposal seeks to upgrade the restaurant/pub and associated accommodation, considered a 'Commercial' use, which is permissible under the SCRA Scheme.

The application proposes to amend the SCRA Scheme. The Department's assessment of the proposed variation against the matters outlined in the *Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999* (Regulation) is provided in **Appendix D**. The Department supports the proposed variation.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant Government agencies about certain development during the assessment process.

The proposal was referred to TfNSW and TfNSW (RMS) for comment and their comments are summarised in **Section 5** of this report. Neither agency raised concerns regarding the ISEPP, with TfNSW specifically stating the risk of the proposed works on the CBD Rail Link Corridor is considered to be negligible. The Department therefore considers the proposal to be consistent with the ISEPP.

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)

SEPP 55 aims to ensure that potential contamination issues are considered in the determination of a development application. SEPP 55 requires the consent authority to consider whether the land is contaminated, and if so, whether the land is suitable for the purpose for the proposed development.

The Applicant's Stage 1 Preliminary Environmental Study finds the site has not been or is currently used for a purpose which could give rise to site contamination. Excavation of an area measuring 1.3 m deep and approximately 2.2 m x 2.7 m is required for the installation of the new lift pit, however the Applicant's study finds due to the topography of the area it is suspected if fill is present it is likely to be minimal.

The report concludes it is unlikely asbestos was used as part of the original building material, however it is likely that refurbishment has been undertaken since, and hazardous materials are suspected in the form of asbestos in window sealant, and lead paint to the exterior wall of the southern elevation and in interior walls of the basement.

The site is considered suitable for the continued use of the building for its current purpose, in accordance with SEPP 55, subject to a Waste Classification Assessment, Unexpected Finds Protocol and HAZMAT survey. The Department proposes conditions to require the preparation of these documents.

Draft Remediation of Land State Environmental Planning Policy (draft Remediation SEPP)

The Explanation of Intended Effect for a new Remediation of Land SEPP was exhibited until 13 April 2018. The draft Remediation of Land SEPP proposes to better manage remediation works by aligning the need for development consent with the scale, complexity and risks associated with the proposed works.

The key operational framework of SEPP 55 is to be maintained in the new SEPP and new provisions are unlikely to significantly affect this application. As such, the Department considers the proposed development would be consistent with the intent of the draft SEPP, subject to conditions requiring a Waste Classification Assessment, Unexpected Finds Protocol and HAZMAT survey, as noted above.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SHC SREP)

The SHC SREP provides planning principles for development within the Sydney Harbour catchment. The site is located within the Sydney Harbour catchment area, is in the foreshores and waterways area and is also defined as a Strategic Foreshore Site. No items of heritage significance are identified within or immediately near the site.

Aims of the plan

The proposed modification is consistent with the aims of the plan as it:

- would not adversely affect the catchment, foreshores and waterways of Sydney Harbour
- would not have adverse environmental impacts, subject to the Department's recommended conditions
- would upgrade the existing commercial use and contribute to the culture and vibrancy of the area.

Matters for consideration

The proposed modification is consistent with the relevant matters for consideration for land within the foreshores and waterways area as it would not:

- have any adverse impacts on the biodiversity or ecology of the area, noting the site is not considered to have high environmental values
- impact on public access, and use of, the foreshore
- reduce the capacity of Sydney Harbour to function as a working harbour or have adverse impacts on the use of the waterways
- detract from the scenic quality of the foreshore and waterway, or views to and from Sydney Harbour, as discussed in **Section 6.3**.

Foreshores and Waterways Planning and Development Advisory Committee

The proposal was referred to the Advisory Committee in accordance with clause 29(3) and no comments were received.

Strategic Foreshore Sites

The site is identified as a 'Strategic Foreshore Site' on 'Sheet 1 - City Foreshores Area' of the Strategic Foreshore Sites Map. Clause 41 of the SHC SREP states that development consent must not be granted for the carrying out of development on a strategic foreshore site unless there is a master plan for the site, and the consent authority has taken the master plan into consideration. The Minister has not directed a master plan for the land be prepared.

