

**ITEM 5. DEVELOPMENT APPLICATION: 2 – 4 OXFORD STREET
DARLINGHURST**

FILE NO: D/2006/02252

SUMMARY

Date of Submission: 15 December 2006

Applicant: HOTVILLE PTY LTD

Proposal Summary: Use of Basement Level (Dug Out Bar) and Level 3 (Lava Bar) of Burdekin Hotel as a Place of Public Entertainment, in conjunction with ground, first and second floors. The proposed hours of operation are from 8:00am to 2:00am Monday to Thursday inclusive, and from 8:00am Friday continuously until 12:00 midnight Sunday.

Summary Recommendation: A total of forty-three (43) submissions were received from residents in the surrounding area primarily concerned about noise disturbance, anti-social behaviour and car parking.

Previous approval was granted in December 2006 for the continued use of a POPE on levels 1 and 2 of the hotel. Retrospective approval was also granted for noise attenuation measures to the building.

The application is recommended for approval subject to the following hours of POPE operation for the basement and third floors:

	Base hours (Basement/level 3)	12 Month Trial (Basement/Level 3)
Monday – Thursday	8:00am – 11:00pm	11.00pm – 2:00am
Friday	8:00am – 11:00pm	11.00pm Friday through till 12:00 Midnight Sunday
Saturday	8:00am – 11:00pm	
Sunday	10:00am – 10:00pm	

Other conditions of consent would include provision for on going acoustic testing, and the installation of additional noise limitation equipment. There would also be a restriction on the use of egress from the doors fronting Liverpool Street for use in the event of an emergency only.

This proposal is recommended for approval.

Development Controls

- (i) South Sydney Local Environmental Plan 1998 (Gazetted 28 April 1998, as amended)
- (ii) South Sydney Local Environmental Plan 1998 – Draft Amendment No. 9
- (iii) South Sydney Development Control Plan 1997 – Urban Design (in force on 2 July 1997, as amended)
- (iv) City of Sydney Notification of Planning and Development Applications Development Control Plan 2005 (date of commencement – 18 May 2005)
- (v) Development Control Plan No. 11 – Transport Guidelines for Development 1996 (Adopted 8 May 1996)

Attachments:

- A - Location Plan
- B - Floor Plans

RECOMMENDATION

It is resolved that consent be granted subject to the following conditions:

SCHEDULE 1A

Approved Development/Design Modifications/Convents and Contributions/Use and Operation

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2006/02252 dated 15 December 2006 and the following drawings:

Drawing Number	Architect	Date
10f6/02.140	John Spiteri Design and Drafting	May 2002
20f6/02.140	John Spiteri Design and Drafting	May 2002
Level 1	Untitled	May 2006
Level 2	Untitled	May 2006
50f6/02.140	John Spiteri Design and Drafting	May 2002

and as amended by the conditions of this consent:

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(2) HOURS OF OPERATION

The hours of operation are regulated as follows:

- (a) The hours of operation for basement, ground, first, second and third floors shall be restricted to between 8.00am and 11.00pm Mondays to Saturdays and 10.00am to 10.00pm Sunday.
- (b) Notwithstanding (a) above, the use may operate on basement, first, second and third floors between 8.00am to 2.00am the following day on Monday, Tuesday, Wednesday and Thursday and from 8.00am Friday continuously until 12.00 midnight Sunday for a trial period of 12 months. The operator shall advise Council in writing of the date of commencement of the use as a place of public entertainment following completion of required fire safety works and Council's issue of a Section 68 approval.

- (c) A further application may be lodged to continue the trading hours outlined in (b) above before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

(3) ROOF TOP

(4) INGRESS/EGRESS

(5) FOOD PROVISION/ALCOHOL

(6) PLAN OF MANAGEMENT

The operator must submit a Plan of Management for the premises including a Security Management Plan, incorporating all conditions of this consent, and the relevant recommendations of Council and the NSW Police Service, to the satisfaction of Council prior to the commencement of operation of the premises. The use must then always be operated and managed in accordance with the Plan of Management approved by Council and be subject to the adoption of any future recommendation of the NSW Police Service and any reasonable direction of Council.

