

Attachment E

Original Concept DA Report

Item 4.**Development Application: 93-97 Macquarie Street, Sydney - D/2017/1609****File No.:** D/2017/1609**Summary**

Date of Submission: 20 November 2017, amended 16 January 2019, 12 August 2019, 1 October 2019, 21 January 2020, 31 January 2020 and 6 February 2020

Applicant: Oakstand Pty Ltd

Architect/Designer: Kann Finch

Developer: Oakstand Pty Ltd

Owner: Sir Stamford At Circular Quay (2000) Limited

Cost of Works: \$135,080,000

Zoning: The site is located within the B8 - Metropolitan Centre zone. The proposed mix of uses (residential apartments and commercial) are all permitted with consent in the zone.

Proposal Summary: The proposal seeks consent for a concept mixed use building envelope up to a height of 55 metres (approximately 16 storeys).

The proposal also seeks in-principle approval for conservation, retention and alteration of the State Heritage significant former Health Department building.

The mix of indicative uses comprises of commercial uses within the retained former Health Department building and lower floors of the new building and residential apartments on the floors above.

The application is referred to the Central Sydney Planning Committee for determination as the proposal is "major development" for the purposes of the City of Sydney Act 1988.

The proposed height complies with the Royal Botanic Gardens sun access plane and 55m height controls applicable under the Sydney Local Environmental Plan 2012 (Sydney LEP 2012).

The maximum Floor Space Ratio (FSR) of 8:1 is permitted. The indicative reference plans submitted demonstrates that the building envelope can comply with the 8:1 FSR control.

A competitive design process is proposed prior to the lodgement of any future detailed design development application. The submitted design excellence strategy does not seek any additional height or floor space as a result of undertaking the competitive design process.

The subject site contains a heritage item, being the former Health Department building, which is listed on the NSW State Heritage Register. The application was lodged as an Integrated Development Application and assessed concurrently by Heritage NSW. In accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, the Heritage Council of NSW granted terms of approval, subject to conditions on 9 October 2019.

The proposed building envelope, indicative drawings and design excellence strategy were amended a number of times to address concerns raised by Council staff. These concerns related to:

- (a) heritage conservation;
- (b) building setbacks;
- (c) compliance with the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG);
- (d) the design excellence strategy; and
- (e) Ecologically Sustainable Development (ESD) targets.

The original proposal was notified and advertised twice for a total of 70 days between 28 November 2017 and 4 January 2018 and between 16 January 2018 and 16 February 2018. An amended envelope and supporting documentation was re-notified and advertised for a period of 41 days between 25 January 2019 and 6 March 2019.

62 submissions were received during the three public exhibition periods which raised the following issues:

- (a) Impact on views from surrounding developments
- (b) Adverse impacts on heritage significance of buildings within the site, surrounding heritage items and the heritage precinct along Macquarie Street
- (c) Non-compliances with height and setback controls in the Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (d) Loss of hotel floor space in Central Sydney
- (e) Loss of public parking in Central Sydney
- (f) Lack of clarity in the City of Sydney Competitive Design Policy
- (g) Non-compliance with future Central Sydney development controls
- (h) Overdevelopment of the site and non-compliance with the Apartment Design Guide
- (i) Inconsistent advice provided by the applicant's consultants
- (j) Loss of amenity to surrounding developments and the public domain

As a result of the design modifications made to the concept design and, subject to conditions, the amended proposal presents an improved outcome and comprises an acceptable response to the conditions of the site and locality. The proposed building envelope provides a form and scale sympathetic to the heritage context of the site and locality and is in keeping with the desired future character of the area. Overall, the proposal is generally compliant with the relevant planning controls the proposal is capable of providing appropriate amenity to future residents, visitors and workers and maintains the amenity of surrounding development.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 (EP&A Act)
- (ii) Heritage Act 1977
- (iii) City of Sydney Act 1988
- (iv) State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) and the Managing Land Contamination Planning Guidelines (SEPP 55 Guidelines)
- (v) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)
- (vi) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)
- (vii) State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- (viii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (ix) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (x) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (xi) City of Sydney Guidelines of Waste Management in New Developments (Waste Guidelines)
- (xii) City of Sydney Public Art Policy
- (xiii) City of Sydney Competitive Design Policy
- (xiv) Central Sydney Development Contributions Plan 2013

Attachments:

- A. Recommended Conditions of Consent
- B. Envelope Drawings
- C. Indicative Drawings
- D. Design Excellence Strategy
- E. Submitted View Impact Assessment)

Recommendation

It is resolved that:

- (A) consent be granted to Development Application No. D/2017/1609 subject to the conditions set out in Attachment A to the subject report; and
- (B) the Design Excellence Strategy for 93-97 Macquarie Street, Sydney, prepared by Mecone and dated 6 February 2020 on behalf of Stamford Property Service Pty Ltd, as shown in Attachment D to the subject report, be approved pursuant to Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the Competitive Design Policy.

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 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.
- (B) The proposal generally satisfies the objectives and provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The proposal is consistent with the objectives of the B8 - Metropolitan Centre zone.
- (D) 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.
- (E) 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.
- (F) The proposed building envelope complies with the Royal Botanic Gardens sun access plane in Clause 6.17 of the Sydney Local Environmental Plan 2012.
- (G) 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.

- (H) 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.
- (I) 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.
- (J) 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.
- (K) 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.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 12 DP 1197140 and is commonly known as 93-97 Macquarie Street, Sydney.
2. The site is located on the western side of Macquarie Street, between Albert and Bridge Streets. The site is irregular in shape and has a frontage to Macquarie Street (to the east) of 45.95 metres and a frontage to Albert Street (to the north) of 34.495 metres.
3. The topography of the site falls from the south-eastern corner of the site on Macquarie Street towards the north western corner on Albert Street, with a change of level of approximately 6.8 metres. The site has an area of 1,611 square metres.
4. Aerial photographs of the site are provided in Figures 1 and 2 below, showing the location of the site and its context.

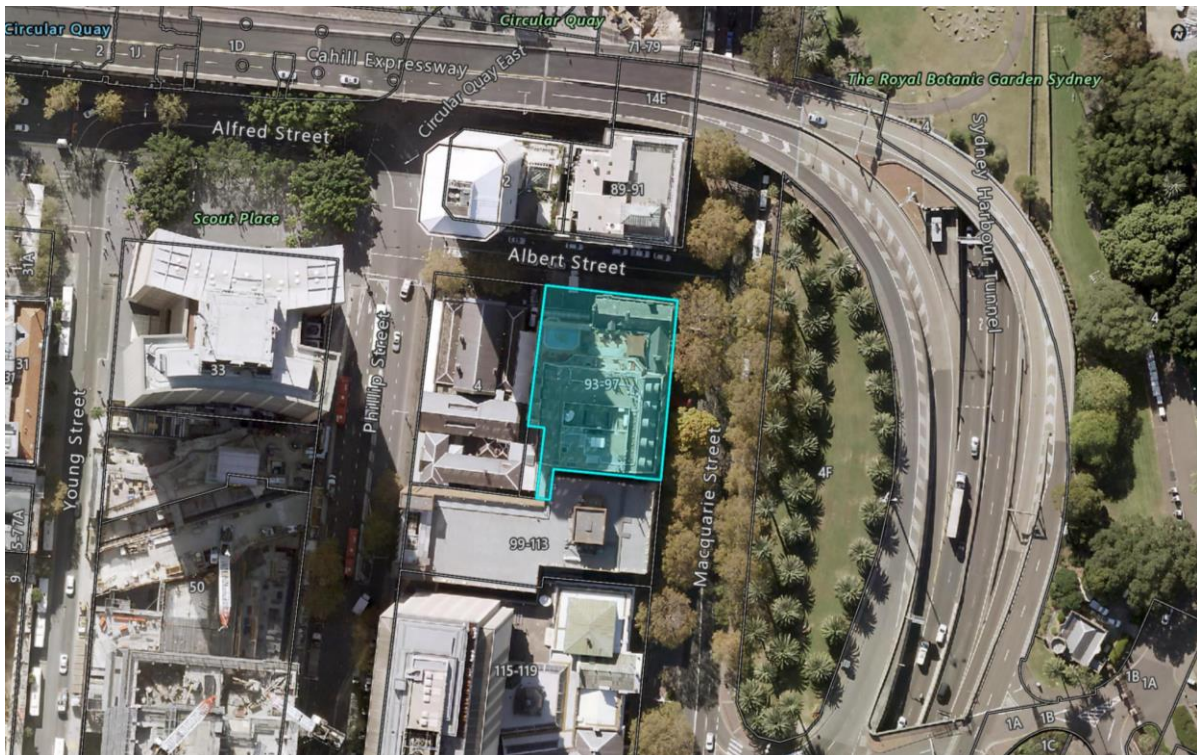


Figure 1: Aerial photograph of the subject site in blue and surrounding area.



Figure 2: Photograph of the subject site in blue and surrounding area as viewed facing south west.

5. The site currently contains 2 interconnected buildings ranging in height from 4 to 10 storeys. The buildings currently accommodate the Sir Stamford Hotel which contains 105 guest rooms, a public bar and dining room, function rooms, health and exercise facilities and a basement containing 99 car parking spaces.
6. The 4 storey building located at the corner of Macquarie Street and Albert Street is known as the former Health Department Building, which is currently listed as an item of State heritage significance and is listed on the State Heritage Register (SHR 01912). The building is also listed as a heritage item on Schedule 5 of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) (Item I1869 - former Department of Health building including interiors, local significance). The lower ground floor within this building can be accessed directly from Albert Street.
7. The former Health Department Building was constructed between 1896 and 1898 and was designed by Walter Liberty Vernon, the NSW Government Architect at the time. The use of the building for health treatments or administration purposes remained on site until the late 1980s, when all NSW Public Health services were relocated. Following the relocation of health services from the site, approximately 30% of the building was demolished and a 10 storey building was constructed as a new hotel wing. The 1990s addition to the hotel contains the majority of the guest rooms.
8. Vehicular access to the existing hotel on site is via a driveway from Albert Street. The car park is currently operating as a hotel and commercial car park. Vehicular access is also provided from this driveway through the site to the InterContinental Hotel to the south of the development.

