

Item 8.**Section 4.55 Application: 93-97 Macquarie Street, Sydney - D/2017/1609/A****File Number:** D/2017/1609/A**Summary**

Date of Submission:	7 May 2024
Amended plans/Additional information	2 May 2025 and 2 June 2025
Applicant:	The Planning Studio
Architect/Designer:	BVN
Developer:	Census Advisory
Owner:	Macquarie Street Development Pty Ltd
Planning Consultant:	The Planning Studio
Heritage Consultant:	Weir Phillips
Cost of Works:	\$183,035,738.56
Zoning:	The site is zoned SP5 Metropolitan Centre under the Sydney Local Environmental Plan 2012. The indicative use is defined as a 'mixed use development', comprising 'residential accommodation', 'commercial premises' and 'food and drink premises', all of which are permissible with consent.
Proposal Summary:	This Section 4.55(2) modification application seeks to amend the concept consent for the redevelopment of the 'Stamford Hotel' building and adaptive reuse of the existing Heritage item known as the Health Building. Specifically, modifications are proposed to the concept envelope, including a minor reduction to the podium and tower setbacks on the north, east and southern boundaries, an increase in the overall height by 2.84 metres (to RL 70.35) and additional height to the podium of 1.35 metres (to RL 38.35). Modifications are also proposed to amend conditions of consent to ensure consistency with the detailed design and other administrative amendments.

The concept consent, as amended, will continue to provide a concept envelope comprising a podium, containing the existing heritage building (being the former Health Department building), and a new tower above.

This application is referred to the Central Sydney Planning Committee (CSPC) for determination as the proposed modifications relate to a "major development" for the purposes of the City of Sydney Act 1988.

A separate Detailed Design DA (D/2024/324) is presented to the CSPC concurrently for approval.

The proposed modifications to the concept consent will deliver consistency between staged development applications, as required under Section 4.24 of the Environmental Planning and Assessment Act 1979.

The proposal was notified and advertised for a period of 28 days between 16 May 2024 and 14 June 2024. Three (3) submissions were received.

The submissions raised the following concerns:

- view impacts
- stormwater concerns
- impacts to easements and services
- traffic/pedestrian impacts
- no consideration to adjoining approved uses
- structural/geotechnical concerns
- inconsistent with Concept Envelope
- impacts to Right of way
- impacts of the street frontage/podium height
- construction noise, vibrations and dust
- revenue loss

The issues raised in the submissions are addressed in the report, and where appropriate, the application has been amended and/or conditions of consent are recommended to address these issues. As amended, the proposed modification to the envelope includes a height increase to 57.84m, 2.84m above the 55m Building Height development standard. This has been assessed on its merits and remains consistent with the objectives of the height of buildings development standard, notwithstanding the non-compliance. The applicant has also adequately demonstrated that there are sufficient environmental planning grounds to justify the breach.

The modification also proposes a reduced podium setback to the north and western elevations and proposes an increase to the podium street height. These amendments relate to the Detailed Design DA that was the subject to an architectural design competition. The changes in the setbacks remain contextually appropriate and result in a scheme that is capable of achieving design excellence. Additionally, the podium height changes ensure an appropriate height transition from the neighbouring Transport House heritage item and maintain the distinctive qualities of the Macquarie Street special character area.

The modification to the tower setbacks on the north, east and western boundaries are also a result of the Detailed Design DA that was the subject to an architectural design competition. The minor proposed variations in the setbacks do not cause additional adverse impacts to neighbouring properties or public domain and ensure the simplified tower form remains consistent with the character of the area. The proposed variations to the setbacks have been assessed as acceptable in its context and is consistent with the objectives of Section 5.1.1.1 of Sydney DCP 2012.

As amended, the proposed modifications to the concept envelope will result in a development that is substantially the same as previously approved and is considered contextually appropriate. The modification will not impact the future use of the concept envelope, nor unreasonably impact on the amenity of neighbouring properties.

Furthermore, the concurrent Detailed Design DA demonstrates that a generally compliant scheme can be provided within the amended envelope.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021
- (ii) City of Sydney Act 1988 and City of Sydney Regulation 2016
- (iii) SEPP (Transport and Infrastructure) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) State Environmental Planning Policy (Housing) 2021
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012
- (viii) City of Sydney Guidelines for Public Art in Private Developments 2006

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Visual Impact Assessment - 2 May 2025
- D. Supplementary Visual Impact Assessment - 1 June 2025
- E. Original Concept DA Report
- F. Submissions

Recommendation

It is resolved that consent be granted to Section 4.55 Application Number D/2017/1609/A subject to the amendment of the following conditions (with additions shown in ***bold italics*** and deletions shown in ~~strikethrough~~), as follows:

(2) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2020/1224 dated 20 November 2017 ***as amended by D/2017/1609/A*** and the following drawings prepared by ***BVN Kann Finch***:

Drawing Number	Drawing Name	Date
<i>S4.55 010 (X)</i>	<i>3D – Concept DA Envelope</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-02</i>	<i>General Arrangement Plan – Level B1</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-03</i>	<i>General Arrangement Plan – Level 00</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-04</i>	<i>General Arrangement Plan – Level 01</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-05</i>	<i>General Arrangement Plan – Level 02</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-06</i>	<i>General Arrangement Plan – Level 03-06</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-07</i>	<i>General Arrangement Plan – Level 07</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-08</i>	<i>General Arrangement Plan – Level 08-15</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-09</i>	<i>General Arrangement Plan – Level 16</i>	<i>21 November 2023</i>
<i>AR-DA- M-10B-01</i>	<i>General Arrangement Plan – Roof</i>	<i>21 November 2023</i>

AR-DA- M-10D-01	Section	21 November 2023
AR-DA- M-10C-01	Elevations East and North	21 November 2023
AR-DA- M-10C-02	Elevations West and South	21 November 2023
02	Massing Diagrams	9 November 2018
03	Plan – Site Context	9 November 2018
04	Plan – Basement 01	9 November 2018
05	Plan – Ground Level	9 November 2018
06	Plan – Level 01	9 November 2018
07	Plan – Level 02	9 November 2018
08	Plan – Levels 03-05	9 November 2018
09	Plan – Levels 06-15	9 November 2018
10	Section 01	9 November 2018
12	Street Elevations – Macquarie St Elevation & Albert St Elevation	9 November 2018
13	Street Elevations – Western Boundary Elevation & Southern Boundary Elevation	9 November 2018

and as amended by the conditions of this consent.

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

Amended – D/2017/1609/A – 19 June 2025

(7) DETAILED DESIGN OF BUILDINGS

The competitive design process brief and subsequent detailed design development application must incorporate the following requirements:

- (a) The podium must be designed to be visually recessive and complementary to the adjoining heritage fabric.
- (b) The western facing facade must present as a 'quiet' facade and not be visually competitive as a backdrop to the adjoining Justice and Police Museum at 4 Phillip Street, Sydney.
- (c) The tower form must be simple in design, ~~avoiding cantilevers over the ground floor communal courtyard.~~
- (d) A considered use of a mix of materials (dark face-brick and sandstone) is to be employed for the Macquarie Street and Albert Street facades to podium level of the new building to integrate with the character and materials of surrounding heritage buildings.
- ~~(e) The south, north and east elevations of the Macquarie Street podium should be substantially glazed at their lower levels (e.g. two floor levels) to allow for views from Macquarie Street through the new residential building to the northern elevation of Transport House and to the (proposed) newly restored and reconstructed southern elevations of the former Health Department Building.~~
- (f) The design of the ground floor courtyard between the new building the former Health Department Building must facilitate the provision of compliant access and the adaptive reuse of the former Health Department Building. The courtyard is to be considered as being within the heritage listing curtilage of the former Health Department Building.
- (g) The roof terraces to the Macquarie Street and Albert Street podiums are to include an increased non-trafficable setback to ensure that views of ancillary and temporary structures (e.g. umbrellas, shade structures, landscaping and the like) are not visible when viewed from the street levels of Macquarie Street and Albert Street.
- (h) Communal open space or communal spaces must be provided within the development in accordance with Part 3D of the Apartment Design Guide for the exclusive use of apartment residents, and which is not to be co-located or co-mingled with other uses.
- (i) Plant and lift overruns must be incorporated into the roof form of buildings and either provided within architectural roof features, as defined in the Dictionary of the Sydney Local Environmental Plan 2012, or located and provided with parapet screening so that they are not visible from the public domain or adjoining tower developments.

- (j) An acoustic brief must accompany the competitive design process brief and be prepared by a suitably qualified acoustic consultant. The brief is to provide design recommendations to allow apartments to achieve both natural ventilation compliance and acoustic compliance in accordance with the provisions of the Apartment Design Guide and Sydney Development Control Plan 2012. The brief must establish the decibel reductions required at each frontage of the building and make design recommendations based on these findings.

Amended – D/2017/1609/A – 19 June 2025

(9) RESIDENTIAL LAND USE

- (a) The Detailed Design Development Application must be designed to meet the principles of 'State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development', the guidelines of the Apartment Design Guide (ADG), and the provisions of the Sydney Development Control Plan 2012.
- (b) The floor to floor and floor to ceiling height controls in Section 4.2.1.2 of the Sydney Development Control Plan 2012 and the Apartment Design Guide.
- ~~(c) The development shall be designed to be compliant with the dwelling mix requirements of Section 4.2.3.12 of the Sydney Development Control Plan 2012.~~
- (d) The development shall be provided with an area/s of communal open space in accordance with the requirements of the Apartment Design Guide and Sydney Development Control Plan 2012.
- (e) A BASIX Certificate in accordance with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 must be submitted with the Detailed Design Development Application.

Amended – D/2017/1609/A – 19 June 2025

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2) of the Environmental Planning and Assessment Act 1979.
- (B) The proposed modifications ensure the detailed design development application is consistent with the concept approval, in order to satisfy Section 4.24 of the Environment Planning and Assessment Act 1979.
- (C) The proposal is consistent with the aims, objectives, and relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 for the reasons set out in the report.
- (D) The modified building envelope can accommodate a building design which is capable of exhibiting design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.

- (E) The changes to the approved building envelope are in keeping with the desired future character of the area. The changes are reasonable and justified with regard to the concurrent detailed design development application D/2024/324.
- (F) The changes to the approved building envelope are appropriate and are not likely to significantly impact the overall use of the building or the amenity of surrounding sites or locality.
- (G) The development, as modified, is in the public interest.

Background

The Site and Surrounding Development

1. A detailed description of the site and surrounds is provided in the assessment report for the concurrent detailed design development application (Detailed Design DA) (D/2024/324) that is presented to the Central Sydney Planning Committee (CSPC) concurrently for approval.

History Relevant to the Development Application

Concept Development Application - D/2017/1609

2. On 12 March 2020, concept consent (D/2017/1609) was granted by the Central Sydney Planning Committee (CSPC). It provides a concept envelope for a building with:
 - a maximum height of RL 70.030 (AHD), approximately 53.23 metres from the ground level at Macquarie Street, with a separation distance from the perimeter of the former Health Department building of at least 3 metres
 - a podium height of RL 36.00 along Macquarie Street and RL 36.00 along Albert Street with building massing set back 5 metres at the ground level of Albert Street
 - the retention of existing vehicular access from Albert Street for access to basement parking within the subject site and to the InterContinental Hotel.

Architectural Design Competition - CMP/2017/14

3. Following the issue of the concept consent, the applicant commissioned an 'invited' competitive design alternatives process for the site, which was held between 6 February 2023 and 20 April 2023.
4. Five architectural firms were invited to submit a design proposal.
5. The 5 design proposals were presented to the competition jury on 21-22 March 2023. The competition jury unanimously concluded that the proposal presented by BVN was selected as the preferred scheme that could achieve design excellence.
6. This Jury also recommended a number of design refinements that are discussed later in this report. The Jury also acknowledged that the BVN scheme varied from the approved Concept DA Envelope in a number of areas, however considered the variances allowed for better achievement of design excellence.

Concurrent Detailed Design Development Application - D/2024/324

7. D/2024/324 - a Detailed Design DA was lodged concurrently on 7 May 2024. It proposes the demolition of the existing 'Stamford Hotel' building, adaptive reuse of the former Health Department Building (heritage building), and construction of a mixed-use development comprising basement car parking, retail and commercial tenancies, residential apartments and a public right of way.

8. The Detailed Design DA is being reported concurrently to the CSPC for determination and is recommended for approval. Refer to the separate assessment report for details.

Proposed Development

9. The subject modification application proposes to amend the concept consent to be consistent with the concurrent Detailed Design DA as outlined below:
- amend Condition (2) to reference an updated concept envelope as follows:
 - amend the overall building height to increase the envelope to a maximum height of RL70.35 (approximately 57.84 metres)
 - amend the podium/street frontage height to Macquarie Street and Albert Street to a maximum height of RL38.35
 - a reduction in the setback of the podium from the Albert Street frontage from 8 metres to 7 metres
 - a reduction in the setback of tower to the northern boundary (Albert Street frontage) from 13 metres to 12.2 metres
 - a reduction in the setback of tower to the eastern boundary (Macquarie Street frontage) from 10 metres and 11.8 metres to 9.8 metres and 11.6 metres
 - a reduction in the setback of the tower from the western boundary from 6 metres to a minimum of 4.3 metres
 - a reduction in the setback of residential tower to the Health Building from 6 metres to 3.3 metres
 - an increase in setbacks on ground level and level 1 from 5.8 metres to 13 metres to provide a large publicly accessible courtyard space
 - Increase basement excavation depth by approximately 2 metres
 - amend Condition (7) (Detailed Design of Buildings) to delete references to glazing treatment and extent of cantilever that were inconsistent with the preferred design competition scheme
 - amend Condition (9) (Residential Land Use) to delete references on dwelling mix