(7) SECURITY/MANAGEMENT

(8) SURVEILLANCE CAMERAS

(9) NEIGHBOURHOOD AMENITY

(10) PLACE OF PUBLIC ENTERTAINMENT

- (a) The use of the premises (or subject part) for the provision of entertainment must not commence until such time as an application, pursuant to section 68 of the *Local Government Act 1993*, has been submitted to and approved by Council. The premises must comply with the requirements of the *Building Code of Australia*, in particular those relating to Places of Public Entertainment.
- (b) The provision of entertainment within the premises must cease after a period of **12 months** from the date of the Place of Public Entertainment final approval under section 68 of the *Local Government Act 1993*. A further application may be lodged before the expiration of the trial period for Council's consideration. A full and current copy of the development consent for the operation of the licensed premises, the security management plan and, where applicable, the Place of Public Entertainment approval under section 68 of the *Local Government Act* must be kept on-site and made available to Police or Council Officers upon request.

- (c) Where a licensed premises holds, or obtains, a Place of Public Entertainment approval, each specific area to which the approval refers must display, in a prominent position, a sign which states the number of persons approved under the POPE licence in letters a minimum 25mm in height on a contrasting background.

(11) MAXIMUM POPULATION OF LICENSED PREMISES

(12) CHANGE OF USE

Pursuant to Clause 93 of the Environmental Planning and Assessment Regulation 2000, the building must comply with any conditions of this consent relating to fire protection (Category 1 fire safety provisions) and structural adequacy. Prior to an Occupation Certificate being issued for the new use, the Principal Certifying Authority must ensure that the building complies with the following:

- (a) The building is to comply with the Deemed-To-Satisfy (DTS) provisions of the Building Code of Australia for a Class 9b Place of Public Entertainment. Departures from the DTS provisions shall be carried out in accordance with Table 1 of the Alternative Solutions Report by Stephen Grubits & Associates, Document Number 2004/218.1 R1.1 dated 23/01/2007 Revision 1.
- (b) The Essential Fire Safety Measures list in Table 2 of the Alternative Solutions Report by Stephen Grubits and Associates, Document Number 2004/218.1 R1.1 dated 23/01/2007 Revision 1 shall be added to the buildings schedule of essential fire safety measures.
- (c) A sufficient number of male and female and sanitary facilities including wash basins and sanitary facilities for people with disabilities shall be provided in accordance with Table F2.3 and F2.4 of the Building Code of Australia.

(13) SMOKE HAZARD MANAGEMENT

(14) NUMBER OF OCCUPANTS IN INDIVIDUAL AREAS

The population of individual areas (including entertainers and staff) must not exceed those numbers quoted in the Alternative Solutions Report by Stephen Grubits and Associates, Document Number 2004/218.1 R1.1 dated 23/01/2007 Revision 1.

(15) SEPARATION OF ENTERTAINMENT AREA

(16) PANIC BOLTS ON EGRESS DOORS.

(17) NOISE - USE

(18) NOISE LIMITERS

(19) ADDITIONAL NOISE CONDITIONS FOR LICENSED PREMISES

During the first 60 days of public entertainment being provided at the premises, the following acoustic measures must be undertaken:

- (a) a suitably qualified acoustic consultant must be appointed (such appointment to be before the entertainment commences) to:
 - (i) measure and verify that the noise emanating from the premises complies with the noise criteria in the "Noise Use" conditions; and
 - (ii) if necessary, make recommendations to ensure that the noise emanating from the premises complies with the noise criteria in "Noise Use condition".
- (b) The noise measurements must be:
 - (i) undertaken without the knowledge of the applicant, manager or operator of the premises; and
 - (ii) taken on at least three different occasions on three different days of the week (excluding Monday, Tuesday and Wednesday) from 11pm until the end of the public entertainment or the close of business, whichever occurs first; and
 - (iii) submitted to Council's Licensed Premises unit within 7 days of the testing.
- (c) If the acoustic consultant recommends that additional treatment or works be undertaken under condition (a)(ii) above, those recommendations must be:
 - (i) submitted to Council with the noise measurements as required in (b)(ii) above; and
 - (ii) implemented to the acoustic consultant's satisfaction before the end of the first 60 days of public entertainment being provided on the premises.
- (d) If the acoustic consultant's recommendations are not implemented in accordance with this condition, public entertainment on the premises must cease until such time as the recommendations are implemented and verified.

