

**Item 5.****Development Application: 96-100 Hay Street, Haymarket – D/2025/1144****File Number:** D/2025/1144**Summary**

**Date of Submission:** The application was lodged on 17 November 2025 and has been modified by amended drawings during assessment.

**Applicant:** Planning Lab

**Architect:** Candalepas Associates

**Owner:** Mrs May Ho Yee, Mr Stanley Yee & Hynsco Pty Ltd.

**Planning Consultant:** Planning Lab

**Heritage Consultant:** Urbis

**Design Advisory Panel (Residential Subcommittee):** The application was considered by the City's Design Advisory Panel (Residential Subcommittee) on 2 December 2025. The application has been amended in response to comments received from the Panel.

**Cost of Works:** \$44,573,294

**Zoning:** The site is zoned SP5 - Metropolitan Centre under the Sydney Local Environmental Plan 2012. The proposed development is a mixed-use development providing for future commercial and residential uses, these being permissible with consent in the zone.

**Proposal Summary:** Approval is sought for the partial demolition and refurbishment of an existing 3-storey masonry building, constructed in 1911 by the Sydney Municipal Council as the Municipal Stores. The Municipal Stores have a long standing history of occupation by Chinese Australian firms, who provided stock for nearby markets and businesses.

The refurbished Municipal Stores building is proposed to be retained as a 'commercial podium' containing food and drink/retail premises. A partial basement level is proposed, containing plant rooms.

A new residential tower is proposed above the podium, resulting in a 16-storey building. Twenty two residential apartments are proposed within the tower (20 x 2-bedroom apartments and 2 x 3-bedroom apartments).

The site is being developed by the long-standing owner-occupiers of the site, who indicate existing food and drink premises within the building will continue to trade post construction (The Emperors Garden Restaurant and Bakery).

The application is referred to the Local Planning Panel for determination as it constitutes Sensitive development as per the referral criteria for development applications to the Local Planning Panel, being a residential apartment building to which Chapter 4 of the Housing SEPP applies.

The applicant requests consent to vary the Clause 4.3 height of buildings development standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012.

The proposal seeks to vary the Clause 4.3 height of buildings development standard by 9.8% (5m) due to the upper level of the building exceeding the 50m SLEP 2012 envelope. Notwithstanding this, the development does not exceed a height of 55m, and does not trigger a design excellence process.

The applicant has sufficiently justified that in this instance, compliance with the Clause 4.3 height of buildings development standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify contravening the standard.

It is recommended that the variation requested to the Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld.

Two deferred commencement conditions are recommended, requiring site investigations to be completed, prior to development approval being activated. This approach is recommended because City staff are satisfied the site can be remediated so it is suitable for the proposed use and reflects site specific conditions where investigative drilling cannot be undertaken completed during assessment.

A third deferred commencement condition is recommended, requiring the resolution of waste issues, prior to development approval being activated.

This is noting the large volumes of waste and recycling that are currently generated by existing food and drink premises within the site.

At the time of reporting, Council's officers are not satisfied the issue of waste disposal is suitably resolved.

The development proposal has been amended during assessment in response to the site being affected by localised flooding. The floor levels of proposed commercial premises facing Hay and Dixon Streets are proposed to be protected by the installation of flood gates. Council's public domain specialists have reviewed the proposal and are satisfied flood gates can be supported in this instance.

Further amendments have been made during assessment, including submission of a heritage assessment report, preliminary public art plan, street tree pruning report and the design of landscaped terraces. Architectural drawings were amended for the waste servicing of the site, which is challenging due to the narrow width of Kimber Lane at the western boundary.

The application was notified for 21 days between 21 November 2025 and 13 December 2025. A total of 1,330 properties were notified and 10 submissions were received. Issues raised in submissions include impacts on the character of Haymarket and Chinatown, impacts on residential amenity (overshadowing, noise and privacy), ecological impacts and around waste management.

The proposal responds appropriately to surrounding development and provides a desirable built form within the Haymarket/Chinatown Locality. The development achieves a standard of architectural design that exhibits design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012 and will provide for future commercial and residential uses that will contribute to the activation of the City.

**Summary Recommendation:** The development application is recommended for deferred commencement approval.

**Development Controls:** Environmental Planning and Assessment Act 1979 and associated Regulation 2021;

State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure 2021);

State Environmental Planning Policy (Sustainable Buildings) 2022 (SEPP Sustainable Buildings 2022);

Sydney Local Environmental Plan 2012 (SLEP 2012);

Sydney Development Control Plan 2012 (SDCP 2012);

Sydney Landscape Code Volume 2: All Developments  
Except for Single Dwellings 2012;

City of Sydney Interim Floodplain Management Policy  
2023;

City of Sydney Guidelines for Waste Management in New  
Developments;

City of Sydney Public Art Policy 2011 and City of Sydney  
Public Art Strategy 2011; and

City of Sydney Community Engagement Strategy and  
Participation Plan 2024.

**Attachments:**

A. Recommended Conditions of Consent

B. Selected Drawings

C. Clause 4.6 Variation Request - Height of Buildings

D. Submissions

## Recommendation

It is resolved that:

- (A) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2025/1144 subject to the conditions set out in Attachment A to the subject report; and
- (B) the variation requested to Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to conditions of consent, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Committee.
- (B) Subject to recommended deferred commencement conditions and based upon the material available at the time of determining this application, the Committee is satisfied that:
  - (i) The site will be made suitable for proposed commercial and residential uses, subject to further investigation to determine the most effective means of conducting any remediation as required by the State Environmental Planning Policy (Resilience and Hazards).
  - (ii) The applicant has sufficiently justified, compliance with the respective height of buildings development standard is unreasonable and unnecessary and that there are sufficient planning grounds to justify contravening the development standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012.
  - (iii) The proposal is in the public interest because it is consistent with the objectives of the SP5 - Metropolitan Centre zone and the floor space ratio development standard.
- (C) The proposal has been assessed against the aims and objectives of the relevant planning controls including the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012, the State Environmental Planning Policy (Transport and Infrastructure 2021) and the State Environmental Planning Policy (Sustainable Buildings) 2022.
- (D) Where non-compliances exist, they have been demonstrated in this report to be acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.

- (E) The proposal exhibits design excellence in accordance with the relevant provisions and matters for consideration in Clause 6.21C of the Sydney Local Environmental Plan 2012.
- (F) The proposed development has a bulk, form and massing that is suitable for the site and its context within the Haymarket/Chinatown Locality. The intended future uses of the site are consistent with the objectives of the SP5 - Metropolitan Centre zone.
- (G) The amended development application has addressed matters raised by Council staff. Subject to the recommended conditions of consent, the proposed development achieves good amenity for the existing and future occupants of the subject and adjoining sites.
- (H) For the reasons above the proposed development is in the public interest.

## Background

### The Reason the Application is Reported to the Local Planning Panel

1. The application is reported to the Local Planning Panel for determination as it is identified in Schedule 3 of the Local Planning Panels Direction of 3 March 2024 as 'Sensitive Development', involving the provision of a residential apartment building to which Chapter 4 of the Housing SEPP applies.

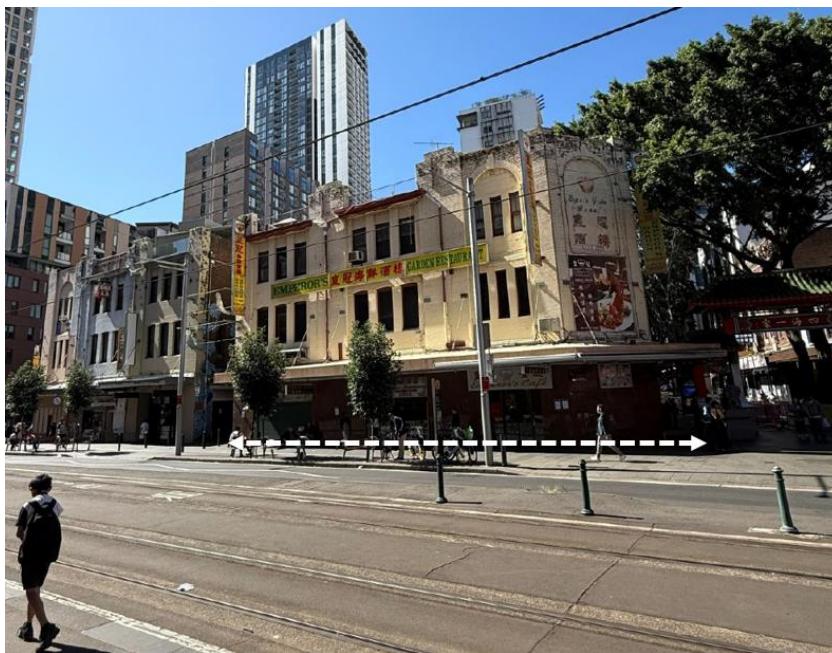
### The Site and Surrounding Development

2. The development site is made up of three lots (Lots 4-6 in DP 261942), known as 96, 98 and 100 Hay Street, Haymarket. Internal walls have been removed historically, and the site currently operates fundamentally as a single (combined) food and drink premises building.
3. The existing building on the site is the eastern pair of 2 buildings, constructed by the then Sydney Municipal Council in 1911 as the Municipal Stores. The stores serviced markets opposite the site (now called Paddy's Markets). The eastern building (subject site) has been occupied on a long-standing basis by Chinese Australian firms.
4. Until the 1970s, the stores provided fruit ripening facilities and storage facilities for stock sold at the markets. Subsequently, and until today, the building has been used for food and drink premises, which are a type of retail/commercial land use (The Emperors Garden Restaurant and Bakery). The building remains under the same family ownership.
5. The ground level and level 1 contains the dining rooms and kitchens of the Emperor's Garden restaurant and Bakery, that have frontages to Hay and Dixon Streets. The remainder of the ground floor contains fish tanks and a commercial kitchen with a pedestrian door to Kimber Lane. Level 2 contains storerooms, offices and a residential apartment. Small outbuildings containing plant are located at the roof level.
6. The site is irregular in shape with a combined area of 450.9sqm. It has primary street frontages of 19.9m to Hay Street and 18.4m to Dixon Street. The site has a secondary street frontage of 18.1m to Kimber Lane with no vehicle access. The site has a 4.4m splayed corner at the corner of Dixon and Hay Streets and is generally level.
7. Dixon Street is located at the eastern site boundary. It has been a pedestrianised street since 1980 and contains street trees that overhang the subject site. Dixon Street is framed at its northern and southern ends by gates known as the Chinatown Ceremonial Gates. These have recently been refurbished with new granite lions, new ceramic roof tiles and lighting.
8. Dixon Street and surrounding streets are a major tourist attraction, characterised by alfresco dining, night markets and high volumes of pedestrian activity. The City has recently commenced public domain upgrade works within Dixon Street including new decorative paving and lighting, upgraded seating and a review of street tree plantings.
9. The Hay Street footpath at the southern site boundary were widened (to approximately 3.5m). They contain street furniture and recently planted street trees. Vehicle traffic on Hay Street has been reduced to one west-bound lane. The Inner West light rail runs east-west along the Hay Street boundary.

10. Surrounding land uses are predominantly commercial and residential in nature. To the north and east of the site are located 3-5 storey commercial buildings with frontages to Dixon Street. To the west of the site, on the opposite side of Kimber Lane is located the western 'pair' of the Municipal Stores (90-94 Hay Street), which contain food and drink premises and a tattoo studio.
11. To the west of the site, reflecting the emerging character of the locality, is located the Darling Square development. It contains several multi-storey buildings that are mixed use, with active retail and food and drink premises on the ground floor frontages and residential towers above.
12. A large indoor marketplace known as Paddy's Markets is located to the south of the site, above which is located a mixed commercial development (Market City) and a residential tower (The Peak). The UTS Haymarket Campus is located to the south-west of the site.
13. The site is not located within a heritage conservation area however has been identified as worthy of heritage listing due to its longstanding association with the Chinese Australian community. Its listing as a heritage item is awaiting formal gazettal at the time of reporting (discussion below).
14. Three heritage items are located within close proximity to the site, including the Chinatown Ceremonial Gates (at the south-eastern boundary of the site), the Covent Garden Hotel (opposite the site on Dixon Street) and the Former Kwong War Chong & Co building, at 82-84 Dixon Street (opposite to and north of the site), which is listed as both a local and state heritage item.
15. The site is located within the Haymarket/Chinatown Special Character Area locality and is identified as being subject to flooding along all site boundaries.
16. A site visit was carried out on 3 December 2025. Photos of the site and surrounds are provided below.



**Figure 1:** Aerial view of site and surrounds



**Figure 2:** Site viewed from Hay Street, looking north-west



**Figure 3:** Site viewed from the Peak development, above Paddy's Markets, looking north. The site is the eastern most half of the Municipal Stores (dashed white double ended arrow)



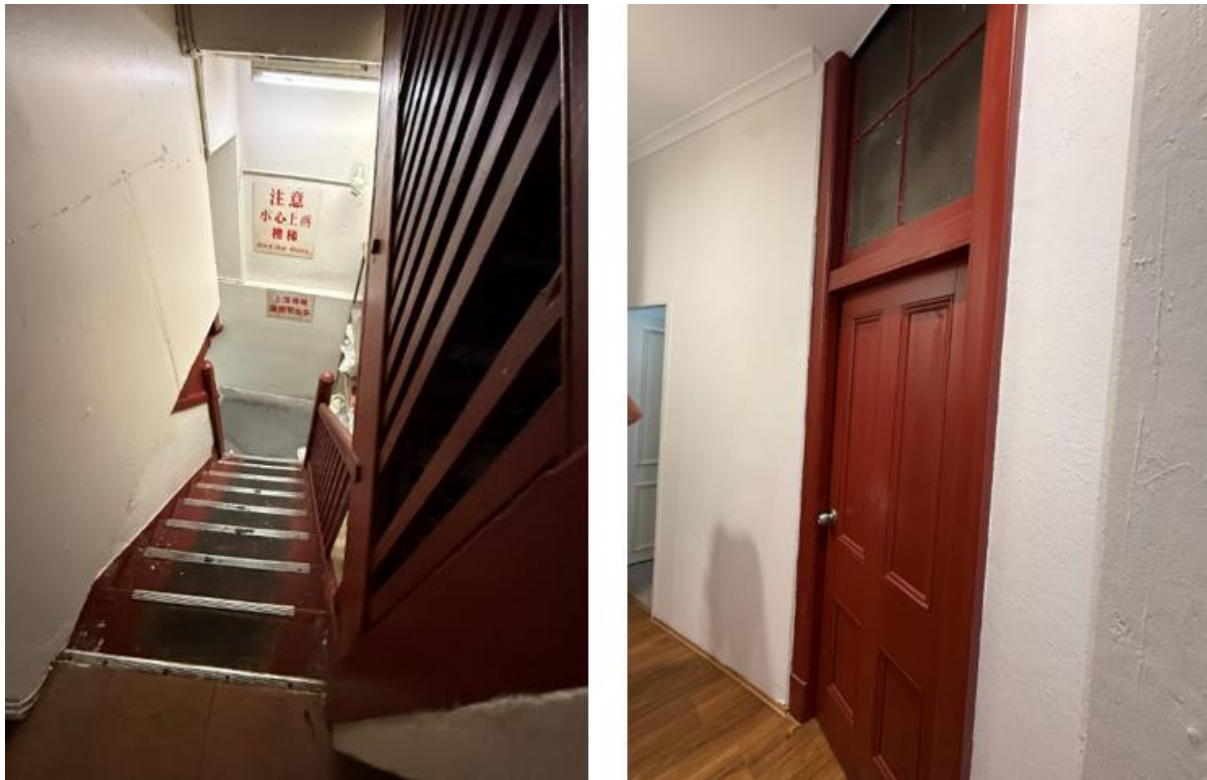
**Figure 4:** Site viewed from Dixon Street, looking north-west and south-west (dashed white double ended arrows).



**Figure 5:** Site viewed from Kimber Lane, looking south-east towards Paddy's Markets (left). Kimber Lane to the north of the site, viewed from the site (right).



**Figure 6:** Ground level restaurant (Emperors Garden - left). Level 1 bakery kitchens (right). Internal dividing walls have largely been removed.



**Figure 7:** Original timber stairs and doors at Levels 1 and 2

## History Relevant to the Development Application

### Development Applications

17. Council's electronic records systems contain many applications related to commercial and food and drink premises.
18. The existing restaurant, known as the Emperor's Garden, was established on the site in 1979 and remains under the same family ownership.
19. The following applications are relevant to the current proposal:
  - **D/2002/529** - On 18 September 2002, consent was granted for the reconfiguration of an existing restaurant and cake shop, new shopfront to Dixon Street, extension of an awning, and reconstruction of internal stair serving the upper level of the restaurant. Hours of operation for the restaurant were approved between 8.00am and 2.00am, daily.
  - **D/2014/1045** – On 8 September 2014, development consent was granted for the replacement of a weather protection awning.

### Compliance Action

20. The site is not subject to any ongoing compliance actions relevant to the subject application.

**Amendments**

21. Following a preliminary assessment of the development by Council Officers and the City's Design Advisory Panel (Residential Subcommittee), requests were sent to the applicant on 22 December 2025 and 9 January 2026.
22. The applicant responded to the request during February and March 2026 with a series of amended drawings and supporting documents. These were discussed with Council's specialists and referred to external parties including Transport for NSW, who had provided a letter of concurrence and General Terms of Agreement.
23. No amendments show any increase to the scale of the proposed development. As such, they were not re-notified to surrounding properties.
24. Amended documents received during assessment include the following (see discussion section below for further details):
  - (a) a revised heritage impact statement including a detailed analysis and fabric assessment of the existing building
  - (b) a revised Preliminary Public Art Plan, showing increased opportunities for art within the development at the podium level and under the cantilevered soffit for the residential tower
  - (c) an updated street tree pruning schedule which is satisfactory to the City's tree management officers
  - (d) amended architectural drawings and a flood report addressing site flooding, showing details for proposed flood gates and their operation
  - (e) details showing residential waste bin storage (acceptable) and an updated operational waste management plan for food and drink premises waste disposal (not accepted - See discussion section below)
  - (f) amended architectural drawings showing deletion of structures extending over Kimber Lane and detailing operation of ventilation hatches over Hay Street within apartments
  - (g) amended landscape drawings

**Proposed Development**

25. The subject application seeks consent for the partial demolition of an existing 3 storey c.1911 commercial masonry building (the eastern half of the Municipal Stores), maintaining the eastern and southern (Dixon Street and Hay Street) facade walls in place.
26. Excavation is proposed for a partial basement containing services and plant areas. No 'trafficable' basement or basement parking is proposed.