10. Selected drawings of the proposed modifications are provided below.

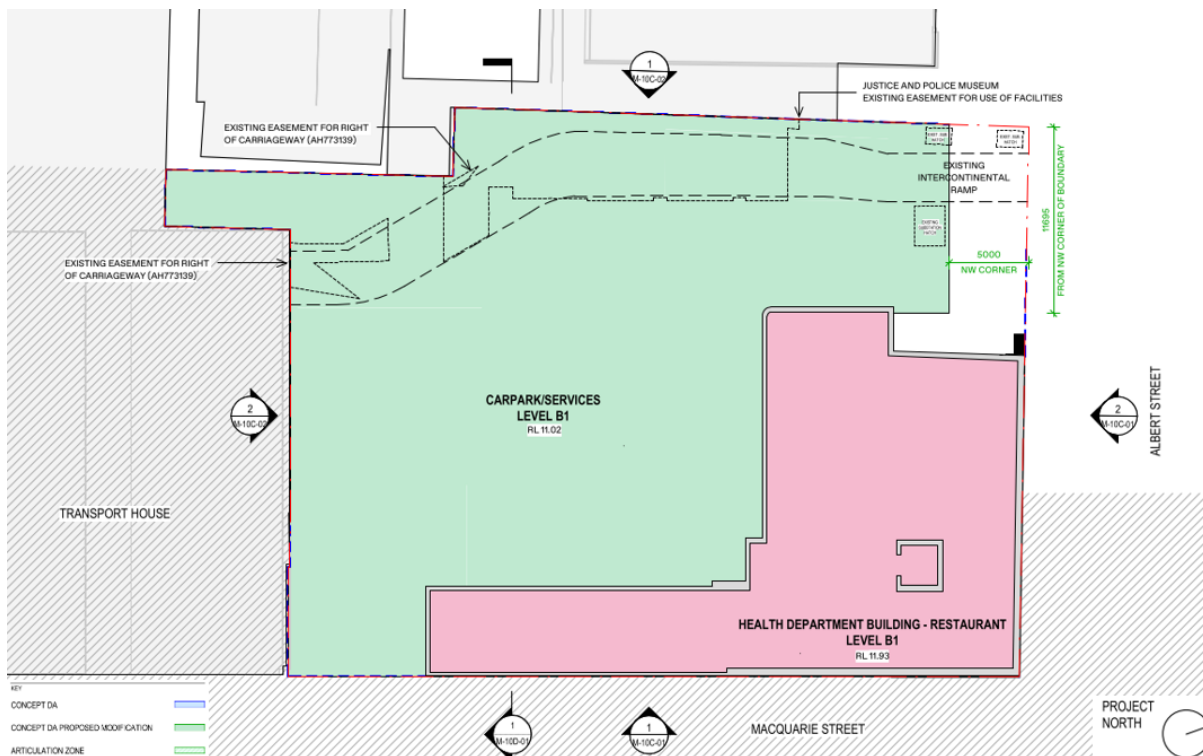


Figure 1: Proposed concept envelope plan - lower ground and basement

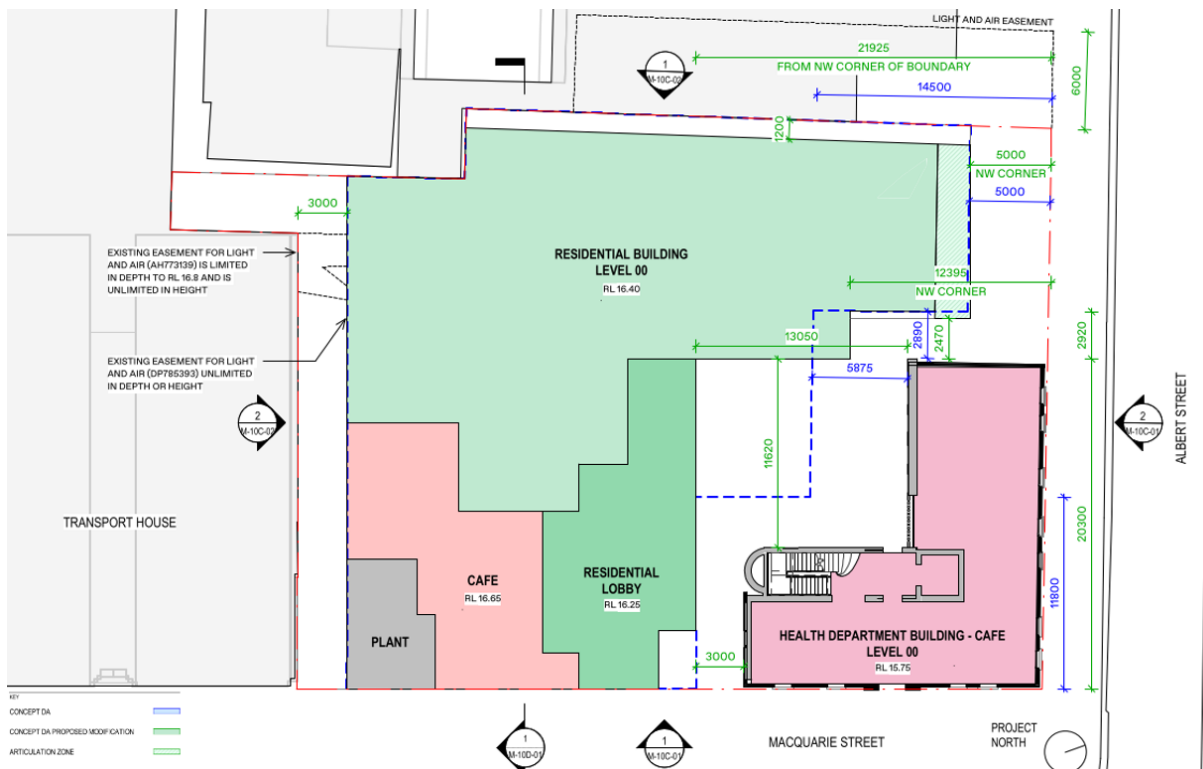


Figure 2: Proposed concept envelope plan - levels ground to level 1

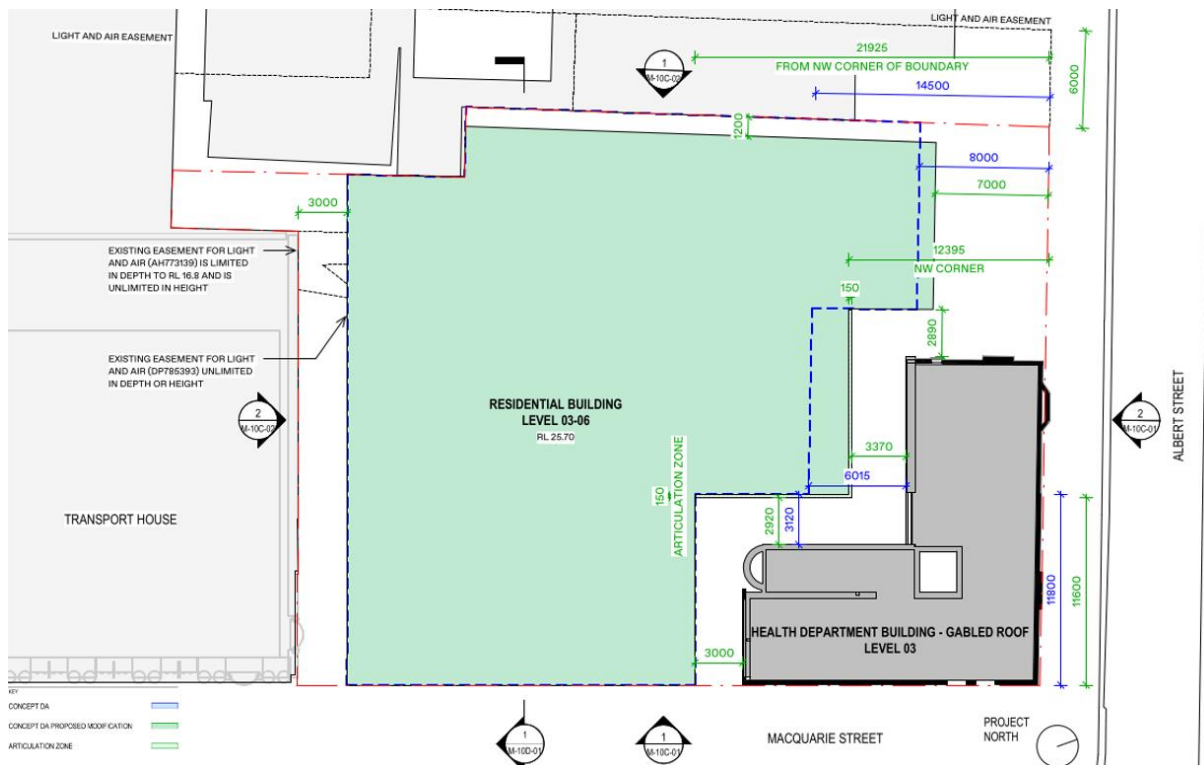


Figure 3: Proposed concept envelope plan - levels 2 to 6

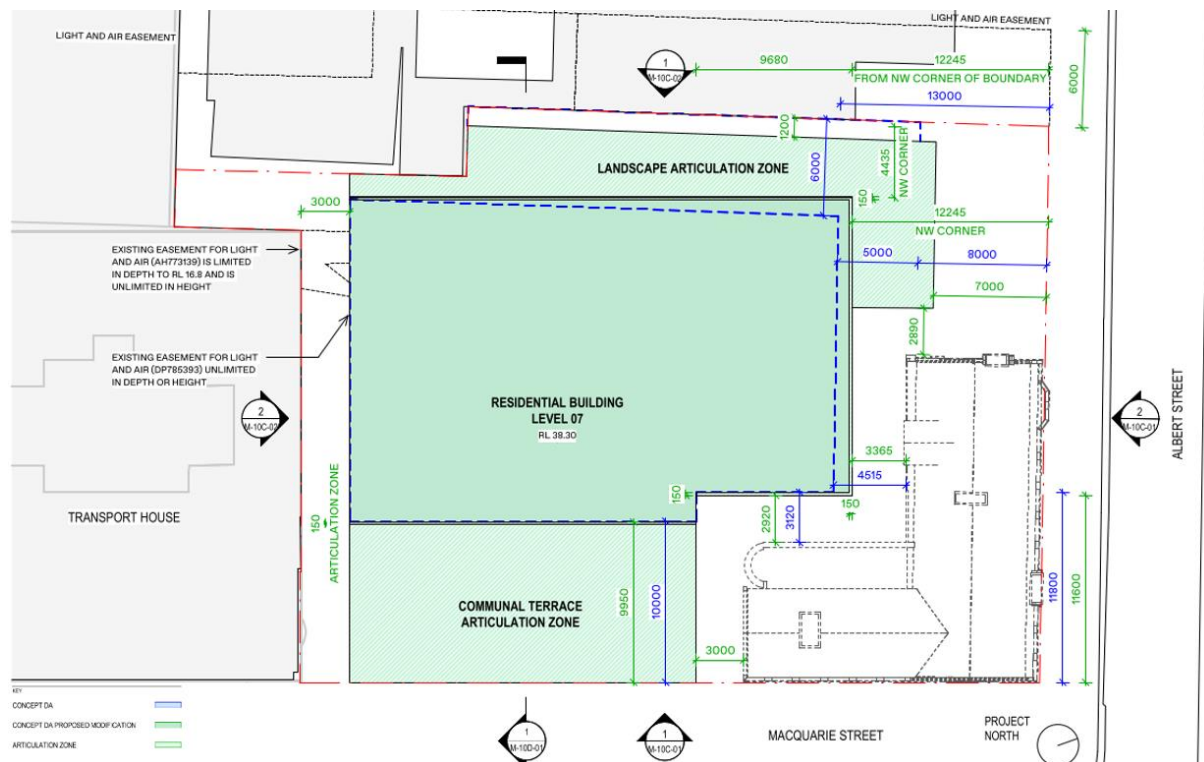


Figure 4: Proposed concept envelope plan - level 7, top of podium

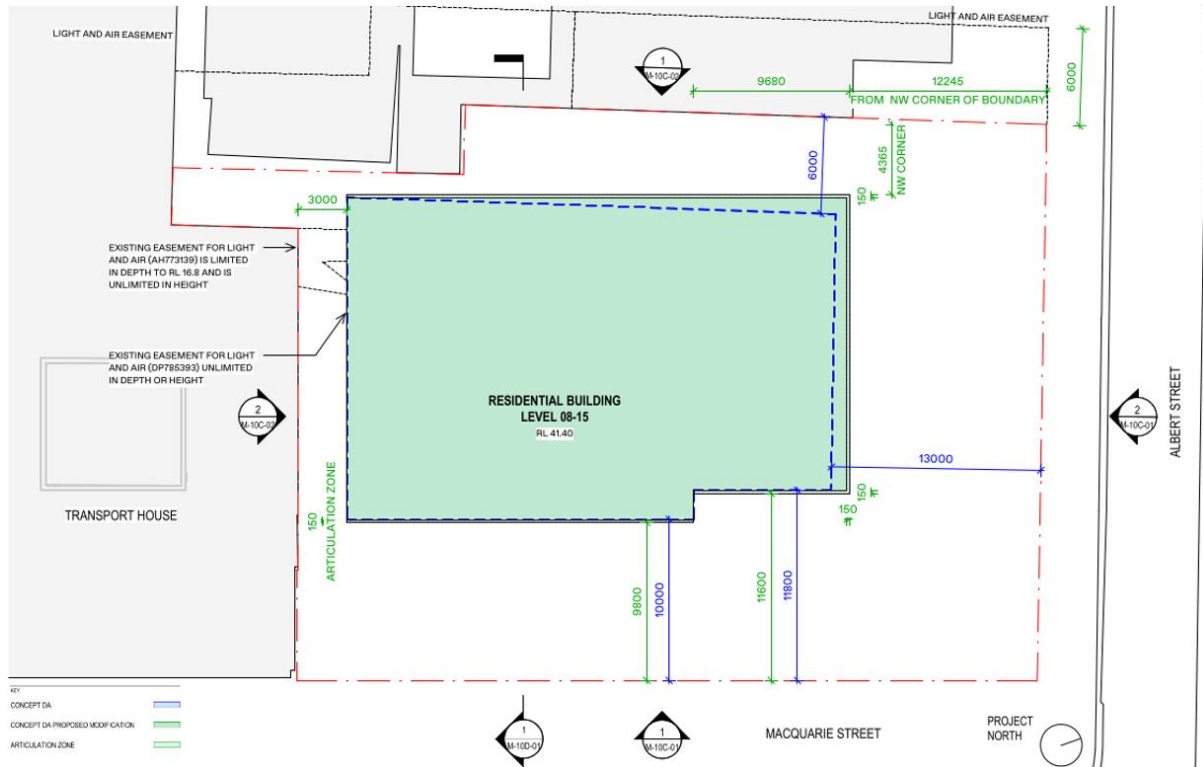


Figure 5: Proposed concept envelope plan - levels 8 to 15

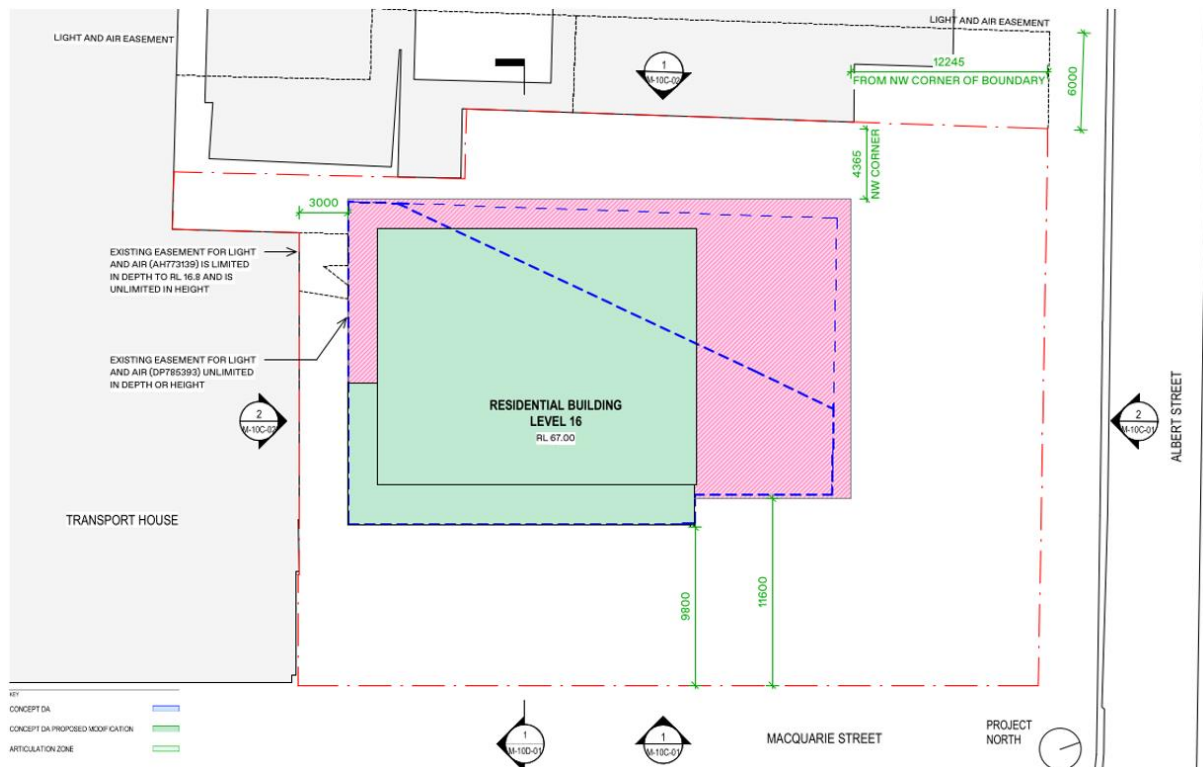


Figure 6: Proposed concept envelope plan – Roof level



Figure 7: Proposed concept envelope (eastern (Macquarie Street) and northern elevations (Albert Street))