Heritage provisions

The Department has considered the proposal in relation to heritage impacts in accordance with Part 5 of this SREP, including impacts on views and vistas between the Sydney Opera House and other public places in the buffer zone as required by clause 59, and finds the proposal would not have unacceptable impacts in relation to any items of environmental heritage in the locality, as discussed in **Section 6.2**.

Draft State Environmental Planning Policy (draft Environment SEPP)

The Explanation of Intended Effect for the Environment SEPP was exhibited until 31 January 2018. The Environment SEPP proposes to simplify the planning rules for the protection and management of the natural environment by consolidating seven existing SEPPs, including the SHC SREP.

The relevant matters for consideration and the general provisions relating to Sydney Harbour are proposed to remain in accordance with those in the current SEPP and therefore the proposed development would be consistent with the intended effect of the Environment SEPP.

The Sydney Harbour Foreshores and Waterway Area DCP 2005 is proposed to be transitioned into one or more guidelines that would cover the current content and provide updated guidance to consent authorities based on design principles and landscape character, however these guidelines are not currently in draft form.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The Sydney Harbour Foreshore and Waterways Area Development Control Plan (the DCP) complements the SHC SREP and provides more detailed design parameters for development within the foreshore area of Sydney Harbour.

The site is within the defined Foreshores and Waterways Area under the SHC SREP and is therefore subject to the controls in the DCP. The DCP includes aims and performance criteria in relation to ecological assessment, landscape assessment, and design guidelines for development within the area.

The Department has considered the submitted Biodiversity Development Assessment Report and concludes the proposal would not result in detrimental impacts on the ecological communities within the study area of the site. As such, the proposed modification satisfies Part 2 (Ecological Assessment) of DCP 2005.

The proposal is sympathetic to the heritage significance of The Rocks Area and is consistent with the guidelines as it does not impact upon the foreshore access or views. Therefore, the Department considers the proposal is consistent with the DCP.

[State Environmental Planning Policy \(Coastal Management\) 2018 \(Coastal SEPP\)](#)

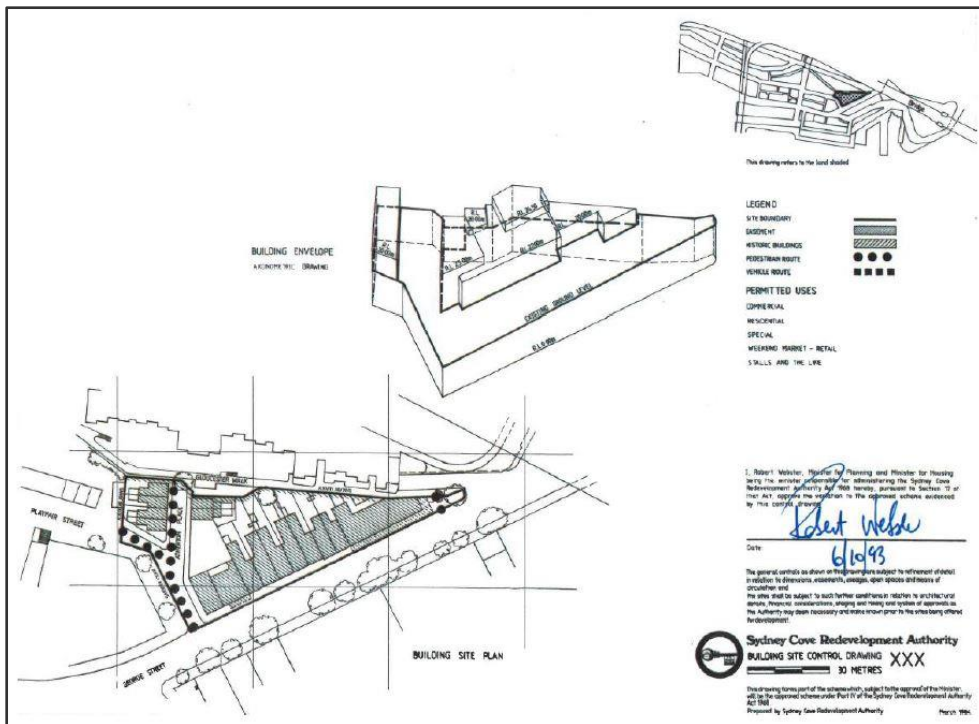
The Coastal SEPP consolidates and replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal Management SEPP gives effect to the objectives of the *Coastal Management Act 2016* (NSW) from a land use planning perspective. It defines four coastal management areas and provides assessment criteria tailored for each coastal management area. The consent authority must apply those criteria when assessing proposals for development that fall within one or more of the mapped areas.