27. The application initially sought consent for site investigations in relation to potential site contamination. However, site specific conditions have prevented these investigative works from being carried during assessment. A deferred commencement condition is recommended, requiring these works to be completed prior to the activation of the consent. See discussion below.
28. Works are proposed to reinstate the floor levels of the 3 storey masonry building, which is intended to be used for ongoing food and drink premises.
29. The refurbished 3 storey building will read as a podium level for a proposed cantilevered, 13 storey residential tower building (16 storeys in total), containing 22 apartments (20 x 2 bedroom apartments and 2 x 3 bedroom apartments).
30. Vehicle access is proposed from a loading area at Kimber Lane, containing a single service vehicle space. Service and plant areas, bike storage, residential storage and residential communal open spaces are proposed at Level 3.
31. A non-trafficable roof level is proposed to contain services, PV panels, a fire water tank and kitchen exhausts, all concealed behind parapet walls.
32. Plans and elevations of the proposed development are provided below.



**Figure 8:** indicative demolition plan (ground level)

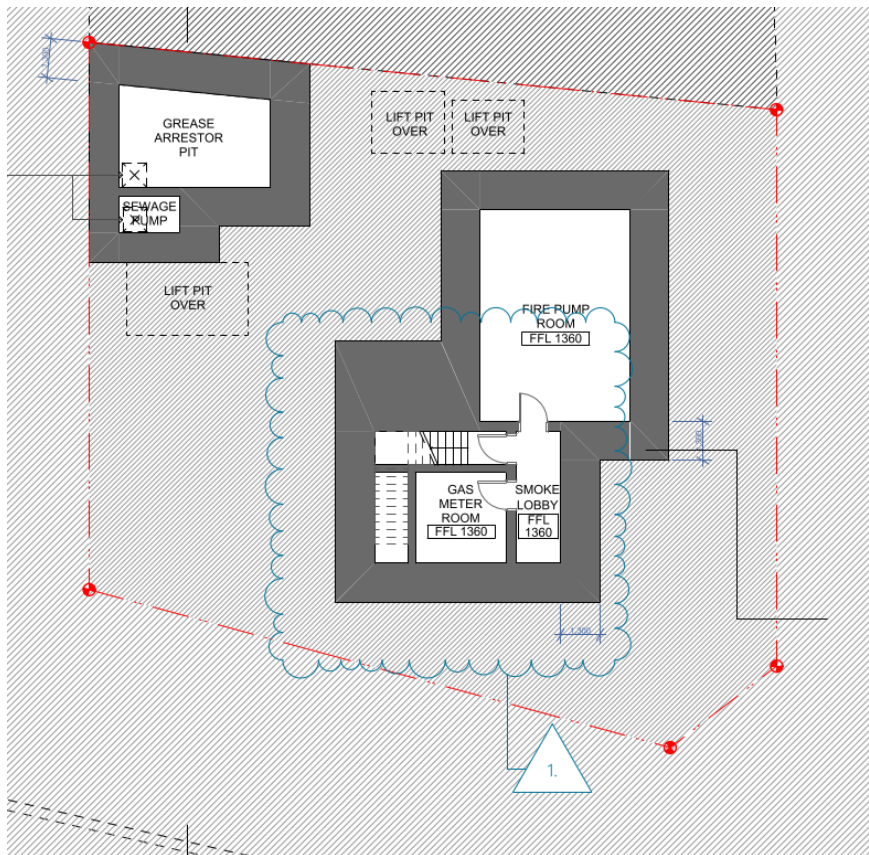


Figure 9: Basement plan

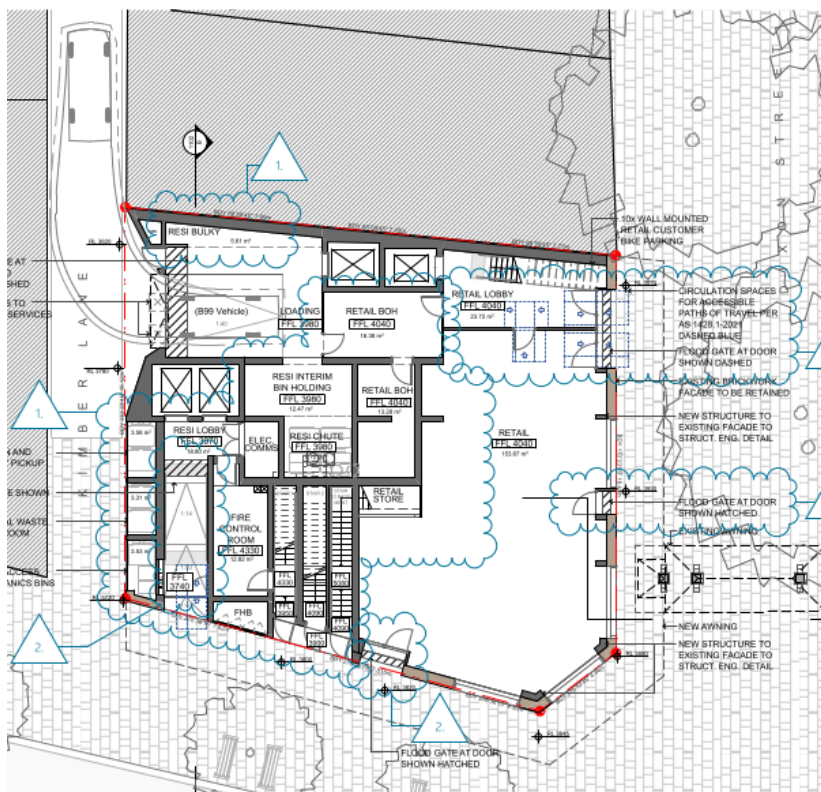


Figure 10: Ground floor plan

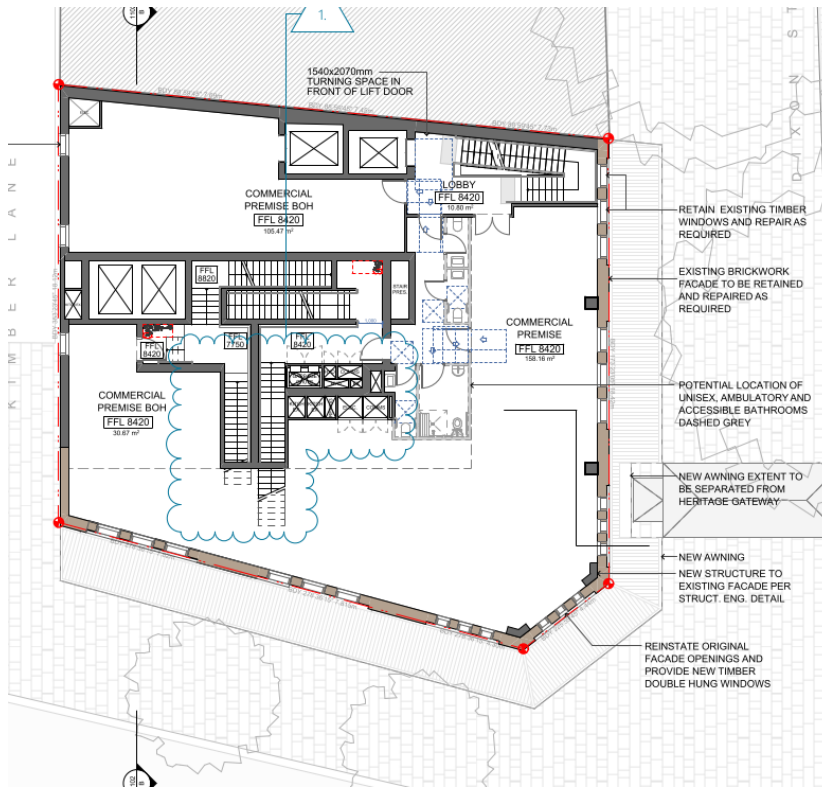


Figure 11: Level 1 floor plan

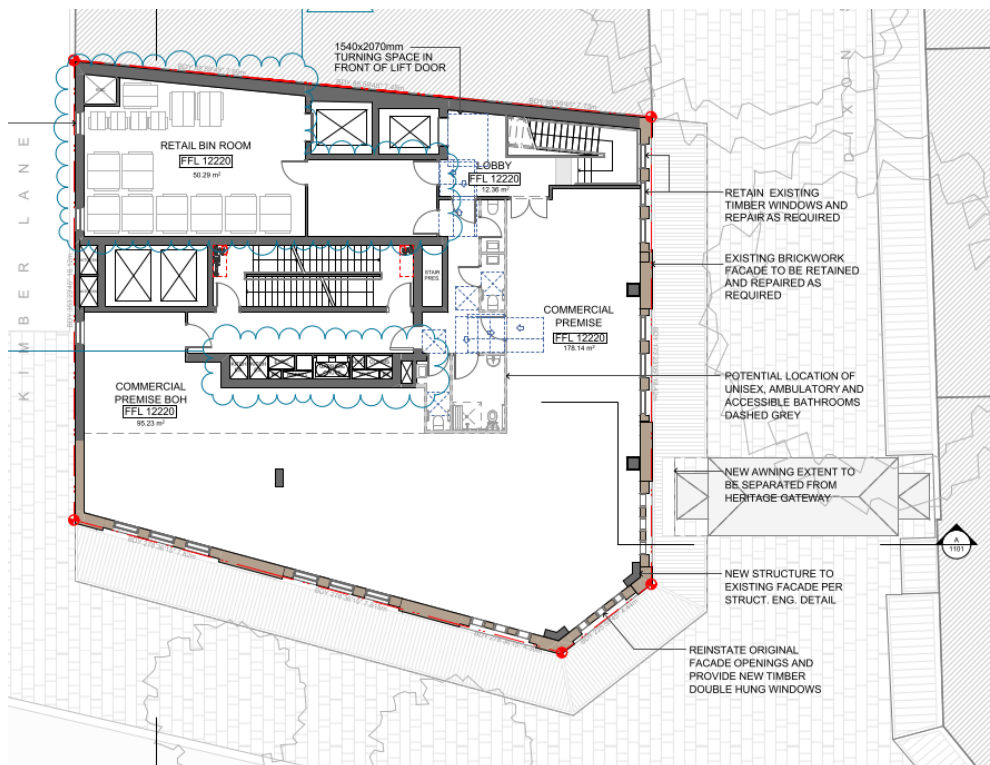


Figure 12: Level 2 floor plan

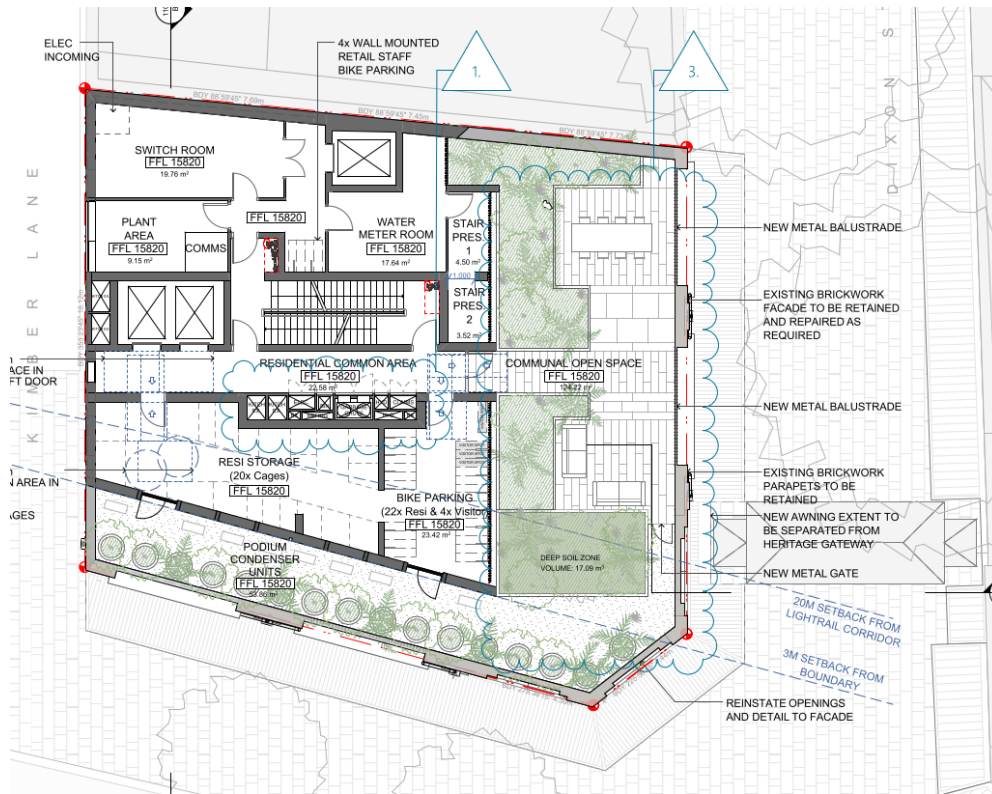


Figure 13: Level 3 floor plan

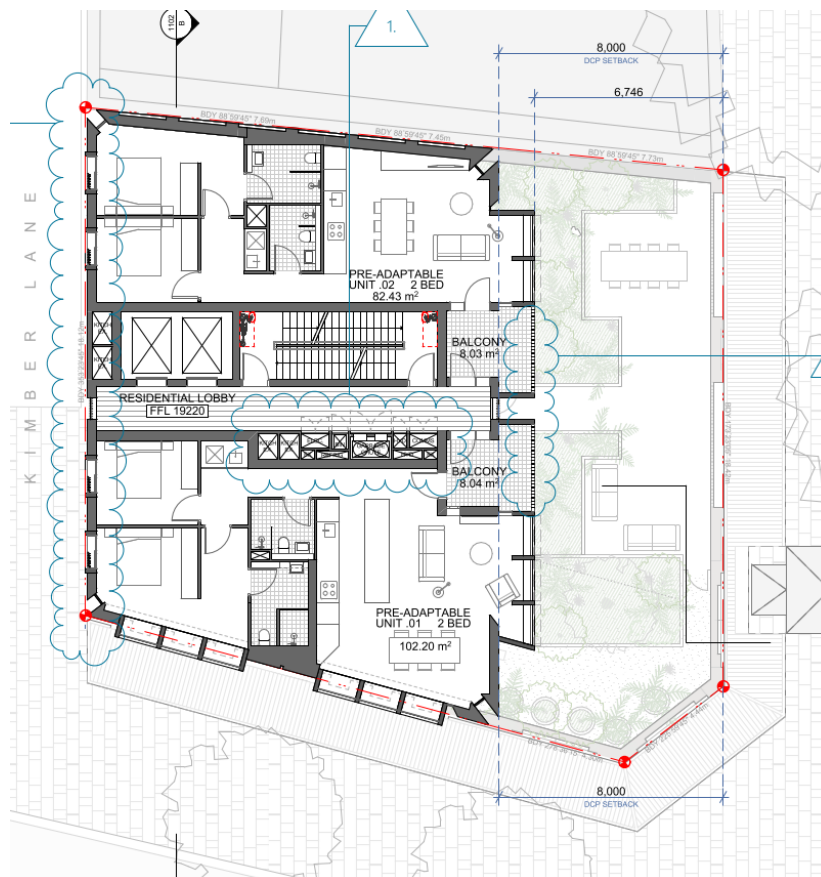


Figure 14: Level 4-13 plan

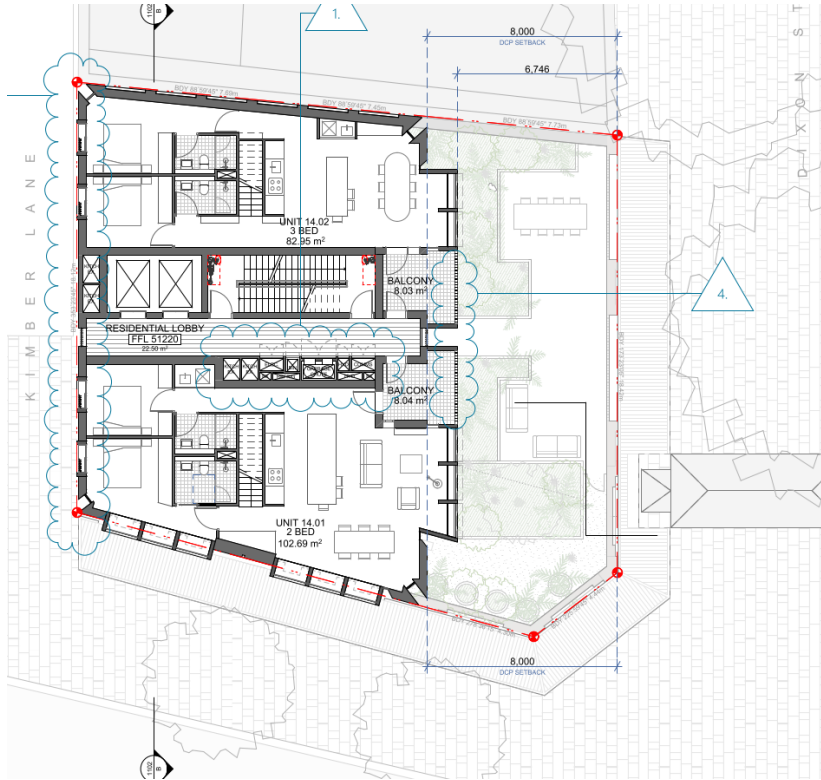


Figure 15: Level 14 plan

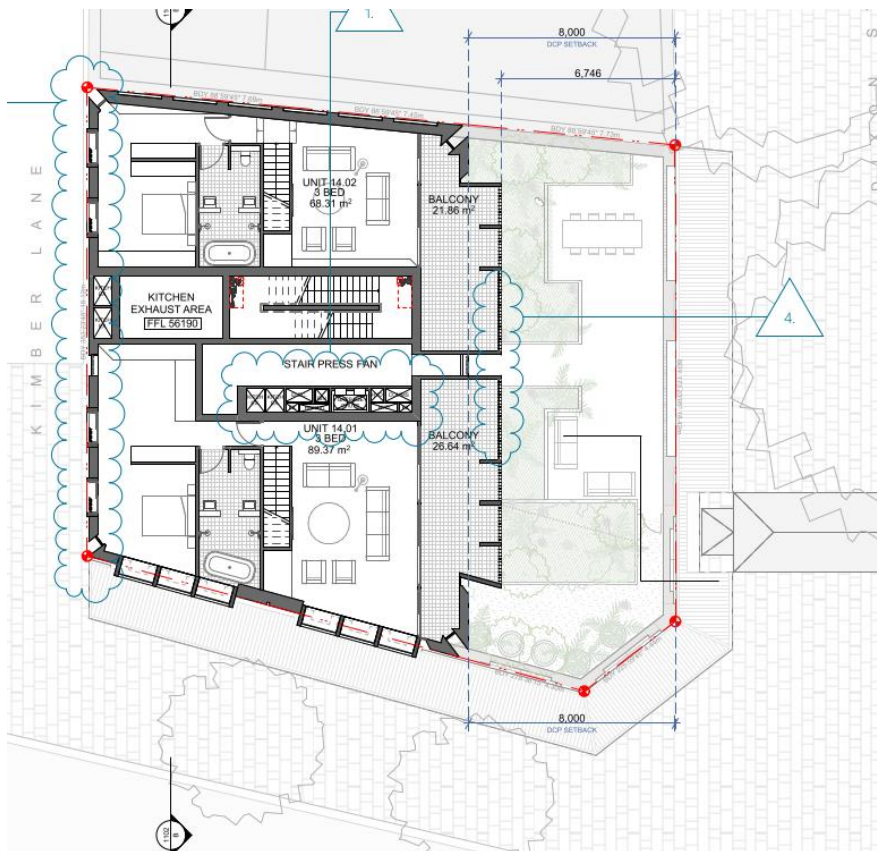


Figure 16: Level 15 plan

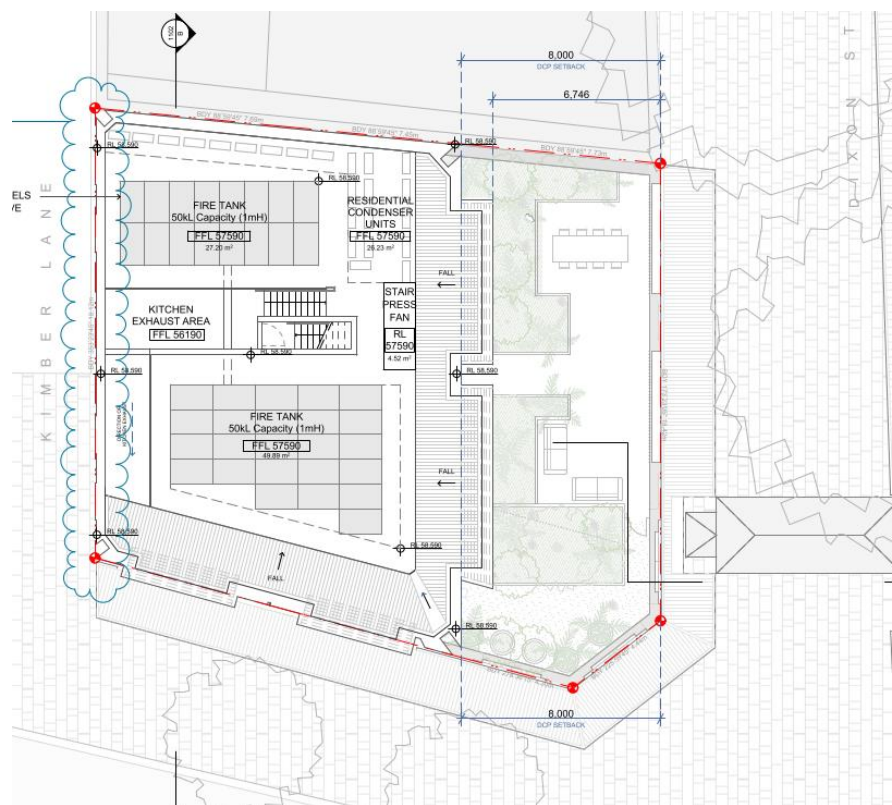
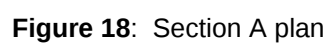


Figure 17: Roof plan



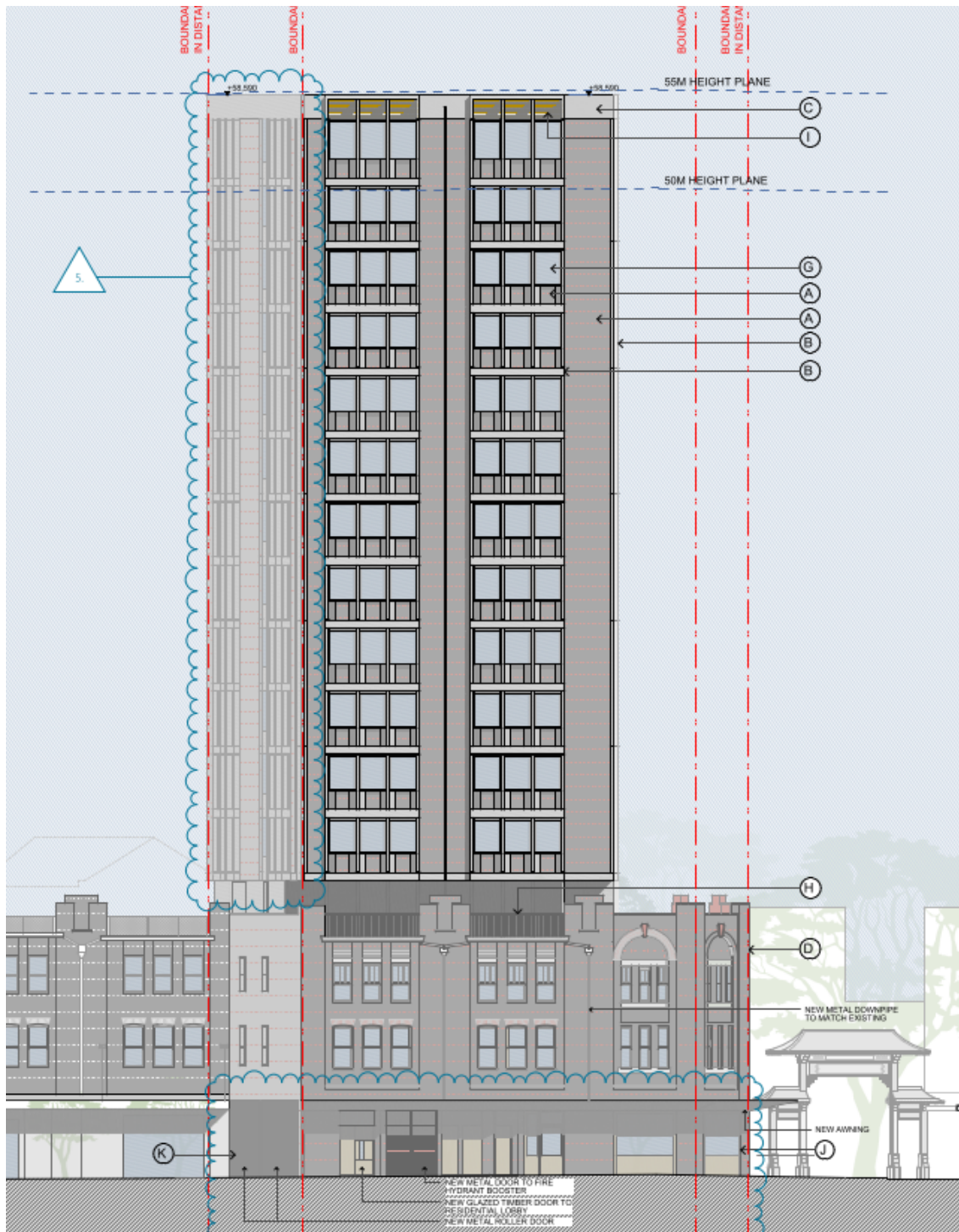


Figure 19: South elevation plan

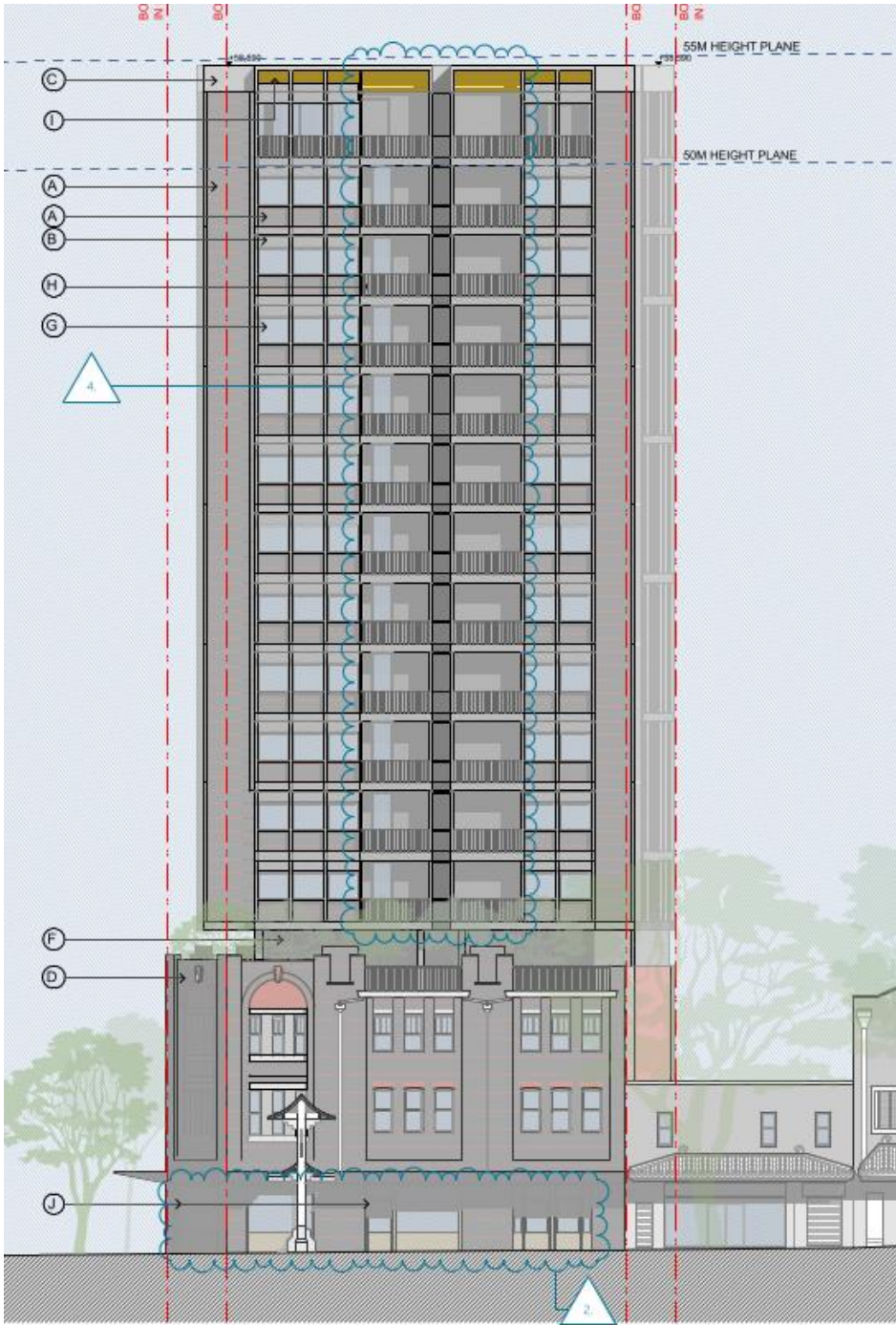
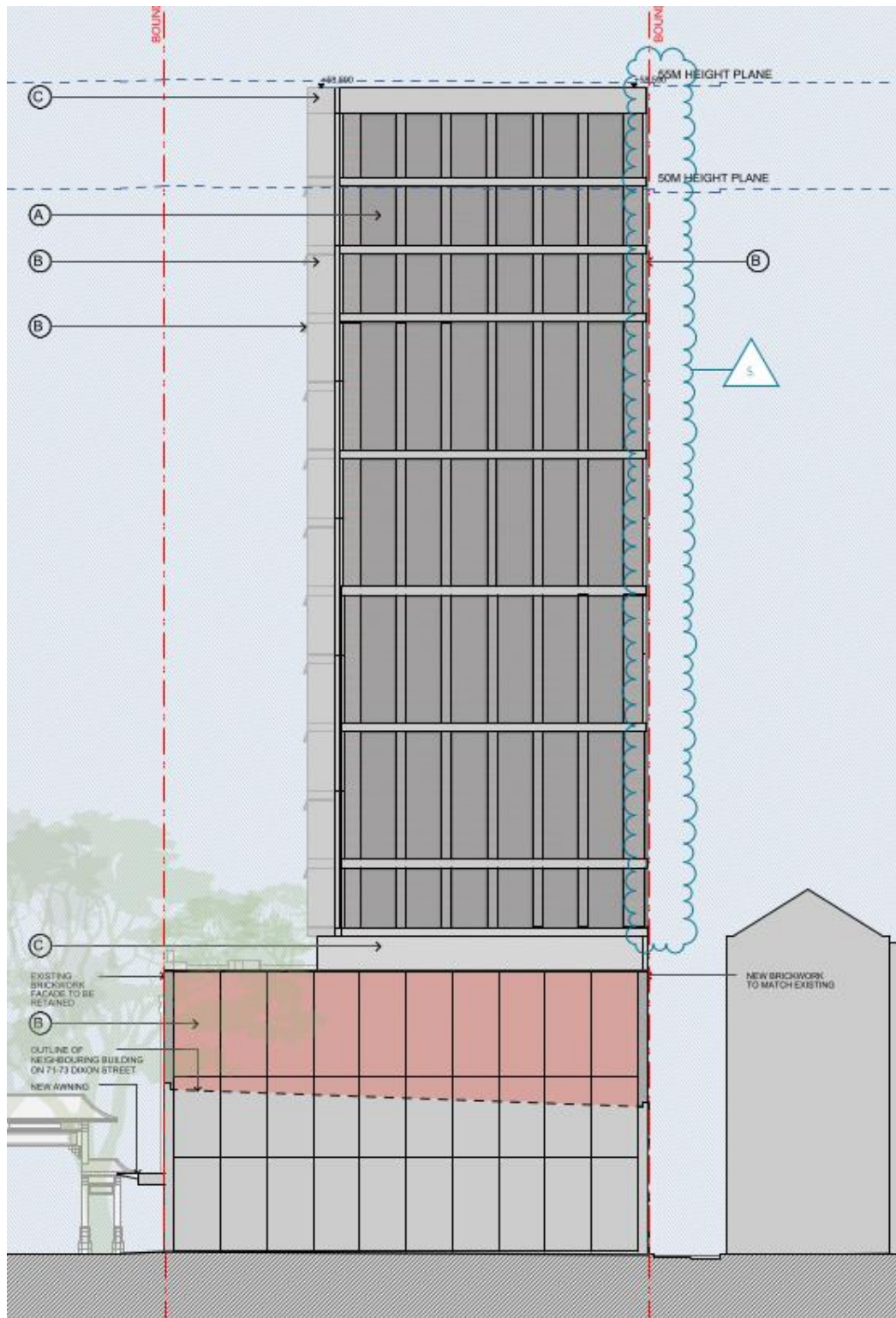


Figure 20: East elevation plan



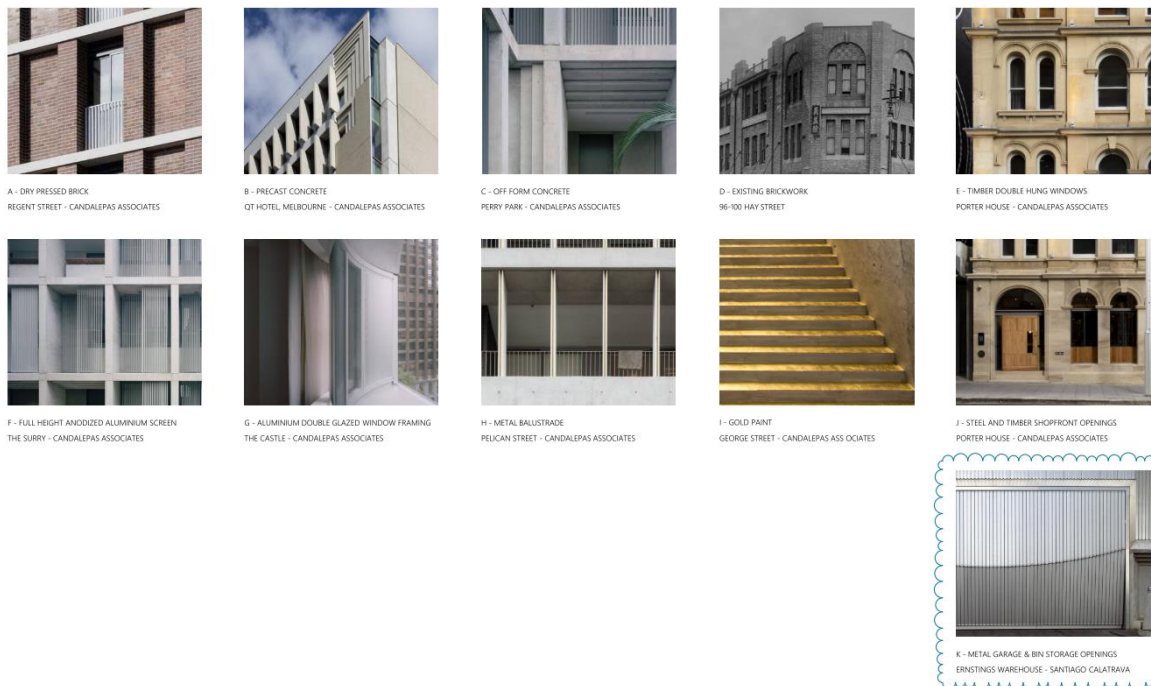
**Figure 21:** West elevation plan



**Figure 22:** North elevation plan



**Figure 23:** Podium conservation works



**Figure 24:** Colours and Materials



**Figure 25:** Photomontage - South



**Figure 26:** Photomontage - North-west

## Assessment

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