(20) ADDITIONAL EQUIPMENT

(21) CARE OF BUILDING SURROUNDS

(22) REMOVAL OF GRAFFITI

(23) SIGNS - SEPARATE DA REQUIRED

(24) WASTE AND RECYCLING COLLECTION

(25) RECEPTACLES FOR CIGARETTE BUTTS

Provision must be made on the site, adjacent to the entrance/s to the building, for an adequate number of receptacles for the disposal of cigarette butts. Prior to the issue of a Construction Certificate under the Environmental Planning and Assessment Act 1979, the location and design of the receptacle/s must be **approved by Council**. The receptacle/s must:

- (a) be located entirely on private property and must not be located on or over Council's footpath;
- (b) not obstruct any required means of egress or path of travel from the building required by the Building Code of Australia;
- (c) not obstruct any required access/egress path for people with disabilities;
- (d) be appropriately secured to the building;
- (e) the emptying and maintenance of the receptacle/s is the responsibility of the building owner/manager and will not be undertaken by Council; and
- (f) emptying of receptacle/s must be carried out on a daily basis.

(26) WASTE REMOVAL

A Waste Management and Street Environment/Litter Control Plan is to be submitted and approved by the Director City Planning prior to the commencement of the use. The plan is to provide all appropriate details including:

- (a) Evidence of a trade waste collection contract with Council or other licensed waste collection contractor.
- (b) Details of generation rates and waste storage facilities within the building and verification that existing facilities can accommodate the storage, recycling and collection requirements of the proposed use.
- (c) Procedures for the cleaning of the public way and daily removal of litter generated by patrons.
- (d) No waste shall be placed for collection in a public place unless collection facilities cannot be provided within the building. If no collection facilities can be provided within the property, prior approval must be obtained from Council's Service Planning Unit as to the position, time and manner of placement of waste on the public way.

(27) SANITARY FACILITIES

Sanitary and other facilities must be provided in accordance with the Building Code of Australia, Part F2

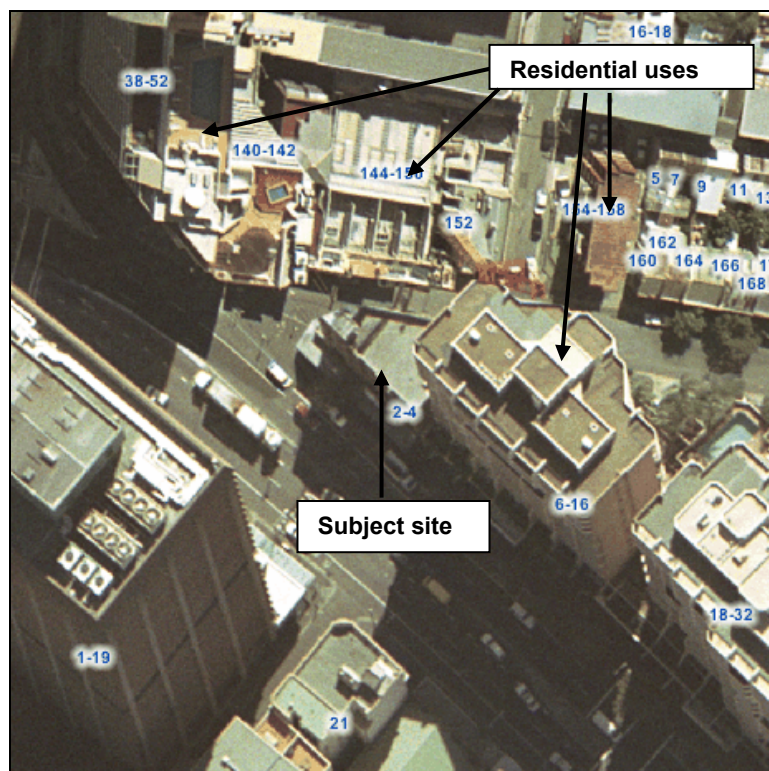
(28) ANNUAL FIRE SAFETY STATEMENT FORM

(29) OCCUPATION CERTIFICATE TO BE SUBMITTED

BACKGROUND

The Site and Surrounding Development

1. No. 2-4 Oxford Street is located on the Y-intersection of Oxford Street and Liverpool Street. The property is known as Lot 1 DP 6064 and contains the Burdekin Hotel.
2. The Burdekin Hotel is a four storey, Federation hotel with Inter-War Art Deco style overlay.
3. The surrounding development is predominantly mixed use, residential and commercial and late night licensed premises providing entertainment.
4. Residential developments within close proximity to the subject site include;
 - (a) 6-14 Oxford Street - The Park Ridge apartments, immediately adjacent the eastern wall of the Burdekin;
 - (b) 18-32 Oxford Street – Saville Park Suites;
 - (c) 144 Liverpool Street - The Connought on the south western corner of Wentworth Avenue and Liverpool Streets;
 - (d) 38 College Street – Hyde Park Plaza; and
 - (e) Residential dwellings in Liverpool and Francis Streets to the north of the site.