9. Figures 3 to 11 show the existing development of the site.



Figures 3 and 4: Existing Macquarie Street frontage



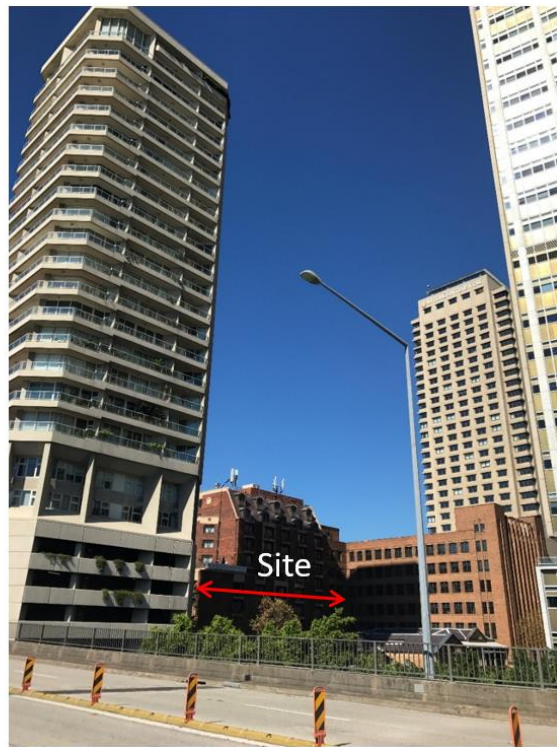
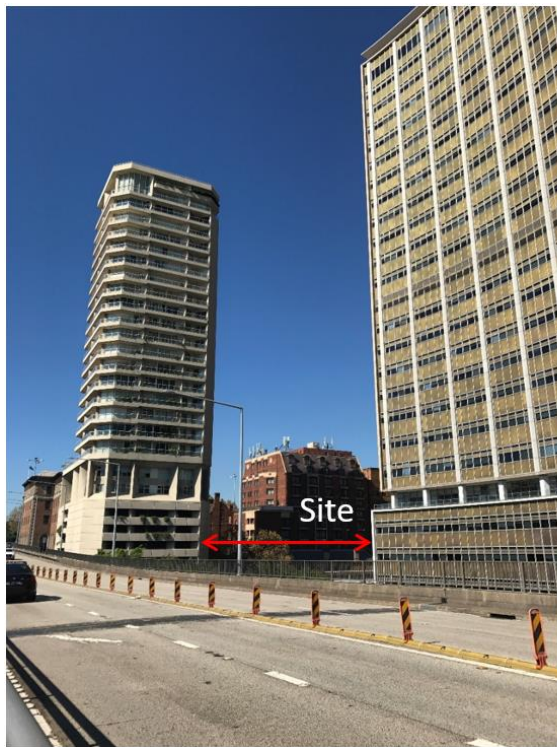
Figure 5: Former Health Department Building as viewed facing west from the corner of Macquarie Street and Albert Street



Figure 6: Site viewed from Albert Street



Figure 7: Site viewed facing east from Phillip Street. Justice and Police museum is located in the foreground



Figures 8 and 9: Site viewed facing south on the Cahill Expressway



Figures 10 and 11: Site viewed facing south from the Cahill Expressway and Royal Botanic Gardens

10. The site is also subject to a number of easements in which other sites benefit from, or the subject site benefits over other parcels of land. These easements include the following:
- (a) Easement for "Existing Elements with variable widths" which includes an encroachment of an existing hotel balcony over the western boundary of the subject site;
 - (b) Easement for "Use of Facilities (limited in Stratum)" which is shown on the submitted survey plan as relating to toilets, storage rooms, kitchen facilities and bin areas on the subject site;
 - (c) Easement for "Light and Air 3m wide and variable" which burdens part of the subject site directly adjoining the southern boundary;
 - (d) Easement for "Right of Carriageway" which relates to a portion of the side adjoining the southern boundary;
 - (e) Easement for "Light and Air" burdening the site directly adjoining the southern boundary;
 - (f) Easement for "Light and Air 6m wide and variable" which benefits the site over land directly adjoining the western site boundary (burdening the site of the Justice and Police Museum at 4 Phillip Street); and
 - (g) Easement for "Right of Carriageway with variable width" burdening the subject site over land that contains the existing driveway access to the InterContinental hotel carpark to the south.

The Locality

11. The site is identified within Section 2.1.6 of the Sydney DCP 2012 as being located within the Macquarie Street Special Character Area, which includes a collection of highly significant buildings that date from the early 19th century. In addition to the former Health Department Building, the site adjoins or is located within close proximity to a number of buildings and sites that are listed on the NSW State Heritage Register. These include the Justice and Police Museum (4-8 Phillip Street), the Royal Automobile Club (89-91 Macquarie Street), the former Treasury Building/InterContinental Hotel (117-119 Macquarie Street) and the Royal Botanic Gardens and The Domain.
12. Development in the vicinity of the site is mixed-use in nature, being generally characterised by commercial, residential, tourist and Government land uses, as well as recreational areas.
13. To the east of the site, on the opposite side of Macquarie Street, is the Cahill Expressway and the Royal Botanic Gardens. The Sydney Conservatorium of Music and Government House are located within the Royal Botanic Gardens and are characterised as low-scale development being no more than 3 storeys in height. Other development on the eastern side of Macquarie Street further south of the Royal Botanic Gardens includes a number of public and Government uses including the State Library of NSW, NSW Parliament House, Sydney Hospital, The Mint and Hyde Park Barracks.
14. The built characteristics of the existing development fronting Macquarie Street to the west differs greatly to that of the development to the east. These include larger scale mixed-use developments containing mostly commercial offices with some residential, retail and food and drink uses occupying buildings. The existing built form along the western side of Macquarie Street ranges between low-scale commercial buildings of 3 storeys in height to towers over 20 storeys in height.
15. To the north of the site, on the opposite side of Albert Street is the 6 storey Royal Automobile Club of Australia and the residential apartment building known as 'The Quay'. Further north is the Cahill Expressway and Circular Quay.
16. Directly north of the Cahill Expressway at 71-79 Macquarie Street is the Opera Residences development, which is currently under construction. When completed, the development will result in a 20 storey mixed-use development containing 109 residential, serviced apartments and retail tenancies.
17. Directly to the south of the site is a 5 storey commercial building known as Transport House. This building is listed as a heritage item of local significance under the Sydney LEP 2012. Further to the south is the InterContinental Hotel, which comprises the former Treasury Building which is listed as an item of State Heritage significance on the State Heritage Register and the Sydney LEP 2012, and a 32 storey tower containing approximately 509 guest rooms.
18. Directly to the west of the site is the State heritage listed Justice and Police Museum, which fronts Phillip Street. Further west, on the opposite side of Phillip Street are high-rise commercial office towers (some currently under construction) occupied by AMP.
19. Figures 12 to 18 below show existing development within the vicinity of the site.



Figure 12: Development directly east to the development - part of the Royal Botanic Gardens and the Cahill Expressway beyond



Figure 13: Development located directly south of the site - Transport House



Figure 14: Development located directly south of the site along Macquarie Street - former Treasury Building (now part of the InterContinental hotel)



Figure 15: Development surrounding the subject site (including the AMP tower, the InterContinental hotel and The Quay) as viewed facing west from the Conservatorium of Music



Figure 16: Development further south of the site along the western side of Macquarie Street



Figure 17: Development directly to the west and south of the site along Phillip Street - Justice and Police Museum, Transport House and the InterContinental Hotel tower



Figure 18: The Royal Automobile Club (left) and The Quay (centre) looking west along the Cahill Expressway

Proposal

20. The subject development application seeks concept development (site specific DCP) consent pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979, for the redevelopment of the Sir Stamford Hotel at 93-97 Macquarie Street, Sydney.
21. Specifically, the application seeks conceptual, in-principle approval for the following:
 - (a) Retention of the heritage listed former Health Department Building and the adaptive reuse of the internal areas;
 - (b) Demolition of the existing 1990's hotel addition;
 - (c) A building envelope for a mixed-use building with:
 - (i) 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;
 - (ii) 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;
 - (iii) the retention of existing vehicular access from Albert Street for access to basement parking within the subject site and to the InterContinental Hotel.

22. The application was accompanied by indicative concept design scheme drawings and documentation. These show a building in the proposed envelope which, as amended, provides the following indicative uses:
- (a) Capacity of up to 11,028 square metres of Gross Floor Area (GFA), including:
 - (i) Up to 9,666 square metres of residential GFA
 - (ii) Up to 746 square metres of retail GFA
 - (iii) Up to 616 square metres of general commercial GFA
 - (b) Basement levels 2-5 : car and bicycle parking, amenities, waste, services and storage areas;
 - (c) Basement level 1: restaurant (accessed from former Health Department lower ground entry on Albert Street), waste storage areas and vehicle access to the InterContinental and services
 - (d) Ground: residential entry, 3 residential apartments, retail and commercial
 - (e) Level 1: residential (4 apartments) and commercial
 - (f) Level 2: residential (8 apartments) and commercial
 - (g) Levels 3 to 15: residential (58 apartments)
23. Selected axonometric, elevation, section and plan drawings of the proposed maximum envelope are provided in Figures 19 to 29 below. These are included with the revised concept drawings, indicative concept design scheme drawings at Attachments B and C to this assessment report.

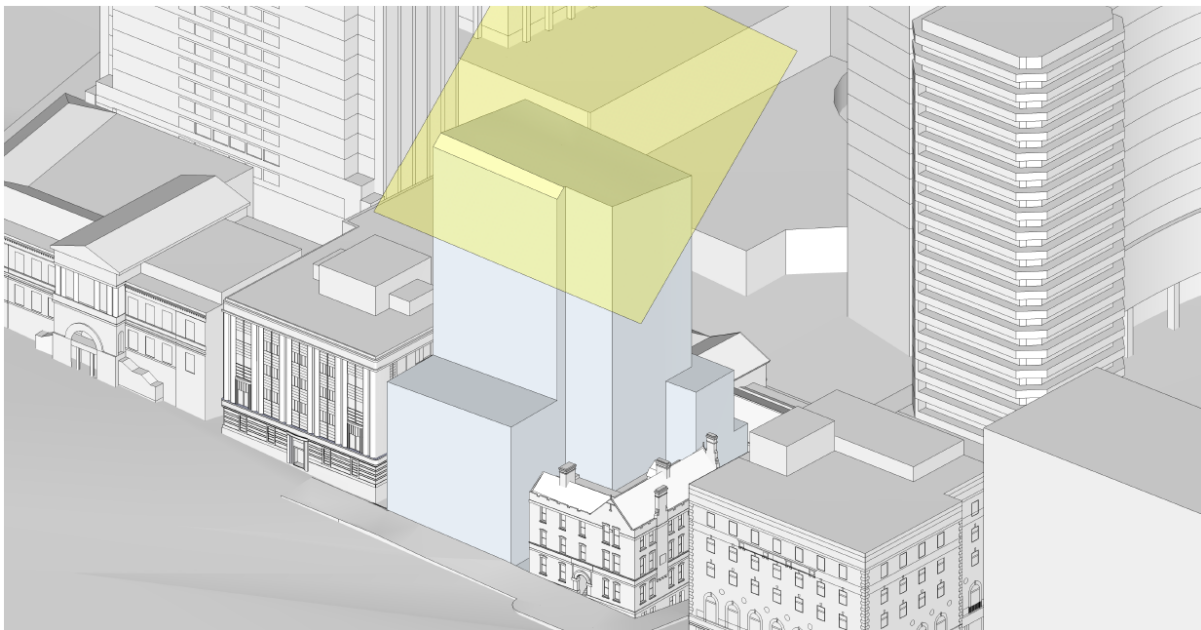


Figure 19: Maximum envelope axonometric view looking south-west showing sun access plane compliance