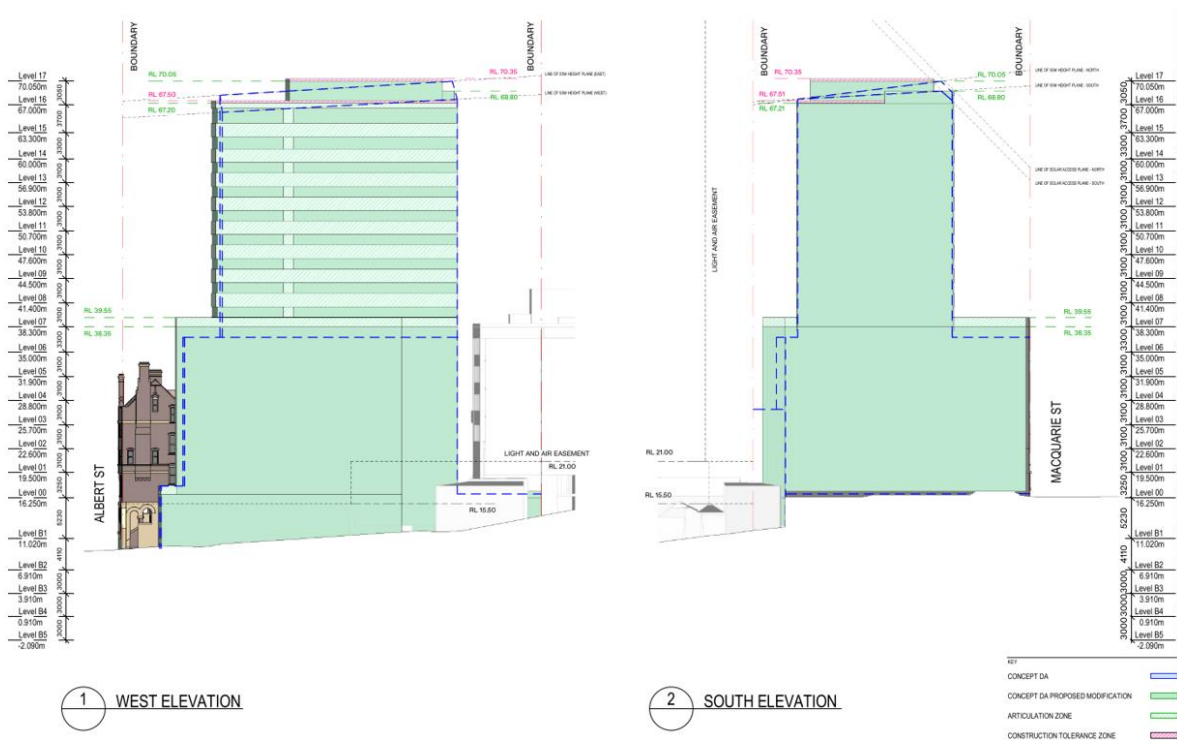


Figure 8: Proposed concept envelope (western and southern elevations)

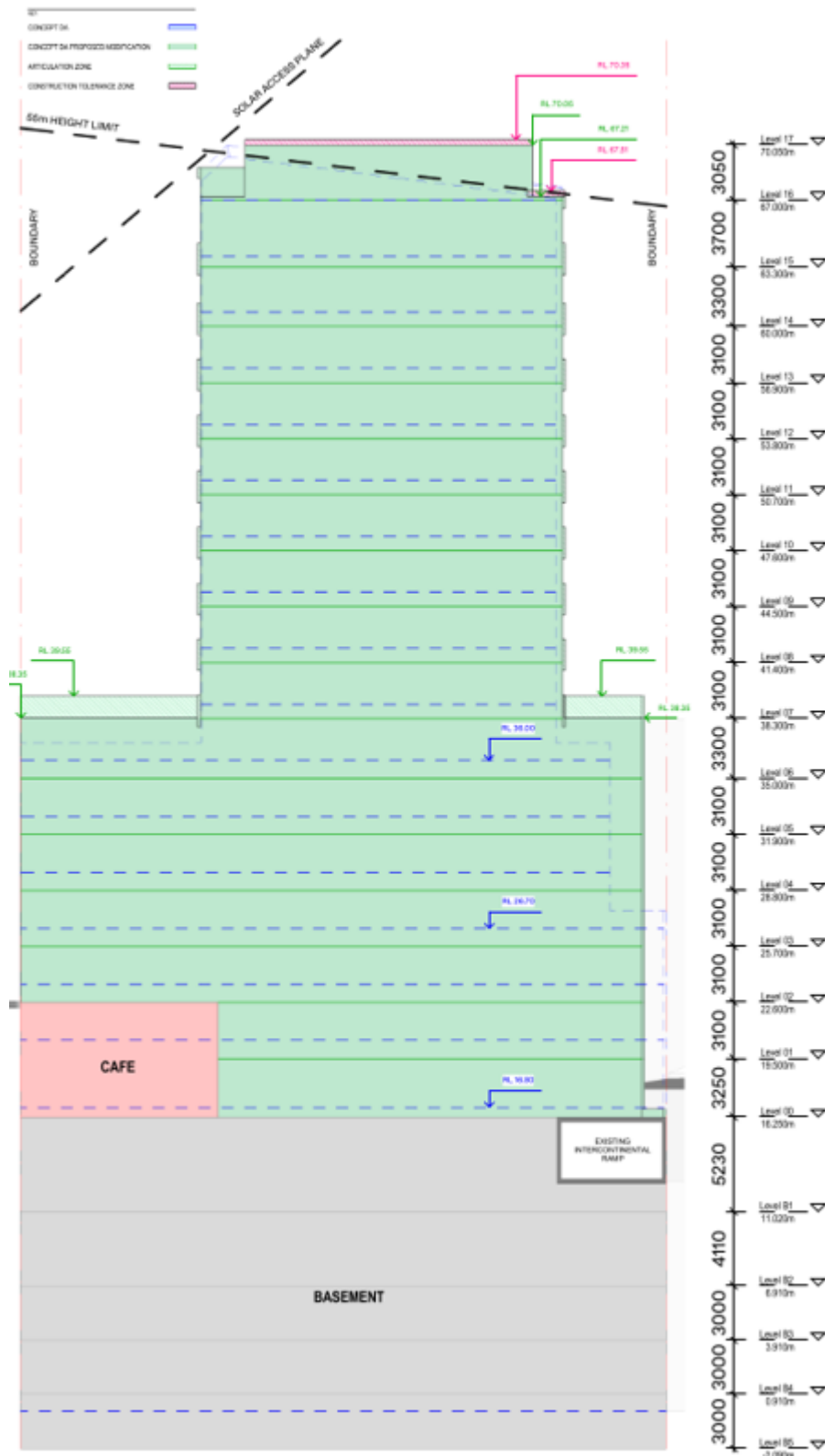


Figure 9: Proposed concept envelope section

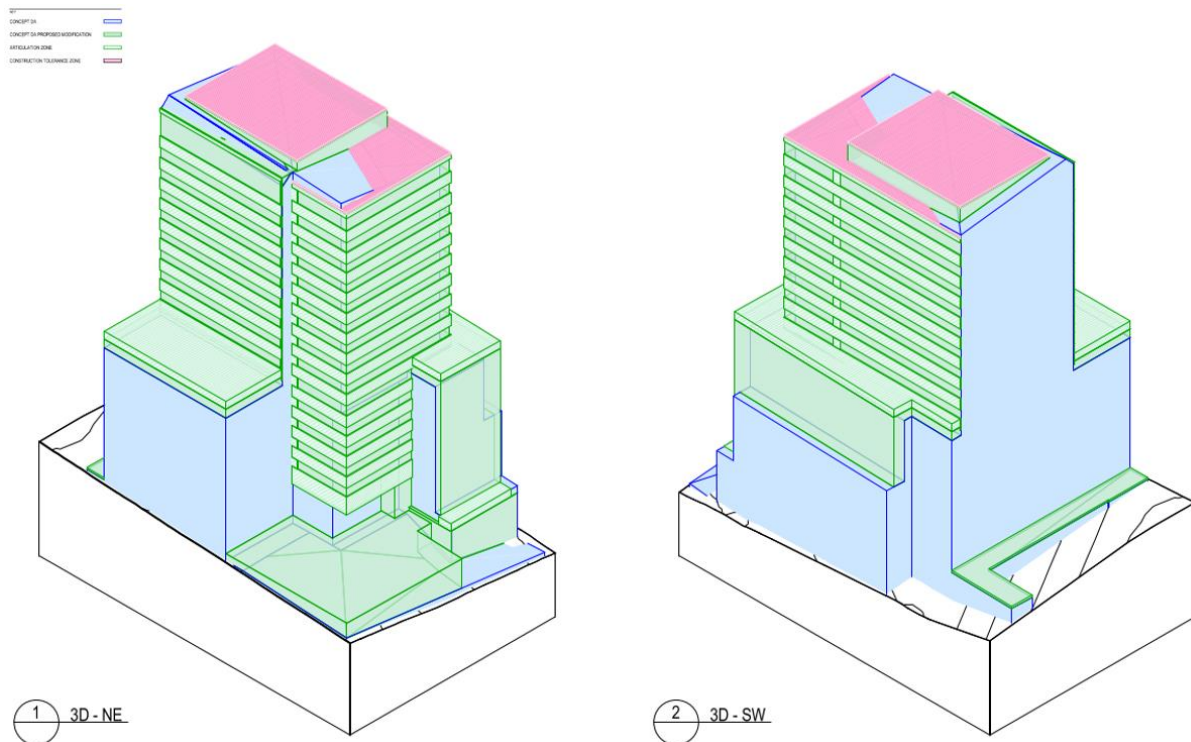


Figure 10: Concept envelope comparison. Blue illustrates the approved Concept DA envelope, green illustrates proposed modifications to the envelope and pink illustrates a construction tolerance zone.

Threshold Test

11. The 'development' as proposed to be modified is considered to be substantially the same as that originally approved, satisfying Section 4.55(2)(a) of the EP&A Act, because:
 - (a) it remains a concept envelope for the redevelopment of the site, comprising the retention of the existing heritage item, incorporation of new podium adjacent to the retained heritage building and a new tower addition above
 - (b) it continues to facilitate a mixed-use development comprising residential accommodation and commercial and food and drink premises on the lower levels
 - (c) it generally maintains the relationship between the concept envelope, adjoining properties, and the public domain
 - (d) it remains generally consistent with the objectives of the relevant environmental planning instruments
 - (e) it presents acceptable environmental impacts when compared to those previously assessed and considered acceptable by granting of the original concept consent (D/2017/1609)
 - (f) it is modified to allow for consistency with the proposed development of the concurrent Detailed Design DA (D/2024/324), which is based on the winning scheme of a competitive design process

- (g) it continues to deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties, as demonstrated in the assessment of the Detailed Design DA and
- (h) it is consistent with the intent of the original approved concept development, in that the location and overall form of the building envelope is maintained, including the solar access to the Royal Botanic Gardens.

Assessment

12. Section 4.55(3) of the EP&A Act requires that the consent authority to consider the reasons originally given to grant the concept consent (D/2020/1224). The original reasons, and how the proposed modifications will uphold those reasons, are discussed below:

Original Reasons for Approval	Discussion
The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979, in that, subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.	The proposed modifications allow the concept development to continue to satisfy the objectives of the EP&A Act, including through the retention of existing conditions to ensure the future development will achieve the objectives of the planning controls for the site.
The proposal generally satisfies the objectives and provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.	The proposed modifications allow the concept development to continue to satisfy the objectives and provisions of Sydney LEP 2012 and Sydney DCP 2012, as discussed in this report.
The proposal is consistent with the objectives of the B8 Metropolitan Centre zone.	The proposed modifications ensure the concept development remains consistent with the objectives of the SP5 Metropolitan Centre zone (previously known as the B8 Metropolitan Centre zone).
The indicative concept design scheme accompanying the application demonstrate the envelope can accommodate a building which complies with the maximum height of buildings development standard in Clause 4.3 and the maximum floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012	The proposed modifications, as demonstrated by the concurrent Detailed Design DA, will facilitate a development that is generally consistent with the provisions of Sydney LEP 2012 and where non-compliances occur, they are considered reasonable and acceptable via a Clause 4.6 variation.

Original Reasons for Approval	Discussion
The proposed development will conserve the significance of the heritage item contained on the site in accordance with Clause 5.10 of the Sydney Local Environmental Plan 2012, including the provision of appropriate setbacks from the curtilage of the heritage item.	The proposed modifications maintain appropriate setbacks to the former Health Building and conserve the significance of the heritage as outlined in the discussion section of this report and within the assessment report for the detailed design DA.
The proposed building envelope complies with the Royal Botanic Gardens sun access plane in Clause 6.17 of the Sydney Local Environmental Plan 2012.	The proposed modifications comply with the Royal Botanic Garden sun access plane.
Subject to compliance with the design excellence strategy, the undertaking of a competitive design process and the recommended conditions of consent, the proposed development will provide a building envelope capable of accommodating a development that achieves a high standard of architectural design, materials and detailing that respond sympathetically to the Macquarie Street Special Character Area and heritage precinct which can exhibit design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.	The proposed modifications are necessary to allow consistency with the proposed development of the concurrent Detailed Design DA, which is the winning scheme of a competitive design process, and is considered to exhibit design excellence as discussed in the separate assessment report for the Detailed Design DA.
In the case of residential uses, the indicative reference design scheme accompanying the application demonstrates that the proposed development is generally consistent with the provisions of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide, subject to various design considerations to achieve acceptable amenity for future residents for solar access, natural ventilation, private open space and privacy.	The proposed residential tower is generally consistent with the provisions of the State Environmental Planning Policy (Housing) 2021 - Chapter 4—Design Quality of Residential Apartment Development (formerly SEPP 65) and the Apartment Design Guide, as is detailed in the concurrent assessment report for the detailed design DA.

Original Reasons for Approval	Discussion
The proposed development has a height and form suitable for the site and its context, satisfactorily addresses the heights and setbacks of neighbouring developments, is appropriate in the streetscape context and broader locality.	The proposed modifications maintain appropriate setbacks to the heritage item and provide acceptable street setbacks to remain appropriate in the streetscape context and the broader locality. Refer to further discussion within this report.
The proposed building envelope can accommodate the proposed uses and does not result in any significant adverse environmental or amenity impacts on surrounding properties, the public domain and the broader Sydney Central Business District, subject to conditions on the subsequent detailed design development application.	The proposed modifications include additional height, however the modified building envelope results in an acceptable view sharing outcome and continues to achieve an acceptable level of environmental and amenity impacts. Refer to further discussion on view sharing within this report.
The public interest is served by the approval of the proposal, as amendments to the development application have addressed the matters raised by the City and the community, subject to recommended conditions imposed relating to heritage conservation, setbacks, views, privacy, transport, servicing and parking.	The proposed modifications will maintain the public interest in that the relevant objectives of the environmental planning instruments are achieved, and that other relevant matters, including design excellence, heritage, height, setbacks, contamination and traffic, continue to be subjected to existing conditions, and are resolved as part of the concurrent Detailed Design DA.

13. For the reasons above, the proposed modifications are considered to uphold the reasons given by the consent authority originally to grant the concept consent that is being modified, satisfying part of Section 4.55(3) of the EP&A Act.
14. An assessment against the relevant provisions of Section 4.15(1) of the Act is provided under the headings below, demonstrating that the remaining part of Section 4.55(3) of the EP&A Act is also satisfied, allowing the concept consent to be modified.

State Environmental Planning Policies

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter

10 Sydney Harbour Catchment

15. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 10 of the Biodiversity and Conservation SEPP. Chapter 10 of the SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.

16. 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 Chapter 10 are not applicable to the proposed development.

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land 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.
33. The Council's Health Unit has reviewed the information provided and has recommended conditions of consent in the concurrent detailed design DA to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.

State Environmental Planning Policy (Housing) 2021

34. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
35. The SEPP requires the consent authority to take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9 when determining an application involving certain residential apartment development. In this instance, Chapter 4 of the SEPP applies to the residential tower and does not apply to the former health department building adaptive reuse.
36. The applicant has submitted a design verification statement and design report prepared by BVN's Lisa Fathalla NSWARB 11240 with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement satisfies Section 29 of the Environmental Planning and Assessment Regulation 2021.
37. The proposed amendments to the concept envelope have resulted from the detailed design DA. This revised envelope has been tested, and it has been demonstrated that the modified envelope is capable of accommodating a residential apartment development that can achieve the design principles and objectives of both the SEPP and Apartment Design Guide. As this modification to the concept envelope has been lodged and assessed concurrently with the detailed design application, a detailed assessment of the proposal against the design quality principles set out in Schedule 9 is provided in planning report for the concurrent detailed design DA.