5. A site location plan is provided in **Attachment A**.
6. Photographs of the site are provided below.

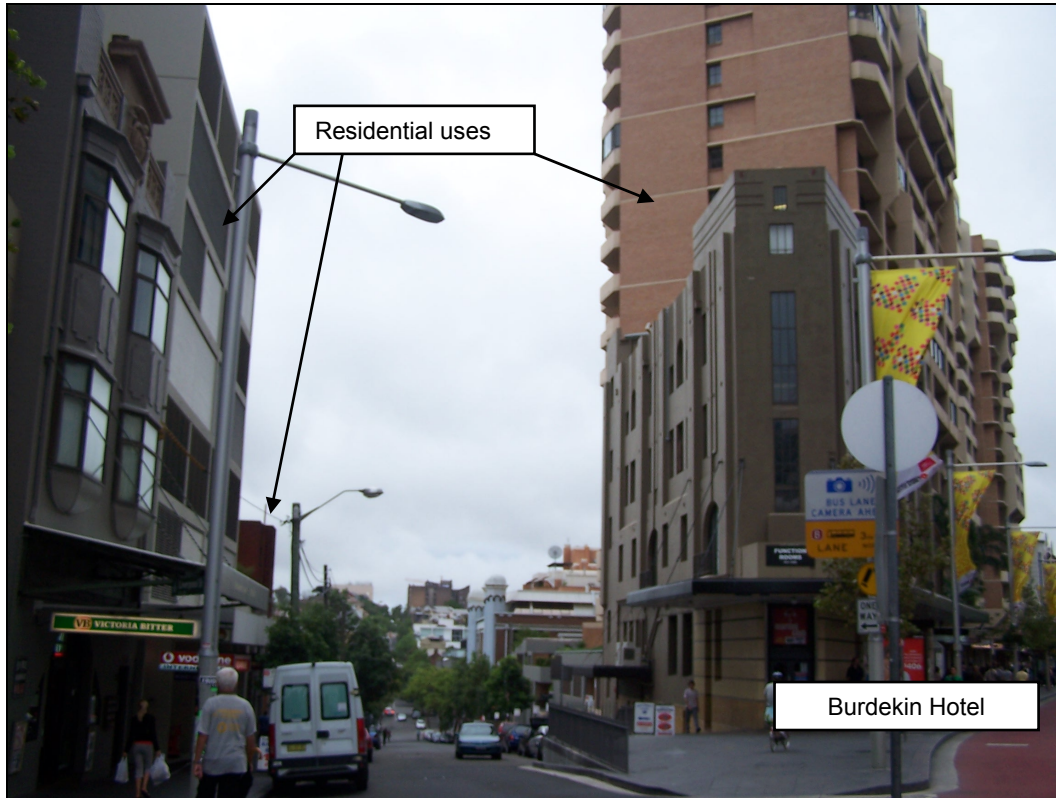


Photo 1: Subject site as viewed from Liverpool Street and Oxford Street intersection.



Photo 2: View of Burdekin Hotel from Liverpool Street showing emergency egress point.

History Relevant to this Site

7. Development application D/89/00101 was approved on 26 April 1989 for internal refurbishment of the basement and ground floor levels as a public bar, use of the first and second floor levels for residential, and provision of a dining room/restaurant on the third floor level. The approved hours of operation were until midnight, 7 days a week.
8. The above consent was subject to several modifications including relocation of restaurant to the first floor and change of use of second floor to provide offices staff rooms and storage facilities.
9. On 4 May 1989, approval (BA/89/413) was granted for the refurbishment of the ground first, second and third floor levels and in 1994, approval (BA/94/00807) was granted for public entertainment on the ground floor level.
10. The Licensing Court granted approval for 24 hour operation in December 1995. Between 1990 and 1995 the premises had licensing approval to operate until 3.00am, Monday to Saturday and between 1.00am and 12.00 midnight on Sundays.
11. According to Council's records, South Sydney raised no objection to the Licensing Court consent and approved hours of operation subject to the imposition of conditions aimed at reducing harm and disturbance to the surrounding locality.
12. On 8 December 2003, Council granted consent for the use of the ground, first, and second floor levels as a Place of Public Entertainment with base hours of operation from 8.00am and 11.00pm Mondays to Saturdays and 10.00am to 10.00pm Sunday. Notwithstanding this, consent was granted for hours of operation 8.00am to 2.00am the following day, Monday to Thursday inclusive and from 8.00am Friday continuously until 12 midnight Sunday for a trial period of one year. Entertainment was said to be provided in the form of recorded DJ music.
13. On 19 December 2006, approval was granted under delegation of Council, for the continued use of levels 1 and 2 as a Place of Public Entertainment and retrospective consent for noise attenuation works and internal refurbishment of the Burdekin Hotel. The application was notified to neighbouring properties within a 50 metre radius, with only four (4) letters of objection received.