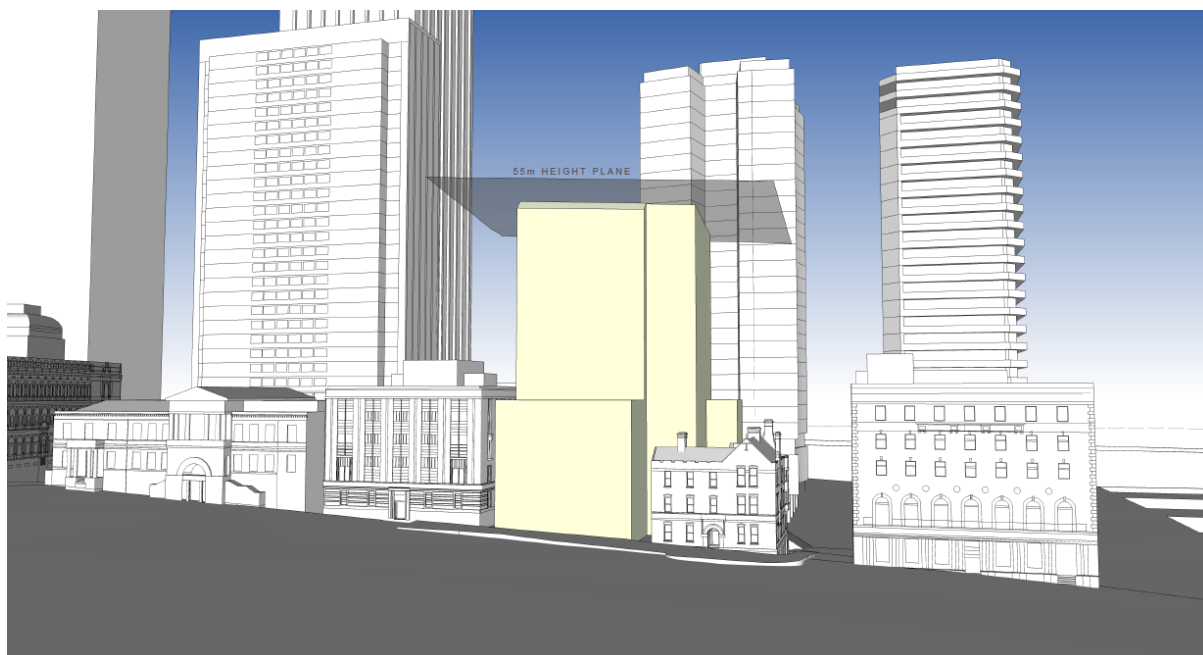


Figure 20: Maximum envelope axonometric view looking west showing height control compliance

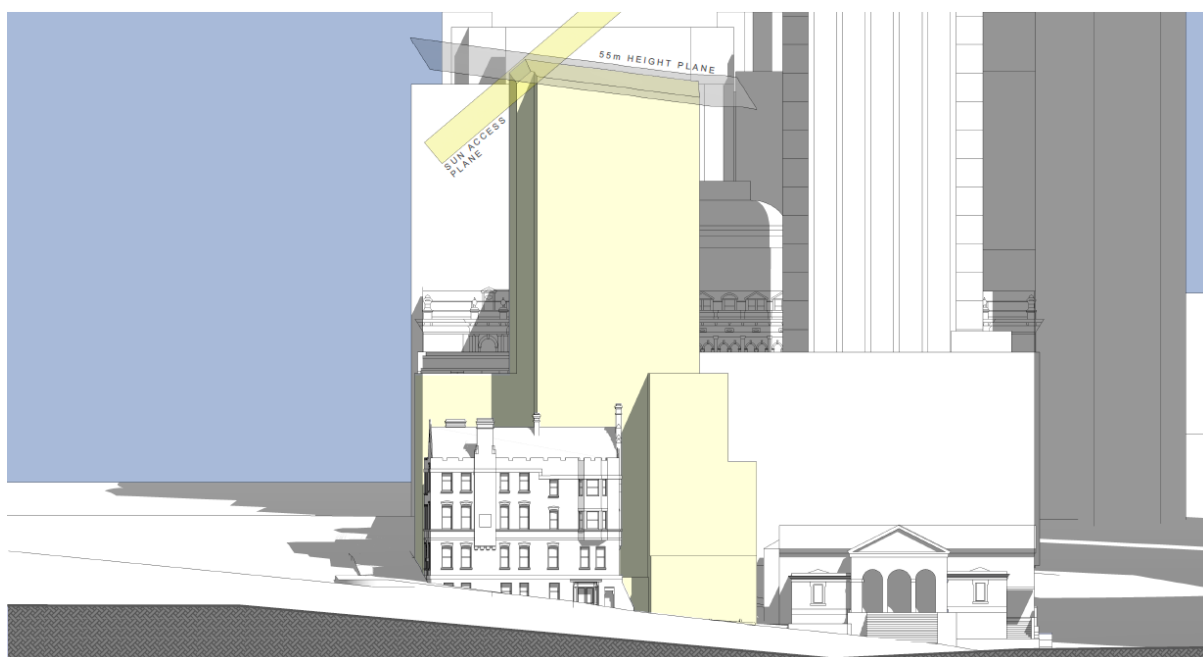


Figure 21: Maximum envelope axonometric view looking south showing height control and sun access plane compliance

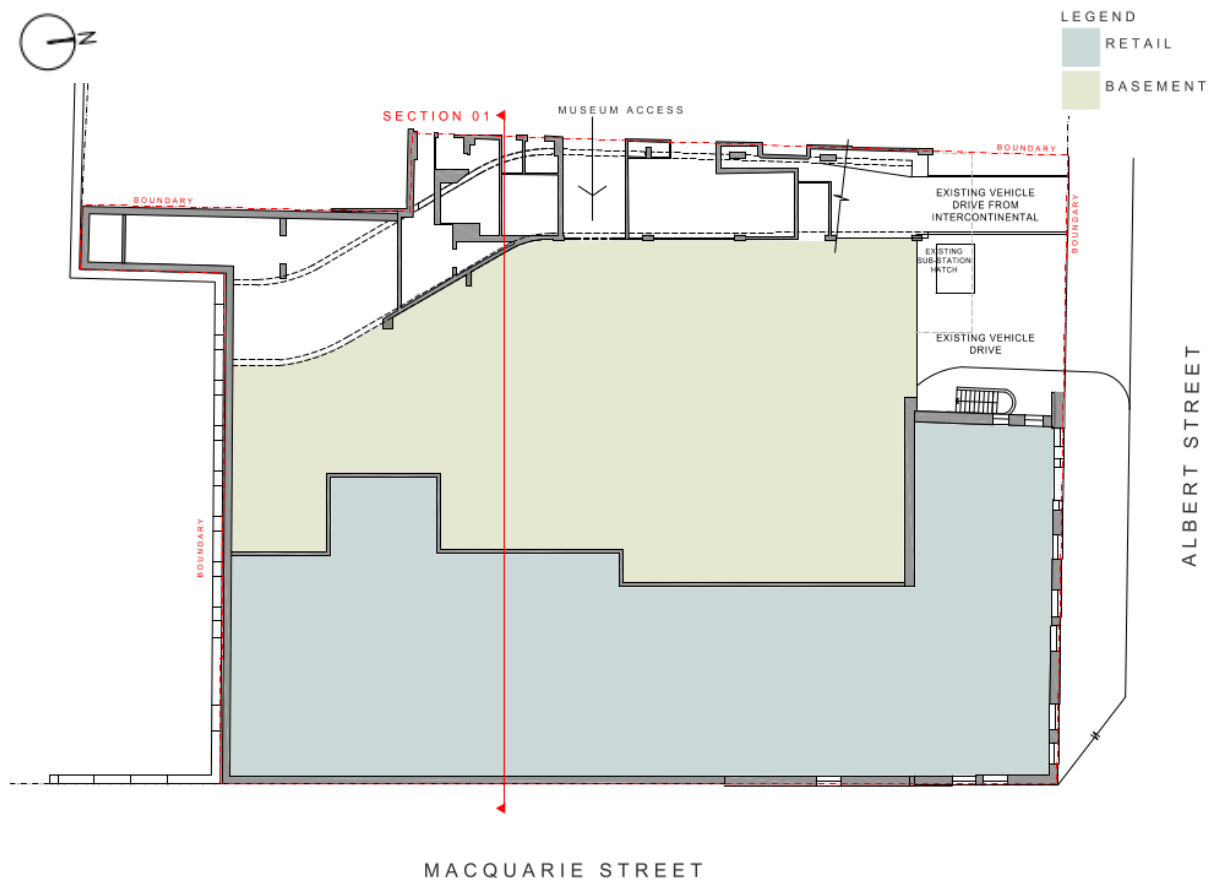


Figure 24: Proposed maximum envelope plan of lower ground floor level/ basement 1