Local Environmental Plans

Sydney Local Environmental Plan 2012

38. The relevant provisions of the Sydney LEP 2012 have been taken into consideration in the assessment of the proposal.
39. The site is located within the SP5 Metropolitan Centre zone. The proposed development, defined as a 'mixed-use development' comprising 'residential accommodation', 'commercial premises' and 'food and drink premises', is permissible within the zone.

40. The proposal seeks to modify the building envelope to increase overall height of the future building from the existing approved 55 metres to a maximum height of 57.84 metres. The site has a 55 metre development standard, and the concurrent detailed design is reliant on both a modification to the building envelope to increase the maximum height to RL 70.35 and on a Clause 4.6 written variation to the building height development standard under Clause 4.3 of the Sydney LEP 2012. Refer to the detailed assessment on building height and the Clause 4.6 written request to vary the development standard in the concurrent detailed design DA.
41. The proposed modifications to the building envelope will not result in any adverse additional overshadowing impacts and the modified envelope is capable of complying with the provisions of Clause 6.17 (Sun Access Plane). The City's Model team have tested this modified concept envelope and electronic model for the detailed design DA and have advised that the proposed detailed design complies and does not encroach on the Sun Access Plane for The Domain and Royal Botanic Gardens.
42. The concurrent Detailed Design DA demonstrates that the modified building envelope can accommodate a development with a compliant floor space ratio). The approved envelope has been assessed previously as being contextually appropriate (in terms of height, massing, setbacks) with surrounding development and the heritage context. The variations to the envelope proposed under this modification application are detailed below, and the conclusion of this report and the concurrent Detailed Design DA is that the modified envelope and design competition winning scheme result in a development that exhibits design excellence (as required under Clause 6.21C).

Development Control Plans

Sydney Development Control Plan 2012

43. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the concurrent detailed design DA.
44. Overall, the proposed modifications to the building envelope are considered to be consistent with the objectives of the relevant DCP provisions. Further discussion on the proposed modifications is provided below in the discussion section.

Discussion

Height

45. The site has a 55 metre building height development standard. The existing approved concept envelope is compliant with this 55 metre building height development standard, which is illustrated as a height plane across this sloping site.
46. The subject application seeks to modify the envelope as a result of the Detailed Design DA (and the winning design competition scheme of BVN) . The proposed modification seeks to increase the overall maximum height of building to 57.84 metres, representing a variation with the building height development standard of up to 5.1% or 2.84m. The extent of additional height above the 55 metre height plane is illustrated in Figure 11, below.

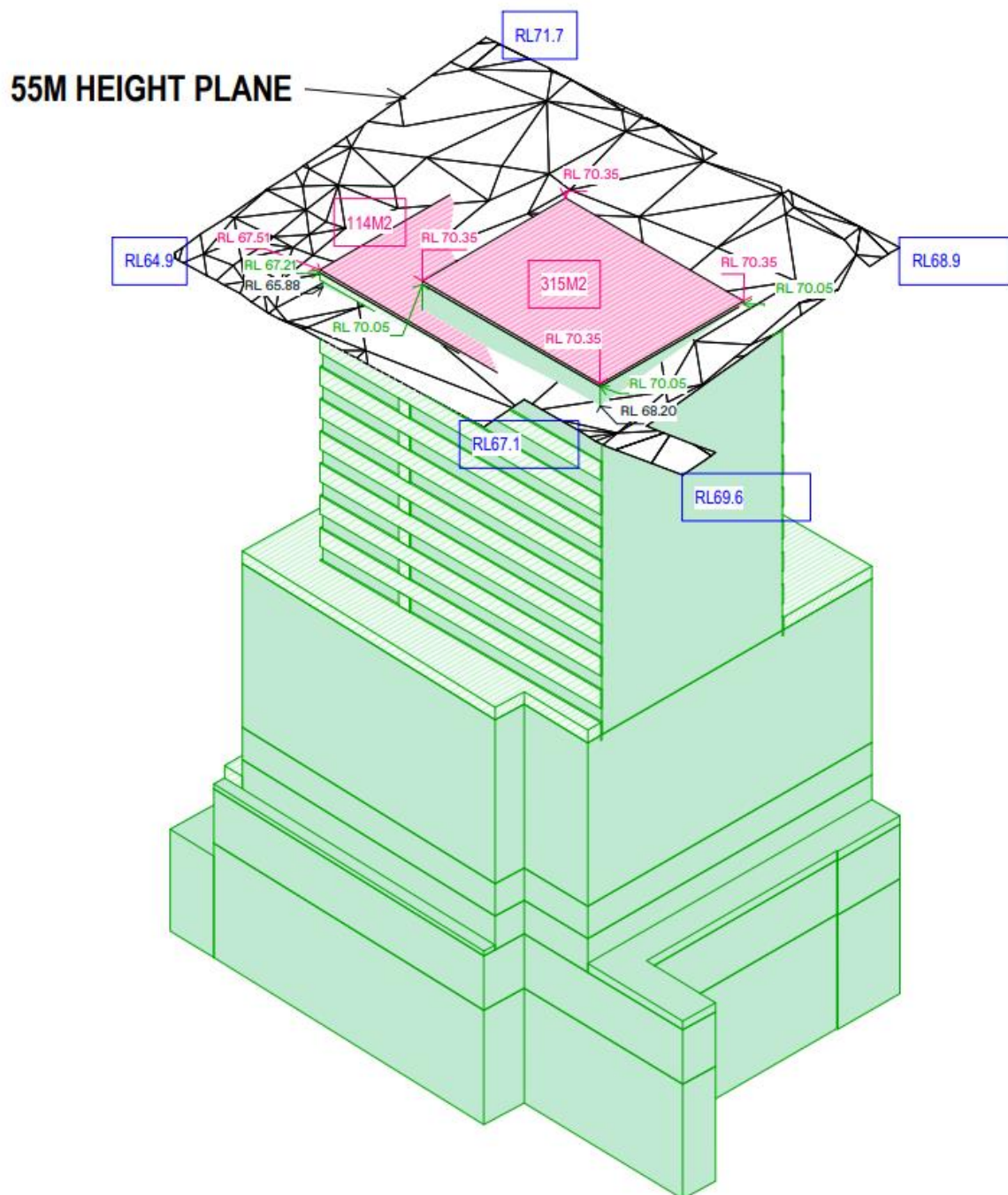


Figure 11: Height plane showing extent of the proposed height of building breach

47. As detailed above, the concurrent Detailed Design DA is supported by a written request under Clause 4.6 seeking to vary the 55 metre height of building development standard. It should be noted that a Clause 4.6 assessment is not required under this modification application. For the assessment of this written variation, refer to discussion and assessment in Detailed Design DA, which has concluded that the proposal meets the objectives of the height of buildings development standard, notwithstanding the non-compliance. The applicant has also sufficiently demonstrated that there are sufficient environmental planning grounds to justify the breach.

48. The proposed locations of the additional height on the building above the 55 metre height control is supported on the following basis:
- (a) A detailed view loss assessment has been carried out by the applicant as part of the original concept and has been supplemented by a further analysis as part of this modification application. The City's Planner has also undertaken independent view inspections from neighbouring properties as part of their assessment. Refer to view loss assessment below;
 - (b) The proposed building envelope modification does not significantly or unreasonably increase overshadowing to the neighbouring sites and complies with the Royal Botanic Garden Solar Access Plane. Additionally, the additional height does not result in an unreasonable reduction to ambient light or overall amenity, as currently enjoyed by surrounding residential and hotel uses. The amendment to the height of the envelope is consistent with the Height of Building development standard and is considered satisfactory.
 - (c) The proposed variation to the overall height of the envelope will remain contextually appropriate within both streetscape settings within which the site is located (Macquarie and Albert Streets). Figures 12 and 13, below, illustrates an analysis of the proposed envelope within its setting illustrating that the minor additional height sought would not result in a built form that is out of character within the streetscape or within this Governors Domain heritage precinct.

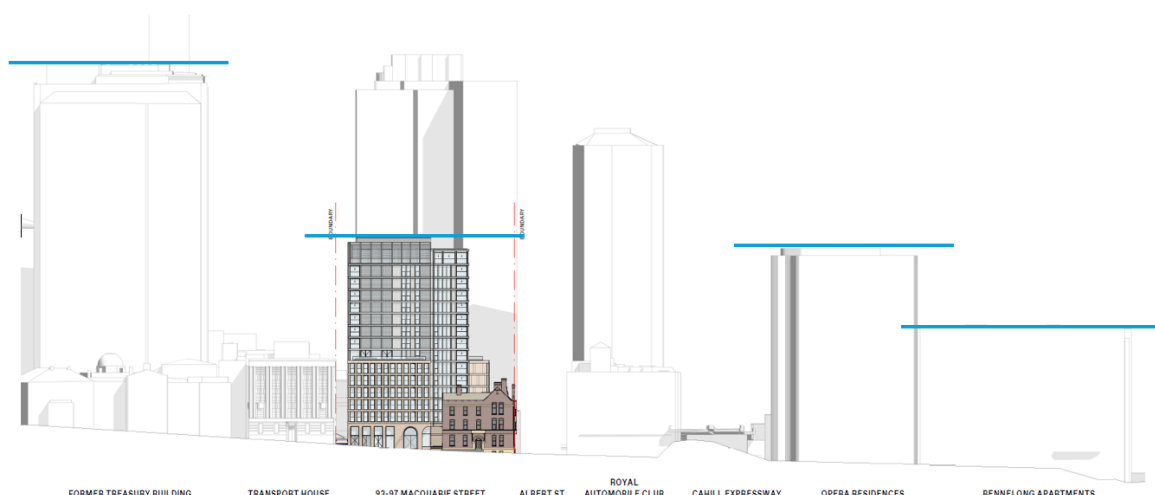


Figure 12: Streetscape analysis from Macquarie Street showing the height transition of buildings down towards the harbour



Figure 13: Render showing proposed envelope and how it transitions in the surrounding urban context

- (d) As shown, the breach does not impact the approved envelope's relationship with surrounding heritage items and maintains an acceptable streetscape.

View impact analysis

49. To support the proposed envelope variations in both height and setbacks, a view loss analysis on any additional or varied impacts resulting from the modified envelope has been undertaken. Where a proposal is likely to adversely affect views from either private or public land, consideration to the Planning Principle for view sharing (Tenacity Assessment) established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 has been used. The below assessment follows the Planning Principle established four-step assessment to assist in deciding whether view sharing is reasonable.
50. Before an assessment of view impacts is undertaken, it is important to note that the approved Concept DA subject to this modification included a detailed view impact analysis as part of the assessment and determination of the application. This assessment reviewed view impacts from properties within close proximity to the subject site including 2 Phillip Street (The Quay), 123-125 Macquarie Street (The Astor) and 99-113 Macquarie Street (The InterContinental). View impact analysis was undertaken to assess the potential loss of views to the Sydney Harbour Bridge, the Sydney Opera House, the Royal Botanic Gardens, Circular Quay and general harbour views.

51. The assessment concluded that with the development being in an urban context within Central Sydney, it is inevitable that any development will affect the views and outlook to an array of residential and commercial developments. Overall, the proposed envelope's impact on views to iconic outlooks occurred predominantly over side property boundaries where it is unreasonable to expect that all existing views across a side boundary can be protected. Furthermore, the residential view impacts were to partial views and would not impact overall views from other viewpoints.
52. The view loss impacts of the concept envelope were considered reasonable and to have a reasonable impact. The assessment can be viewed in the original assessment report included at Attachment D.
53. This modification proposes envelope variations in both height and setbacks, so an additional view impact analysis on any additional or varied impacts resulting from the modified envelope has been undertaken.
54. The application was accompanied by a 'View Impact Assessment' dated 2 May 2025 and a further supplementary Visual impact Assessment dated 1 June 2025, both prepared by Urbaine Design Group. The assessment dated 2 May 2025 provides an analysis comprising of 3D digital modelling and photomontages of existing and proposed views from indicative low-rise, mid-rise and high-rise locations within surrounding developments including The InterContinental hotel, The Astor and The Quay.
55. It is to be noted that the Visual Impact Assessment dated 2 May 2025 (May 2025 VIA), had not been based on internal access within the InterContinental Hotel, and had relied on modelling and drone photography.
56. The applicant's team was granted internal access to selected rooms within the Intercontinental Hotel for the purpose of a view loss assessment on 26 May 2025. A supplementary Visual Impact Assessment dated 1 June 2025 was then prepared and submitted to Council to be read in conjunction with the other report.

Step 1: Assessment of views to be affected

57. The views that are subject of concern with regard to this modification include:
 - (a) Water views, which are valued more highly than land views. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured. In the case of the proposed the following viewing was considered:
 - (b) general harbour views
58. Iconic views which are valued more highly than views without icons. Additionally, whole views are valued more highly than partial views. In the case of the proposed, the following views were considered:
 - (a) Views to the Sydney Opera House
 - (b) Views to the Sydney Harbour Bridge

59. The focus of the assessment was on permanent private residential properties and hotels rooms in the surrounding area. It is noted that commercial properties (including hotels) can be considered as having a lesser sensitivity than a permanent residential property (with respect to the rigour applied to view loss assessment). It is to say that, given the temporary occupancy nature of hotel rooms, the view is considered not as valuable as that from a permanent residential living room.
60. This assessment has identified The Astor and InterContinental Hotel as the properties to experience potential additional view loss as part of the proposed modified envelope.
61. Figure 14, below, illustrates the location of view affected properties, The Astor residential building and The InterContinental Hotel and their proximity to the subject site. Both properties have made submissions in relation to impact on views.



Figure 14: Aerial image with site context

62. The Astor, located at 123-125 Macquarie Street is a high-rise residential development located to the south of the subject site. The view of concern is in a northerly direction across Bridge Street with the subject site in the middle distance. The view is of the Opera House, Sydney Harbour Bridge and general harbour views. A total of 8 viewpoints have been modelled from the site. Below is a typical view to the north from The Astor at rooftop terrace level.



Figure 15: Drone photo from northern elevation of the Astor building facing north

63. The InterContinental Hotel, located at 117 Macquarie Street is a 24-storey hotel located directly to the south of the subject site. The views of concern are from the northern elevation across the adjoining property to the north. The view is of the Opera House, Sydney Harbour Bridge and general harbour views. All 168 windows on this elevation have been identified and modelled in the May 2025 VIA to review the potential impacts. It can be assumed that each window represents a hotel room, however this has not been confirmed. So, the assessment will reference these as individual windows. Below is a typical view to the north from a hotel room.



Figure 16: Typical view from a hotel room facing north

Step 2: Consider from what part of the property the views are obtained

64. The views modelled in the May 2025 VIA are from a standing position (1.6m from floor) from main windows of the residential/hotel rooms and at the roof top terrace of The Astor. The views from supplementary report, dated June 2025 is physically taken from standing position on the upper-level window of each room assessed. All views are across boundary and contain a wide view cone.
65. The drone photography used to capture views in the May 2025 VIA are supported by RLs that have been ascertained from survey information to ensure accuracy.
66. The supplementary June 2025 VIA used a Canon EOS Full Frame Digital Camera with fixed focal length 24mm lens to take all viewpoint photos, at an eye level of 1600mm and supported with RL measurements.
67. Both VIA reports from May and June 2025 have been reviewed by the City's modelling team who have certified the accuracy of the documents.

Step 3: Assess the extent of view loss

68. The assessment of view impact in this report will be focused on the additional impact from the modification. The impacts of the approved concept envelope have been determined and can be viewed in the original assessment document located in Attachment E.

The InterContinental Hotel

69. Modelling has been undertaken from all 168 windows on the northern elevation of the InterContinental Hotel to determine the impacts of the proposed height and setback changes that form part of this modification.

70. An extract of the northern elevation 'key' of the InterContinental Hotel is provided below which identifies each level and window in relation to the view loss assessment. Note this information is from the May 2025 VIA which was prepared prior to the applicant's consultant team being provided internal access to the hotel. The levels identified are confirmed by RL and are for reference in this assessment only.