The Coastal SEPP identifies the site as being located within the Coastal environment area and Coastal use area. Land within these areas are subject to clauses 13 and 14, however as the site is located on land within the Foreshores and Waterways Area of the SHC SREP, clauses 13 and 14 of the Coastal SEPP do not apply.

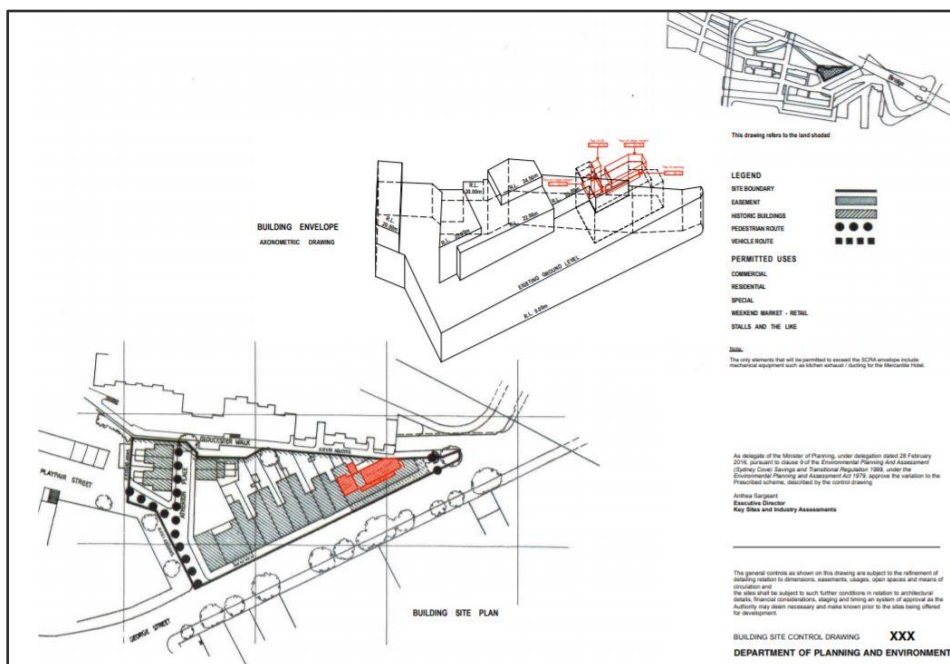
Appendix D – SCRA Scheme Variation

The site is located on Drawing XXX of the SCRA Scheme (**Drawing A**).



Drawing A | Current SCRA Scheme Drawing XXX

The proposed variation seeks to amend Drawing XXX of the SCRA Scheme to enable development consent to be granted for additions to the rooftop for a bar and restaurant, including associated amenities and kitchen mechanical exhaust, and a new lift to provide access to the rooftop, which would be outside of the building envelope nominated in the SCRA Scheme (**Drawing B**). This would increase the current building heights from RL 26.74 at the parapet and RL 28.72 at the existing rooftop structures (whilst noting the existing chimney height is RL 29.55) to a maximum of RL 29.55 at the top of the lift and rooftop bar.



Drawing B | Proposed SCRA Scheme Drawing XXX (amendments shown in red)

The Department notes the existing Mercantile Hotel exceeds the SCRA Scheme envelope height of RL 20 by 9.55 m, meaning the maximum height of the extension would not exceed the existing maximum height of the existing building.

The reason for the existing building's exceedance of the envelope is unknown, however the hotel has been in operation since 1915, which pre-dates the current SCRA Scheme drawing created in 1993. This SCRA variation would also correct this inconsistency.