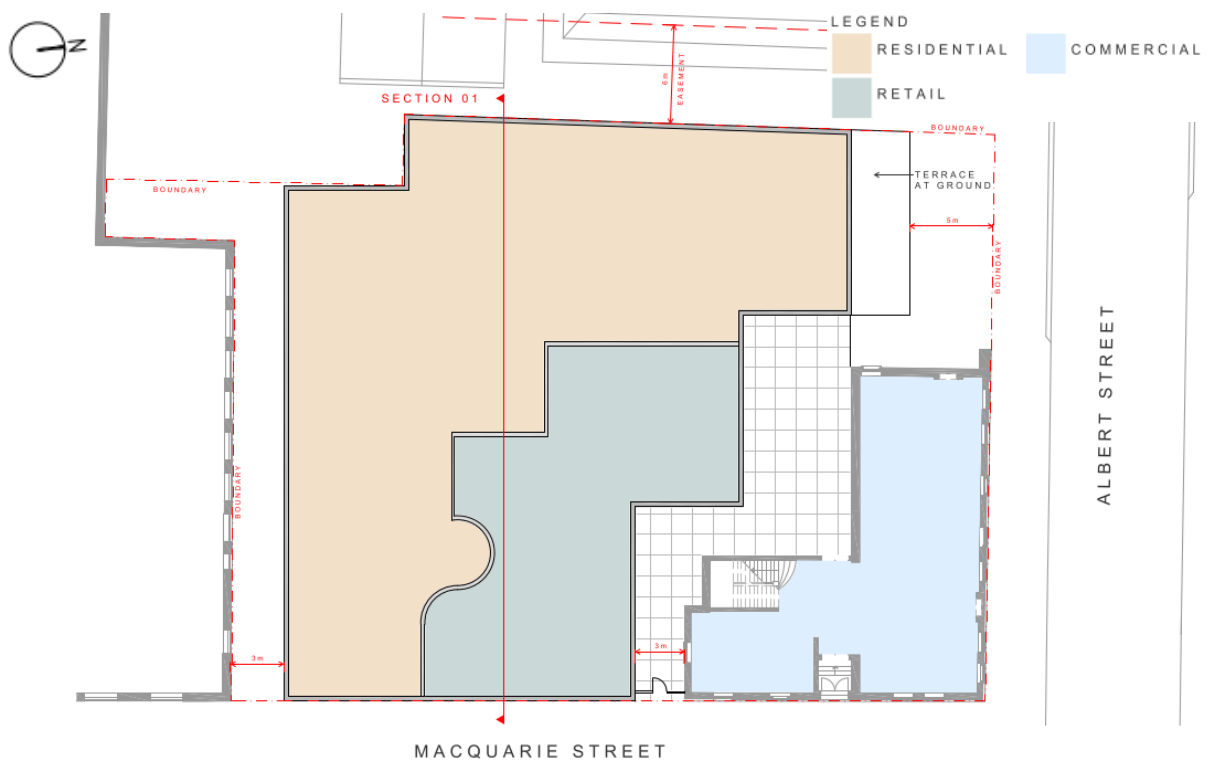


Figure 25: Proposed maximum envelope plan of ground floor level

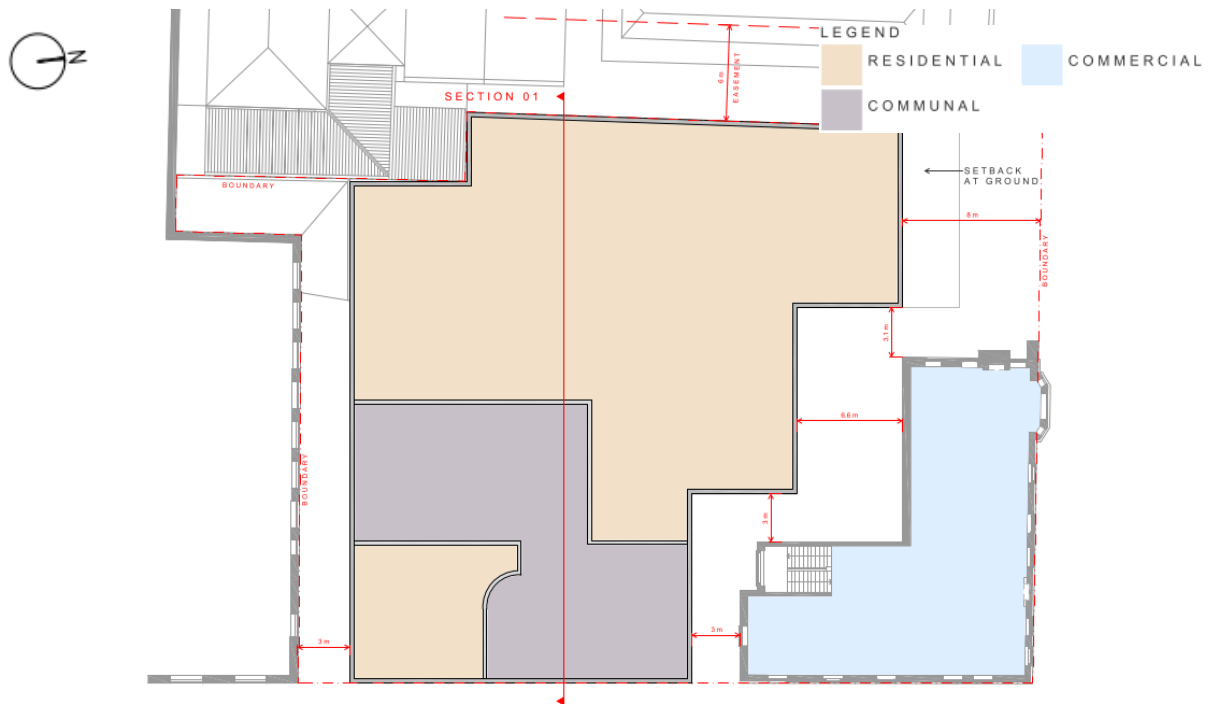


Figure 26: Proposed maximum envelope plan of level 1

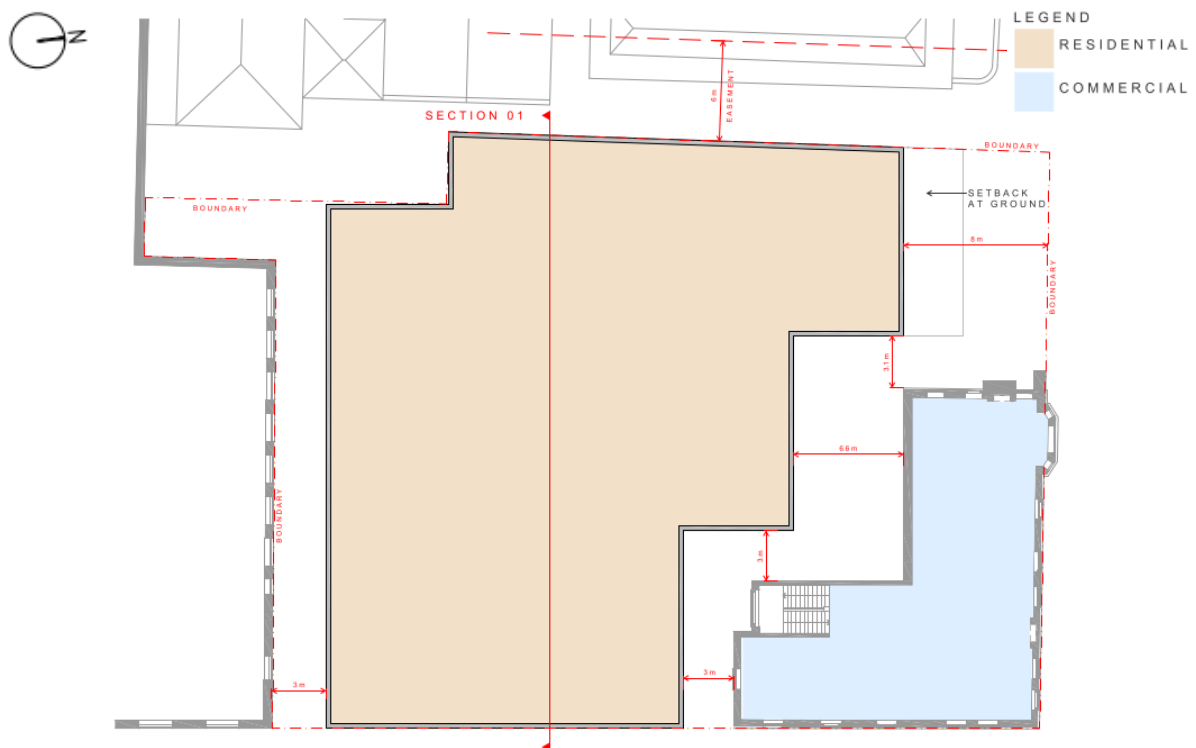


Figure 27: Proposed maximum envelope plan of level 2

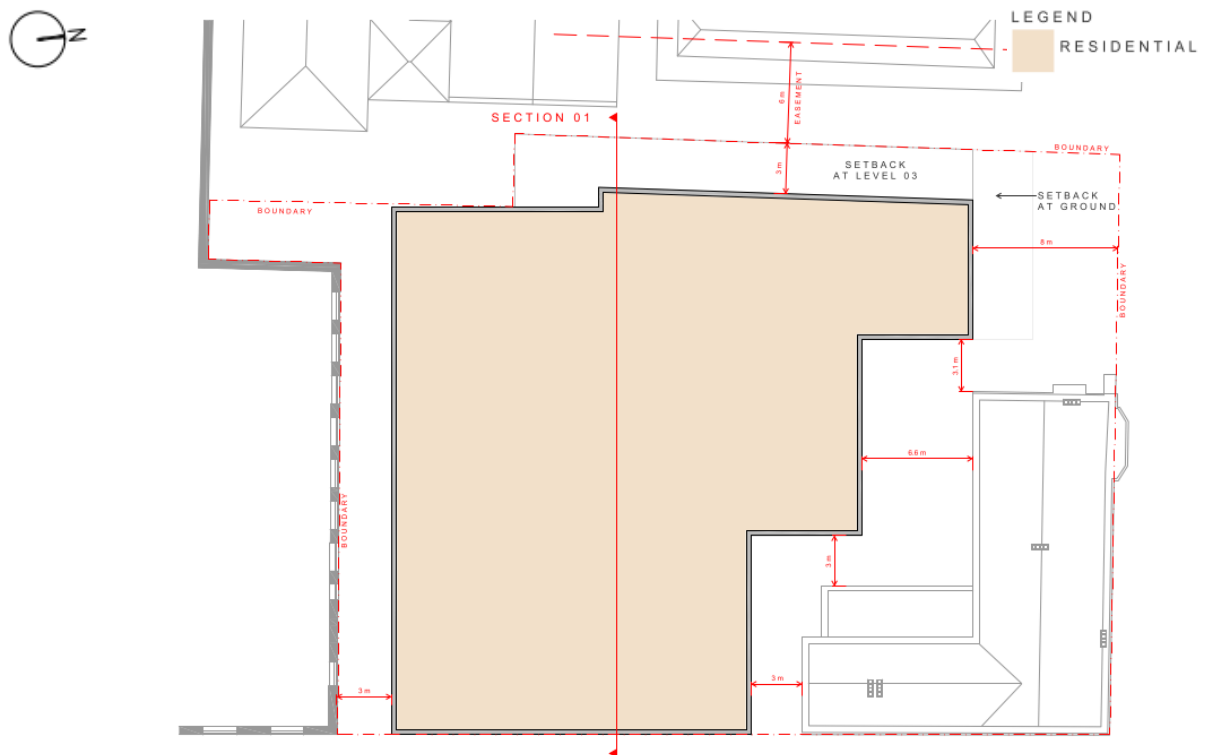


Figure 28: Proposed maximum envelope plan of levels 3 to 5

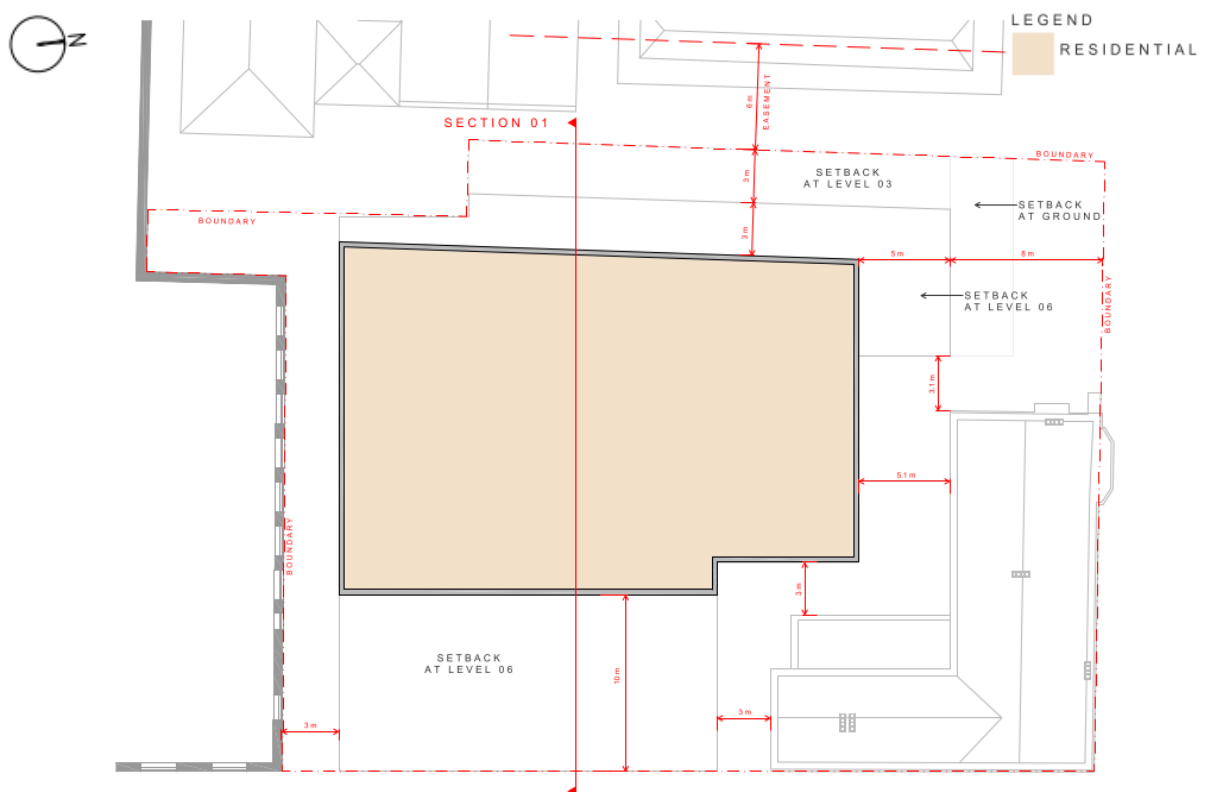


Figure 29: Proposed maximum envelope plan of levels 6 to 15

History Relevant to the Development Application

History of development applications and consents of adjoining properties

SSD 7693 - InterContinental Hotel Alterations and Additions

24. On 22 January 2020, the Independent Planning Commission granted consent for a concept building envelope for the expansion of the InterContinental Hotel, including the following:
- (a) Use the roof and airspace above Transport House for tourist and visitor accommodation purposes (an addition to the InterContinental Hotel)
 - (b) Establish building envelopes to facilitate external alterations and additions to the Hotel, including:
 - (i) Additions to the northern and eastern elevations of the Hotel, including a new plant room enclosure at Levels 8 and 9, wellness centre at Level 9, and a grand ballroom at Levels 10 to 12 extending over part of Transport House and the existing hotel podium;
 - (ii) Alterations to the roof of the hotel tower, including an expansion of the club lounge and terrace on Level 32; and
 - (iii) Internal alterations and upgrades to the Hotel (State Heritage-listed areas only)
25. The approved building envelope above Transport House is set back approximately 20 metres from Macquarie Street. Figure 30 below shows the approved building envelope additions to the InterContinental tower and ballroom addition over Transport House.