PROPOSAL

14. The proposed development seeks the use of the Dug Out Bar (basement level) and Lava Lounge (level 3) as a Place of Public Entertainment (POPE) within the existing 'Burdekin Hotel'.
15. The proposed hours for the POPE are 8:00am to 2:00am the following day Monday to Thursday inclusive, and from 8:00am Friday continuously until 12:00 midnight Sunday.
16. The application also seeks to consolidate existing approvals for the Main Bar (ground floor), Mini Bar (Level 1) and Viper Bar (Level 2) into single development approval and Section 68 approval for administrative purposes.

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

17. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:-

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

18. The proposed development is not subject to any relevant State Environmental Planning Policies.

LEPs AND DCPs

19. The following Local Environmental Plans are relevant to the proposal.

South Sydney Local Environmental Plan 1998

20. Compliance of the proposal with the LEP controls is summarised below:

Development Controls	Permissible under South Sydney LEP 1998	Proposal as assessed under South Sydney LEP 1998
Planning Principles (Part 2)	Development is to be considered having regard to the goals and objectives within the Strategy for a Sustainable City of South Sydney.	The proposed development application satisfies the Strategy. Refer to issues section of report.
Zoning Controls (Part 3)	Zone 3 – Business	The development is permissible with consent. Refer to issues section of report.
Heritage Conservation (CI 22 to 27)	The building is a Heritage Item (HI 768) and located within the East Sydney Heritage Conservation Area. The proposal is to satisfy certain heritage requirements.	The proposal satisfies these provisions and is not considered to harm the heritage significance of the building or the Conservation Area.

South Sydney DCP 1997

21. Compliance of the proposal with the DCP controls is summarised below:

Matter to be Considered	Compliance	Comment
PART B: URBAN DESIGN PRINCIPLES		
Urban Villages, Public Spaces and Pedestrian Networks <i>Section 3</i>	✓	Able to Comply: The site is located within the East Sydney Urban Village, and surrounded by other late night premises. Subject to specific conditions the use can continue to protect the residential amenity of this mixed use area. Refer to issues section of report.
Sustainable, Healthy Environment <i>Section 4</i>	✓	Able to comply: The proposal entails potential adverse noise impacts. Refer to issues section of report.
PART D: SOCIAL PLANNING		
Cultural Issues <i>Section 4</i>	✓	Complies: The proposed use enhances and can continue to be compatible with the existing surrounding land uses.
Cumulative Impacts and Trade-Offs <i>Section 6</i>	✓	Able to comply: The proposal makes provision for the mitigation of adverse social impacts of the development.
Security <i>Section 9</i>	✓	Able to comply: There is an existing Plan of Management and Security Plan of Management for the premises. Further conditions have also been recommended by the NSW Police. Refer to issues section of report.
Health <i>Section 10</i>	✓	Complies: Noise insulation for the existing hotel has been implemented to satisfy Australian Standards. These levels are considered satisfactory and will not adversely impact on neighbouring residential land uses.

Matter to be Considered	Compliance	Comment
PART E: ENVIRONMENTAL DESIGN CRITERIA		
Parking , Access and Servicing <i>Section 1.6</i>	✓	Complies: No off street parking is proposed and there are no proposed changes to the existing loading and servicing of the site. The site is well serviced by public transport.
Site Facilities <i>Section 1.9</i>	✓	Complies: There is adequate existing provision of waste handling.
Signage <i>Section 2.6</i>	n/a	There is no proposed change to the existing signage for the hotel.
Heritage and Conservation <i>Section 3</i>	✓	Complies: The proposed development is not considered to harm the heritage significance of the building, or the appearance of surrounding Conservation Area.
Visual and Acoustic Privacy <i>Section 4.1</i>	✓	Able to comply: The hotel includes existing noise attenuation measures for public entertainment use. Council's Health Unit were satisfied that the existing noise attenuation measures were satisfactory and that any additional noise impacts could be effectively mitigated, subject to the imposition of appropriate conditions. Refer to issues section of report.
Safety and Security <i>Section 4.2</i>	✓	Able to comply: A Security Management Plan exists for the site. Increased security and surveillance for the premises is also recommended by the NSW Police through conditions of consent. Refer to issues section of report.
Access and Mobility <i>Section 4.4</i>	✓	Able to comply: The proposal makes adequate provision for equitable access and facilities.