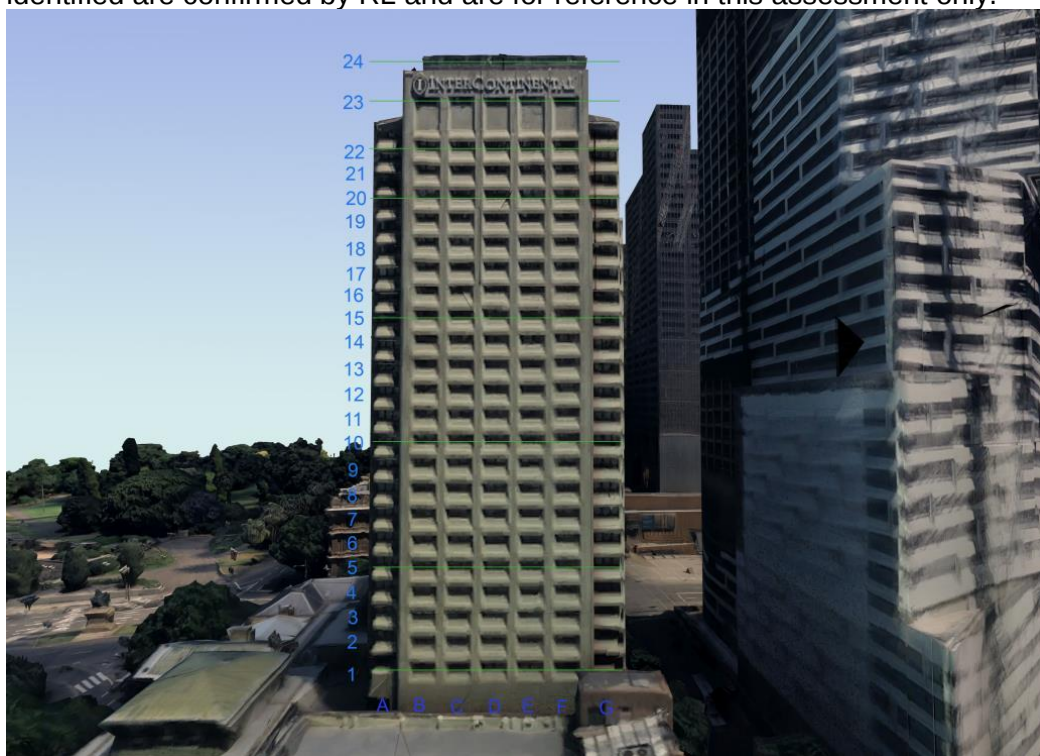


Figure 17: Northern elevation of the InterContinental Hotel showing storeys and windows labelled A-G (left to right)

71. Internal access to the InterContinental Hotel was later granted to the applicant's team for the purpose of a Visual Impact Assessment internally of the hotel. The June 2025 VIA is based off a physical inspection of selected rooms guided by a representative of the InterContinental Hotel. The inspection included a review of 11 rooms. An extract of the rooms reviewed on the northern elevation is provided below.



Figure 18: Northern elevation of the InterContinental Hotel showing rooms that were assessed as part of the supplementary Visual Impact Assessment

72. A review of the modelling shows the proposed changes in height and setbacks produce no additional adverse view loss impact to levels 1 to 10 (inclusive) and levels 14 to 24 (inclusive) to the hotel. This is also confirmed in the June 2025 supplementary VIA which contains an assessment of 10 rooms located at levels 6 to 9.
73. At the lower levels 1-10, the view to the Opera House is already removed by the concept approval and the proposed setback changes do not generate any additional view loss to iconic or harbour views. Note these levels still achieve a view of the Sydney Harbour Bridge and partial Harbour views.
74. At the higher levels 14-24, the changes to the setbacks and height do not further impact iconic views or adversely increase impacts to harbour views, as the rooms at this height look over and down onto the development.

75. The additional view loss impacts to iconic views and harbour views are located on levels 11 to 13 only. It is at these levels that views to the Opera House sails and partial harbour view are further impacted, as show in the figures below.

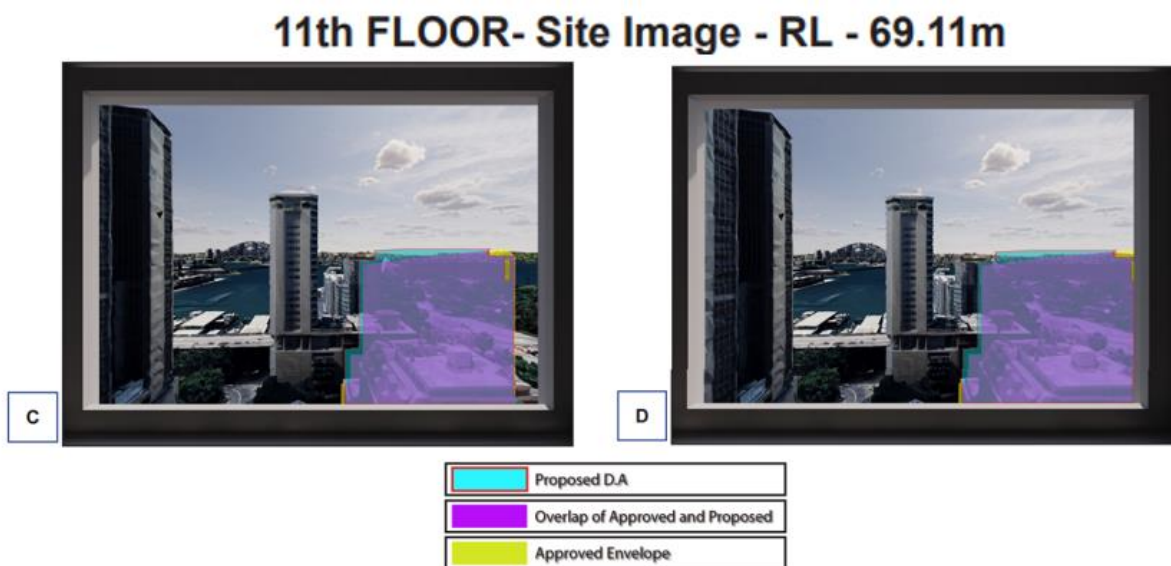




Figure 21: 11th Floor positions E and F of the northern façade



Figure 22: 12th Floor positions A and B of the northern façade



Figure 23: 12th Floor positions C and D of the northern façade



Figure 24: 12th Floor positions E and F of the northern façade

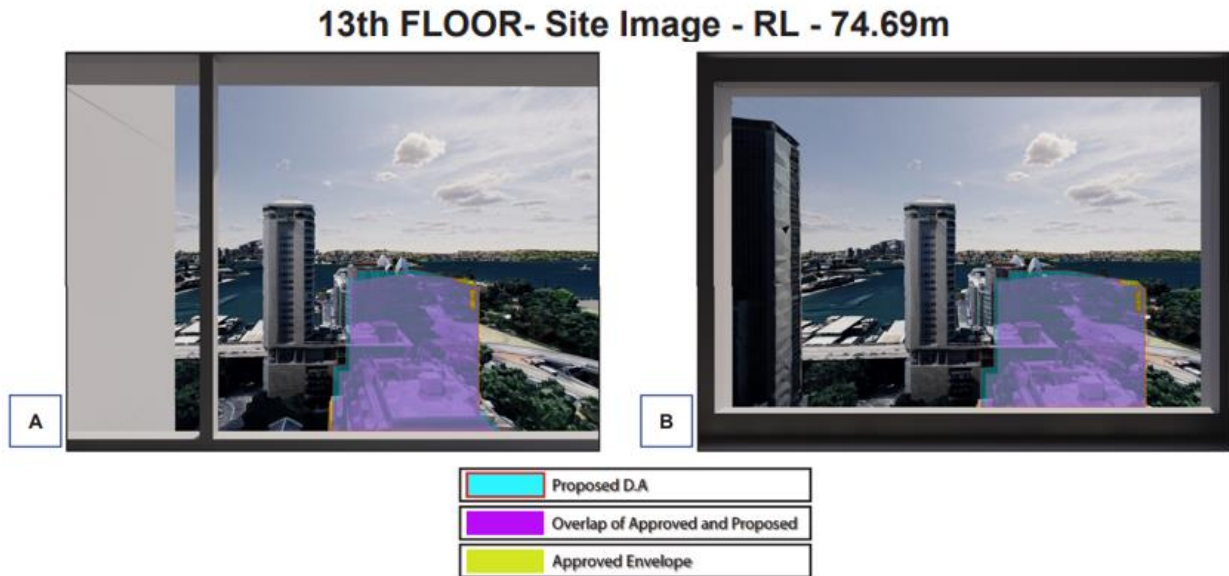


Figure 25: 13th Floor positions A and B of the northern façade

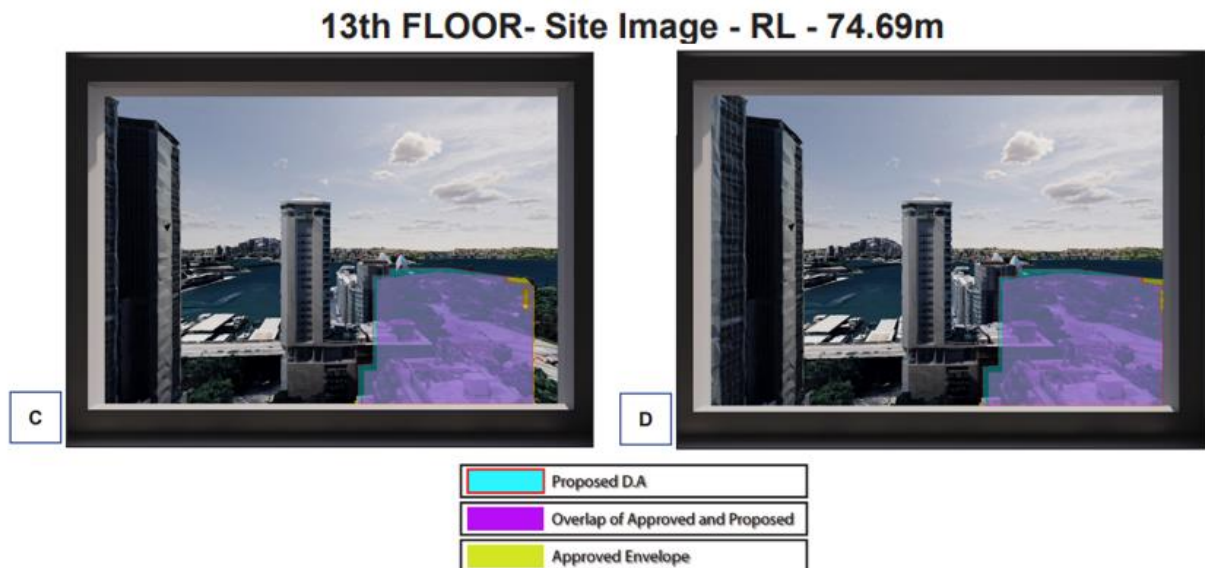


Figure 26: 13th Floor positions C and D of the northern façade



Figure 27: 13th Floor positions E and F of the northern façade

76. As part of the June 2025 VIA access to one room between levels 11 and 13 was provided by the InterContinental Hotel. Level 13 viewpoint D (known in this supplementary report as level 21 Room 2125) was physically inspected and is consistent with the view impacts analysis in the May 2025 VIA report. The view impacts are shown below.

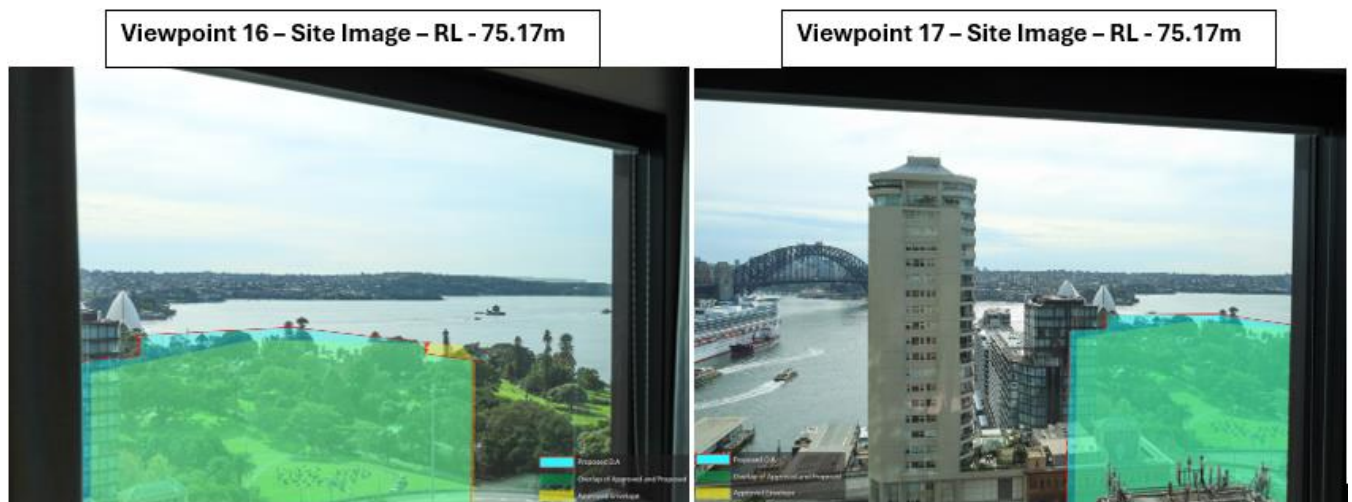


Figure 28: 13th Floor position D of the northern façade known as Viewpoints 16 and 17 in the supplementary report

77. The extent of impacts with regard to Tenacity Assessment and the view loss is summarised in the table below:

View Loss impact Summary Matrix							
Viewpoint /Floor	A	B	C	D	E	F	G
11	Minor impact – Partial view of top of the western Opera House Sail removed.	Minor impact - Partial view of top of the Opera House Sails removed.	Minor impact - Partial view of top of the eastern Opera House Sail removed.	Minor impact - Partial view of top of the eastern Opera House Sail further restricted.	No impact	No impact	Negligible impact – general harbour view to the northeast partially removed.
12	Moderate impact – – Partial view of Opera House further restricted.	Moderate impact – Partial view of Opera House further restricted.	Moderate impact – Partial view of the eastern Opera House sail further restricted.	Minor impact - Partial view of the eastern Opera House sail further restricted.	Negligible impact – general harbour view to the northeast removed.	Negligible impact – general harbour view to the northeast partially removed.	Negligible impact – general harbour view to the northeast partially removed.
13	Minor impact– Partial view of Opera House further restricted and minor loss of general harbour view.	Minor impact - Partial view of Opera House further restricted and minor loss of general harbour view.	Minor impact - Partial view of Opera House further restricted and minor loss of general harbour view	Negligible impact - Partial view of Opera House further restricted and minor loss of general harbour view.	Negligible impact – general harbour view to the northeast partially removed.	Negligible impact – general harbour view to the northeast partially removed.	Negligible impact – general harbour view to the northeast partially removed.

78. Level 11 contains small partial views to the top portion of the Opera House sails located from hotel rooms at a standing position. The proposed height and setback change would result in the full removal of the tip of the western sail from View Point A and further obscure the small partial view to the sails at View Points B-D. The extent of impact when considering Tenacity Assessment is measured as Minor given the removal of partial views are to such a small portion of the Iconic view. At View Point G some general Harbour views are partially obscured, however this is considered a small portion of harbour view in the whole view cone and considered Negligible impact.
79. Level 12 is the worst affected floor by the modification, where partial views to a moderate portion of Opera House sails are further restricted from a standing position in the hotel rooms. The proposed modifications result in additional obscuring of the Opera House sails to View Points A-C that results in a small view of the tip of sails to remain. The extent of impact when considering Tenacity Assessment is measured as Moderate given the amount of the Opera House sails removed. View Point D has additional loss to the partial view of the eastern Opera House sail and is measured as Minor when considering Tenacity because it results in a small portion of the sail to remain. The remaining View Points at E-G show removal of some general harbour views, however when considered within the wider view cone the impact is Negligible.
80. Level 13 contains partial views of the Opera House from a standing position in the hotel rooms which are impacted. The proposed height and setback change would result in further restriction to the partial views to the Opera House at View Points A-C. The extent of impact when considering Tenacity Assessment is measured as Minor impact. View Points D-E contain a small impact to the partial view of the Opera House and include minor loss of general harbour views. The extent of this impact is measured as Negligible.