## State Environmental Planning Policies

### State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4

#### Remediation of Land

34. Two deferred commencement conditions are recommended, requiring site investigations to be undertaken, prior to the development consent becoming operational.
35. A Preliminary Environmental Site Investigation (PESI) was lodged with the application, which concludes there is a low to moderate potential for site contamination. This is based on historic commercial uses of the subject site and surrounding sites. The PESI identifies potential contamination from the likelihood of underground fuel storage tanks and a dry cleaners.
36. Soil contamination from underground fuel storage tanks in Sydney is common and there are extensive examples where the remediation of soil contamination from historic commercial uses has been conducted successfully.
37. Council's officers requested the applicant provide a Detailed Site Investigation (DSI). However, there are operational constraints preventing the preparation of the DSI at this stage including the inability to provide access for a drilling rig.
38. Noting the PEI concludes there is a low to moderate potential for site contamination and that there will be no basement accessible to residents, it is reasonable in this instance to include a deferred commencement condition, requiring a DSI to be prepared (with a RAP if required), prior to the consent becoming operational. Reasons for this are as set out in more detail below in the Discussion section.
39. Subject to the satisfaction of recommend deferred commencement conditions pertaining to site investigations, Council's assessing officers are of the view the site can be made suitable for the proposed future uses.
40. This is in keeping with the key aim of State Environmental Planning Policy (Resilience and Hazards) 2021 Chapter 4, Remediation of Land, which is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

### State Environmental Planning Policy (Housing) 2021

#### Chapter 4 - Design of Residential Apartment Development

41. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales. The SEPP requires the consent authority to consider a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.