Matter to be Considered	Compliance	Comment
Fire Regulations <i>Section 4.6</i>	✓	Able to comply: Council's Building specialists were satisfied that fire safety measures outlined in the applicant's Alternative Solution Report 2004/218.1 R1.1 are adequate.
Operational Controls <i>Section 6</i>	✓	Able to comply: The proposed hours of operation for POPE on basement level and level 3 are to be consistent with the approved hours of POPE operation for levels 1 and 2. A Plan of Management and Security Plan of Management are required by condition of consent. The proposed use is not considered to adversely impact on the surrounding land uses. Refer to issues section of report.
PART F: DESIGN CRITERIA FOR SPECIFIC TYPES		
Shopping Streets <i>Section 5 to 5.5</i>	✓	Complies: Oxford Street is identified as a major shopping street. The proposal satisfies all applicable requirements of this section.

ISSUES

22. The issues identified in the above instruments/policies as non-complying or requiring further discussion in the abovementioned tables are discussed in detail below:-

Strategy for a Sustainable City of South Sydney

23. One of the principal objectives of the LEP as stated in Clause 7 is to implement the goals and objectives contained in the Strategy for a Sustainable City of South Sydney. Clause 8 also provides that in assessing any development application that the Council must take into consideration the goals and objectives of the Strategy as they relate to the proposed development.

24. In order to realise the main goal of the strategy, a number of detailed strategies were developed and are grouped under sub-goals of Environment, Land Use and Transport, Character and Identity, Community Well-Being and City Management. An assessment of the development application reveals that it meets the goals of the above strategies. These issues are dealt with in detail in the issues section of this report, where relevant to the proposal.

Zoning Objectives

25. The site is located within Zone No. 3 – the Business Zone of the South Sydney Local Environmental Plan 1998. The use satisfies objective (a) of the zone in that it will *‘Encourage suitable types of mixes of business activities including.....entertainment related land uses that increase employment opportunities and contribute towards the economic and social vitality of the area’*.

Hours of Operation

26. The current and proposed hours of operation for the POPE for all levels of the hotel are summarised in the tables below;

Table 1: Current and proposed hours for Ground floor, Level 1 & Level 2;

Current Approved Hours - Levels 1 and 2			Proposed
	Base	Trial period	No change proposed
Monday – Thursday	8:00am – 11:00pm	11:00pm – 2:00am	
Friday	8:00am – 11:00pm	11:00pm Friday through till	
Saturday	8:00am – 11:00pm	12:00 Midnight	
Sunday	10:00am – 10:00pm	Sunday <i>(5-year trial period as per D/2006/00774)</i>	
Current Approved Hours - Ground Level			Proposed
Monday – Thursday	8:00am – 11:00pm	Base hours apply. <i>(Trial period expired per DA D/2003/00780)</i>	No change proposed
Friday	8:00am – 11:00pm		
Saturday	8:00am – 11:00pm		
Sunday	10:00am – 10:00pm		

Table 2. Current and proposed hours for Basement and Level 3

Current Approved Hours - Basement Level and Level 3			Proposed
	Base	Trial period	Trial 12 months
Monday – Thursday	8:00am – 11:00pm	Base hours apply. <i>(Trial period expired per DA D/2003/00780)</i>	11:00pm – 2:00am
Friday	8:00am – 11:00pm		11:00pm Friday
Saturday	8:00am – 11:00pm		through till
Sunday	10:00am – 10:00pm		12:00 Midnight Sunday

Table 3. Consolidated hours as a result of current Development Application

	Base hours	Trial hours	Trial Period
Basement	8:00am to 11:00pm Monday to Saturday, and	11:00pm – 2:00am Monday to Thursday	12 months
Ground		No proposed change to Ground Floor	
Level 1	10:00am to 10:00pm Sunday.	11:00pm – 2:00am Monday to Thursday	5 years
Level 2			
Level 3		11:00pm Friday through 12:00 Midnight Sunday	12 months

27. As indicated in Tables 1 and 2, the proposed hours of operation match the hours approved for Levels 1 and 2 subject to a 5 year trial period. Table 3 summarises the consolidated hours of operation for each level as a result of this development application.
28. It is considered that with the inclusion of a detailed Plan of Management, and a Security Management Plan as required by condition of consent, the proposed hours will be acceptable on a trial basis subject to the conditions.