Development history of the Site

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27. Development Application D/2013/2011 was lodged with Council on 20 December 2013. This application sought consent for the following:
 - (a) Retention and adaptive re-use of the former Health Department Building;
 - (b) Partial retention and re-use of the Sir Stamford Hotel building;
 - (c) Construction of a 19 storey (plus plant level) building accommodating 102 residential apartments, 1,296 square metres of retail/commercial floor space and 65 basement car parking spaces; and
 - (d) Ancillary landscaping and public domain improvement works.
28. The development was placed on public exhibition and forwarded to the NSW Heritage Council for review. On 5 March 2014, the NSW Heritage Council issued General Terms of Approval (GTAs) for the development.
29. Following Council recommendations for design modifications regarding various concerns, amended plans were submitted on 1 July 2014. These plans were publicly exhibited and forwarded again to the NSW Heritage Council for further review.
30. The applicant filed a Class 1 appeal against the deemed refusal of the application at the NSW Land and Environment Court (LEC) on 15 August 2014 (*Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*).
31. Mulpha Australia Pty Ltd (Mulpha), the owner of Transport House at 99 Macquarie Street and the InterContinental Hotel (including the former Treasury Building) at 117-119 Macquarie Street joined the Class 1 proceedings on 2 October 2014. Mulpha pursuant to (the now repealed) Section 39A of the Land and Environment Court Act, as a party to the proceedings (*Stamford Property Services Pty Ltd v Council of the City of Sydney [2014] NSWLEC 1206*).
32. Issues raised in the proceedings included the following:
 - (a) Whether a site specific development control plan or a Stage 1 (Concept) development application is required;
 - (b) Whether a competitive design process is required;
 - (c) Whether the proposed development demonstrates design excellence;
 - (d) What are the setbacks required for the Macquarie Street and Albert Street frontages;
 - (e) Whether the proposed tower exceeds the applicable height control and, if so, whether a variation is justified;
 - (f) Whether the departures from the required setbacks to all boundaries have unacceptable impacts for bulk and scale, and view sharing impacts, that warrant refusal of the application;
 - (g) Impacts on the heritage significance of the heritage item on the site and items in the vicinity of the site;
 - (h) Impacts on the amenity of Transport House; and

- (i) Whether the amenity of the proposed residential apartments in terms of solar access, privacy, building separation, and private and communal open space, is adequate.
33. On 28 May 2015 the LEC dismissed the appeal, concluding that a decision on the impacts of the proposed development could not be determined as a Stage 1 DA or a site specific development control plan was not undertaken or provided as required by the Sydney LEP 2012.

History of the subject application

34. Following the Court's dismissal of the appeal to the deemed refusal of the development application D/2011/2078, the applicant held pre-DA discussions with Council to workshop a Concept DA proposal. The proposal was to address key issues raised during the Court proceedings including the following:
- (a) Lack of a Stage 1/ Concept application;
 - (b) Indication that a competitive design process would be undertaken;
 - (c) Providing compliant setbacks and heights;
 - (d) Providing adequate amenity to surrounding developments;
 - (e) Providing an appropriate building bulk that will not impact on the streetscape; and
 - (f) Providing adequate amenity to the future use within the site.
35. The subject development application was subsequently lodged with the City on 20 November 2017, placed on public exhibition, and referred to the Heritage Council of NSW for assessment. The original proposal indicated the future use of the former Health Department Building to be for residential use.
36. On 10 April 2018, the Heritage Council Approvals committee issued General Terms of Approval and referral advice in response to the proposal. The advice noted GTAs in accordance with Section 4.47 of the EP&A Act are only issued to the proposed development within the curtilage of the heritage item, in this case, being the outer walls of the former Health Department Building, rather than the entirety of the site. The GTAs noted consent was granted to future conservation works to the heritage item, but the future use for residential purposes was not approved due to the extent of physical intervention required.
37. Referral advice received from Heritage NSW also noted that an envelope for a tower with a 10 metre setback from Macquarie Street is not supported on the site as it would detrimentally impact the significance of surrounding heritage items and the Macquarie Street Special Character Area.

38. The application was presented to the City's Design Advisory Panel (DAP) on 10 May 2018. The DAP noted the building envelope is lower in height with increased setbacks compared to previous iterations of proposed designs on site. The DAP did not support the indicative use of the former Health Department Building as residential and recommended other uses that require less physical intervention be explored (i.e. commercial use). Further, the DAP supported the proposed envelope, however believed the indicative reference design could be further refined to address compliance issues like privacy. Overall, the DAP was generally supportive of the proposal (including its setback from Macquarie Street) and recommended a competitive design process be a mandatory requirement.
39. On 15 August 2018, Council officers requested an amended building envelope and amended supporting documentation to respond to a number of issues raised during the preliminary assessment of the application including issues raised by Heritage NSW and the DAP. Council requested the setbacks to Albert Street and the western boundary be increased to allow views to the western facade of the former Health Department Building be maintained and to provide a stepped backdrop to the Justice and Police Museum when viewed from Phillip Street. The increased setbacks were to also respond to setback and separation controls in the ADG in which setbacks are to increase at different heights in a building. It was also requested that an amended Design Excellence Strategy be provided to correct inconsistencies within the document and to provide a response to the Ecologically Sustainable Design (ESD) controls applicable to the development.
40. On 8 May 2018, a Class 4 appeal was filed with the Land and Environment Court by Mulpha Australia Limited (*Mulpha Australia Limited v Central Sydney Planning Committee [2018] NSWLEC 179*). Mulpha contended that the Heritage Council, in providing GTAs for the portion of the subject application that fell within the curtilage of the State heritage item (former Health Department Building) only, and not for the entirety of the application, misconstrued its role, and in so doing, fell into jurisdictional error, and that it ought to have either provided GTAs, or notification that it would refuse a *Heritage Act* approval, in relation to the whole of the proposal.
41. On 12 November 2018, the Court found the Heritage Council was legally obliged, when providing GTAs (pursuant to Section 4.47(2) of the EP&A Act) or advice that it will not grant approval (pursuant to Section 4.47(4)), as an approval authority with respect to an integrated development application, to respond to so much of the development as it considered had a relevant nexus to the land on which the Building is situated. The Court orders prohibited the development application from being determined pending the provision of a lawful decision by the NSW Heritage Council pursuant to Section 4.47 of the EP&A Act concerning the granting of GTAs (or refusal) of the application.
42. On 16 January 2019, the Class 4 appeal decision was appealed to the NSW Court of Appeal by Stamford Property Services to challenge the decision made (*Stamford Property Services Pty Ltd v Mulpha Australia Ltd [2019] NSWCA 141*). On 19 June 2019, the Court of Appeal held that the decision of the Land and Environment Court should be overturned as the NSW Heritage Council was able to issue GTAs for only the development contained within the curtilage of a heritage item. The Court orders from the Class 4 appeal were set aside and the proceedings were dismissed.

43. Amended plans were received on 16 January 2019 responding to Council's requests. The drawings included increased setbacks along Albert Street and the western boundary, in accordance with recommendations of Council planning officers.
44. The application was re-notified and re-exhibited for a period of 41 days and referred to Heritage NSW for further assessment.
45. A further assessment of the proposed indicative drawings and supporting documentation by Council indicated other non-compliances with the ADG and inconsistencies with development controls. This included the Design Excellence Strategy including a possible 10% increase in FSR as a result of a design competition where the indicative plans could not show a development that would accommodate this floor space (the indicative plans provided a FSR calculation of approximately 6.64:1 where the base FSR control for this area is 8:1). Further refinements to the indicative floor plans were also requested to respond to minor ADG non-compliances including natural ventilation, ceiling heights, apartment sizes, open space and balconies and privacy.
46. On 9 October 2019, the Heritage Council Approvals committee issued GTAs and referral advice in response to the amended plans. Advice received was similar to comments received in response to the original submission dated 10 April 2018. The Approvals committee provided GTAs to the conservation works within the former Health Department Building with the approval of a future use subject to a future application. This advice is discussed below in detail under the heading Heritage Act 1977.
47. An amended Design Excellence Strategy was submitted to Council on 12 August 2019 in which the application no longer sought a 10% bonus in floor space and instead sought a 10% bonus in height as a result of a future design competition. This amendment was a significant change to the proposal with implications for the assessment of the DA and would require amended indicative reference plans to assess the impacts of the taller development.
48. Final indicative reference scheme drawings with accompanying cross-ventilation and solar access documentation was submitted to Council on 1 October 2019. A final Design Excellence Strategy was submitted to Council on 6 February 2020 confirming that the development will not be seeking any bonus floor space or height through the competitive design process.
49. Further, a final Public Art Strategy was submitted on 31 January 2020 containing minor formatting changes that refer to correct advisory panels and the process of obtaining a consultant.
50. The assessment below in this assessment report is based on the amended envelope drawings submitted to the City on 16 January 2019, supporting documentation submitted on 12 August 2019, 1 October 2019, Design Excellence Strategy submitted on 6 February 2020 and Public Art Strategy submitted on 31 January 2020.

City of Sydney Act 1988

51. Section 51N requires the Central Sydney Planning Committee (the Planning Committee) to consult with the Central Sydney Traffic and Transport Committee (CSTTC) before it determines a DA that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works likely to have a significant impact on traffic and transport in the Sydney CBD. A full extract of this Section is provided below.