The Applicant amended the proposal following public exhibition of the EIS to include a kitchen exhaust that would also exceed the SCRA Scheme building envelope. The Applicant advised the exceedance was likely to be in the order of 1.2 m, however this would not be known exactly until cooking and kitchen equipment is selected at the construction stage.

Given the exact dimensions of the exhaust were not known, the Department considered the most appropriate way to vary the SCRA Scheme was to include an annotation on the drawing, rather than depicting the exhaust. This would avoid the need to seek another variation in future if the exhaust dimensions change, noting that if any substantial changes were proposed, a modification would need to be sought.

A nominal height of 1.2 m has therefore been shown on the architectural drawings and a note added to the SCRA drawing stating "the only elements that will be permitted to exceed the envelope include: mechanical equipment such as kitchen exhaust/ducting for the Mercantile Hotel". This amendment required the amended application and draft variation to the SCRA Scheme to be re-exhibited.

The Department has undertaken an assessment of the proposed variation of the SCRA Scheme against the matters outlined in the *Environmental Planning and Assessment (Sydney Cove) Savings and Transitional Regulation 1999* (Regulation) in **Table 3**.

Table 3 | Consideration of provisions of the SCRA Scheme

Consideration	Department's Assessment
Clause 4 – Application for variation to approved SCRA Scheme	The Applicant applied for a variation to the approved SCRA Scheme for both the initial and amended proposals.
Clause 5 – Decision as to preparation of draft variation	The Secretary approved the request to prepare a draft variation to the SCRA Scheme for both the initial and amended proposals and notified the Applicant in writing.
Clause 6 – Public notice and exhibition of draft variation	The initial and amended proposal and accompanying draft variation to the approved SCRA Scheme were exhibited concurrently. Notice of the Draft SCRA variation was included in the public notice given of the development application.
Clause 7 – Inspection of, and submissions concerning, the draft variation	During the exhibition period for the initial and amended proposal, the draft variation to the approved SCRA Scheme was publicly available for any person to inspect and make extracts of the draft variation and make a written submission concerning the draft variation.
Clause 8 – Public notice of development that is not designated or advertised development	The initial proposal and SCRA Scheme variation were concurrently exhibited from 28 June 2018 until 25 July 2018. The amended proposal and SCRA Scheme variation were concurrently exhibited from 2 May 2019 until 31 May 2019.

Clause 9 – Variation of approved SCRA Scheme

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| (1) Minister is to consider all submissions | All submissions have been considered in this report, as detailed in Sections 5,6 and Appendix B . |
| (2) If after considering those submissions, the Minister is of the opinion that the draft SCRA variation, if made: | |
| (a) Will not permit development that will adversely affect: | |
| i. development on adjoining land, or | The Department considers the rooftop extension to provide a bar and restaurant, associated structures and lift would not have an adverse impact on adjoining land or the quality of public domain in the locality, including with regards to design, heritage, views, noise and solar access as discussed in Sections 6.2, 6.3, 6.4 and 6.5 . |
| ii. the heritage significance of buildings, structures or sites in the locality, or | The Department considers there would not be adverse heritage impacts, as discussed in Section 6.2 . |
| iii. the quality of public domain in the locality, and | The Department does not consider the works will have an adverse impact on public domain in the locality. |
| (b) Will not permit development that will have an adverse impact on the natural or built environment or an adverse social or economic impact in the locality, and | The proposed rooftop extension and lift will not result in unacceptable impacts on surrounding heritage items or views. The proposal would improve the functionality of the premises, which would assist in conserving a State Heritage listed building. |
| (c) Will conform with the general planning and design principles for the Sydney Cove Redevelopment Area. | The proposal is therefore considered consistent with the planning and design principles of the SCRA Scheme. |

The Department is satisfied the proposal is consistent with the aims and objectives of the SCRA Scheme and recommends the Minister's delegate make the SCRA Scheme variation, subject to additional wording being added to the proposed notation on the SCRA drawing which states 'that is granted development consent by the relevant consent authority'.

Appendix E – Development Instrument of Consent

The recommended conditions of consent for SSD 8665 can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/9991>