The Astor

81. Modelling has been undertaken from 8 views at the Astor's northern elevation. These views represent various levels over two fixed View Points to determine the impacts of the proposed height and setback changes that form part of this modification.
82. A review of the modelling noted that view loss is only a concern at the rooftop communal terrace level facing north at a standing position as shown below in figure 29.



Figure 29: Communal Rooftop level facing north

83. As shown above, the view loss to the portion of the Harbour Bridge is already approved under the concept envelope. The proposed modification would add a small amount of height to the already approved envelope, however, this does not generate any additional view loss impacts.

Step 4: Reasonableness of the proposal that is causing the impact

84. Before the reasonableness of the proposal is concluded, the Tenacity Assessment process also prompts the question to whether a more skilful design would result in a lesser view impact and achieve the same development potential and amenity.
85. The modification and concurrent detailed DA lodged contain a proposal that has been subject to a comprehensive, detailed and extensive design process which has included a successful Architectural Design Competition. The design does include a proposed variation to the Building Height development standard of up to 5.1% or 2.84m. As shown below, the extent of additional height above the 55 metre height plane is illustrated in Figure 30, below.

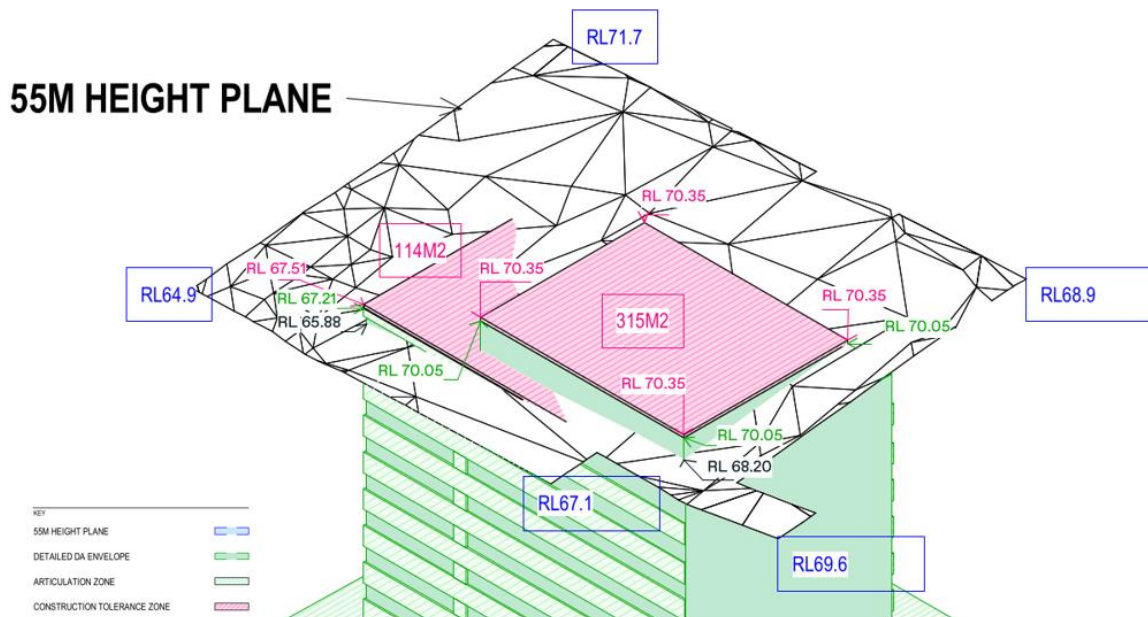


Figure 30: Height plane showing extent of the proposed height of building breach

86. As shown, the breach is largely because of the sloping nature of the site and is centralised mostly to the rooftop plant room. To ensure a high-quality architectural outcome, the plant room had been designed to accommodate all required infrastructure whilst housing the plant in the rooftop so it is not visible from the public domain and neighbouring buildings. The height variation and its planning justification is discussed further in this report and the concurrent detailed design DA.
87. In addition to the breach, the site is heavily constrained but has managed to accommodate a proposal that respects the heritage of the area and is of an appropriate scale and mass for the site, particularly when assessed within the context of the desired future character of the area. The existing developments along Macquarie Street decrease in height towards Circular Quay, whilst the towers to the west are significantly higher.
88. Furthermore, the design allows for appropriate setbacks, floor to ceiling heights and an integrated rooftop plant room that all result in a high-quality architectural outcome that is consistent with relevant planning controls. The proposed design is considered a skilful solution that is supported by sufficient planning justification and provides an acceptable view impact.

Conclusion

89. When looking at the reasonableness of the impacts to The Astor residential property, the assessment noted little impact resulting from the modification changes to height and setbacks and is considered acceptable impact.
90. The view loss assessment, however, does show additional impacts to the north facing hotel rooms of the InterContinental Hotel. These impacts vary from Negligible to Moderate when viewed in isolation against the Tenacity principles. However, the reasonableness of view loss impact is to be considered by the whole building to fully understand the impact to the InterContinental Hotel.

91. The concept approval resulted in 166 windows along the northern elevation of the InterContinental Hotel maintaining an iconic views of the Harbour Bridge and general harbour with the remaining two (2) windows at level one only having a small partial view of the Harbour Bridge Pylons. From the total 168 views points along the northern elevation of the hotel, 98 windows maintain views of the Opera House (roughly broken down as 20 small, 16 moderate, 62 full views).
92. The proposed height and setback changes that form part of this modification maintain the views to the Harbour Bridge as stated above. However, the proposed modification results in a reduction to 95 total views to the Opera House (roughly broken down as 23 small, 10 moderate, 62 full views). The proposed changes result in 3 views of the Opera House being removed, equating to an additional 1.78% total view loss to the Opera House from the approved concept envelope. In addition, 3 moderate sized views have been downgraded to a small view and 9 other views have been somewhat impacted.
93. This Visual Impact Assessment has undertaken a review of the proposal, within its future setting and concludes that the additional impact caused, as a result of the amended design, is acceptable. Even with the additional 1.78% of removed view to the Opera House, all northern windows maintain some portion of Iconic views and 58% of the northern facing facade maintain wide view cones containing both the Harbour Bridge and a portion of the Sydney Opera House. Therefore, even where views are additionally impacted, the view still contains bridge and harbour views unimpacted from the modification.
94. Being located in an urban context within Central Sydney, it is inevitable that any development will affect the views and outlook to an array of residential and commercial developments. Particularly when these views are achieved via across multiple properties boundaries. Again, it is important to note the original concept envelope to acknowledge the extent of visual impact and view loss incurred as a result of the existing approval.
95. In conclusion, the modification proposal represents an acceptable variation to the existing visual impact and view loss to neighbouring properties, particularly The Astor and the InterContinental Hotel. The proposed building envelope does not significantly or unreasonably reduce the enjoyed views by surrounding residential and hotel uses. The proposed envelope provides adequate view sharing to surrounding icons, maintains desirable views from surrounding developments and is considered acceptable.

Amendments to setbacks and podium height

96. The Detailed Design DA is the subject of an architectural design competition and the BVN design being named the winning scheme.
97. The Design Competition Jury acknowledged that the BVN scheme did propose variations from the approved Concept DA Envelope in a number of areas. The Jury, however, considered the variances to still be contextually appropriate and result in a scheme that is capable of exhibiting design excellence for the following reasons:
 - (a) The 'averaging' approach to the western elevation gave a simpler form and enabled a quieter elevation that provided a calmer background to the Police and Justice Museum, which was a key design objective for the Brief. It also helps to resolve a simpler volume to the corner facing Albert Street;

- (b) The similar 'averaging' approach and pulling back at the lower levels to the north gives an improved interface to the heritage building, and the infill at higher levels which provides a simplification to the tower form. The arched form at the northern elevation of the building will enable good views to the Health Building; and
- (c) The slightly increased podium height along Macquarie Street is intended to present a better transition from Transport House to the podium of the subject building.

98. The applicant seeks to modify the concept envelope setbacks and podium height as a result of the design competition scheme. These are further discussed below.

Modification to podium/street wall height - Macquarie Street and Albert Street

- 99. The approved concept envelope provided a podium height of RL 36.00 along Macquarie Street and RL 36.00 along Albert Street. The modified envelope proposes an increase to RL38.35 along both Streets.
- 100. The modified upper datum of the podium is informed by the height of Transport House, while the geometry of the arched building separation is informed by the ornate entry to the former Health Department Building as shown below:

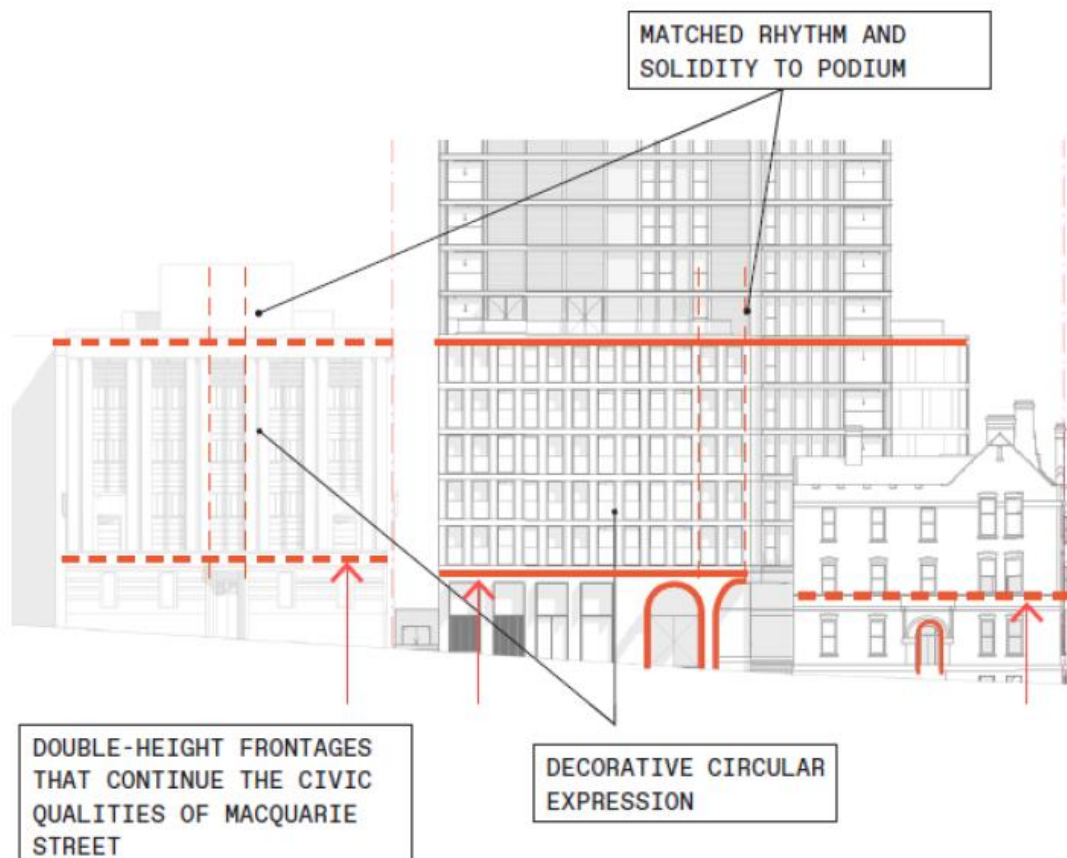


Figure 31: Extract from the architectural design report showing rationale for podium heights

101. The proposed modification to increase the height of the podium was part of BVN's winning design competition scheme and commended by the Jury.
102. Although the proposal exceeds the maximum street wall height along Albert Street, this is considered acceptable as the height responds to the podium set by Macquarie Street. The increase is acceptable and is consistent with the objectives of Section 5.1.1.2 of Sydney DCP 2012, considering:
 - (a) The proposal ensures an appropriate height transition from the neighbouring Transport House; and
 - (b) The distinctive qualities of the Macquarie Street special character area are maintained and the development respects the scale form and proportions of area.

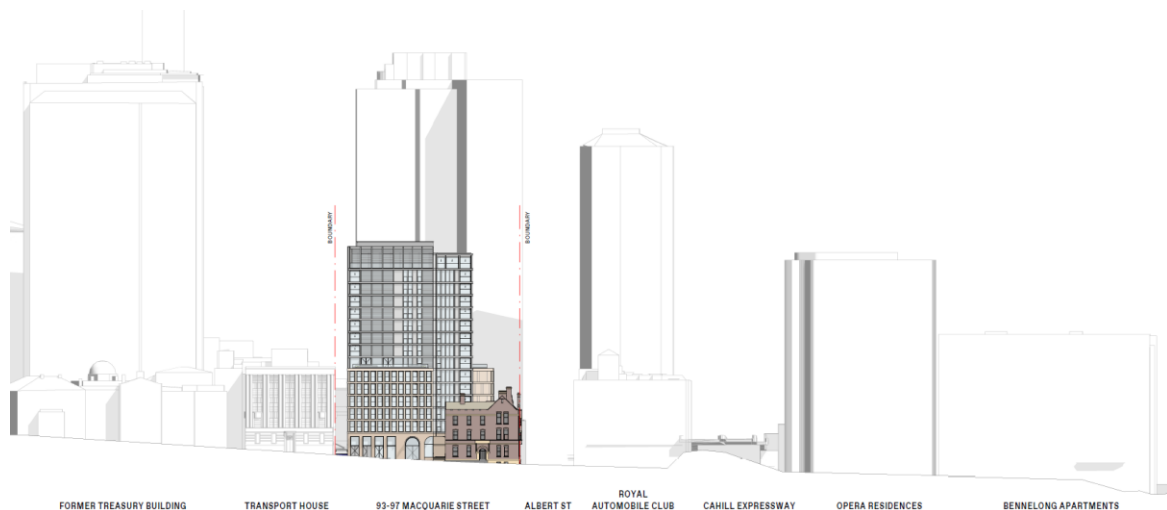


Figure 32: Extract from the architectural package showing larger streetscape context

Albert Street Setbacks

103. The existing concept consent approved an 8m podium setback and 13m tower setback from its Albert Street (northern boundary) frontage, consistent with the DCP provisions.
104. The proposed modification and detailed design seek a minor variation and propose a setback of 7m for Levels 2-6 and 12.245m for levels 7-15 from this northern boundary, as shown in Figures 33 and 34, below:

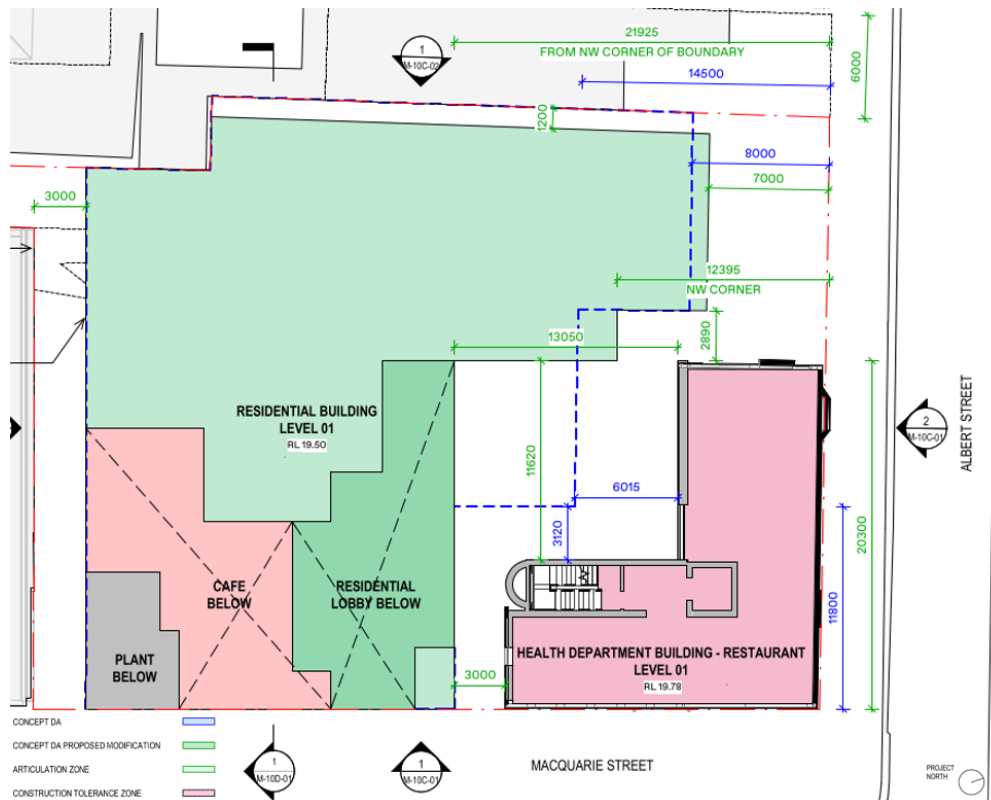


Figure 33: Level 1 concept envelope plan (with the blue line and text being the approved concept DA and green line and text being the proposed modifications)