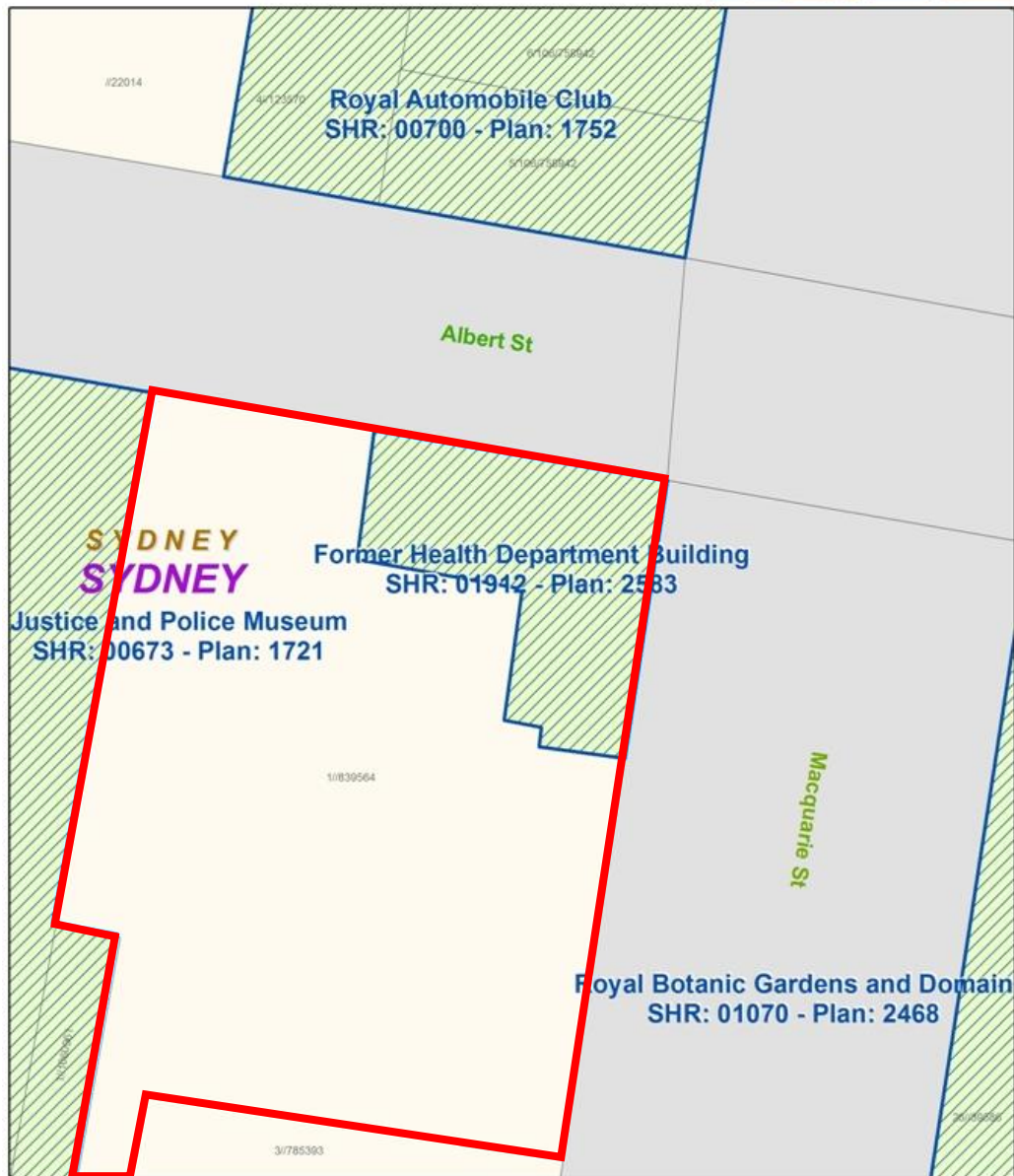
"51N Planning proposals having a significant impact on traffic and transport in the Sydney CBD

- (1) The Planning Committee must consult the CSTTC before it exercises a function under Part 4 that will result in the making of a decision that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD.
- (2) The Planning Committee must take into consideration any representations made by the CSTTC within the period of 21 days (or such other period as is agreed to by the CSTTC and the Planning Committee in a particular case) after consultation takes place.
- (3) The Planning Committee may delegate to a subcommittee of the Planning Committee, or the general manager or another member of the staff of the City Council, any of its functions under this section other than this power of delegation. A delegation can be given subject conditions. A delegation does not (despite section 38) require the approval of the Minister administering that section.
- (4) The failure of the Planning Committee to comply with this section does not invalidate or otherwise affect any decision made by the Planning Committee."
52. Having liaised with the City's Access Unit, the delegate of the CSPC in this instance, the Director of Planning, Development and Transport recommends that the proposal is not considered to have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary.

Heritage Act 1977

53. The subject site contains the former Health Department Building which is listed on the State Heritage Register as an item of State significance (SHR 01912). Figure 31 below shows the curtilage of the heritage item in respect of the overall site area, as provided on the NSW Heritage Register website.

Heritage Council of New South Wales



State Heritage Register

Gazettal Date: 09 October 2013

0 2.5 5 10 15 20 Metres

Scale: 1:350

Produced by: Vivian Ren

Legend

- | | |
|---------------|--------------|
| SHR Curtilage | Land Parcels |
| LGAs | Water |
| Suburbs | Roads |
| | Railways |
| | NSW Reserves |

Figure 31: Curtilage of the State heritage listed former Health Department Building. The site boundaries subject to this assessment are outlined in red.

54. In accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, the NSW Heritage Council granted GTAs for the conservation of the Health Department Building subject to conditions on 9 October 2019. The Approvals Committee also provided advice in response to the remainder of the proposed development that fell outside the curtilage of the heritage item. The advice received from NSW Heritage is provided below:

The Heritage Council Approvals Committee:

1. **Agrees** to issue approval for the conservation of the Health Department Building (former), in accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, subject to the following terms of approval:

- a. Detailed schedule of conservation works along with an implementation plan shall be submitted with a future application to carry out these works;
- b. This conservation works schedule must be prepared in consultation with an appropriately qualified and experienced heritage consultant;
- c. All conservation works must be implemented as part of the adaptive reuse works prior to an occupation certificate being issued for the Health Department Building (former).
- d. The adaptive reuse of the Health Department Building (former) is not approved at this stage as no details have been provided for internal and external changes required to achieve this use. The use is to be considered as part of the Stage 2 development application along with such details.

2. **Provides** the following comments on the proposed development located outside the State Heritage Register (SHR) curtilage of the Health Department Building (former):

The proposed tower development is not supported for the following reasons:

- a. The proposed tower block with a 10m setback from Macquarie Street frontage would have a detrimental impact on the setting of several SHR listed heritage items and the Macquarie Street Special Character Area. The subject site located within a group of State Heritage Register listed (SHR) items including the Justice and Police Museum (SHR No 00726) and the InterContinental Hotel former Treasury Building (SHR No 00355) forms an important component of the Macquarie Street and Bridge Street precinct.
- b. The State heritage significance of the Former Health Department Building is inextricably linked to its ability to reflect the status of Macquarie and Bridge Streets as a prestige address for many government institutions, becoming an important component of the precinct. The erection of the proposed tower block would have a permanent detrimental impact on the setting of the item and the historic precinct of which it is an important component.

3. **Recommends** that the Sydney Development Control Plan 2012 planning controls be revised to support only low-scale development between 89-121 Macquarie Street to protect the heritage values of this low-scale precinct. The current street wall height and existing low-scale

setting of the precinct should be maintained as the dominant height for the full 30m depth of all sites fronting Macquarie Street from the Chief Secretary's Building (SHR No 00766) through to the Royal Automobile Club (SHR No 00700).

55. A 30 metre setback would prevent the proposal. The CSPC previously agreed to the 10 metre setback in the current DCP. Refer to paragraph 81. Further, in correspondence from NSW Heritage received on 16 December 2019, the Heritage Council Approvals Committee also provides the following comment:

If the project proceeds to the Stage 2 DA, the Heritage Council will request the opportunity to communicate with the City of Sydney to seek heritage input to the brief and to the design competition.

56. As per Section 3.3 of the City of Sydney Competitive Design Policy, it is recommended that one member of the jury for a design competition be an appropriately qualified heritage consultant. Additionally, Council's Design Excellence Unit have been informed of the request for Heritage Council input to any future competitive design process brief.
57. The GTAs as provided in Part 1 above are recommended as conditions of consent and are contained within Schedule 3 of Attachment A. The referral advice provided in Parts 2 and 3 above are discussed in further detail under the heading Issues below.

Economic/Social/Environmental Impacts

58. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

(a) Environmental Planning Instruments and Development Control Plans.

State Environmental Planning Policy No 55—Remediation of Land

59. The aim of SEPP 55 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.
60. The City's Health Unit is satisfied that subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

61. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:

(a) **Principle 1: Context and Neighbourhood Character**

- (i) The site is centrally located in the Sydney Central Business District, amongst buildings of similar height and scale and in proximity to existing and planned public transport infrastructure, including multiple bus routes, bicycle lanes, ferry wharves and light, heavy and metro rail stations. The site is also located within the Macquarie Street Special Character Area and is within close proximity to a number of heritage items. The proposal is of an appropriate bulk and scale in consideration of surrounding development and will contribute to the vitality of the locality and the broader City of Sydney Local Government Area.
- (ii) It is located in the B8 Metropolitan Centre zone and the proposal is generally in accordance with the objectives of the Sydney LEP 2012 and the Sydney DCP 2012, subject to the recommended conditions. The proposal is also consistent with the existing and desired future character of the locality.

(b) **Principle 2: Built Form and Scale**

- (i) The immediate locality along Macquarie Street and Albert Street has a diverse built form and scale, architectural building styles and land uses. The form and scale of development anticipated in the area is consistent with the height and typology of the proposal.
- (ii) The proposed building envelope adheres to the provisions of the Sydney LEP 2012, including the maximum height prescribed by the Royal Botanic Gardens sun access plane. The proposal responds satisfactorily to the surrounding urban renewal context, while achieving a suitable form and scale, subject to the recommended conditions.
- (iii) The proposal maintains the existing street wall height of the heritage item facades on the site.

(c) **Principle 3: Density**

- (i) The proposed density of development in the indicative reference design scheme drawings demonstrates that the envelope accommodates a building which complies with the maximum Floor Space Ratio development standard in Clause 4.4 of the Sydney LEP 2012.
- (ii) It is consistent with the desired future character envisaged in the locality of the Sydney Central Business District and the broader City of Sydney Local Government Area.

(d) **Principle 4: Sustainability**

- (i) The proposal is accompanied by an indicative reference design scheme showing compliance with the minimum solar access and natural cross ventilation requirements of SEPP 65 and the Apartment Design Guide (ADG).

- (ii) The competitive design process phase for the detailed design of the development is required to achieve sustainable development targets and to optimise opportunities for ecologically sustainable development (ESD) and best practice environmental performance, including low running costs in relation to water and energy use.
 - (iii) Any subsequent detailed design development application must also be accompanied by a BASIX Certificate to demonstrate that the NSW Government's sustainability requirements are met.
- (e) **Principle 5: Landscape**
 - (i) The existing building footprint is constructed to the site boundaries. Accordingly, there is no at grade landscaped area. This is acceptable in the context of the Sydney Central Business District.
 - (ii) Conditions are recommended requiring any future detailed design development application involving the development of a residential flat or mixed use building to provide areas of communal open space, and to be accompanied by a detailed landscape plan and statement in accordance with the concept landscape statement.
- (f) **Principle 6: Amenity**
 - (i) The indicative reference design scheme demonstrates that a residential apartment building within the proposed tower form is capable of achieving an acceptable level of amenity.
 - (ii) The indicative scheme provides compliant levels of solar access, natural cross ventilation and apartment sizes.
- (g) **Principle 7: Safety**
 - (i) The indicative reference scheme demonstrates that separate and secure entrances are able to be provided to the different building uses. Details will need to be considered as part of any future detailed design application.
 - (ii) A condition is recommended for a Security Management Plan prepared in accordance with the 'Crime Prevention Through Environmental Design' (CPTED) principles.
- (h) **Principle 8: Housing Diversity and Social Interaction**
 - (i) The site benefits from its proximity to existing and future retail premises (within and outside the site) and commercial, recreational and entertainment facilities in the wider locality of the Sydney Central Business District. The site is suitable for the proposed indicative residential uses.
 - (ii) The indicative reference design demonstrates that there will be a suitable mix of dwellings provided in the proposed building envelopes on the site and that a future building can be provided with adequate areas of communal open space. This will require demonstration in any future detailed design development application.

(i) **Principle 9: Aesthetics**

- (i) This is a matter for a subsequent detailed design development application. A condition is recommended to ensure that the future building provides suitable architectural diversity, expression and character in order to achieve consistent with this design quality principle.

62. The development is generally acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

Apartment Design Guide (ADG)

63. Clause 28 of SEPP 65 requires consideration of the ADG, which provides additional detail and guidance for applying the design quality principles outlined in SEPP 65 to residential apartment developments.

64. Compliance with the guidelines in the ADG, where relevant to the assessment of the subject concept development application, is addressed in the table below.