Noise Control

29. The South Sydney DCP 1997 stipulates that developments should protect the amenity of internal living areas and ensure effective noise attenuation between different classes of buildings.

30. In 2005, the Applicant's acoustic consultants conducted testing in response to Section 104 Conferences and Complaints at the Liquor Administration Board. Acoustic testing was carried out on 29 January 2005 from the southern façade of 150 Liverpool Street as a direct response to the noise complaints received. Noise attenuation works involving double glazing to windows and installation of internal lining to the northern side of the hotel were implemented.

31. Further testing was carried out at 150 Liverpool Street on 9 May 2005. On 29 June 2005, specific testing was carried out at unit Nos. 603 and 802 of 150 Liverpool Street. As a result, minor additional sound limiting measures were introduced to level 1 of the hotel. On 21 November 2005, a further test was carried out to unit 603. The acoustic report dated 25 November 2005 stated inter alia;

'..the absolute maximum noise levels of the music were controlled by the limiting system and with the sound system operating at maximum level, no music from the Burdekin Hotel could be detected in the master bedroom of apartment 603/150 Liverpool Street with or without the balcony doors open.

On the basis of the compliance test, it would appear that the suggestion of the Burdekin Hotel giving rise to noise disturbance on the nights of the 23 September, 25th September and 29th October, 2005 would more than likely be associated with another licensed premise in the area and/or music occurring inside the apartment building of 150 Liverpool Street'

32. The report also confirmed that the level of traffic noise in the apartment was significantly greater than the ambient background noise level.

33. An acoustic report dated 31 January 2007 submitted with the current proposal and states inter alia;

'...acoustic compliance testing has been carried out on a number of occasions at the Burdekin Hotel and found it fully complied with the Liquor Administration Board and Council standard noise Conditions of Consent.....

Our compliance testing found that the noise control measures carried out to the hotel and the limitation placed upon the sound systems would ensure that the simultaneous operation of the top floor, first floor, ground floor and basement music areas would fully comply with the LAB and Council noise conditions for both prior and after midnight assessment periods.'

34. The proposal was referred to Council's Environmental Health Specialist and the proposed use is considered satisfactory subject to additional conditions regarding noise control, neighbourhood amenity, noise limiters, and specific conditions relating to noise for licensed premises.

35. In view of the above, it is considered that the extension of the POPE use to basement and third floor levels will not give rise to any additional adverse noise, and as a result, is unlikely to cause any harm to neighbouring residential amenity.

Safety and Security

36. With regard to issues of safety and security, a Security Management Plan currently exists for the premises. A condition is also recommended that a revised Security Management Plan be submitted to the satisfaction of Council prior to the commencement of operation of the premises.

37. The proposal was referred to Council's Building Surveyor (Licensing Unit), and to NSW Policy Surry Hills Licensing Branch. There was no objection raised to the proposed hours of entertainment use for basement and third floor levels subject to a 12 month trial period.

Section 79C(1)(b) Other Impacts of the Development

38. The proposed development will not result in any significant additional impacts other than those already identified and discussed above.

BCA Matters

39. The BCA Classification of the building is Class 9b.
40. The development is capable of satisfying the requirements of the BCA without significant modification.

Section 79C (1) (c) Suitability of the site for the development

41. The site is suitable for a commercial development, the proposed development is considered appropriate for the reasons detailed elsewhere in this report.

Section 79C (1) (e) Public Interest

42. The proposed development is consistent with many of the relevant controls including operational controls, noise attenuation, safety and security, and residential amenity. In this regard it is considered that the proposal will be in the public interest.

POLICY IMPLICATIONS

43. The proposal is not considered to harm the surrounding residential amenity and is therefore considered acceptable.

PUBLIC CONSULTATION

Section 79C(1)(d)

Advertising and notification

44. Adjoining and nearby owners and occupiers of buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications Development Control Plan 2005.
45. Forty-three (43) letters of objection were received. The grounds for objection are summarised as follows:-
- (a) **The proposal will result in increased noise disturbance and vibration from the premises.**

Comment: Council's Environmental Health Specialists have advised that potential noise impacts are able to be adequately addressed through existing and proposed noise attenuation measures. This includes the provision of noise limiters and ongoing acoustic testing. Refer to Conditions 13, 14, 15 and 16 of the consent.