42. A design verification statement prepared by Candalepas Associates was lodged with the application. The statement addresses the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement satisfies Clause 29 of the Environmental Planning and Assessment Regulation 2021.
43. An assessment of the proposal against the design quality is provided as follows:
- (a) Principle 1: Context and Neighbourhood Character:
    - (i) The proposal responds sympathetically to existing development within the visual catchment of the site, both to the west, with nil setbacks to Hay Street and to the north, which has setbacks to Dixon Street.
    - (ii) Proposed works will retain the character and setting of the existing three storey masonry building on the site, which is located at a key corner of the city block and adjacent to the Ceremonial Gates.
    - (iii) The proposed residential tower has been designed with a suitable cantilevered separation to the podium level, with massing, articulation and materiality that are a good fit for the Haymarket / Chinatown Special Character Area.
  - (b) Principle 2: Built Form and Scale:
    - (i) Designed elements successfully reduce the perceived building mass of the residential tower. These include projecting balconies and bay windows.
    - (ii) The bulk and height of the proposed tower are generally consistent with the current planning controls established by the completed planning proposal, which established a scale of development that is suitable for the area.
    - (iii) Where departures from the controls are proposed, they justified as not having any significant impacts on neighbouring properties and the character of the Haymarket / Chinatown Special Character Area.
  - (c) Principle 3: Density;
    - (i) The proposal provides a density or residential development anticipated by the current development standards for the site, as established by the planning proposal for the site and surrounds. The subject proposal establishes a suitable scale for future development in the City block.
    - (ii) The development scheme provides a high level of amenity for residents and each apartment, compliant with ADG minimums.
  - (d) Principle 4: Sustainability:
    - (i) As discussed below, the proposal retains a level of solar access, sufficient to ensure the amenity of neighbouring residential development to the south of the site (The Peak above Paddy's Markets).
    - (ii) The building has been designed to a high standard with regard for sustainability, reducing reliance on fossil fuels and using low emission appliances.

- (iii) The extent of pruning of street trees on Dixon Street is acceptable to Council's specialists.
  - (e) Principle 5: Landscape:
    - (i) High quality landscaped areas are to be provided at Level 3 of the development. These areas receive good solar access and are protected from prevailing westerly winds by the proposed tower and street tree canopy.
    - (ii) Communal private open spaces are provided with flexible furniture configurations for usable and discreet opportunities for social interaction, with equitable access.
  - (f) Principle 6: Amenity:
    - (i) High residential amenity is provided for future residents, as outlined in the table below.
    - (ii) Apartments have generous room dimensions and layouts, access to sunlight, natural ventilation, an outlook and visual and acoustic privacy. Adequate storage and balconies are provided.
  - (g) Principle 7: Safety:
    - (i) Commercial and residential premises are suitably designed with entries located both off Hay and Dixon Streets.
    - (ii) Letter boxes are internal to the building preventing opportunities for mail theft.
  - (h) Principle 8: Housing Diversity and Social Interaction:
    - (i) The design achieves a suitable mix of apartment sizes [(20 x 2 bedroom apartments (91%) and 2 x 3 bedroom apartments (9%)].
    - (ii) Four apartments are identified as being 'adaptable' (18%), in addition to 60% of apartments able to achieve a 'Silver' level of universal design for Liveable Housing.
    - (iii) The development proposal provides opportunities for social interaction within communal private open spaces at the Level 3 podium, which is to be landscaped and provided with flexible furniture for usable, discreet opportunities for social interaction, with equitable access.
  - (i) Principle 9: Aesthetics:
    - (i) The building is suitably scaled and detailed in relation to its materiality, and will positively contribute to the Haymarket / Chinatown Locality with regard for aesthetics.
44. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012.

45. Consequently, compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.

| 2E Building Depth       | Consistency | Comment |
|-------------------------|-------------|---------|
| 12-18m (glass to glass) | Yes         | 15.5m   |

| 2F Building Separation                                                                                                                                                                                                          | Consistency | Comment                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------------------------|
| 9 storeys and above (over 25m): <ul style="list-style-type: none"> <li>• 24m between habitable rooms / balconies</li> <li>• 18m between habitable and non-habitable rooms</li> <li>• 12m between non-habitable rooms</li> </ul> | No          | 3.6m across Kimber Lane and 18m across Dixon Street. See discussion section below. |

| 3D Communal and Public Open Space                                                                                                                                                        | Consistency | Comment                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Communal open space has a minimum area equal to 25% of the site.                                                                                                                         | Yes         | 26% (115sqm)                                                                                                                                         |
| Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter). | Yes         | Communal open space at Level 3 will receive solar access, particularly at the southern end, between 10:00am and 12:00 midday at the winter solstice. |

| 3E Deep Soil Zones                                                       | Consistency | Comment                                                         |
|--------------------------------------------------------------------------|-------------|-----------------------------------------------------------------|
| Deep soil zones are to have a minimum area equivalent to 7% of the site. | N/A         | The entire site is covered by existing and proposed structures. |

| 3F Visual Privacy                                                                                                                                                        | Consistency | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>9 storeys and above (over 25m):</p> <ul style="list-style-type: none"> <li>12m between habitable rooms / balconies</li> <li>6m between non-habitable rooms</li> </ul> | Acceptable  | <p>3.6m across Kimber Lane and 18m across Dixon Street. Despite this, the proposal can be supported on the basis it largely complies with the built form controls and full compliance is not able to be achieved on such a small site.</p> <p>West-facing bedrooms face towards Kimber Lane. These have been designed in such a way that a building with a similar typology may be constructed to the west (90-94 Hay Street), with windows off-set from those proposed in the subject development.</p> |
| Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.             | Yes         | Floor plates contain two apartments per level, with living areas isolated from lift lobbies.                                                                                                                                                                                                                                                                                                                                                                                                            |

| 4A Solar and Daylight Access                                                                                          | Consistency | Comment                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces. | Yes         | All apartments (100%) receive direct sunlight in midwinter to east-facing living areas between 9:20am and 11:20am at the winter solstice. |
| Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.               | Yes         | All apartments receive solar access.                                                                                                      |

| 4B Natural Ventilation                                                                                                                          | Consistency | Comment                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All habitable rooms are naturally ventilated. The area of unobstructed window openings should be equal to at least 5% of the floor area served. | Yes         | <p>All rooms are naturally ventilated. Living areas have large east-facing windows (approximately 3.6sqm per apartment), equating to 10% of the floor area served.</p> <p>Bedroom windows face west and are shown as sliding doors with areas of</p> |

| 4B Natural Ventilation                                                                                           | Consistency | Comment                                              |
|------------------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------|
|                                                                                                                  |             | approximately 2.6sqm (10% of the floor area served). |
| Minimum 60% of apartments in the first 9 storeys of the building are naturally cross ventilated.                 | Yes         | All apartments are naturally cross ventilated.       |
| Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. | Yes         | Apartments have maximum depths of 15.5m.             |

| 4C Ceiling Heights                                                                                                               | Consistency | Comment                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------|
| Habitable rooms: 2.7m                                                                                                            | Yes         | Floor to floor heights allow for minimum ceiling heights of 2.7m.                       |
| 2-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area. | Yes         | Upper level 2-storey apartments have ceilings of 2.7m.                                  |
| If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.                            | Acceptable  | Ground level is flood affected and has various floor heights varying from 3.2m to 3.3m. |

| 4D Apartment Size and Layout                                                                             | Consistency | Comment                                                                                                 |
|----------------------------------------------------------------------------------------------------------|-------------|---------------------------------------------------------------------------------------------------------|
| Minimum unit sizes: <ul style="list-style-type: none"> <li>2 bed: 70sqm</li> <li>3 bed: 90sqm</li> </ul> | Yes         | 2 bed apartments range from 83.3sqm to 103.1sqm.<br><br>2 bed apartments range from 151sqm to 192.1sqm. |

| 4D Apartment Size and Layout                                                                                                                                                                                                               | Consistency | Comment                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.                                                                                                               | Yes         | Habitable rooms are provided sufficient window apertures.                                                                                                                                                                                                                                                         |
| Habitable room depths are to be no more than 2.5 x the ceiling height.                                                                                                                                                                     | Acceptable  | <p>Living rooms have depths of 9m as measured kitchen rear walls to east-facing windows (3.3 times ceiling height).</p> <p>This is acceptable as these rooms also benefit from south-facing windows that provide indirect natural light and ventilation by way of mesh screens. See discussion section below.</p> |
| 8m maximum depth for open plan layouts.                                                                                                                                                                                                    | Acceptable  | See discussion above.                                                                                                                                                                                                                                                                                             |
| <p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> <li>• master bedroom: 10sqm</li> <li>• all other bedrooms: 9sqm</li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p> | Yes         | <p>Master bedrooms for 2 bedroom apartments have areas of approximately 13.9sqm, including a 'tail' or hall for access. Upper level master bedrooms for 3 bedroom apartments have areas of 25sqm.</p> <p>All other bedrooms exceed 9sqm.</p>                                                                      |
| <p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• 2-bedroom or more: 4m</li> </ul>                                                                    | Yes         | Living rooms are provided with typical dimensions of 5.4 x 7.2m (39sqm), excluding kitchens.                                                                                                                                                                                                                      |
| 4m minimum width for cross over and cross through apartments.                                                                                                                                                                              | Yes         | Cross over apartments have minimum widths of approximately 5m.                                                                                                                                                                                                                                                    |

| <b>4E Private Open Space and Balconies</b>                                                                                                                                                        | <b>Consistency</b>           | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>2 bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m.</p> <p>3 bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.</p> | <p>Acceptable</p> <p>Yes</p> | <p>2 bed apartments have balconies of 8sqm with minimum depths of 2.4m.</p> <p>The size of the balconies is supported in this instance noting they provide for high amenity.</p> <p>They are sufficient to provide for a small table and chairs, are close to mature street trees and receive good solar access. Drawings were amended during assessment to increase the size of these balconies by removing decorative 'fins' that reduced their effective sizes.</p> <p>3 bed apartments have balconies of 22sqm with minimum depths of 3m.</p> |

| <b>4F Common Circulation and Spaces</b>                                                                                                                                                                                                 | <b>Consistency</b> | <b>Comment</b>                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------|
| <p>The maximum number of apartments off a circulation core on a single level is 8.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>                                       | Yes                | Two apartments are located on all floors.                                              |
| Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled. | Yes                | Primary living and bedrooms are separated by structure from common circulation spaces. |
| Daylight and natural ventilation are provided to all common circulation spaces.                                                                                                                                                         | Yes                | Lift lobbies have windows at both ends.                                                |

| 4G Storage                                                                                                                                                                                                                                                                        | Consistency | Comment                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> <p>(Minimum 50% storage area located within unit)</p> | Yes         | <p>Full height storage cupboards are provided, providing for a minimum of 50% of the required storage within apartments.</p> <p>All apartments are provided with storage within a common area in Level 3, with the exception of units 14.01 and 14.02 (upper level 3 bedroom apartments), which are provided with storage within the apartments themselves (12-14 cubic metres).</p> |

| 4J Noise and Pollution                                                                                            | Consistency | Comment                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings? | Yes         | <p>Noise from the adjoining light rail line has been addressed by an acoustic report lodged with the application and by the design of the apartments.</p> <p>South-facing windows are fixed, with mesh ventilation hatches providing occupants further, optional ventilation.</p> |

### State Environmental Planning Policy (Sustainable Buildings) 2022

46. The development proposal involves works resulting in a mixed-use building containing residential and commercial uses, with a capital investment value more than \$10 million. As such, it is subject to the provisions of the Sustainable Buildings SEPP.
47. The development has been designed to address the sustainability provisions of the SEPP, with regard for Chapters 2 and 3 of the SEPP (Standards for residential development and Standards for non-residential development).
48. Particulars include:
  - (a) Council's specialist has reviewed a NABERS Embodied Emissions Materials Form lodged with the application. All drawings have been stamped by an accredited NatHERS assessor.
  - (b) An ESD Report lodged with the application confirms the development will meet all BASIX and NatHERS targets including energy efficiency (60 points), water efficiency (40 points) and will achieve a NatHERS star rating of 7.
  - (c) Residential design features addressing ESD include:
    - (i) in addition to 100% cross-ventilation of apartments, a low window-to-wall ratio being achieved, with recessed glazing throughout the podium and tower

- (ii) the building will be fully electrified, incorporating apartment heating and cooling by an air-cooled variable refrigerant flow (VRF) system, allowing for seasonal heat recovery, sealed LED lighting with high efficiency fixtures, regenerative drives to residential tower lifts, a PV array at the roof level (16-20kWp), energy efficient appliances including induction cooktops, electric ovens and dishwashers
    - (iii) high efficiency fixtures and fittings, drought resistant landscaping and a closed-loop fire protection system
  - (d) The proponent intends to reuse or recycle approximately 90% of all demolition and construction waste (by mass) and highlights the retention of the existing heritage facade.
49. The embodied emissions attributable to the development have been quantified in accordance with section 3.2 of the SEPP. Council's ESD specialist has advised that the application meets sustainability requirements and has recommended conditions that are included in the notice of determination.
50. The proposal is consistent with the aims of the SEPP Sustainable Buildings 2022 and complies with relevant standards for non-residential development.

#### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

51. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

#### **Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network**

##### **Clause 2.48 Determination of development applications – other development**

52. The application is subject to Clause 2.48 of the SEPP as the development will be carried out immediately adjacent to an electricity substation. As such, the application was referred to Ausgrid for a period of 21 days.
53. Ausgrid has provided advice with no objection to the proposal, subject to conditions that have been included in the notice of determination.

#### **Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors**

##### **Clause 2.97 – Development adjacent to rail corridors**

54. The application is adjacent to the Inner West light rail corridor and was subsequently referred to Transport for NSW (TfNSW) for comment. TfNSW have provided concurrence and recommended conditions which are included in the Notice of Determination.

## Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

55. The proposal includes pruning street trees however does not involve the clearing of vegetation. See referral section below (tree management officers).

## Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

56. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development. The development is considered to satisfy the relevant matters for consideration.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

57. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

#### Part 2 Permitted or prohibited development

| Provision                              | Compliance | Comment                                                                                                                                                                                                                                        |
|----------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.3 Zone objectives and Land Use Table | Yes        | The site is located in the SP5 Metropolitan Centre zone. The proposed mixed-use development includes commercial and residential uses, which are permissible with consent in the zone. The proposal generally meets the objectives of the zone. |

#### Part 4 Principal development standards

| Provision               | Compliance | Comment                                                                                                                                                                                                                                                                                                        |
|-------------------------|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.3 Height of buildings | No         | Proposed works have a height of 54.9m, exceeding the maximum development standard for height of buildings (50m) by 4.9m (9.8%).<br><br>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below. |

| Provision                               | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.4 Floor space ratio                   | Yes        | <p>As per Clause 4.4 of SLEP 2012, the site is subject to a maximum 'base' FSR standard of 7.5:1 (3,381.8sqm of GFA).</p> <p>The site is located within 'Area 4' and proposes retail and food and drink premises. As such, it is eligible for an amount of additional 'Accommodation floor space' FSR, per Clause 6.4(g) of SLEP 2012, equating to 1.5:1 (676.3sqm).</p> <p>Business premises comprise approximately 31% of GFA for the site, equating to a maximum permissible additional FSR of 0.47:1 (31% of 1.5:1 or 211.9sqm).</p> <p>The total combined permissible FSR for the site is 7.97:1 (3,591.5sqm).</p> <p>The development proposes a FSR of 7.87:1 (3,551.6sqm) and complies with the maximum floor space ratio development standard.</p> |
| 4.6 Exceptions to development standards | Yes        | <p>The proposed development seeks to vary the height development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

#### Part 5 Miscellaneous provisions

| Provision                  | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.10 Heritage conservation | Yes        | <p>The City is progressing the heritage listing of the subject site as well as two others within the Haymarket /Chinatown locality (see discussion below).</p> <p>The applicant has provided an amended heritage impact statement during assessment, which has been reviewed by Council's heritage specialist.</p> <p>Conditions are recommended in relation to the identification and protection of heritage fabric during construction.</p> |

| Provision           | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                     |            | The proposal has been amended during assessment to ensure works (specifically public art) will not have any significant impacts on or visually dominate the setting of the heritage listed Chinatown Ceremonial Gates, which are adjacent to the site.                                                                                                                                                                                                                                                                |
| 5.21 Flood planning | Yes        | <p>Architectural drawings have been amended during assessment in response to site flooding, showing the provision of flood gates within ground level premises.</p> <p>The amended proposal is consistent with the relative provisions including compatibility with the flood function and behaviour on the land, works not affecting surrounding properties and that the safety and risk management of the (occupation and efficient evacuation of people) can be suitably managed. See Discussion section below.</p> |

#### Part 6 Local provisions – height and floor space

| Provision                                           | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Division 1 Additional floor space in Central Sydney |            |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 6.4 Accommodation floor space                       | Yes        | The application complies with the relevant FSR standards for the site. See discussion above.                                                                                                                                                                                                                                                                                                                              |
| Division 3 Height of buildings and overshadowing    |            |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 6.16 Erection of tall buildings in Central Sydney   | Yes        | <p>The proposed residential tower does not exceed 55 metres above ground level and complies with the maximum floor space ratio for the site. As such this clause does not apply.</p> <p>Despite this, the development will not adversely impact on the wind conditions of public places, will not impact upon key views from public places and will not unreasonably impede sun and daylight access to public places.</p> |

| Provision                    | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                              |            | The development provides a suitable height transition between the site and nearby buildings within the Haymarket/Chinatown Locality special character area.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 6.17 Sun access planes       | Yes        | The proposal does not breach the sun access plane for Belmore Park between 10am and 2pm at the winter solstice.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Division 4 Design excellence |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 6.21 Design excellence       | Yes        | <p>The design provides a high standard in relation to materials and detailing.</p> <p>The adaptive re-use of the existing building and proposed design response satisfy the principles of ecologically sustainable development and heritage conservation.</p> <p>The proposal retains the facade of a building intended to be heritage listed and responds by providing a massing and modulation that is a good fit with nearby buildings.</p> <p>The development provides a mix of commercial and residential uses that will contribute to the vitality and character of the Haymarket Chinatown area. The development provides a service vehicle space and bicycle parking.</p> <p>The development achieves a successful interface at the ground level between the building and the public domain and demonstrates excellence and integration of landscape design at the podium roof terrace.</p> |