2E Building Depth	Compliance	Comment
12-18 metres (glass to glass)	Able to comply	The proposed building envelope has a maximum east-west dimension of approximately 35.8 metres and a maximum north-south dimension of approximately 38.5 metres. While this exceeds the maximum 18 metre requirement, it allows for flexibility in terms of building position and articulation when designing a future building. The future detailed design requires compliance with the maximum building depth criterion.

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): 12 metres between habitable rooms / balconies 9 metres between habitable and non-habitable rooms 6 metres between non-habitable rooms	Partial compliance	The site utilises the existing 6 metres wide light and air easement benefiting the site over the adjacent site to the west (Justice and Police Museum) and includes this space in the setback calculations. Including the 6 metre width the easement provides to the west, the subject envelope provides compliant setbacks along the western frontage.

2F Building Separation	Compliance	Comment
Five to eight storeys (approximately 25 metres): 18 metres between habitable rooms / balconies 12 metres between habitable and non-habitable rooms 9 metres between non-habitable rooms		The proposed envelope along the southern frontage is set back 3 metres from the boundary as per the light and air easement that burdens the subject site. The proposed indicative scheme suggests the southern-facing wall will be a blank wall, similar to the existing hotel development on site. This is an appropriate response to the urban context and is an acceptable urban design outcome. It is noted that should a future detailed design development application include active uses and window openings along the southern boundary, setbacks must be increased to provide adequate building separation.
Nine storeys and above (over 25 metres): 24 metres between habitable rooms / balconies 18 metres between habitable and non-habitable rooms 12 metres between non-habitable rooms		

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Able to comply	The ADG would require 353 square metres of communal space on the site (based on the total site area minus part of the site occupied by the former Health Department Building). The indicative proposal provides approximately 138 square metres of communal open space and 619 square metres of internal communal facilities within the basement and Level 1.
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).		

3D Communal and Public Open Space	Compliance	Comment
		While the outdoor space identified on the indicative reference scheme is significantly less than the requirements of the ADG, there is sufficient space within the proposed envelope to provide a compliant area of communal open space. This is to be considered in the detailed design development application having regard to the quality/quantity of open space provided.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6 metres	No but acceptable	The site is located in the highly urbanised environment of the Sydney Central Business District, where a lack of deep soil zones is characteristic of development in the locality. No deep soil zones are proposed, given that opportunities to provide them on the site are constrained, as the existing and proposed building footprint occupies the entirety of the site area. No objection to the lack of deep soil zones is raised and matters relating to stormwater management and landscape opportunities can be investigated and addressed in any future detailed design development application.

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): 6 metres between habitable rooms / balconies 3 metres between non-habitable rooms	Able to comply	The indicative reference scheme generally provides adequate separation distances to maintain visual privacy between buildings within the subject site and adjoining development.

3F Visual Privacy	Compliance	Comment
Five to eight storeys (25 metres): 9 metres between habitable rooms / balconies 4.5 metres between non-habitable rooms		Further design development is required regarding future low-level apartments facing towards the internal courtyard, and building separation of the proposed building envelope and the adjacent former Health Department Building.
Nine storeys and above (over 25 metres): 12 metres between habitable rooms / balconies 6 metres between non-habitable rooms		A future detailed design development application must take into consideration the proximity of a future addition above Transport House. The indicative reference scheme indicates the southern boundary is predominantly a blank wall with obscured windows, with most views directed towards the west, east and north. 'The south-western corner and western boundary of any future building on the site may need to consider privacy features.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No, but able to comply	The sun's eye views submitted with the amended application demonstrate that 61% (45 apartments) in the indicative concept design scheme achieve solar access as required by the ADG. The proposed apartment mix and configuration can be amended in any future detailed design application to demonstrate compliance.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Able to comply	As above, the proposed envelope is capable of achieving compliance with the design criteria. A condition is recommended requiring any future detailed design development application satisfy the relevant provisions of the ADG.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	Indicative floor plans submitted demonstrate that the proposed building envelope is capable of providing naturally ventilated habitable rooms.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No, but able to comply	A review of the indicative plans indicates only 40% of the apartments within the scheme are naturally cross-ventilated with another 18% being able to comply subject to design modifications. With further design development, the envelope is capable of meeting the design criteria. A condition is recommended requiring any future detailed design development application satisfy the relevant provisions of the ADG.
Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.	Able to comply	The internal layout of apartments are not approved as part of a concept application. Any proposal for cross-over or cross-through apartments will be considered as part of a detailed design development application.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7 metres	Yes	The submitted indicative reference scheme plans suggest the floor to underside of the slab is at a height of 2.9 metres. Provided the ceiling is included and is no lower than 200mm from the slab, the scheme is compliant.
Non-habitable rooms: 2.4 metres	Yes	The submitted indicative reference scheme plans suggest the floor to underside of the slab is at a height of 2.9 metres. The proposal is able to achieve floor to ceiling heights of 2.4 metres for non-habitable rooms.

4C Ceiling Heights	Compliance	Comment
Two-storey apartments: 2.7 metres for main living area floor, 2.4 metres for second floor, where it does not exceed 50% of the apartment area.	Yes	Each floor on the submitted indicative reference scheme provides a floor to the underside of the slab clearance of 2.9 metres and is able to achieve compliant floor to ceiling heights in two-storey apartments.
If located in mixed use areas – 3.3 metres for ground and first floor to promote future flexibility of use.	Partial compliance	The indicative plans provide a floor to underside of slab height of 3.5 metres on the ground floor and 2.9 metres on the first floor. As floor to floor heights are not approved as part of a concept application, the matter can reasonably be resolved as part of the detailed design.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: • Studio: 35 square metres • 1 bed: 50 square metres • 2 bed: 70 square metres • 3 bed: 90 square metres	Able to comply	The submitted indicative reference scheme plans demonstrates that minimum apartment sizes and other design criteria can be accommodated within the proposed building envelope. A condition is recommended requiring any future detailed design development application satisfy the relevant provisions of the ADG.
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.		
Habitable room depths are to be no more than 2.5 x the ceiling height.		
8m maximum depth for open plan layouts.		

4D Apartment Size and Layout	Compliance	Comment
Minimum area for bedrooms (excluding wardrobes): • master bedroom: 10m² • all other bedrooms: 9m² Minimum dimension of any bedroom is 3m (excluding wardrobes).		
Living and living/dining rooms minimum widths: • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m		
4m minimum width for cross over and cross through apartments.		

4E Private Open Space and Balconies	Compliance	Comment
Studio apartments are to have a minimum balcony area of 4 square metres with a minimum depth of 1 metre. One bed apartments are to have a minimum balcony area of 8 square metres with a minimum depth of 2 metres. Two bed apartments are to have a minimum balcony area of 10 square metres with a minimum depth of 2 metres. Three bed apartments are to have a minimum balcony area of 12 square metres with a minimum depth of 2.4 metres.	Yes	The indicative reference design scheme submitted with the application demonstrates that compliant private open space areas can be achieved in the proposed envelope including apartments on the ground floor and on a podium.

4E Private Open Space and Balconies	Compliance	Comment
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15 square metres and a minimum depth of 3 metres.		

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Able to comply	Submitted indicative plans demonstrate that no more than 8 apartments per level can be provided per circulation zone.
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Able to comply	Indicative plans demonstrate that the proposed building envelope can accommodate more than one lift core and will not have more than 40 apartments sharing a single lift.
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.	Able to comply	Indicative floor plans demonstrate that the proposed building envelope is capable of addressing circulation and privacy impacts with adequate separation between habitable room windows and common circulation areas.
Daylight and natural ventilation are provided to all common circulation spaces.	Able to comply	The proposed building envelope can provide opportunities for common circulation spaces with natural ventilation and daylight. Design details to achieve natural ventilation and daylight to common circulation areas will be required as part of a detailed design development application.

4G Storage	Compliance	Comment
Minimum storage provision facilities: • Studio: 4 cubic metres • 1 bed: 6 cubic metres • 2 bed: 8 cubic metres • 3 bed: 10 cubic metres (Minimum 50% storage area located within unit)	Able to comply	The submitted indicative reference scheme demonstrates adequate storage facilities are capable of being provided within the proposed building envelope.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Able to comply	The site is located within close proximity to the Cahill Expressway which although is not identified as a road carrying more than 40,000 annual average daily traffic, has potential noise impacts on the indicative future residential use. An assessment of noise impacts is required to be submitted as part of the future detailed design development application and the design of the building must respond to these potential acoustic impacts.

State Environmental Planning Policy (Infrastructure) 2007

65. The provisions of Infrastructure SEPP have been considered in the assessment of the development application.

Clause 45

66. The application is subject to Clause 45 of the Infrastructure SEPP, given that it comprises development likely to affect an electricity transmission or distribution network.
67. In accordance with the Clause, the application was referred to Ausgrid for a period of 21 days. Ausgrid raised no objection to the proposal, subject to the recommended conditions in Attachment A to this report.

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

68. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the SREP.

69. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
- (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
70. The site is within the Sydney Harbour Catchment and eventually drains into the 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 SREP are not applicable to the proposed development. The development is consistent with the controls contained within the SREP.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

71. Any subsequent detailed design development application will be required to satisfy BASIX requirements.
72. A condition is recommended to ensure that it is accompanied by a valid BASIX Certificate, in accordance with the provisions of the BASIX SEPP and Environmental Planning and Assessment Regulation 2000.

Sydney Local Environmental Plan 2012

73. The site is located in the B8 Metropolitan Centre zone. The proposed mix of uses (residential apartments, commercial uses and retail premises) are all permissible with consent in the zone.
74. The relevant matters under the Sydney LEP 2012 for the proposal are outlined in the compliance tables below.

Development Control	Compliance	Comment
4.3 Height of buildings	Yes	A maximum height of 55 metres is permitted over part of the site, whilst another part is governed by the Royal Botanic Gardens sun access plane. A height of 55 metres is proposed.
4.4 Floor space ratio	Yes	A maximum FSR of 8:1 is permitted. The indicative reference design scheme drawings demonstrate that the proposal can achieve compliance with the maximum FSR for the subject site.

Development Control	Compliance	Comment
		A condition is recommended ensuring any subsequent detailed design development application complies and requires the provision of precise calculations and details of the distribution of Gross Floor Area (GFA) and FSR with any such future application.
5.10 Heritage conservation	Yes	The subject site includes a State heritage item. While the proposal will result in extensive works on the site, the impacts on the item is generally acceptable, subject to conditions. Refer to the further discussion and assessment provided below under the Issues heading.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.17 Sun access planes	Yes	The subject site is subject to the Royal Botanic Gardens Sun Access Plane. The sun access plane results in a maximum height of approximately RL 70.030 which the proposal complies with.
6.21 Design excellence	Yes	The proposal is for concept building envelopes which are capable of accommodating future buildings which can exhibit design excellence in accordance with the objective and matters for consideration in Clause 6.21 of the Sydney LEP 2012. Refer to the further discussion provided below under the Issues heading.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Able to comply	The maximum number of car parking spaces permissible will be dependent on the number of apartments proposed in any future detailed design development application and the quantum of retail and commercial floor space provided. The indicative reference scheme proposed a total of 63 car spaces within the basement, inclusive of service vehicles, car share spaces, retail and residential parking. The mix of land uses within the indicative scheme would allow for up to 51 spaces. The subject application is not determining a set number of parking spaces on the site. A compliant number of spaces can be provided as part of a future, detailed design development application.
7.14 Acid sulfate soils (ASS)	Able to comply	The site is located on land identified as part Class 2 and part Class 5 ASS. It will be determined at the detailed design development application stage if the ASS provisions of the Sydney LEP 2012 are triggered by any proposed works under natural ground level.
7.15 Flood planning	Able to comply	The subject site is located in the City Area catchment and is flood affected. The City's Interim Floodplain Management Policy is applicable to this site. Appropriate conditions are recommended and included in Attachment A to this report in order to ensure that any future detailed design development application will be required to demonstrate that any relevant flood planning design criteria set out in Clause 7.15 of the Sydney LEP 2012 are met.