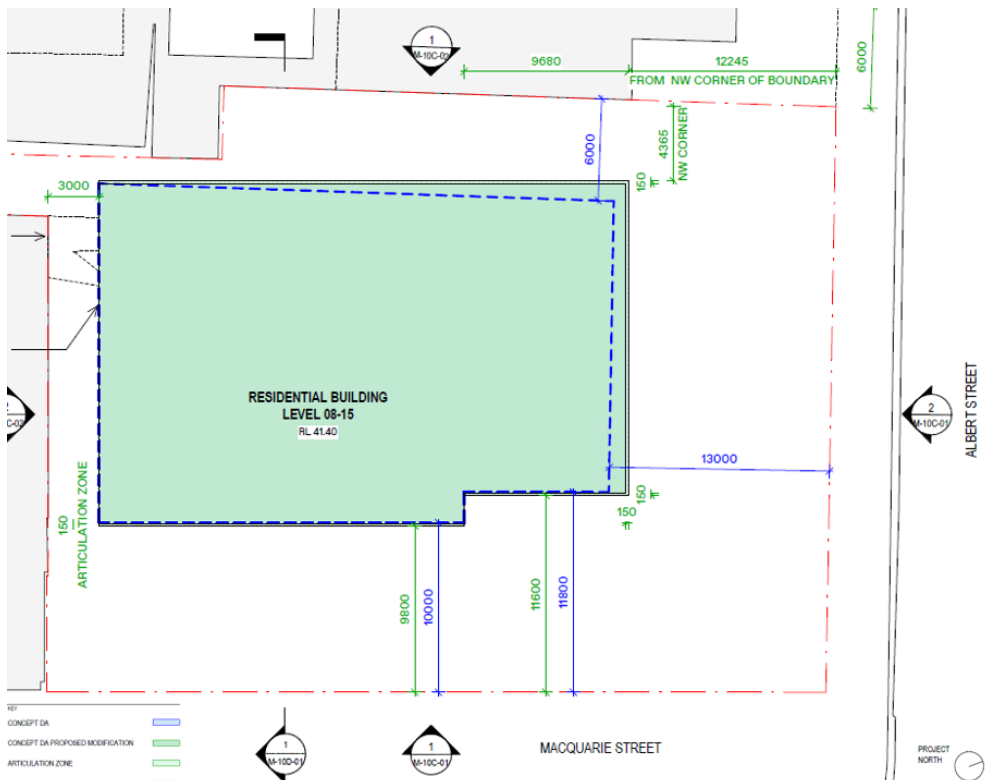


Figure 34: Level 8-15 concept envelope plan (with the blue line and text being the approved concept DA and green line and text being the proposed modifications)

105. The proposed 0.755m-1m reduction from the existing approved envelope does not impact the amenity of former Health Building or neighbouring properties. The variation in setback would not be perceptible beyond that already approved and would not result in varied amenity or environmental impacts. The proposed variation in the setback still allow the Former Health Building to remain prominent, forward of the new development and able to be read from Phillip Street.

Macquarie Street Setbacks

106. The existing concept consent approved a 10m and 11.8m tower setback from its Macquarie Street (eastern boundary) frontage.
107. The proposed modification and detailed design development application seek a minor variation and propose a variable setback of between 9.8m and 11.6m for Levels 7-15 from this northern boundary, as shown above in Figure 34.
108. The proposed 0.2m reduction from the existing approved envelope does not impact the amenity of the former Health Building or neighbouring properties. The variation in setback would not be perceptible beyond that already approved and would not result in varied amenity or environmental impacts. The proposed variation in the setback allows for better building articulation that is consistent with the winning competition scheme.

Western setback

109. The concept consent approved a nil setback from the western boundary (where the Police and Justice Museum is located) for Levels Basement to 2 of the envelope, 3 metres for Levels 3 to 5 and then a 6 metre setback for Level 6 and above of the tower. Figure 35 illustrates the approve envelope and proposed modifications to the setbacks.

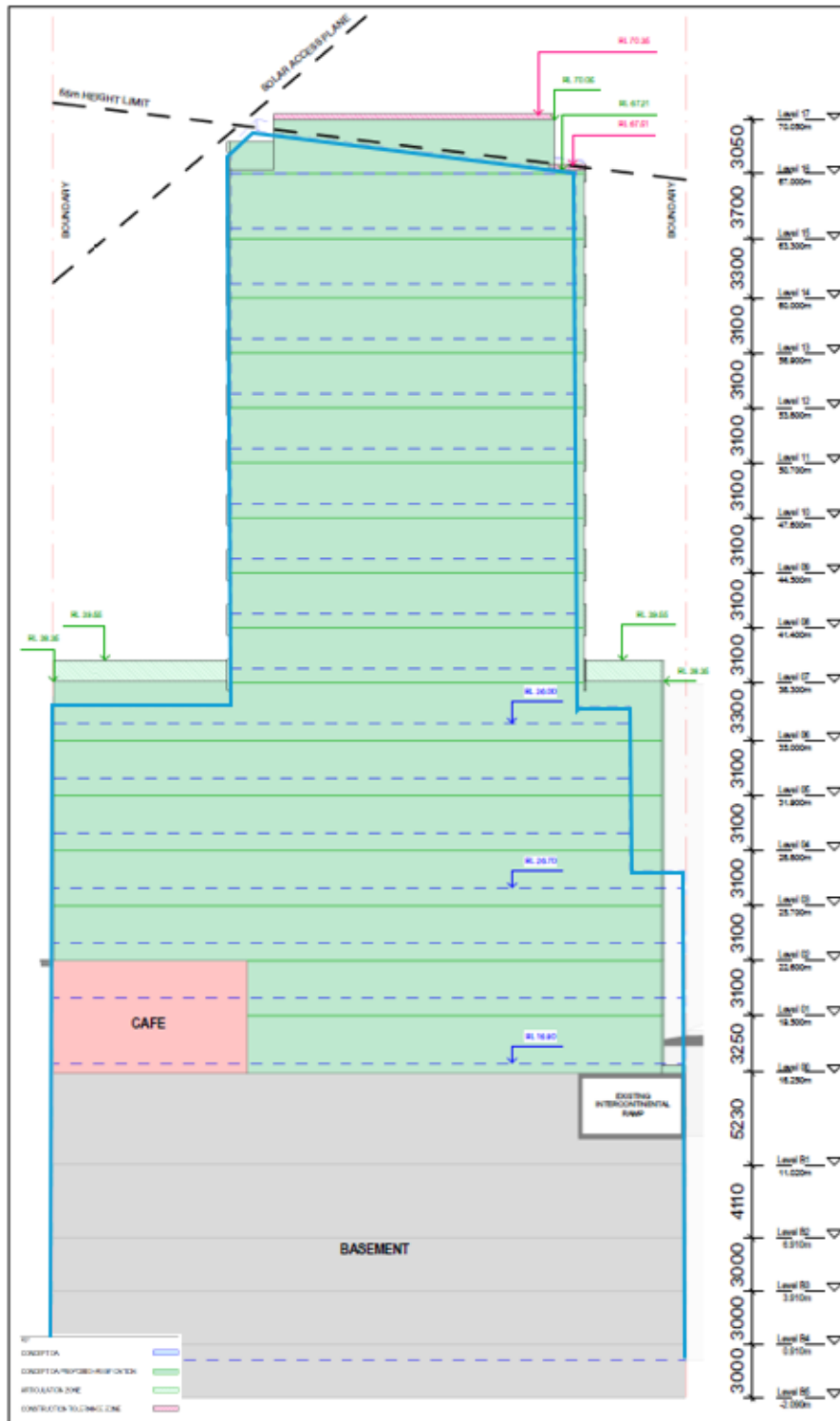


Figure 35: Concept envelope section showing the averaging change to the podium on the right side (and approved concept DA shown in blue outline)

110. A key component of the winning scheme from the design competition was the averaging of the western podium. The winning scheme sought to vary the stepping setback design approved in the concept DA and instead sought to create a simplified straight wall to be sympathetic and non-obtrusive backdrop to the Police and Justice Museum. The subject modification seeks to adopt revised western boundary setbacks for the podium and lower levels of a nil setback for levels B5 to level B1 and a 1.2 metre setback from Level 00 to Level 6.
111. The western setback for the tower seeks to amend the approved concept envelope that was parallel to the western boundary. The revised envelope and concurrent detailed design seeks to adjust the alignment of the western facade to square off the envelope and to be instead parallel with the eastern facade. This would allow for a more simplified construction.

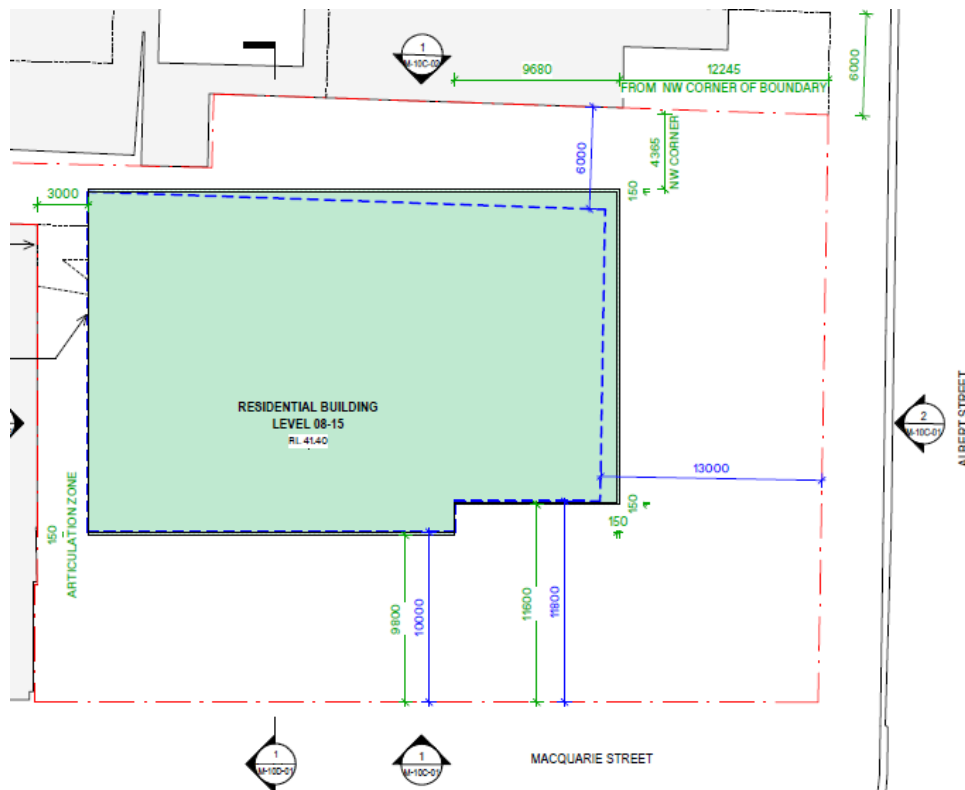


Figure 36: Level 8-15 envelope illustrating the realignment of the envelope to the western facade

112. The realignment of this facade would result in a variable reduction in setback from the this western boundary for the tower of between 5.7m and 4.3m. The proposed straightening of the tower's western facade has no effect on views to the tower from Phillip and Albert Street. The massing retains the simplicity and street character noted in the design competition jury report.
113. As is addressed in this report, the variation proposed in the setback do not unreasonably impact on views from neighbouring properties. The minor proposed variations in setbacks do not cause additional adverse overshadowing to neighbouring properties or public domain. The proposed variation to the western setbacks are acceptable in the above context and is consistent with the objectives of Section 5.1.1.1 of Sydney DCP 2012.

Ground floor courtyard and setbacks to the heritage building on site (former Health Department Building)

114. When compared to the existing approved Concept DA envelope, the proposed modified scheme accommodates a design that contains a double height open space at ground level and Level 1. The proposed modification seeks to increase the setbacks of the envelope from the former Health Department building on these levels to 11.62 metres to west of the heritage building and 13.05 metres from the south of the heritage building.
115. The modified proposal does propose a reduced setback on Level 2 upwards from the approved 6m setback from the southern wall of the heritage item to approximately 3.3m. There is a minor variation in the approved envelope setback from the heritage item from the western wall of the heritage building from 3.12 metres to 2.92 metres.

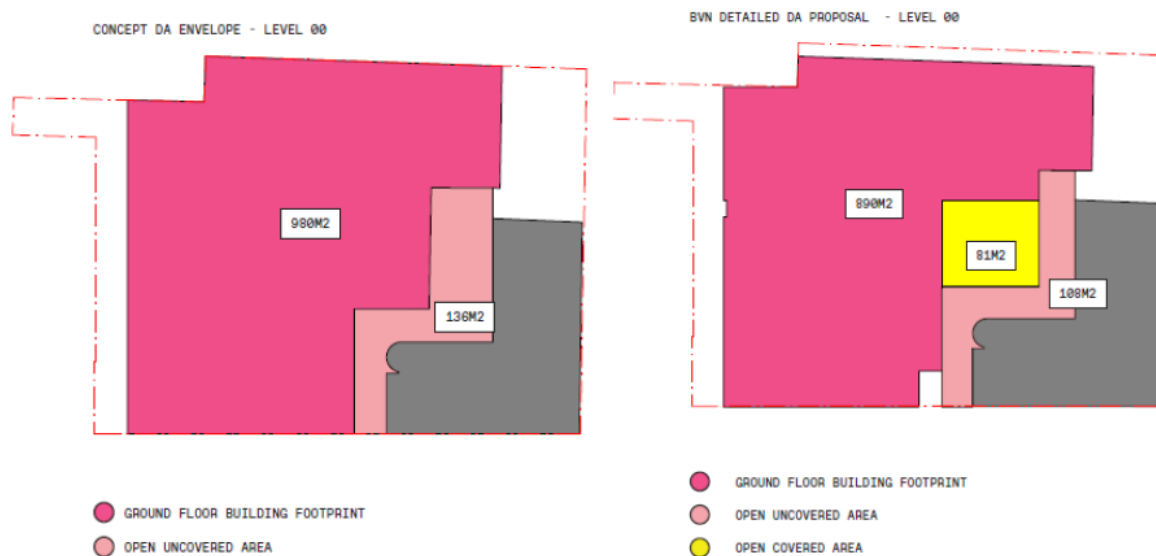


Figure 37: Extract from the architectural design report showing the rational of the courtyard space and development volume

116. This change was supported by the design competition jury, as this design positively redistributed bulk in its averaging strategy. To compensate for the reduced setback on the upper levels, the additional open space courtyard area has been provided at the ground floor.
117. The courtyard located between the new building and the former Health Department Building will also be transformed into a public space as part of the detailed design DA, leading to a new pedestrian connection to Albert Street. This space offers the opportunity to introduce heritage interpretation to the former Health Department Building and introduce a space for public art.
118. The reduced tower setback is also considered to maintain an acceptable relationship with the existing heritage building, satisfying the objectives of section 5.1.3 of Sydney DCP 2012, considering:
- (a) it is considered sufficient to ensure the tower addition will not overwhelm the heritage building;

- (b) it will maintain the original scale, form and architectural character of the heritage building to be clearly perceivable; and
- (c) it will also ensure the heritage building remains respected when viewed against the new addition.