#### Part 7 Local provisions – general

| Provision                                                                   | Compliance | Comment                                                                                                       |
|-----------------------------------------------------------------------------|------------|---------------------------------------------------------------------------------------------------------------|
| Division 1 Car parking ancillary to other development                       |            |                                                                                                               |
| 7.5 Residential flat buildings, dual occupancies and multi dwelling housing | Yes        | SLEP 2012 does not specify a minimum number of car parking spaces. Rather it sets a maximum of 16 car parking |

| Provision                                                                           | Compliance | Comment                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7.7 Retail premises                                                                 |            | spaces for residential uses in addition to those for business premises.<br><br>The proposed development includes only one service vehicle parking space and complies with the relevant development standards.                                                                                                                     |
| Division 3 Affordable housing                                                       |            |                                                                                                                                                                                                                                                                                                                                   |
| 7.13 Contribution for purpose of affordable housing                                 | Yes        | The site is located in Central Sydney. Clause 7.13(1)(d) is activated noting the development involves the demolition of existing floor area and the subsequent creation of more than 100 square metres of gross floor area.<br><br>A condition is recommended requiring the payment of a contribution towards affordable housing. |
| Division 4 Miscellaneous                                                            |            |                                                                                                                                                                                                                                                                                                                                   |
| 7.14 Acid Sulfate Soils                                                             | Yes        | The site is located on land with class 5 Acid Sulfate Soils however the application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.                                                                                                                                                    |
| 7.16 Airspace operations                                                            | Yes        | The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport.                                                                                                                                                                                   |
| 7.19 Demolition must not result in long term adverse visual impact                  | Yes        | The application does not indicate there will be any delay between the demolition of the existing level 3 of the building and the construction of additional storeys.                                                                                                                                                              |
| 7.20 Development requiring or authorising preparation of a development control plan | Yes        | The site area does not exceed 1,500 square metres and the resulting development will not exceed a height of 55 metres above existing ground levels. As such, the development is not subject to the Clause.                                                                                                                        |

| Provision                                                                 | Compliance | Comment                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7.26 Public art                                                           | Yes        | An amended preliminary public art plan has been provided to the satisfaction of Council's public art team. The amended plan provides details in relation to suitable locations of public art and to the proposed estimated budget. |
| 7.33 Sustainability requirements for certain large commercial development | Yes        | <p>The development satisfies the requirements of the sustainability requirements for large commercial development.</p> <p>Refer to the SEPP (Sustainable Buildings) 2022 discussion section above.</p>                             |

## Development Control Plans

### Sydney Development Control Plan 2012

58. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

### Section 2 – Locality Statements

59. The site is located within the Haymarket/Chinatown Special Character Area locality. The proposed development is in keeping with the current design principles of the locality, set out by Section 2.1.3 of the SDCP 2012 as set out below.
60. The development is also consistent with draft changes to the Locality Statement that were reported to a Council meeting on 11 December 2023 and that are anticipated to be included in an upcoming amendments to the City's SDCP 2012.
61. When compared against the existing locality statement, the development is consistent with the unique character and the design principles of the locality in that it will:
- (a) retain and enhance the urban character and scale of the Haymarket locality by providing a building that maintains commercial uses at the lower levels on the street frontage and is built to the street alignment
  - (b) maintain the street frontage height of the subject building, which is intended to be listed as a heritage item
  - (c) provide suitable building setbacks above street frontage heights and maintain a high level of daylight access to the street by providing a suitable building height and bulk
  - (d) maintains existing vistas to a former market building (Paddy's Market) and conserve existing significant public domain features, including the Hay and Dixon Street frontages that have undergone extensive streetscape improvements

- (e) provide public artworks in locations visible from open spaces including the public domain.
62. When compared against adopted (but not published) design principles for Haymarket/Chinatown Special Character Area, the development will:
- (a) encourage Asian cultural expression in the public domain through the provision of suitable lighting and public artworks
  - (b) support the vibrancy of the area through providing an activated ground floor and retail/commercial tenancies to enable late-night trading

### Section 3 – General Provisions

| Provision                                                                                                                 | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 Public Domain Elements                                                                                                | Yes        | The proposal prioritises pedestrians, cycling and transit use by locating service parking and waste management services within Kimber Lane.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 3.1.5 Public art                                                                                                          | Yes        | <p>A Preliminary Public Art Plan has been provided during assessment that is supported by the Council's public art team.</p> <p>The strategy identifies opportunities for public art at the podium level and on the under-soffit of the new residential tower.</p> <p>The Plan identifies that public art budget will equate to 1% of the development cost which is commensurate with the ambition, scale and nature of the development.</p> <p>A condition of consent is recommended requiring a Detailed Public Art Plan to be submitted to and approved by Council prior to issue of a construction certificate.</p> |
| <p>3.2. Defining the Public Domain</p> <p>3.2.2 Addressing the street and public domain</p> <p>3.2.3 Active frontages</p> | Yes        | <p>The development proposal contributes to the activity, safety and amenity of Hay and Dixon Streets by providing a mix of commercial and residential spaces that will further activate the public domain.</p> <p>Legible and accessible entries will be provided from the street level that respond positively to site flooding conditions.</p>                                                                                                                                                                                                                                                                        |

| Provision                                     | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                               |            | <p>The proposal retains existing retail entries from Dixon Street and an additional entry from Hay Street.</p> <p>Additional fire services are proposed to Hay Street, with a condition recommended to require detailed construction drawings in relation to proposed metal doors.</p>                                                                                                                                                                                |
| 3.2.4 Footpath awnings                        | Yes        | <p>Footpath awnings are provided along the Hay and Dixon Street frontages to enhance pedestrian amenity and provide weather protection.</p> <p>The awning design responds to the building design and is does not visually dominate the setting of the heritage listed Chinatown Ceremonial Gates.</p>                                                                                                                                                                 |
| 3.2.6 Wind effects                            | Yes        | <p>Reports lodged with the application confirm the proposed development will not result in any significant impacts for the public domain surrounding the development, as compared to the existing condition of the site.</p> <p>A supplementary wind report provided during assessment confirms that the proposed Level 3 outdoor terrace will be safe and comfortable for future users.</p>                                                                          |
| 3.2.7 Reflectivity<br>3.2.8 External lighting | Yes        | <p>The building design has a high solid to void ratio. East and west-facing windows are shielded by external screens and other devices that minimise reflection of sunlight from the subject building to surrounding areas and buildings.</p> <p>A Reflectivity Report was lodged with the application, confirming reflections from the tower east facade towards Hay Street are very brief and will not have any significant impacts on neighbouring properties.</p> |

| Provision                                              | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.3 Design Excellence and Competitive Design Processes | Yes        | The development is not subject to a competitive design process as it does not result in a building with a height greater than 55 metres and does not have a capital value exceeding \$100,000,000.                                                                                                                                                                                                                                                                                                      |
| 3.5 Urban Ecology<br>3.5.3 Tree management             | Yes        | <p>The proposed development does not involve the removal of any existing street trees. However, street trees have been allowed to overgrow the site and will require significant pruning during construction for the installation of hoardings.</p> <p>Council's tree management team received an amended tree pruning report during assessment and are satisfied the viability of existing street trees can be maintained, subject to recommended conditions requiring protection of street trees.</p> |
| 3.6 Ecologically Sustainable Development               | Yes        | <p>The proposal can satisfy its environmental obligations under the SEPP (Sustainable Buildings) 2022. Refer to the discussion above.</p> <p>The proposed location and placement of photovoltaic solar panels on the roof of the building is unlikely to be overshadowed by potential permissible building forms on adjacent properties, noting they will have a maximum permissible building height similar to the proposed development.</p>                                                           |
| 3.7 Water and Flood Management                         | Yes        | <p>The site is identified as being on flood prone land.</p> <p>Refer to the details under Section 7.15 of the SLEP 2012 above and below in the Discussion section.</p>                                                                                                                                                                                                                                                                                                                                  |
| 3.8 Subdivision, Strata Subdivision and Consolidation  | N/A        | The proposed development does not seek consent for the subdivision of the site. Conditions are recommended, requiring application to Council for any future strata subdivision.                                                                                                                                                                                                                                                                                                                         |

| Provision                                      | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.9 Heritage                                   | Yes        | The site is a draft heritage item. An amended heritage impact statement has been assessed by Council's heritage specialist. See discussion section below.                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 3.11 Transport and Parking                     | Yes        | <p>The application provides suitable responses to transport and parking provisions.</p> <p>In addition to 4 x visitor bike parking spaces, 22 residential bike parking spaces (1 per apartment) are provided at Level 3 of the development.</p> <p>A service vehicle parking space is provided with access to Kimber Lane.</p> <p>A deferred commencement condition is recommended in relation to waste servicing. This is noting the applicant has not provided a sufficient response to issues raised by Council's waste management specialists. See discussion section below.</p> |
| 3.12 Accessible Design                         | Yes        | An Access Report has been provided, demonstrating the proposal can comply with the accessibility requirements of the Access Code of Disability (Access to Premises - Buildings) Amendment Standards 2010 and the Disability Access relevant sections of BCA/NCC and that proposed adaptable units comply with the essential criteria of AS4299- adaptable housing.                                                                                                                                                                                                                   |
| 3.13 Social and Environmental Responsibilities | Yes        | <p>Active retail and commercial uses are proposed to the Hay and Dixon Street boundaries, ensuring passive surveillance over the street.</p> <p>The development does not provide any opportunities for anti-social behaviour at any frontages such recessed doorways and has generally been designed in accordance with the 'Crime Prevention Through Environmental Design' (CPTED) principles.</p>                                                                                                                                                                                  |

| Provision                          | Compliance         | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.14 Waste                         | No                 | A deferred commencement condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development. See discussion section below.                                                                                                                                                                                                                                                                 |
| 3.15 Late Night Trading Management | Yes                | <p>The site is located in a 'Late Night Management' area. Various (future) commercial uses of the building will, depending on their nature, be defined as a categories A, B or C premises (high to low risk).</p> <p>In the circumstances of the application, it is not necessary to impose any conditions of consent relating to the hours of operation for the future uses, noting they will be subject to future, separate development applications or complying development applications.</p> |
| 3.16 Signage and Advertising       | Condition to apply | <p>No signage is proposed under the subject application.</p> <p>Conditions are recommended, requiring the preparation of a signage strategy and for separate applications once tenancies are further developed.</p>                                                                                                                                                                                                                                                                               |

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

| Provision                                                       | Compliance | Comment                                                                                                                                                           |
|-----------------------------------------------------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.2.1 Building height                                           |            |                                                                                                                                                                   |
| 4.2.1.1 Height in storeys and street frontage height in storeys | Yes        | Refer to height discussion above (SLEP 2012 section) and in the discussion section below. Further, refer to section 5 - Specific Areas - Central Sydney Controls. |
| 4.2.1.2 Floor to ceiling heights and floor to floor heights     | Yes        | Refer to discussion above - Chapter 4 - Design of Residential Apartment Development (Housing SEPP).                                                               |

| Provision                                      | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.2.2 Building setbacks                        | Acceptable | Refer to section 5 - Specific Areas - Central Sydney Controls.                                                                                                                                                                                                                                                                                                                   |
| 4.2.3 Amenity                                  |            |                                                                                                                                                                                                                                                                                                                                                                                  |
| 4.2.3.1 Solar access                           | Yes        | Refer to discussion above - Chapter 4 - Design of Residential Apartment Development in State Environmental Planning Policy (Housing) 2021.                                                                                                                                                                                                                                       |
| 4.2.3.2 Lightwells                             | Yes        | No lightwells are proposed.                                                                                                                                                                                                                                                                                                                                                      |
| 4.2.3.3 Internal common areas                  | Yes        | Corridors and lift lobbies have access to daylight and an outlook.                                                                                                                                                                                                                                                                                                               |
| 4.2.3.4 Design features to manage solar access | Yes        | Fixed shading devices on the western edge of apartments provide for a high solid to void ratio, avoiding extensive, unprotected glazing receiving mid-summer sunlight and a reliance on high performance tinting or glazing.<br><br>The fixed shading devices do not substantially restrict access to natural daylight or an outlook and provide a satisfactory design solution. |
| 4.2.3.5 Landscaping                            | Yes        | Amended landscape drawings have been received, to the satisfaction of Council's specialist. See referrals comments below.                                                                                                                                                                                                                                                        |
| 4.2.3.6 Deep Soil                              | N/A        | Deep soil provisions do not apply to development in Central Sydney.                                                                                                                                                                                                                                                                                                              |
| 4.2.3.7 Private open space and balconies       | Yes        | Refer to discussion above - Chapter 4 - Design of Residential Apartment Development (Housing SEPP).                                                                                                                                                                                                                                                                              |
| 4.2.3.8 Common open space                      | Yes        | Refer to discussion above - Chapter 4 - Design of Residential Apartment Development (Housing SEPP).                                                                                                                                                                                                                                                                              |
| 4.2.3.9 Ventilation                            | Yes        | Refer to discussion above - Chapter 4 - Design of Residential Apartment Development (Housing SEPP).                                                                                                                                                                                                                                                                              |

| Provision                                                  | Compliance | Comment                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.2.3.10 Outlook                                           | Yes        | All apartments are provided with a pleasant outlook over neighbouring streets (Dixon Street and surrounds). Southern apartments have an outlook over the Paddy's Markets site.                                                                                                                               |
| 4.2.3.11 Acoustic privacy                                  | Yes        | All apartments will achieve the minimum internal noise criteria, in accordance with an acoustic report lodged with the application. Apartment windows are fixed at the southern boundary, to address noise from light rail and prevent objects being thrown or accidentally dropped the rail corridor below. |
| 4.2.3.12 Flexible housing and dwelling mix                 | Acceptable | The DCP specifies a quantum of 40-75% of 2 bedroom apartments, where 91% is provided, and 10-100% of 3 bedroom apartments is specified, where 9% are proposed. The dwelling mix is assessed as suitable as it will provide for a range of household types.                                                   |
| 4.2.3.13 Wind affected balconies                           | N/A        | Wind conditions do not require screens to protect balconies within the tower component of the building.                                                                                                                                                                                                      |
| 4.2.3.14 Apartments with setback bedrooms                  | Yes        | No setback bedrooms are proposed.                                                                                                                                                                                                                                                                            |
| 4.2.4 Fine grain, architectural diversity and articulation | Yes        | The site is not sufficiently large to be affected by this control. Notwithstanding this, the development provides suitable facade articulation and modulation .                                                                                                                                              |
| 4.2.5 Types of development                                 | Yes        | Refer to discussion below - Section 5 – Specific Areas.                                                                                                                                                                                                                                                      |
| 4.2.6 Waste and recycling Management                       | No         | <p>The site is heavily constrained at ground level with existing narrow and heavily used service lanes and constrained site access.</p> <p>The dual residential and food and drink premises uses require separate and different waste access and storage. Council's Waste, Transport, and</p>                |



| Provision                                                      | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                |            | <p>southern and eastern site boundaries (Hay and Dixon Streets).</p> <p>The proposed residential tower has a nil setback to the Hay Street frontage (above the podium frontage height) and a 6.75m setback to the Dixon Street frontage.</p> <p>Notwithstanding this, the proposal can be supported with regard for the objectives of Section 5.1.1 of the SDCP 2012. Refer to the Discussion section below.</p>                                                            |
| 5.1.1.3 Side and rear setbacks and building form separations   | Yes        | <p>Table 5.4 does not specify minimum side and rear setbacks and building form separations for buildings of less than or equal to 55m. This applies to the Kimber Lane frontage as well as to the northern facade, which contains no windows.</p> <p>Proposed works will provide a development consistent with the relevant objective of the clause, which is to ensure high quality of the Public Places in terms of wind mitigation, ventilation and daylight access.</p> |
| 5.1.1.4 Built form massing, tapering and maximum dimensions    | Yes        | <p>The horizontal dimension of the new tower form will not exceed the 50m maximum required by SDCP 2012 (26 metres).</p> <p>The development scheme provides for a tall building that is articulated with high quality materials. It will not present as overly massive from any direction, and the northern facade is sufficiently detailed, as it will be exposed until such time as the neighbouring site is similarly developed.</p>                                     |
| 5.1.2 Development outlook and demonstrating amenity compliance | Yes        | <p>The provisions require that all developments should provide for adequate setbacks within their development sites to guarantee their own minimum outlook.</p>                                                                                                                                                                                                                                                                                                             |

| Provision                                                    | Compliance | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                              |            | The facades of the residential tower contain windows and balconies that achieve pleasant outlooks and field depths over street trees and development to the east and south.                                                                                                                                                                                                                                                                                                                                                                                              |
| 5.1.3 Heritage items, warehouses and special character areas | Yes        | <p>The site is intended for heritage listing, noting the primary values of the site are related to its contribution to the culture and commercial vitality of the Haymarket Chinatown locality.</p> <p>Proposed works are consistent with the key objective of the clause, which is to conserve the setting of heritage items by ensuring that new development respects and reinforces the significant scale, form, modulation, articulation, proportions, street alignment, materials and finishes of heritage items in the vicinity. See discussion section below.</p> |
| 5.1.4 Building exteriors                                     | Yes        | <p>The proposal will refurbish the retained heritage podium and is acceptable with regard for reduced street frontage heights as outlined above.</p> <p>The development will contribute to the streetscape with high quality architecture and design. Architectural interest is provided by articulated and well detailed facades. The development will provide a high quality development on an important street corner and will contribute to the quality of public spaces around Hay and Dixon Streets.</p>                                                           |
| 5.1.9 Managing wind impacts                                  |            | <p>An environmental wind statement lodged with the application concludes that it is expected that the changes to the architectural design will result in suitable wind conditions within the Ground Level trafficable areas and will comply with the relevant DCP controls for wind comfort and safety.</p> <p>Furthermore, it is expected that the wind conditions along the Level 3 communal terrace area will be suitable for their intended uses.</p>                                                                                                                |

## Discussion

### Clause 4.6 Request to Vary a Development Standard

63. In accordance with the provisions of Clause 4.3 of the SLEP 2012, the site is subject to a maximum height of buildings control of 50m. The development proposes a maximum height above ground level of 54.9m and exceeds the standard by 4.9m (9.8% - Figure 27 below).