- (b) **The proposal will affect the level of available local on street parking and increase traffic congestion in the general area.**

Comment: The site and the locality are well serviced by public transport, and the proposal is for licensed premises with late trading hours. It is likely that the majority of the patrons will not drive to the site.

- (c) **The proposal will have an adverse impact on residential amenity, particularly to residences on Liverpool Street.**

Comment: The proposal makes provision for measures to reduce negative impacts on residential amenity. The existing and recommended noise attenuation measures are considered acceptable. Additional conditions are recommended for security surveillance, access and egress and patron behaviour. It is not considered there will be a loss of residential amenity as a result of the proposal. Refer to conditions 7, 8, and 10 of the consent.

- (d) **The proposal will result in increase criminal and anti-social behaviour in the locality.**

Comment: Conditions of consent require an amended Security Management Plan, security guards and surveillance. There is no evidence to suggest that the use contributes to violence and crime and the NSW Police have not raised any objection to the proposal, subject to conditions.

- (e) **The proposal will cause an increase in waste disposal to Liverpool Street.**

Comment: There are no proposed changes to the existing waste management for the site. Council's standard waste management conditions have been included as conditions of consent.

- (f) **The locality is already saturated with licensed premises**

Comment: The site is located within an area where entertainment uses are allowed. The premises currently hold a 24 hour liquor license and there are no proposed changes to the existing hours of operation. As indicated in the main body of the report, the proposed POPE for basement and third floors is not considered to harm the amenity of the surrounding sensitive land uses, subject to conditions.

- (g) **The proposed use will cause a financial value loss of surrounding residential properties.**

Comment: Loss of property value results from loss of residential amenity. As indicated, the existing and recommended noise attenuation measures are considered acceptable. In addition conditions are recommended which relate to security surveillance and safety measures. Egress from the premises is restricted to Oxford Street access points only after 9.00pm. It is not considered that there will be a loss of residential amenity as a result of the proposal.

EXTERNAL REFERRALS

46. The proposal was referred to the NSW Police.

NSW Police

47. In accordance with Council's protocol for licensed premises, the NSW Police Service was notified of the proposed development. Comment and advice relating to the proposal was furnished to Council by the Senior Constable in the Licensing Unit of the Surry Hills Local Area Command.
48. The NSW Police has advised that they support the proposal in principle subject to conditions with regard to the following issues:
- (a) Clear signage to be displayed on each level indicating maximum number of patrons on each level when entertainment is being conducted;
 - (b) Lighting to be at levels to allow staff to observe patrons for signs of intoxication and disorderly behaviour;
 - (c) Lighting is to be at levels so that CCTV cameras record quality information;
 - (d) The installation of an up to date and quality CCTV system including installation at all entrances, exits, stairs, recordable for 30 days minimum, capable for viewing on quality office monitors and capable for downloading data and recording on disc; and
 - (e) A minimum of one licensed security uniformed guard per 100 patrons.

INTERNAL REFERRALS

49. The application was referred to Council's:-
- (a) Place of Public Entertainment Specialist;
 - (b) Building Surveyor;
 - (c) Specialist Surveyor; and
 - (d) Environmental Health Specialist.
50. No objection was raised in principal to the proposed use for the basement and third floor levels, subject to the imposition of appropriate conditions. Appropriate conditions have been included in the recommendation of this report.

RELEVANT LEGISLATION

51. The Environmental Planning and Assessment Act 1979, Heritage Act 1977.

OPTIONS

52. The committee may or may not concur with the recommendation of this report.

CONCLUSION

53. It is considered that the objections received in relation to the application can be adequately addressed by the imposition of appropriate conditions.
54. It is considered that the proposal is acceptable and is recommended for approval, subject to recommended conditions of consent, including:

- (a) The imposition of conditions recommended by Council's Environmental Assessments (Health) Unit relating to noise attenuation and ongoing acoustic testing and mitigation measures;
 - (b) The restriction of the hours of POPE entertainment for the Basement and third floor to between 08:00am and 11:00pm, Mondays to Saturdays, and 10:00am and 10:00pm Sundays, and the imposition of a twelve month trial period on trading between 0:800am to 2:00am Mondays to Thursdays (inclusive) and 8:00am Friday continuously till 12:00 Midnight Sundays.
 - (c) The adoption and implementation of the recommendations of the NSW Police Service.
55. It is recommended that the period after which the development consent will lapse be two years.

GIOVANNI CIRILLO
Acting Director City Planning

(Kate Freedman, Planner)