Increase the depth of the basement envelope

119. It is proposed to increase the depth of the basement by approximately 2 metres as shown in Figure 38, below. The increase in the depth is to accommodate the new basement of the concurrent Detailed Design DA, that is centrally located and services the basements, the heritage building, and the new residential tower.

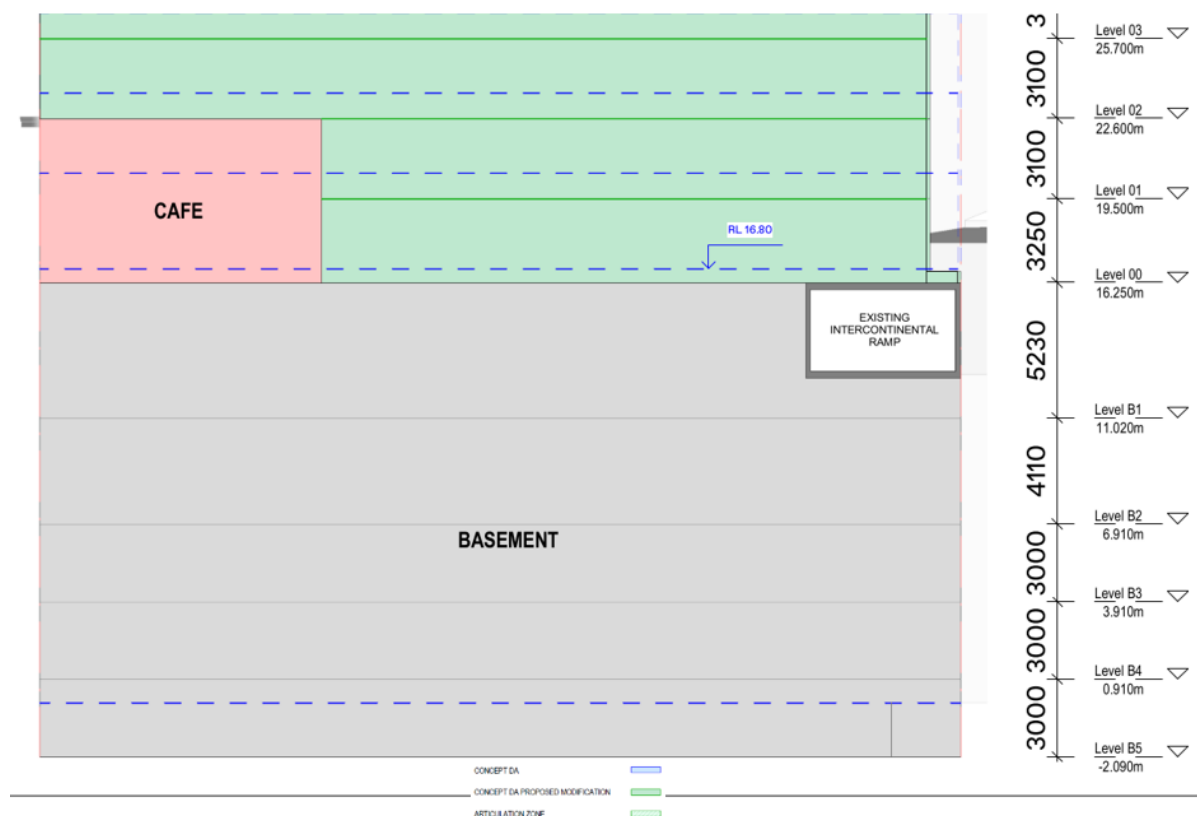


Figure 38: Extract from the concept section showing extent of additional excavation

120. The increase in the basement depth is entirely below ground and will not be visible from adjoining properties or the public domain. The additional excavation will be primary towards the western side of the basement as it will level out the current 'zigzag' basement.
121. The proposed basement footprint is demonstrated by the Detailed Design DA as necessary to accommodate the consolidated internal circulation core, while accommodating the substation and other loading and servicing requirements of the proposed development. The additional excavation is considered acceptable by the submitted geotechnical report and the associated additional demolition to the heritage item is also considered acceptable by the submitted heritage impact statement and the City's Heritage Specialist. The proposed changes to the basement envelope are considered acceptable.

Heritage

122. The site is listed on the State Heritage Register as an item of State significance (SHR 01912) and is also a local heritage item listed as "Former Department of Health building including interiors" (I1869).
123. While the proposal seeks to vary the building envelope setbacks to the heritage item. The design of the envelope responds appropriately to the existing Heritage Item and ensures the heritage significance is maintained.

Overall, the proposed development will allow the original former health building to be retained and maintain its heritage alongside the new building envelope. Modifications to Conditions for consistency with detailed design

124. As part of the modification application, the applicant is seeking to delete subparts of 2 conditions to ensure that the detailed design DA can achieve the requirement of not being inconsistent with the concept DA for site as required under Section 4.24 of the Environmental Planning and Assessment Act 1979.
125. The applicant under the concept modification proposes deleting Condition 7 (Detailed Design of Buildings) part (e) which states:
- 'The south, north and east elevations of the Macquarie Street podium should be substantially glazed at their lower levels (e.g. two floor levels) to allow for views from Macquarie Street through the new residential building to the northern elevation of Transport House and to the (proposed) newly restored and reconstructed southern elevations of the former Health Department Building.'
126. The intent of this condition was to allow for views from Macquarie Street through to the northern elevation of Transport House and to the (proposed) newly restored and reconstructed southern elevations of the former Health Department Building.
127. The concurrent development design has been further refined from the original concept design and was subject to a design competition. The competition winning scheme by BVN responds to the intent of this condition, however, do not explicitly meet the criteria of this condition. Substantial glazing is provided between the residential lobby and the courtyard area and towards Transport House where required servicing does not limit its inclusion. The proposal is considered to achieve the intent of this condition, which was to provide better passive surveillance, create a more inviting frontage and reveal the surrounding heritage facades at the ground plane where possible.
128. The applicant also proposes to amend part (c) of Condition 7 which states:
- 'The tower form must be simple in design, avoiding cantilevers over the ground floor communal courtyard.'
129. The intent of this condition was to ensure the residential tower remained a simple form and not to introduce structural elements for the cantilever into the courtyard or impact of the amenity of internal spaces.

130. The proposed concurrent detailed design DA contains a larger covered courtyard area which will be a public through-site link (with easement on title) to Albert Street. The courtyard is covered by a double height void that has a supporting structure that could be deemed to include a cantilevered element. This element however, is designed as an integrated architectural piece that has been refined to ensure it is not too monumental in the space as shown in Figure 39, below.
131. This larger courtyard space reveals the facade of the former Health Department Building, with opportunities for heritage interpretation, public art, and landscaping. As assessed in the concurrent detailed design DA, this treatment is considered an appropriate response and in turn, the modification to delete this part of the condition is supported.



Figure 39: Render of proposed courtyard space showing the supporting column design

132. Condition 9 (Residential Land Use) part (c) of the concept development consent states the following:

'The development shall be designed to be compliant with the dwelling mix requirements of Section 4.2.3.12 of the Sydney Development Control Plan 2012.'

133. The detailed Design DA which is being concurrently assessed includes a dwelling mix that is not in strict accordance with the DCP provision. The proposed mix of dwellings has been assessed as acceptable and provides an acceptable range of housing typologies within the development. The deletion of this part of Condition 9 is supported in this instance to ensure consistency between the concept and detailed design consents.

Consultation

Internal Referrals

134. The application was discussed with the City's Design Advisory Panel; Heritage and Urban Design Unit; Access and Transport Unit; Public Domain Unit; Construction Regulation Unit; Tree Management Unit; Environmental Health Unit, and Cleansing and Waste Unit. Relevant advice has been included in this report, and recommended modifications to conditions have been included in Attachment A.

External Referrals

135. The subject application was referred to Heritage NSW, who raise no objections to the proposed modifications and recommended no modifications to the existing conditions of consent.

Advertising and Notification

136. In accordance with the City of Sydney Community Engagement Plan Participation Strategy 2023, the proposed modification was notified between 16 May and 14 June 2023. A total of 356 properties were notified, and 3 submissions were received.

137. The submissions raised the following concerns:

- (a) Issue: The Heritage Council of New South Wales has reactivated nomination to list Transport House on the State Heritage Register (SHR) under the NSW Heritage Act 1977. The submitter believes this adds significant weight to submissions regarding the heritage value of Transport House and that the Stamford proposal "is aggressive, invasive, unsympathetic, out of character, overly dominant in its immediate context, and dramatically different in its height to the lower scale buildings in the historic precinct in which the site is located

Response: The application has been assessed against the relevant heritage controls in the Sydney LEP 2012 and Sydney DCP 2012, in addition to being assessed as an Integrated Development under the Heritage Act 1977, requiring approval from Heritage NSW, the same body that is reviewing the state listing nomination.

- (b) The proposal, including the alterations to the item and the new residential tower, has been reviewed by Heritage NSW and it is considered that the heritage significance would not be adversely impacted and has been issued with General Terms of Approval.

- (c) Furthermore, the application has also been reviewed by the City's Heritage team who also has considered the proposal acceptable and would not adversely affect the significance of the retained heritage building. The variations to the envelope in relation to the Former Department of Health Building and surrounding heritage items including Police and Justice Museum and Transport House are acceptable as discussed in the report. The podium and tower in the streetscape images show that the development is sympathetic to the heritage and not overly dominant in comparison to surrounding built form including the hotel itself and AMP/Quay Quarter development.
- (d) Issue: The proposal should comply with the approved concept envelope under D/2017/1609.

Response: As discussed in this report and the concurrent stage 2 report, this modification application is a result of an architectural design competition which awarded the design to BVN. The design competition report noted that there were inconsistencies with the approved envelope, however the panel justified that the changes reflected a better proposal that meets design excellence.

The amendments to the concept envelope have been rigorously assessed above and are considered to result in a built form that is acceptable for its immediate context and not result in greater unreasonable impacts to surrounding development.

- (e) Issue: The application makes no mention of the approved roof top addition to Transport House.

Response: As discussed in the concurrent assessment report of the detailed DA report, in December 2022 a modification was approved for building envelopes for external alterations and additions, including additions to the northern and eastern elevations of the InterContinental Hotel extending over part of Transport House and the existing hotel podium. This development includes potential bar, retractable awning, and seating associated with a function centre use.

This application has considered adjoining uses and including the approved development above the neighbouring Transport House. As noted in the history section of this report, this modification included an acoustic assessment which assessed the potential acoustic impacts against the future residential use at 93 - 97 Macquarie Street (the subject application). Conditions have been included in that SSD approval. Furthermore, the City's environmental health team also reviewed the potential impacts from this use in conjunction with the acoustic report assessment of the detailed DA and have concluded the development suitable subject to relevant conditions in Attachment A.

- (f) Issue: The View Impact Analysis submitted in support of the proposal does not address the additional view loss from north facing rooms in the InterContinental Hotel which are at or above the top of the approved building envelope.

Response: Refer to detailed assessment within this report, including attachments and the assessment of the applicant's written request under Clause 4.6 to vary the building height development standard contained in the concurrent detailed design DA report..

- (g) Issue: The Clause 4.6 variation request should be denied

Response: A detailed clause 4.6 assessment is undertaken in the concurrent assessment report for the detailed design DA.

- (h) Issue: Access/ROW from the InterContinental Hotel during construction has not been addressed.

Response: This matter is addressed in the concurrent assessment report for the detailed design DA.

- (i) Issue: Demolition of amenities and storage used by the Justice and Police Museum has an easement and no discussion with other parties has occurred.

Response: The City is not a party to the easement and therefore all matters regarding the easement are a civil matter between the parties.

However, the demolition plans show that the amenities and storage area is benefited by an easement for the use of the JPM. The plans show that the area will be demolished and temporarily relocated during construction reinstated as part of the new development.

Additionally, it is understood that the new owners and the applicant have had advanced discussions with the operators of the Justice and Police Museum with regard to the temporary arrangements and new facilities.

- (j) Issue: Non-compliant street frontage height to Macquarie Street.

Response: The design proposes an increased podium street height as a result of the Architectural Design Competition where BVN's winning design proposed this height to match the neighboring Transport House building for a better height transition. The competition Jury agreed with this approach, noting its inconsistency with the Concept envelope. On balance it was considered to provide a better urban outcome that is more in character with the surrounding street context. Refer to detailed discussion on variations to the podium height within this report.

- (k) Issue: Noise and vibration impacts from the additional excavation outside the concept envelope.

Response: Refer to discussion within the concurrent assessment report for the detailed design DA.

- (l) Issue: Objection to bulky canopy/awning designs.

Response: Refer to discussion within the concurrent detailed design DA.

- (m) Issue: Pavement crossings on the south side of Albert St degrade the visual and pedestrian environment.

Response: Refer to discussion within the concurrent assessment report for the detailed design DA.

- (n) Issue: Concerns about increased light generation and reflection from a taller building north of The Astor.

Response: Refer to discussion within the concurrent assessment report for the detailed design DA.

- (o) Issue: Concerns about the lack of engineering detail, particularly with regard to structural integrity of surrounding buildings, vibrations, undermining and anchoring.

- (p) Response: Refer to discussion within the concurrent assessment report for the detailed design DA. Issue: Development will cause loss of revenue.

Response: Impacts to revenue and profit/loss are not a matter for consideration under Section 4.15 of the Act.

- (q) Issue: Proposals scale and bulk significantly dwarf the neighbouring heritage listed buildings, particularly the Justice and Police Museum (JPM).

Response: Impacts The building's massing breaks down into a discrete elements comparable in height and proportion to the western elevation of the (now detached) Health Building and matching the height of the Transport house. Its mass is further articulated as a podium of complementary scale and materiality to both the Police Museum and the base of the Health Building.

The western elevation adjoining the JPM is to be sandstone clad and creates a non-obtrusive backdrop to the Police and Justice Museum west of the site. This aligns with the recommendations of the Architectural Design Competition seeking a 'quiet' elevation to be a background to the JPM.

- (r) Issue: Site stormwater drainage is uncertain.

Response: Refer to discussion within the concurrent assessment report for the detailed design DA.

Financial Contributions

138. The subject application is not subject to any development contributions as it relates only to a concept envelope.

139. Appropriate conditions are recommended under the concurrent Detailed Design DA to levy the relevant contributions should consent be granted by the CSPC.

Relevant Legislation

140. Environmental Planning and Assessment Act 1979.

141. Heritage Act 1977.

Conclusion

142. This section 4.55(2) modification application proposes to modify the approved concept envelope and selected conditions of consent to ensure consistency with the Detailed Design DA (D/2024/324) that is presented to the CSPC concurrently for determination.
143. The proposed modifications will ensure consistency between the staged development applications in order to satisfy Section 4.24 of the Environmental Planning and Assessment Act 1979.
144. The development as proposed to be modified is substantially the same as that originally approved.
145. The modifications to the building envelope to:
 - (a) Increase the building height to RL70.35
 - (b) Increase podium/street frontage height to Macquarie Street and Albert Street to a maximum height of RL38.35.
 - (c) Reduced tower setback to the northern boundary (Albert Street frontage) from 13 metres to 12.2 metres,
 - (d) Reduction of 200mm in the setback of the tower from the eastern boundary.
 - (e) Reduction in the setback of the tower from the western boundary from 6 metres to a minimum of 4.3 metres,
 - (f) Reduction in the setback of residential tower to the Health Building from 6 metres to 3.3 metres,
 - (g) Increase in setbacks on ground level and level 1 from 5.8 metres to 13 metres to provide a large publicly accessible courtyard space,
 - (h) Increase basement excavation depth by approximately 2 metres.

The above variations are supported as they do not result in unacceptable amenity impacts and deliver an envelope that can achieve an acceptable level of amenity for future occupants and adjoining properties.

146. The amended building envelope can accommodate a future building that exhibits design excellence in accordance with Clause 6.21C of the Sydney LEP 2012. This is demonstrated by the Detailed Design DA being considered concurrently by CSPC.
147. The modifications to conditions of consent are also supported as they do not result in unacceptable impacts to the public domain or diminish the significance of the retained heritage item.
148. The proposed modifications are therefore in the public interest and are recommended for approval.

GRAHAM JAHN AM

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