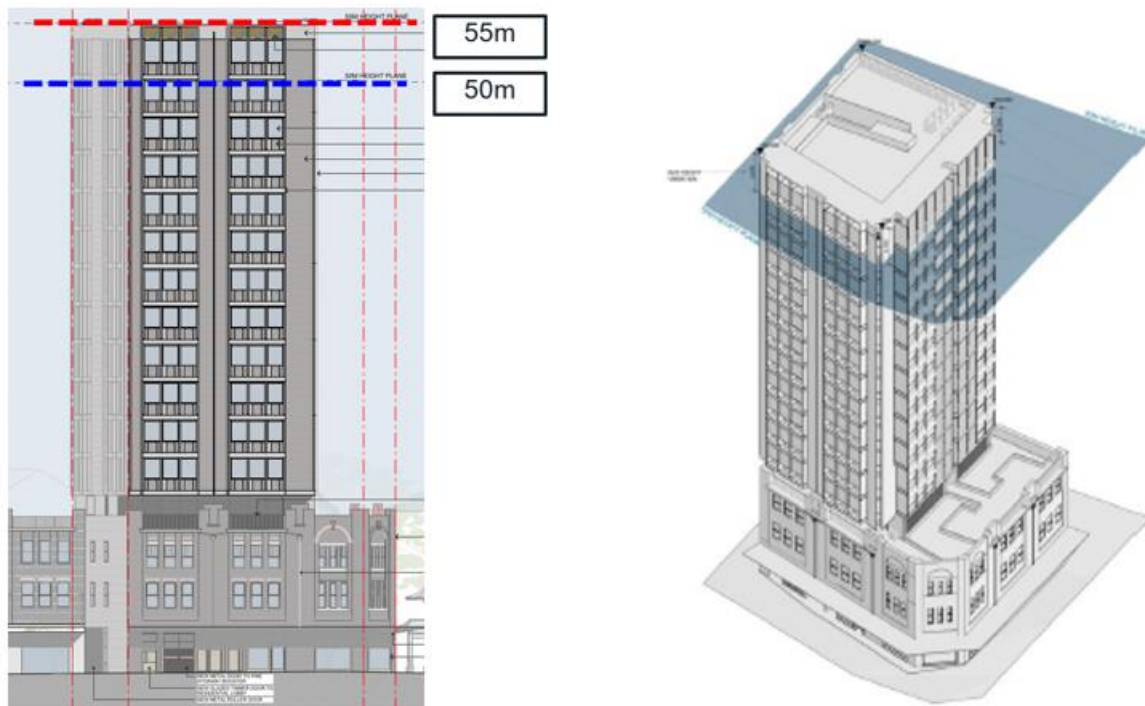


Figure 27: Proposed height of building (inclusive of parapet and roof plant).

64. The applicant argues that, in accordance with Clause 4.6(3)(a) and (b) of the SLEP 2012, non-compliance with Clause 4.3 height of buildings development standard is reasonable in this instance by:
- (a) demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
  - (b) that there are sufficient environmental planning grounds to justify contravening the standard
65. The applicant justifies the contravention of the development standard as follows:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

- (b) The applicant refers to the first method of the 5-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary. This method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.
- (c) Against the objectives of the height of buildings development standard contained in Clause 4.3 of the SLEP 2012:

***Objective (a): to ensure the height of development is appropriate to the condition of the site and its context***

- (i) the subject site is identified in Council's existing and emerging broader Strategy and LEP and DCP controls that seek to achieve a balance between conserving the more significant historical and cultural elements of the Chinatown/ Haymarket Special Character Area, whilst providing the incentive for medium to high rise mixed commercial and residential buildings, as a catalyst for the economic and cultural revitalisation of this strategically important part of the City of Sydney.
- (ii) The proposed building height of 54.87m (a variation of 4.87m or 9.74% of the LEP maximum) is appropriate in the context of the scale and density envisaged by Council for this precinct, as evident by Council's recent approval of similar height variations for the redevelopment of nearby properties, 413-415 Sussex Street and 82-84 – Dixon Street, 417-419 Sussex Street and 683-689 George Street.
- (iii) The proposed building height is appropriate in terms of the consistency of its built form profile and massing with the design controls of the SDCP 2012, as well as the retention of the Hay and Dixon Streets facades of the existing commercial building.

***Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas***

- (iv) the proposed mixed-use podium and tower building at a height of 54.87m, inclusive of the retention of the Hay and Dixon Streets facades of the existing commercial building, achieves an appropriate balance between maintaining a respectful arrangement with the street level history and character of the Chinatown/Haymarket area.

***Objectives (c): to promote the sharing of views outside Central Sydney***

- (v) No significant or iconic view corridors from surrounding buildings or public places have been identified that would be impacted by the proposal. The scale of the building is compatible in relation to the surrounding built form and the site will be surrounded by both existing and recently approved buildings that already block any extensive district views.

***Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas***

- (vi) the height and built form are consistent with the controls intended to revitalise the locality with extensive strategic planning and urban design analysis undertaken by the City;
  - (vii) the building's scale is guided by its surrounding context, CBD location and development controls applicable to the site such as the tower setback to Dixon Street Pedestrian Mall;
  - (viii) The tower's proportion, setbacks and the formal alignments to the heritage podium.
- (d) That there are sufficient environmental planning grounds to justify contravention of the standard:

***Overshadowing***

- (i) shadow diagrams demonstrate shadows generated by the proposal are to the south, south-east and south-west, and do not impact on the Dixon Street mall in mid-winter;
- (ii) only limited additional overshadowing is created by the proposed mixed-use building (see discussion below). The proposed height exceedance contributes only a minor extent to this impact noting buildings are already significantly overshadowed in the mid-winter period.

***Heritage and Special Character Area***

- (iii) The site has no major physical heritage significance, but rather a social heritage significance with proposed works including the refurbishment of the existing podium facades and reinstating and upgrading fenestration to original details;
- (iv) the area of exceeded height will not adversely impact on the heritage significance and special character of this part of the Haymarket/Chinatown area

***Privacy Impacts***

- (v) the windows of habitable spaces meet the ADG privacy criteria for visual privacy. Primary openings for habitable rooms are oriented towards the east, south and west with no north facing openings;
- (vi) The proposed 8m setback to Dixon Street provides sufficient privacy protection to buildings across Dixon Street. To the south, an existing distance in excess of 20m from the building across Hay Street provides sufficient privacy;
- (vii) In anticipation of possible future neighbouring development to the west (90-94 Hay Street), privacy screens and louvres are to be installed on the western façade;
- (viii) The exceeded height area includes proposed residential apartment 14.01 on Level 15, where visual privacy impacts are minimised for both the new apartment residents and the residents of surrounding residential uses.

***View Impacts***

- (ix) No significant or iconic view corridors from surrounding buildings or public places have been identified that would be impacted by the proposal (see discussion below).
- (x) The scale of the building is compatible in relation to the surrounding built form and the site will be surrounded by both existing and recently approved buildings that already block any extensive district views.
- (xi) The area of exceeded height will have minimal adverse impacts on the views from adjoining properties or the public domain.

***Visual Impacts***

- (xii) The tower form is aligned to the Hay Street frontage with a 3m vertical offset between podium and tower. The tower is further setback from the Dixon Street frontage allowing the podium form to take primacy and connect directly to its immediate neighbours.
- (xiii) The height exceedance of the upper-level residential unit and enclosed services parapet contributes to the appropriate building form sought by Council's LEP and DCP urban design controls, and creates no adverse visual impacts.

***Sustainable Design***

- (xiv) passive and sustainable design elements have been incorporated and consideration given to wind velocities at height, with recessed ventilation openings moderating the flow of air and allowing ventilation to be maintained during inclement weather.
- (xv) residential amenity is achieved through the orientation of the apartments' key habitable spaces (including the living rooms and private open space) to the eastern street frontages.

***Pedestrian Environment Wind Impacts***

- (xvi) The architectural design will result in suitable wind conditions within the Ground Level trafficable areas and will comply with the relevant DCP controls for wind comfort and safety.
- (xvii) The proposed exceeded height area will have minimal impact on the pedestrian wind environment of this building and its surrounding public domain.

- 66. Development consent must not be granted unless the consent authority is satisfied that that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.
- 67. The provisions of Clause 4.6(3)(a) of the SLEP 2012 specify that the consent authority must be satisfied that the applicant has demonstrated compliance with the development standard is unreasonable or unnecessary in the circumstances of the application.

68. In this regard, the applicant has demonstrated that in relation to the objectives of Clause 4.3 of SLEP 2012 relating to the height of buildings:
- (a) Clause 4.3 objective (a): the height of the development is appropriate to the condition of the site and its context within the streetscape. The building design is in keeping with existing development located to the west of the site and will retain the character of Hay and Dixon Streets.
  - (b) Clause 4.3 objective (b): Noting the existing facade of the subject Municipal Stores building is to be largely retained, the part of the building that exceeds the height of buildings standard (upper level apartments over 50m) will not have any significant bearing on the City's intention to list the subject site as a heritage item and will not have any significant impacts on the setting of existing heritage items to the east of the site.
  - (c) Clause 4.3 objective (c): the development proposal does not propose any additional building height above 50 metres that would significantly impact any existing views across the site, noting the clause refers to the sharing of views outside of Central Sydney.
  - (d) Clause 4.3 objective (d): the site is not located within the Green square locality.
69. Further, the applicant has demonstrated that in this instance, as per the provisions of Clause 4.6(3)(b) of the SLEP 2012, there are sufficient environmental planning grounds to justify the contravention of the development standard. These include:
- (a) The part of the building that exceeds the 50m height of buildings standard will not have any significant impacts for the adjoining buildings in relation to overshadowing (see discussion below).
  - (b) The development proposal retains the existing facade as a podium level, and will not impact upon the intention to list the site as a local heritage item.
  - (c) Apartments have been designed to provide high residential amenity, noting screens and window designs will ensure sufficient and acceptable levels of internal visual privacy. The design of these windows provides for the potential development of the remaining western portion of the Municipal Stores (90-94 Hay Street) as a similar development.
  - (d) As outlined below in the discussion section, that part of the building that exceeds the 50m height of buildings standard will not have any significant impacts for the adjoining buildings in relation to view loss.
  - (e) The new tower addition is appropriately detailed, with the upper portion of the building exceeding 50m in height of buildings appropriately detailed to provide an interesting and articulated visual outcome.
  - (f) As detailed below, the proposed development will provide suitable measures relating to environmental sustainability and minimisation of reliance on fossil fuels.
  - (g) Sufficient detail has been provided to demonstrate the level 3 communal open spaces and footpath surrounding the site will provide high residential amenity and will not be excessively affected by wind.

70. For the above reasons, it is recommended the applicant's request to vary the Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld.

### **Deferred commencement conditions**

71. Three deferred commencement conditions are recommended to the Local Planning Panel for inclusion in the notice of determination. Two relate to site investigation (contamination), which due to site specific conditions and have not been able to be resolved prior to determining the development application.
72. The third deferred commencement condition requires the resolution of commercial waste access and servicing around the site.

### **Deferred commencement conditions 1 and 2**

#### **Potential Contamination**

73. Notwithstanding the continuation of commercial uses within the podium, the proposal introduces residential accommodation, which constitutes a more sensitive land use for the purposes of Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021. Accordingly, the consent authority is required to consider whether the land is contaminated and, if so, be satisfied whether it is suitable or can be made suitable for the proposed use in accordance with clause 4.6 of the Policy.
74. Council officers requested the preparation of a Detailed Site Investigation (DSI) to further inform the assessment of land suitability. While the DSI has not been undertaken at this stage, the PESI provides sufficient preliminary evidence to indicate that contamination, if present, is capable of being appropriately managed through investigation and remediation measures prior to the occupation of the site.
75. The deferred commencement condition would not be satisfied until a Remedial Action Plan (if required by the DSI) has been independently reviewed by a NSW EPA-accredited Site Auditor, and a Section B Site Audit Statement (or interim advice letter) is provided confirming that the proposed remediation strategy is appropriate and confirm that the land will be suitable for the intended uses upon completion.
76. Subject to further detail of the proposed remediation strategy, the consent authority can be satisfied, for the purposes of clause 4.6 of the SEPP (Resilience and Hazards), that the land can be made suitable for the proposed development.
77. While the PESI identifies potential contamination consistent with historical and surrounding land uses, and states there is nothing to indicate the site is incapable of being remediated to an acceptable standard; that potentially contaminated material may require excavation and disposal in accordance with EPA Waste Classification Guidelines. The proposed absence of a trafficable basement further limits potential exposure pathways for future occupants.
78. This approach is consistent with the object of Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021, which seeks to ensure that changes in land use do not result in increased risk to human health.

79. A deferred commencement consent is deemed as appropriate in the circumstances of the application. The land can be remediated to make it suitable for the proposed use, however, further investigation is required to determine the most effective means of conducting any remediation.
80. The recommended approach is in keeping with the key aim of State Environmental Planning Policy (Resilience and Hazards) 2021 Chapter 4, Remediation of Land, which is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed. The use in question will be a retail or food and drink premises at the ground floor. Residential uses are three levels above this area at the podium and above for the residential flat building.

### **Deferred commencement condition 3**

#### **Waste Management**

81. Council's waste management specialists reviewed architectural drawings and a draft operational waste management plan lodged with the application and raised issues with the applicant's intended approach to waste servicing and collection.
82. The applicant proposed a solution whereby all residential and commercial waste would be collected by commercial waste trucks using Kimber Lane (heading northwards from Hay Street towards Little Hay Street). Council's specialists did not support this approach for three reasons.
83. Firstly, Council requires all residential waste to be collected by the City's contractors rather than by commercial contractors. Residential Council rates include a waste collection levy, and requiring future residents to pay for commercial collection on top of their rates would result in them being levied twice for waste collection.
84. Secondly, for operational reasons and in accordance with the City's Guidelines for Waste Management in New Developments, Council will not service new residential developments using small waste trucks. All residential waste must be collected using larger waste trucks that due to their size, will not fit within Kimber Lane.
85. The third factor is that the northern end of Kimber Lane is currently effectively blocked, at most times by waste bins for separate commercial premises north of the site. For historic reasons, these premises do not have on-site waste bin storage rooms, meaning their bins are permanently stored on Kimber Lane (Figure 28).

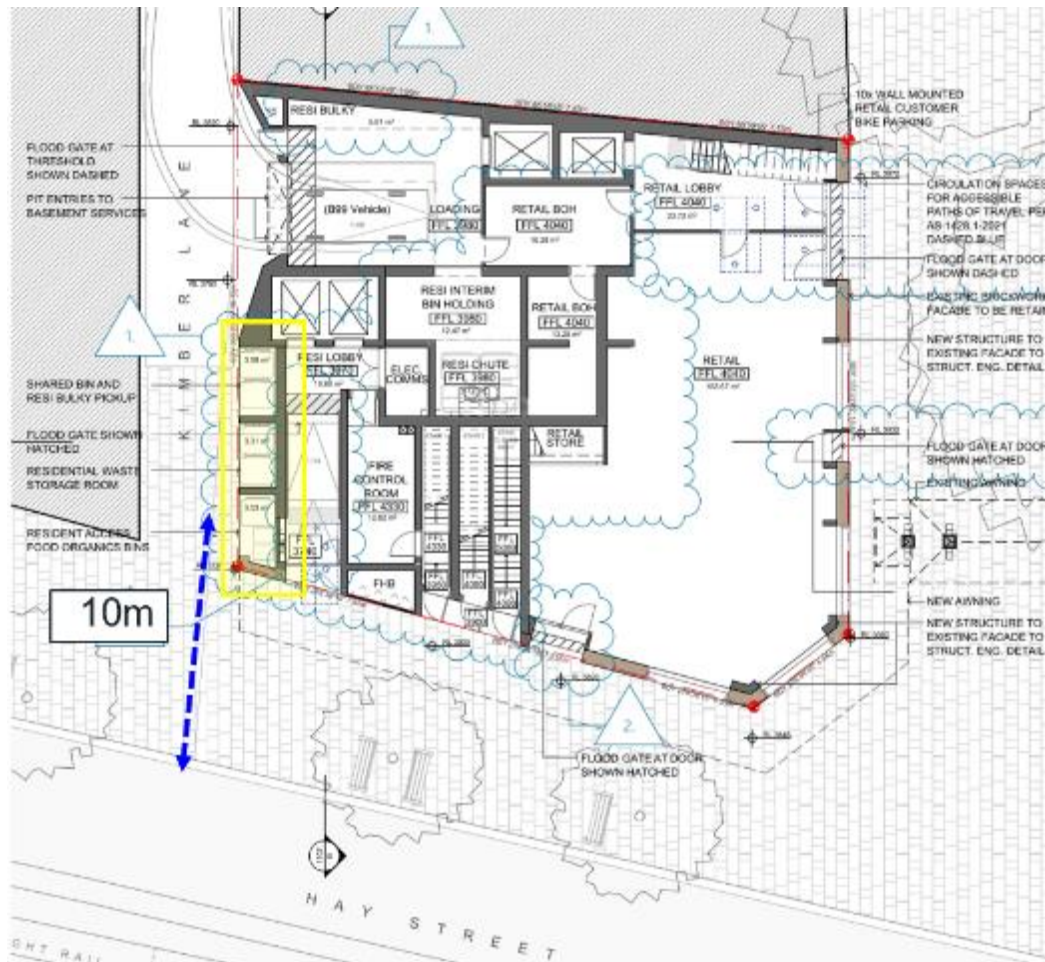


**Figure 28:** commercial waste bins on Kimber Lane, looking south towards the site (left) and north from the site (right)

#### ***Amendments - Residential Collection - SATISFACTORY***

86. Waste access, storage, and management were identified as issues during assessment. Amended drawings and an operational waste management plan show:
- (a) a narrow waste bin holding area for residential bins along the western boundary with Kimber Lane (Figure 29 below). The narrow waste bin holding area is within 10m of the Hay Street kerb, allowing collection by a Council waste vehicle;
  - (b) this arrangement is consistent with Section 3 of the City's Guidelines for Waste Management in New Developments (Waste and recycling collection points), which specify that the maximum manual handling distance between the storage point and the collection point for bins is 10 metres for wheeled Mobile Garbage Bins (MGBs).
  - (c) This arrangement will require a change to existing 'No Stopping' signs on Hay Street. However, this change can be supported by Council's transport specialists, who would support signage stating '*No Stopping except for Council Vehicles*';
  - (d) An area for the collection of food and organic waste (FOGO) is also shown within the narrow waste bin holding area for residential bins along the western boundary with Kimber Lane. An access hatch is proposed within the ground floor residential lobby, allowing residents to dispose of FOGO as they exit the building. A condition is recommended, requiring further detailing of this element.
  - (e) Details have been provided in relation to red and yellow 'overflow' bins, which are to be stationed in cupboards near to lifts on all levels within the residential tower. Three bins would be used in the event garbage and recycling chutes are blocked for any period, with a dedicated space within lift lobbies.

- (f) The applicant provided satisfactory amendments with regard for the collection of residential waste from the site, in response to issues raised by Council's waste specialists.



**Figure 29:** amended drawings showing residential waste bin store within 10m of Hay Street kerb. The loading bay is approximately 25m from Hay Street.

### **Amendments - Commercial collection - UNSATISFACTORY**

87. Commercial Waste access, storage and management were also identified as issues during assessment.
88. Noting large volumes of commercial waste are expected to be generated by future food and drink premises, Council's specialists are not satisfied the updated operational waste management plan (OWMP) and architectural drawings provided by the applicant demonstrate a workable solution for the site.
89. The updated OWMP anticipates that within any 7-day period, future commercial uses of the site will require collection at the following frequency and volumes:
  - (a) general waste (red bins): 3 x 660L bins, twice per week
  - (b) recycling waste (yellow bins): 7 x 660L bins, 4 times per week
  - (c) food organics (FOGO bins): 8 x 240L bins, twice per week

90. The updated operational waste management plan proposes that commercial waste trucks servicing the site will utilise Hay Street for collection, as per the arrangements agreed to by Council's specialists for residential waste collection.
91. The use of Hay Street by commercial waste trucks will not be supported by Council's specialists as wheeled Mobile Garbage Bins (MGBs) for commercial waste would need to be moved approximately 25m (greater than the allowed 10m) along Kimber Lane.
92. This would result in Hay Street being blocked for unacceptably long periods and may result in bins being stored prior to or after collection on Kimber Lane or Hay Street, up to 4 times per week.
93. Councils' specialists are satisfied this can be achieved using B99 vehicles. Further, that Kimber Lane is sufficiently wide (at its northern end) to allow for all bins to be stacked against one side and for a B99 vehicle to proceed north onto Little Hay Street.
94. In light of above, Council is confident that Waste access, storage and management can be solved through amended plans. Waste issues pertaining to collection of commercial waste have not been resolved at the time of reporting the application to the Local Planning Panel. As above, a deferred commencement condition is recommended to address this issue. These require an updated operational waste management plan (and if required, amended architectural drawings) to show commercial waste collection occurring within the site, by vehicles capable of reversing into the loading dock.

#### **Design Advisory Panel (Residential Subcommittee) advice**

95. The proposal was amended in response to comments received from the City's Design Advisory Panel (Residential Subcommittee).
96. Architectural drawings have been amended to delete projections over Kimber Lane, which the panel noted would impact development potential on neighbouring sites and the public domain. Further changes were made to improve the amenity of residential balconies by the deletion of deep, closely spaced blade columns.
97. The northern boundary has been provided with a quality finish noting it will be visually prominent from the public domain.
98. Changes have been made in response to panel comments regarding the ground floor layout, including addressing the City's waste management requirements, spatial requirements for services, lobby functions, and proposal to install flood gates.
99. Details have been amended in relation to conservation and reinstatement of existing public art in Kimber Lane, and further details provided for landscaped podium areas.

#### **Solar access and overshadowing**

##### *Neighbouring sites*

100. Public submissions were received in relation to solar overshadowing impacts on the Peak Building (south of the site), with regard for north-facing communal spaces at the roof level. These include a large open grassed area at the western end of the podium and a tennis court at the eastern end of the podium.

101. Council's model team provided solar access modelling to aid with assessment. The modelling (Figure 30 below) demonstrates that the proposed building casts shadows on the Peak's communal areas approximately between 9:15am and 1:30pm and that the outdoor areas of the Peak receive solar access between 9:00am and 3:00pm.
102. The proposed development will not have any significant additional impacts on the Peak in relation to overshadowing, noting:
- (a) an area of communal open space at the western end of the Peak's podium (containing turf and gardens) will receive solar access to 100% of its area between 9:00am and 11:00am at the winter solstice, before becoming partially shadowed by existing buildings on the northern side of Hay Street (however not being affected at any time by proposed works); and
  - (b) a tennis court at the eastern end of the podium level is already affected throughout the day by existing buildings including Darling Square. Notwithstanding this, the tennis court will receive solar access to greater than 50% of its area between 1:00pm and 3:00pm at the winter solstice.



**Figure 30:** Solar access modelling prepared by Council's model team. Western and eastern communal open spaces will receive more than 2 hours of solar exposure, between 9:00am and 3:00pm at the winter solstice.

## View Sharing

### *Neighbouring sites*

103. Public submissions raise the issue of view sharing, with regard for balconies located within Darling Square, which is a multi-storey development located to the west of the site.
104. An assessment of impacts on views has been undertaken by Council's assessing officer. The assessment is based views from apartments located within Darling Square that have easterly aspects (Figure 31 below).



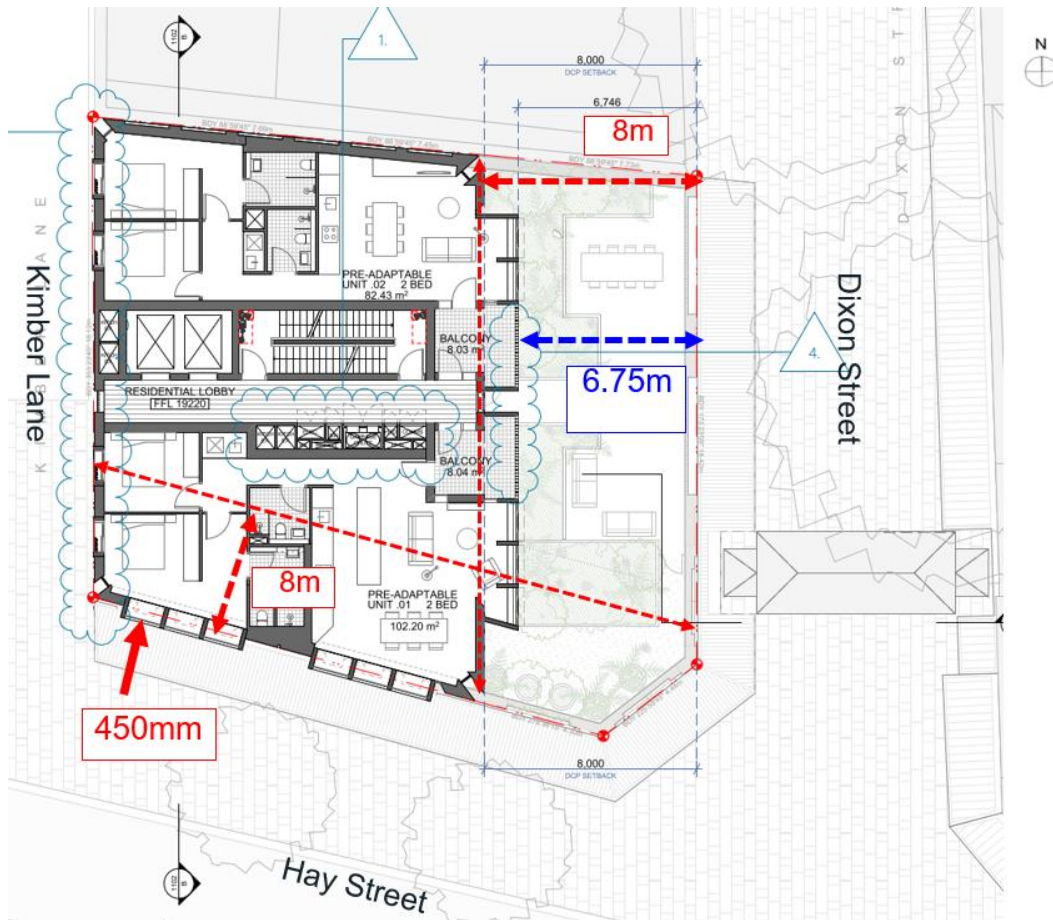
**Figure 31:** Image provided by Council's Model specialists, showing outlook from apartments within Darling Square (west of the site, looking east).

105. The assessment has been made against the planning principle established by Senior Commissioner Roseth in the Land and Environment Court decision of *Tenacity Consulting v Warringah* [2004] NSWLEC140, and is based on a photograph taken by the assessing officer. The photograph shows that views from east-facing apartments within the Darling Square will be affected.
106. Affected apartments are located at the lower levels of the Darling Square development, up to 16 storeys, which is the height of the proposed development.
107. Impacts on existing views are assessed as 'moderate'. Existing views are classed as an outlook over the Haymarket and Chinatown locality including over neighbouring buildings and the light rail line. Whilst these outlooks are highly valued by occupants of Darling Square, they are not considered iconic views as per the planning principle (such as uninterrupted views of the Sydney Opera House for example).

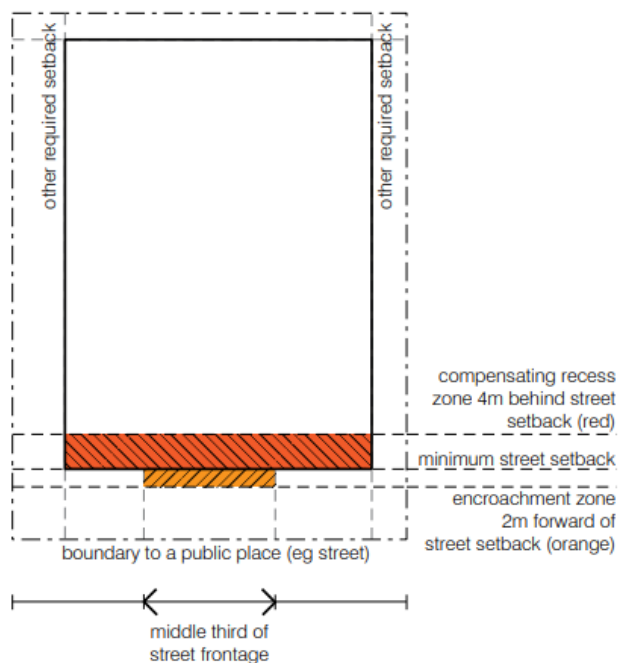
108. The outlooks over the site are available from living areas and balconies of residential apartments within towers of the Darling Square development. The amenity enjoyed by these apartments is considered to be 'borrowed amenity' in that it is likely to be interrupted by any new building that complies with the relevant height, floor space ratio and set back controls for the site.
109. The proposed development is not unreasonable to the extent it generally complies with the relevant planning controls. The impacts of the proposal would only be mitigated by reducing the height of the proposed development, below that allowed by the relevant development standards.
110. The planning principle asks whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a largely complying development would probably be considered acceptable and the view sharing reasonable.
111. The proposed development has been skilfully designed and as noted elsewhere in the report, has a building height that is acceptable and an FSR that complies with the relevant development standard. The building provides an appropriate built form and scale.
112. For the reasons outlined above, and with consideration of guidance provided by the relevant planning principle, the impacts upon existing outlooks are acceptable and do not would warrant the refusal or substantial modification of the proposed development application.

### **Building Setbacks - Planning Controls**

113. The relevant controls specify that the proposed tower setback should be setback by 8m from both the primary boundaries of Hay and Dixon Streets. However, the development seeks consent for a nil setback above the podium level to Hay Street and a 6.75m setback to the Dixon Street frontage (Figure 32 below).
114. Figure 5.3 of SDCP 2012 allows for a non-compliance with the 8m setback control in circumstances where it can be demonstrated, by way of a detailed urban design and options analysis, that a high quality urban design outcome will be achieved.
115. Figure 5.3 of SDCP 2012 permits building elements to encroach 2m forward of the minimum Street Setback within the middle third of the frontage. However, it also requires a compensating recess to be provided equal to or greater area up to 4m behind the minimum Street Setback (Figure 33 below).



**Figure 32:** 6.75m setback proposed to Dixon Street and nil setback to Hay Street (with 450mm projections)



**Figure 33:** Figure 5.3 of SDCP 2012, demonstrating that some flexibility may be applied in relation to minimum street setbacks (light orange) with compensating recesses (dark orange)

*Nil setback to Hay Street*

116. The development proposes a nil setback to Hay Street, with windows framed by architectural detail that extends by 450mm beyond the southern boundary (Figure 32 above).
117. The nil setback and accentuated window frames are supported on the basis Hay Street is a significantly wider street with building on opposite sides separated by approximately 26m. By comparison, buildings on Dixon Street are separated by approximately 11.3m.
118. The width of Hay Street provides scope for taller buildings with nil setbacks that will not have significant impacts on the character of the street and surrounds. This is evidenced by recently constructed buildings located at the western end of Hay Street including Darling Square. The photomontage and the applicant's design verification statement further justify this approach as being acceptable (Figure 34 below).
119. This approach is also supported by two examples of buildings within close proximity to the site, both with residential tower components facing Dixon Street. These include (Figure 35 below):
- (a) a residential tower at 49-53 Dixon Street has a flat and unarticulated eastern facade
  - (b) an approved (but not constructed) development at 413-415 Sussex Street presents a flat facade does not provide any significant benefit for the streetscape of Dixon Street, as compared to the subject proposal



**Figure 34:** Left: Extract from photomontage, showing Darling Square (background) and subject site. Right: Massing analysis provided by applicant showing consistency of setbacks along Hay Street.



**Figure 35:** Residential towers at 49-53 Dixon Street and 413-415 Sussex Street, with relatively flat facades compared to the subject development

#### *Setback to Dixon Street*

120. The development proposes a 6.75m setback to the Dixon Street frontage, which extends by 1.25m into the required 8m setback. Elements that extend into the 8m setback include bay windows and balconies.
121. Proposed works do not extend by 2m into the setback as permitted by the control (extending by only 1.25m- see Figure 33 above). The elements that extend into the setback contain accentuated bay windows and balconies that improve the residential amenity of apartments whilst not significantly affecting the building appearance. As such, it is reasonable that no compensating setback be included at the edges of the building as required by Figure 5.3 of SDCP 2012.

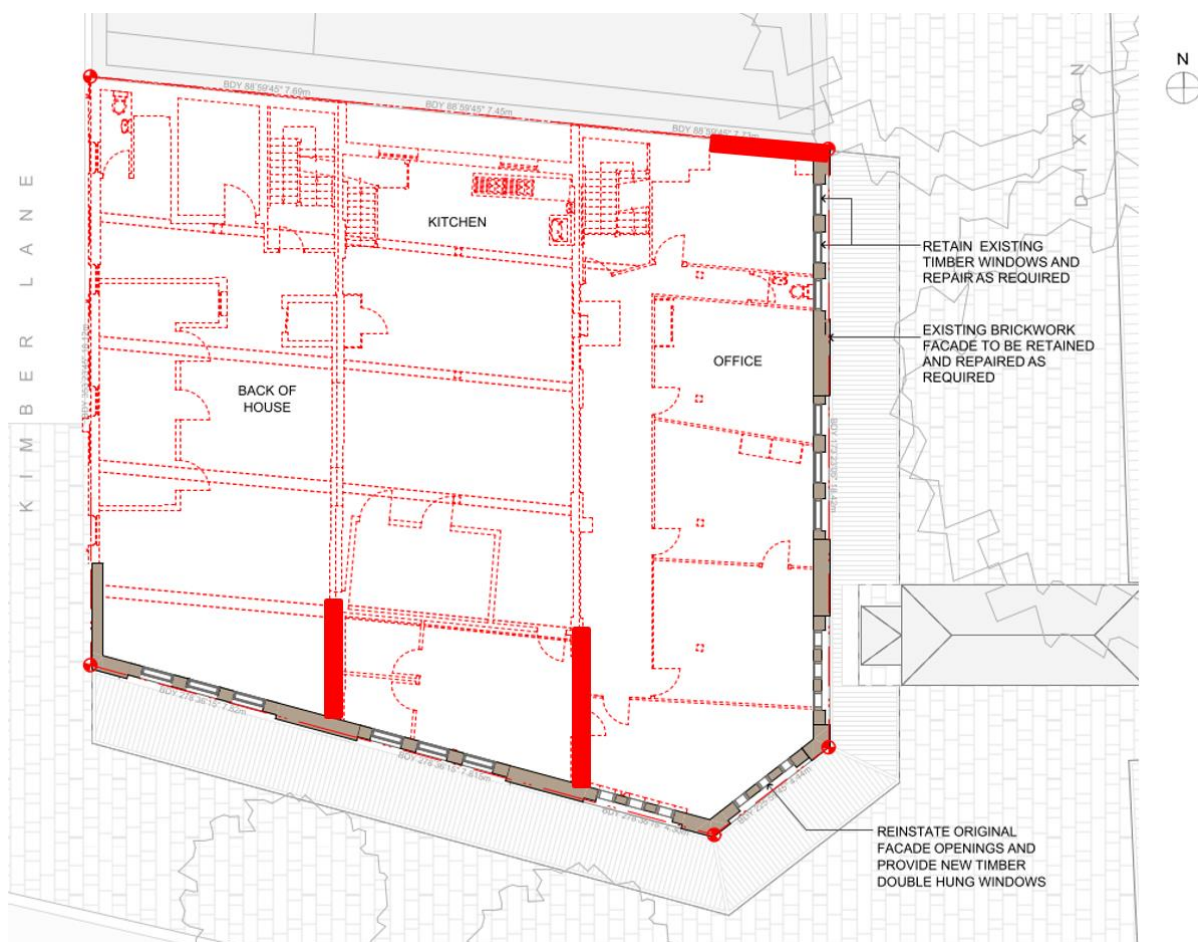
#### **Heritage Listing and Conservation**

122. The City's 2023 Haymarket and Chinatown revitalisation strategy includes an action to recognise the cultural heritage of Chinatown through the heritage listing of culturally significant buildings.
123. This action was progressed in September 2025, with public consultation commencing in relation to the City's proposal to list three buildings (including the subject site) as local heritage items. The draft listings include:
  - (a) 90–100 Hay Street: the subject site described as the Former Municipal Stores
  - (b) 50–54 Dixon Steet (approximately 100m north of the site), described as the Goon Yee, Loong Yee and Loon Fook tongs building

- (c) 75–77 Ultimo Road, described as the Kuo Min Tang building
124. Post-exhibition findings were reported to both the Council and the City's Transport, Heritage and Planning Committee in December 2025. The findings and recommendations were endorsed and SLEP 2012 amendments including the listings are currently going through the required gazettal process.
125. The draft heritage inventory report for the site describes the subject building as the eastern most building of a pair of buildings (the other being 90-94 Hay Street) that were constructed as the Municipal Stores, located opposite the Municipal Markets, which are known today as 'Paddy's Markets'.
126. The stores at 90-100 Hay Street were occupied by Chinese Australian fruit and vegetable produce firms between the 1910s and the 1970s. These firms were instrumental in pioneering the processes involved in banana ripening and were central to the trading, and distributing of vegetables and bananas coming from Chinese Australian communities across New South Wales, Queensland and Fiji. The site also contains the well-known Emperors Garden restaurant and a bakery. Both have been in operation for several decades.
127. The draft heritage inventory report notes that whilst some finishes and details (such as paint on the facades, balustrades, awnings and some windows) are not original, the exterior form has a high degree of intactness and integrity. The report notes a low degree of intactness for internal elements with 98-100 Hay Street having been largely altered with only some original fabric remaining.
128. The draft heritage report notes the stores were primarily open plan, would have had limited internal architectural elements or detailing and that little evidence survives of the historical banana and produce stores.
129. Council's heritage specialist notes that there is intact structure located within Level 2 of the building and recommends that walls be retained within this area, both as interpretive elements and to support the facade of the building, which is proposed to be retained. In addition and for the same reasons, Council's heritage specialist recommends that a 3m section of wall be retained along the northern boundary, at the north-eastern corner of the site (Figure 37 below).
130. The proposed development (subject to recommended conditions) is consistent with the recommendations of the draft heritage report in that:
- (a) Proposed additions and alterations will ensure the retention of the whole form and original detailing of the exterior of the principal buildings.
  - (b) The proposed works including residential tower have been designed to allow for the legibility of the original building fabric at the podium level, with the future tower being a sympathetic design using suitable materials.
  - (c) The setback and scale of proposed vertical additions will sufficient to maintain the readability of the existing form and scale of the principal building with new building elements tying into the building as a whole, with floor levels and parapets integrated into the retained facade.



**Figure 36:** Municipal Stores c.1910. Source: City of Sydney website.



**Figure 37:** Walls recommended to be retained at Level 2, both as interpretive elements and to support the facade of the building are shown highlighted in red

### Street Activation and Public Art - Dixon Street

131. In 2023, the City announced a strategy for the Revitalising of Haymarket and Chinatown including a public domain plan for works to upgrade Dixon Street. Stage 1 of the Revitalising strategy for Dixon Street was completed in June 2025, including works to restore the Chinatown Ceremonial Gates, adjacent to the site at the southern end of Dixon Street (Figure 38 below).
132. Stage 2 of works is currently being undertaken, consisting of public domain upgrade works to Dixon Street (paving, street furniture and a review of street tree plantings). These are anticipated to be completed midway through 2026.
133. The final stage 3 works will involve the construction of creative lighting installations, suspended above the footway and relying on surrounding buildings on the eastern and western sides of Dixon Street for support (Figure 39 below). These works are anticipated to be commenced midway through 2026 and completed by the Sydney Lunar Festival, early in 2027.
134. To facilitate the installation of creative lighting installations, a condition is recommended, specifying that fixing points must be shown on the eastern facade of the podium of the site.



**Figure 38:** Recently completed works to the Chinatown Ceremonial Gates, adjacent to the site at the southern end of Dixon Street



**Figure 39:** Artist's impression of Dixon Street upgraded. Source: City of Sydney website/ Aspect Studios.

### Street Activation and Public Art - Kimber Lane

135. Kimber Lane contains a multi-dimensional art piece known as 'In Between Two Worlds'. The piece was completed in 2013 by artist Jason Wing. It consists of key 3 components, being painted wall murals, painted floor murals and suspended illuminated 'spirit' figures (Figures 41 and 42 below).
136. Proposed works to the subject site involve the demolition of the western wall of the existing former Municipal Store Building, which will require the removal and storage of suspended illuminated 'spirit' figures and the destruction of sections of the painted wall mural.
137. During assessment, the applicant has updated the preliminary public art plan for the site, to include details specifying the conserving and reinstating of suspended illuminated 'spirit' figures at the completion of works and mural.
138. Council's public art specialists are satisfied that subject to recommended conditions of consent, 'Between Two Worlds' can be suitably conserved and reinstated at the conclusion of works. Recommended conditions include:
  - (a) that a conservator must be engaged to document any impacted elements of the artwork. The conservator must provide an inventory of impacted elements detailing, number and location of attachment points, catenaries and any other artwork elements; and

- (b) conservator is to develop a methodology for approval by the City's Public Art Team, for the safe removal, packaging and transport to a nominated City of Sydney storage facility, return and reinstatement following development.

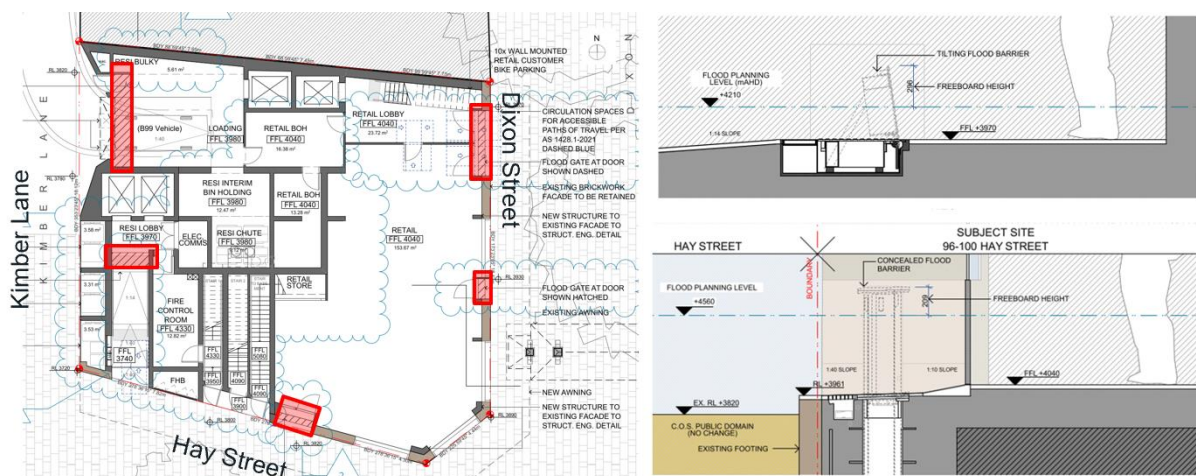


**Figure 40:** 'In Between Two Worlds' by artist Jason Wing, photographed in 2013. Source: City of Sydney website.



**Figure 41:** 'In Between Two Worlds', photographed December 2025

139. The site is located within the Darling Harbour Catchment which flows into Sydney Harbour. The site is identified by the City's modelling as being flood prone land.
140. While the proposed development generally retains the ground levels of the existing building (and does not propose any large basements), the proposed development involves new additions to a commercial building with an area greater than 100 square metres. In accordance with Section 3.2 of the City's Interim Floodplain Management Policy consideration must be given to mitigating site flooding conditions.
141. An amended flood impact and assessment report has been provided for assessment, which identifies flood levels around the site. The floor report recommends flood levels and that flood gates may be suitable for the mitigation of flood events. Architectural drawings were amended accordingly.



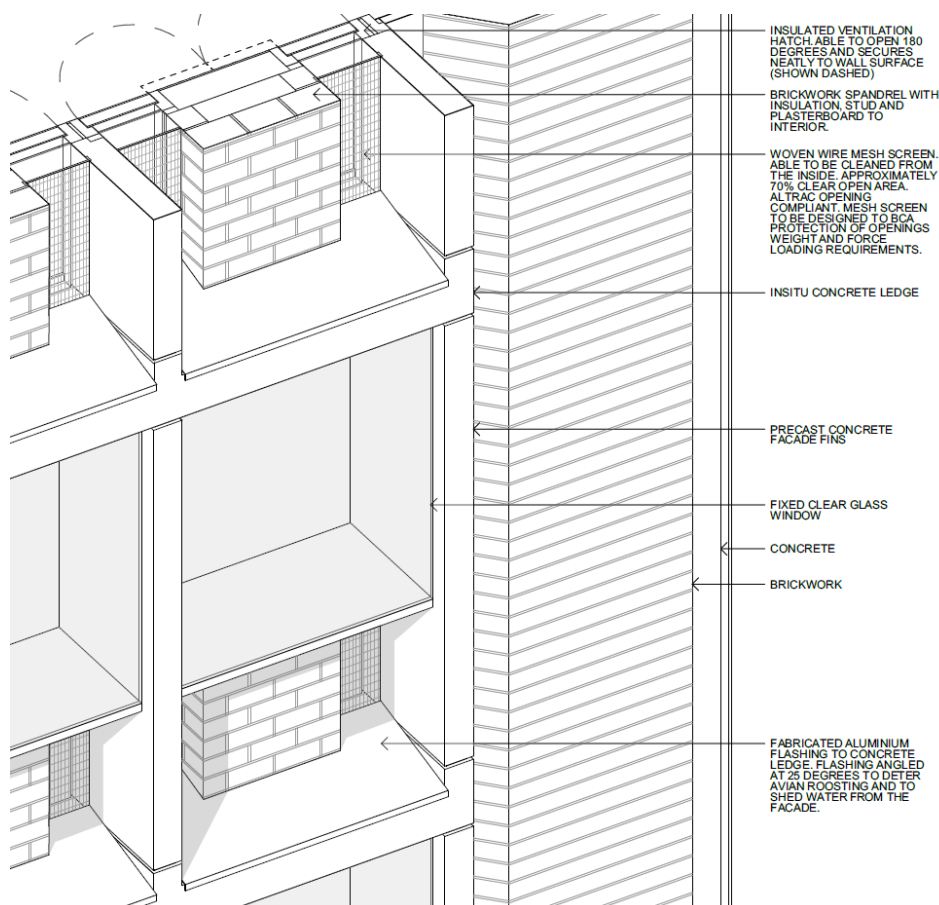
**Figure 42:** Extract from ground level drawings and flood gate details, showing locations of flood gates (red shading)

142. While flood gates are generally discouraged, Council staff recommend consideration be given to granting development consent to the development for the following reasons:
  - (a) the development involves the adaptive re-use of an existing building that is intended to be heritage listed. The existing condition of the site does not meet the minimum flood requirements and noting the site constraints, consideration can be given to installing suitable flood mitigation measures that will upgrade the existing building to meet the flood levels specified by the flood report;
  - (b) the application of proposed active flood control devices is recommended to be covered by a condition of consent, requiring the Flood control devices to be designed and certified by an appropriately experienced engineer and that the flood control devices are to be backed up by an independent back-up power supply, to be used in the event of a power failure.
143. The proposed response to site flooding is consistent with the provisions of Clause 5.21 of SLEP 2012 relating to flood planning and, as such, the development is recommended for approval. The application can be supported on the basis that:

- (a) The development will be compatible with and will respond appropriately to the identified flood hazards of the land (where the existing building does not).
- (b) Proposed works will not significantly adversely affect flood behaviour in a way that would impact other development or properties, noting no changes are proposed at the ground plane other than installing flood mitigation devices within the confines of the site.
- (c) The development incorporates measures to mitigate the risk of life from flood, noting the existing building is to be upgraded to meet the recommended levels in accordance with the City's Interim Flood Policy.

#### Ventilation to living areas facing Hay Street (light rail corridor)

144. Sketch plans were received in response to comments made by the City's DAP(RS) and urban designer in relation to ventilating living areas facing Hay Street.
145. The sketch plans show mesh panels located within hatches and below fixed glazing (Figure 43 below). The mesh panels will provide for ventilation of living areas and are a suitable response to the design requirements of the current operators of the Light Rail (ALTRAC Light Rail), which are to prevent objects being dropped or thrown onto the light rail corridor below.
146. The proposed mesh panels will not restrict airflow through the ventilation panels - expand as discussed.



**Figure 43:** Detail showing mesh screens on southern elevation, allowing residents to ventilate apartments with fixed windows overlooking the light rail corridor

## Consultation

### Internal Referrals

147. The application was discussed with Council's:

- (a) Building Services Unit
- (b) Environmental Health officers
- (c) Heritage and Urban Design specialists
- (d) Public Domain specialists
- (e) Surveyors
- (f) Transport and Access specialists
- (g) Tree Management officers
- (h) Waste Management specialists

148. Key issues raised by Council's specialists are outlined in this report, noting deferred commencement conditions are recommended in relation to site investigation and waste management.

149. Council's urban designer suggests several design revisions that are addressed by way of recommended conditions of consent. These include:

- (a) provision of a window schedule, demonstrating Objective 4B1 of the Apartment Design Guide - that all habitable rooms are naturally ventilated
- (b) drawings showing the location of operable windows and how the area of unobstructed window opening should be equal to at least 5% of the floor area served
- (c) a physical material and finishes board is to be provided, keyed to elevations and including manufacturer's specifications
- (d) palisades of the balcony balustrades to be flat sections that are angled to provide privacy to the occupants and screen any urban storage being viewed from the public domain

150. Council's transport specialist recommended a condition requiring the provision of ten bike parking spaces for customers. This condition has not been included as site constraints prevent ground level areas are prioritised for waste servicing. Further, the site is well serviced by public transport and there is ample on-street bike parking for customers on Hay Street. Notwithstanding this, a condition is recommended, requiring 4 x staff bike parking spaces with associated end of journey facilities.

151. Council's health and building specialists recommended conditions regarding details being provided for kitchen design and fitout prior to the issue of a construction certificate. These conditions have not been included as no approval is granted under the subject consent for the fitout and use of commercial tenancies within the development.

## External Referrals

### Ausgrid

152. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment. A response was received raising no objections to the proposed development.

### Transport for NSW

153. Pursuant to Section 2.97 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for concurrence. Concurrence was received on 2 December 2026. Recommended conditions of consent (terms of approval) are included in the Notice of Determination.

### Sydney Water Corporation

154. Pursuant to Section 78 of the Sydney Water Act 1994, the application was referred to the Sydney Water Corporation for comment. A response was received raising no objections to the proposed development.

## Advertising and Notification

155. In accordance with the City's Community Engagement Strategy and Community Participation Plan 2025–2029, the proposed development was notified for a period of 21 days between 21 November 2025 and 13 December 2025.
156. A total of 1,330 properties were notified and 10 submissions were received. The submissions raised the following issues:
- (a) Increased density and height: Negative changes to the character of Chinatown and Haymarket due to increased density and height. Negative demographic changes and impacts on property values.
  - (b) The Clause 4.6 height variation is not properly justified. Approving this height exceedance could set a bad precedent for future development.
  - (c) Haymarket is already facing intense pressure from heavy foot traffic, ongoing construction works, vehicle congestion and limited open space. demand on local infrastructure.

### Response:

- The development scheme is generally consistent with the City's planning controls pertaining to scale and the built form and is a suitable precedent for future buildings within the Haymarket / Chinatown locality.
- The development provides accommodation for 22 households and will not significantly affect the character of Haymarket / Chinatown. It is noted property values are not a consideration under the EP&A Act 1979.
- Close attention has been given to the servicing of the site with particular regard for waste management. Residential waste access, collection and management are satisfactory. A deferred commencement condition is recommended to address commercial waste.

- (d) Heritage impacts: the subject buildings should be retained due to their importance for local heritage and streetscape character.

**Response:**

- Heritage values have been considered during assessment, noting specialist reports justify the heritage listing with regard for historical / cultural attachments rather than with regard for internal fabric and structures.
  - Consistent with draft heritage inventory, the facades of the building are to be protected during construction and refurbished using new fabric. Conditions are recommended for future conservation works.
- (e) Buildings in Haymarket provide habitat and perching space for a number of urban bird species. The development provides inadequate sustainability measures and green infrastructure.

**Response:**

- Birds of prey are known to nest in higher buildings surrounding the site. The proposed residential tower includes a 'non-trafficable' roof and may provide habitat for birds in due course. Conditions are recommended to address circumstances in which birds or other animals are disturbed during tree pruning.
- (f) Construction impacts: noise pollution, dust, reduced air quality, and road closures. Proceeds on preliminary geotechnical advice and a preliminary CMP which do not address key risks to neighbouring buildings

**Response:**

- Conditions are recommended to ensure future construction works will not have any significant impacts on neighbouring properties.
  - A deferred commencement condition is recommended in relation to site investigations pertaining to potential site investigation. It is noted the consent cannot be activated without these works (and subsequent decontamination works if required) being mapped out / completed.
- (g) Waste options are limited in this location. There is insufficient space along Kimber Lane noting bins frequently/constantly occupy and reduce the Lane's width. It is unrealistic for a B99 Van to travel along this Lane. Council should provide an off peak loading zone along Hay Street to service the proposed development.

**Response:**

- Waste management issues have been considered in the assessment of the application. Whilst arrangements for residential waste management are satisfactory, a deferred commencement condition is recommended, requiring further details to be provided to demonstrate management of commercial waste.

- As above, the consent cannot be activated without these arrangements being properly articulated to the satisfaction of Council's Waste and Transport specialists.
- (a) Amenity impacts: View loss, solar access, natural light, privacy, noise and ventilation.

**Response:**

- The proposal is assessed as providing high amenity for future residents of the subject building as well as residents of surrounding buildings. See discussion section above.

## **Financial Contributions**

### **Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2000**

157. The Central Sydney Development Contributions Plan 2020 applies to the site. The cost of the development is over \$250,000. The development is therefore subject to a s7.12 contribution under this Plan. A condition relating to this contribution has been included in the recommended conditions. The condition requires the contribution to be paid prior to the issue of a construction certificate.

### **Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012**

158. The site is located within the Central Sydney area. As the proposed development includes additional floor space, a contribution is required at a rate of \$11,223.28 per square metre totalling \$1,466,858. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.
159. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies.
160. The Act applies with respect to a development application for consent to carry out development within an area if a State Environmental Planning Policy identifies that there is a need for affordable housing within the area. Clause 14 of the Housing SEPP identifies that there is a need for affordable housing within each area of the State.
161. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to consideration of the following:
- (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
  - (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and

- (c) the condition requires a reasonable dedication or contribution, having regard to the following -
  - (i) any other dedication or contribution required to be made by the applicant under this section or section 7.11.

162. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable. A condition of consent is recommended requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

### **Housing and Productivity Contribution**

163. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
164. The site is located within the Greater Sydney region, the development contains residential and commercial development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
165. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

### **Relevant Legislation**

166. Environmental Planning and Assessment Act 1979.
167. Heritage Act 1977.

### **Conclusion**

168. The proposal seeks consent for the redevelopment of the site, including retention of heritage facades and refurbishment of three commercial levels and for the construction of a residential tower, resulting in a 16 storey mixed-use building.
169. The applicant has sufficiently demonstrated that the variation requested to Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 can be supported.
170. Two matters may be resolved by way of deferred commencement conditions and to the satisfaction of Council's specialists, prior to the formal activation of development consent. These relate to site investigations and any required subsequent remediation, and resolving commercial waste collection and management of the site.
171. The proposed development complies with remaining key development standards applicable to the site, including the design excellence provisions, floor space ratio, flooding, heritage and vehicle parking.

172. The application has undergone extensive consultation with Council staff and has been amended during the assessment to resolve a number of matters including heritage investigations, public domain and public art plans, design for flood levels and mitigation measures.
173. The proposal will provide for mixed commercial uses in an adaptively reused heritage façade. The site is highly accessible to existing and planned employment, services, and public transport infrastructure.
174. The proposal achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future users of the site.
175. Concurrence has been granted by Transport for NSW, subject to recommended conditions of consent. The application is recommended for approval, subject to recommended conditions of consent provided by Transport for NSW and Ausgrid.
176. As a result of public notification, 10 submissions were received. Issues raised in the submissions have been addressed as discussed within this report.
177. All matters raised by internal and external referrals have been adequately addressed, as discussed within this report.
178. The proposal is in the public interest and is recommended for approval by the Local Sydney Planning Committee.

**ANDREW THOMAS**

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Adrian McKeown, Senior Planner