Part 7 Local Provisions - General	Compliance	Comment
7.20 Development requiring preparation of a development control plan	Yes	The area of the site is greater than 1,500 square metres, which triggers the requirement for the preparation of a site-specific development control plan. Section 4.23 of the Environmental Planning and Assessment Act 1979 allows a concept approval to be lodged in lieu of preparing a development control plan. The matters under Clause 7.20 (4) of the Sydney LEP 2012 are satisfied by the documentation submitted with the application and the recommended conditions. The proposal satisfactorily sets expectations for the form, massing, scale, environmental impacts, ESD outcomes, access outcomes, interface with ground level and landscaping outcomes of the development.

Sydney Development Control Plan 2012

75. The relevant matters to be considered under the Sydney DCP 2012 for the proposed development are outlined below.

2. Locality Statements – Macquarie Street Special Character Area

The subject site is located in the Macquarie Street Special Character Area. The proposed building envelope is in keeping with the character of the area and design principles, in that the envelope is consistent with the character of the western built edge of the special character area.

The proposed envelope emphasises Macquarie Street as the eastern built edge of the City, and comprises a medium scale building envelope which creates a stepping up to the city high rise built character beyond when viewed from the Botanic Gardens. Further, the proposal is consistent with the supporting development principles for the Macquarie Street Special Character Area for the following reasons:

- (a) The proposed envelope does not impact views from the public domain south towards Hyde Park, nor does it impact views and vistas to the north towards the Sydney Opera House.

2. Locality Statements – Macquarie Street Special Character Area

- (b) The envelope provides an appropriate separation from the former Health Department Building to enhance the historic significance of the building, particularly on Albert Street where the proposed envelope includes an acceptable setback at the ground plane to expose the entire western elevation of the heritage item.
- (c) The proposed envelope supports the urban character and scale of Macquarie Street and the sense of a built edge definition to the western side of the Royal Botanic Gardens.
- (d) The envelope podium abuts the street alignment along Macquarie Street and comprises compliant street frontage heights and setbacks along Macquarie Street and Albert Street, as per Section 5.1 of the Sydney DCP 2012.
- (e) The building envelope does not adversely impact solar access to the Royal Botanic Gardens and is compliant with the relevant sun access plane.

Any future detailed design development application must ensure compliance with the character statement and the supporting principles, particularly in designing a building that is sympathetic to its historic setting whilst enhancing the historic significance of surrounding heritage items.

A final Conservation Management Plan is also required as part of a future detailed design development application to ensure special consideration is given to development in the vicinity of a heritage item, both within the subject site and adjoining heritage items of both local and State significance.

The site also directly adjoins the Circular Quay Special Character Area, being located just east of the border of the locality. The proposed envelope satisfies the objectives and provisions of the special character area and provides an appropriate transition between low-scale historic buildings to mid- and high-rise developments at the north of the CBD. Further, the envelope is capable of providing a sympathetic backdrop to the Justice and Police Museum when viewed from public spaces, particularly from Scout Place, a public plaza just north of the AMP tower. Refer to the further discussion and assessment provided below under the Issues heading.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public Art	Able to comply	A preliminary Public Art Strategy was submitted with the application. The strategy was reviewed by Council staff and is acceptable with regard to the provisions of Section 3.1.5 of the Sydney DCP 2012. The strategy is recommended to form part of the competitive design process design brief to inform any future design competition.

3. General Provisions	Compliance	Comment
		A detailed Public Art Strategy is required to be developed for the site in accordance with the preliminary strategy and the City's Public Art Policy and Section 3.1.5 of the Sydney DCP 2012. Appropriate conditions are recommended ensuring that this strategy is required to be prepared and submitted as part of any future detailed design development application.
3.2 Defining the Public Domain	Yes	The proposal maintains and improves the existing active street frontage with the provision of retail and commercial uses fronting both Macquarie Street and Albert Street. The proposal will make a positive contribution to the public domain and will not have an adverse impact on views from the public domain to utilised public places, Sydney Harbour, the heritage item contained within the site or surrounding heritage items.
3.3 Design Excellence and Competitive Design Processes	Yes	Any future detailed design development application associated with the proposed development will be the subject of a competitive design process. An appropriate condition to this effect is recommended and included in Attachment A to this report.
3.6 Ecologically Sustainable Development	Able to comply	Appropriate conditions are recommended and included in Annexure A to this report in order to ensure that the relevant ESD commitments in the Design Excellence Strategy will be carried through the competitive design process to the detailed design development application.

3. General Provisions	Compliance	Comment
		Furthermore, a condition is recommended to ensure that any subsequent detailed design development application is accompanied by a valid BASIX Certificate, in accordance with the provisions of the BASIX SEPP and Environmental Planning and Assessment Regulation 2000.
3.9 Heritage	Yes	The site contains the former Health Department Building which is listed on the State Heritage Register as being a building of State heritage significance. The proposal has acceptable heritage impacts and will not result in an adverse impact on the surrounding heritage setting. The application is not required to be considered by a separate heritage committee as per Section 3.9.4 of the Sydney DCP as the proposal does not involve a reduction or increase of the envelope of the heritage item within the site, nor does it involve an overhang of any new envelope over more than 20% of the airspace of the heritage item. Refer to the further discussion and assessment provided below under the Issues heading.
3.11 Transport and Parking	Able to comply	Appropriate conditions of consent are recommended and included in Attachment A to this report to ensure that adequate bicycle parking facilities are provided as part of any future detailed design development application. Refer to the further discussion and assessment provided below under the Issues heading.

3. General Provisions	Compliance	Comment
3.12 Accessible Design	Able to comply	An appropriate condition is recommended and included in Attachment A to this report to require an Access Report to be submitted with any future detailed design development application to ensure that the future buildings on the site incorporate accessible design.
3.13 Social and Environmental Responsibilities	Able to comply	A condition is recommended and included in Attachment A to this report to require a Security Management Plan, prepared in accordance with the 'Crime Prevention Through Environmental Design' principles, to be submitted with any future detailed design development application.
3.14 Waste	Able to comply	A condition is recommended and included in Attachment A to this report to require that a Waste Management Plan is submitted with any subsequent detailed design development application, in accordance with the controls in Section 3.14 of the Sydney DCP 2012.
3.16 Signs and Advertisements	Able to comply	A condition is recommended and included in Attachment A to this report to require a signage strategy to be submitted with any subsequent detailed design application, in accordance with the requirements of Section 3.16.1 of the Sydney DCP 2012.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.1 Building height 4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The proposed building envelope is consistent with the prescribed height controls and street frontage heights as required in Section 5 of the Sydney DCP 2012.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	The indicative reference design scheme drawings do not provide a minimum floor to floor height of 4.5 metres however proposed envelopes can accommodate compliant floor to ceiling and floor to floor heights.
4.2.2 Building setbacks	N/A	The site is subject to building setback controls prescribed in Section 5 of the Sydney DCP 2012. Refer to the further discussion and assessment provided below under the Issues heading.
4.2.3 Amenity	Able to comply	The indicative reference design scheme drawings demonstrate that a building can be constructed within the proposed envelope with acceptable levels of residential amenity.
4.2.4 Fine grain, architectural diversity and articulation	Able to comply	The proposed envelope provides a street frontage length of approximately 21.5 metres along Macquarie Street and 11 metres along Albert Street whilst the former Health Department Building provides street frontage lengths of approximately 18.5 metres along Macquarie Street and 21.5 metres along Albert Street. Further, the separation between the proposed envelope and the former Health Department Building is acceptable as it mimics a similar 3 metres separation between the existing hotel building and Transport House to the south.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		A future detailed design development application must ensure design variety consistent with the supported Design Excellence Strategy and subsequent competitive design process. The architectural diversity and articulation of the future building must enhance the surrounding heritage precinct and contribute to the Macquarie Street Special Character Area.
4.2.5 Types of development 4.2.5.4 Residential uses on the ground and first floor	Able to comply	The indicative reference design includes some residential apartments located on the ground and first floors. These apartments are located to the west of the site and are consistent with the relevant provisions of this section.
4.2.6 Waste and Recycling Management	Able to comply	The indicative reference design scheme drawings have provided areas within the building envelope to accommodate waste storage and collection facilities. An appropriate condition is recommended and included in Attachment A to this report to ensure these are provided in any subsequent detailed design development application.
4.2.7 Heating and Cooling Infrastructure	Able to comply	The indicative reference design scheme drawings have provided areas within the building envelope to accommodate plant and services, including consolidated heating and cooling infrastructure.
4.2.8 Letterboxes	Able to comply	The location of letterboxes can be addressed as part of any future detailed design development application.

5. Specific Areas 5.1 Central Sydney	Compliance	Comment
5.1.1 Street frontage heights	Yes	The site is located within the Macquarie Street Special Character area and is subject to street frontage heights required in Section 5.1.3 of the Sydney DCP 2012. The proposed street frontage heights of the building envelope are consistent with the objectives of this section. The envelope will provide a comfortable street environment for pedestrians whilst reinforcing the medium-scale building character of the eastern built edge of Central Sydney and the heritage streetscape of Macquarie Street.
5.1.2 Building setbacks	Partial compliance	The site is located within the Macquarie Street Special Character area and is subject to front building setbacks required in Section 5.1.3 of the Sydney DCP 2012. The proposed building envelope also includes a 3 metres side setback along the southern site boundary and various setbacks along the western site boundary (nil setback to a height of RL 26.700, increasing to 3 metres up to a height of RL 36.000 and then 6 metres to a height of RL 63.900). The proposed side setbacks are consistent with the objectives of this section of the Sydney DCP 2012 as they are capable of providing appropriate amenity in terms of daylight, outlook, view sharing, ventilation, wind mitigation and privacy between the indicative residential use and adjoining commercial uses.

5. Specific Areas	Compliance	Comment
5.1 Central Sydney		
		As discussed in detail throughout this report, the envelope relies on the benefits of a 6 metre wide light and air easement over the site directly to the west of the development. The nil setback to the west is acceptable in this case and future residential uses, subject to skilful design and compliance with other development controls, can achieve appropriate amenity. The proposed envelope does not include any additional setbacks to the southern boundary above 45 metres as indicative reference drawings shows the southern boundary includes offset windows along a predominantly blank wall. This is acceptable at a concept design stage, however, should a detailed design development application include principal windows facing towards the south, additional setbacks are required.
5.1.3 Street frontage heights and setbacks for Special Character Areas	Yes	The site is located within the Macquarie Street Special Character Area and is subject to site-specific street frontage heights and setback controls. See further discussion under the heading Issues.
5.1.5 Building bulk	Yes	Above a height of 45 metres, tower floor plates are restricted to a maximum of 1,000 square metres, with a maximum dimension of 40 metres. The proposal provides a maximum floor plate of approximately 560 square metres and a maximum dimension of approximately 29.5 metres.
5.1.6 Building exteriors	Able to comply	The proposal is for a concept building envelope and the architecture and materiality of the development will be determined as part of any future competitive design process and detailed design development application.

5. Specific Areas	Compliance	Comment
5.1 Central Sydney		
5.1.10 Sun access planes	Yes	The proposed envelope complies with the Royal Botanic Gardens sun access plane.

Issues

Building Envelope, Street Frontage Height and Setbacks

76. The subject site is located within the Macquarie Street Special Character area and as such, specific street frontage heights and setback controls apply to ensure development enhances and complements the distinctive character of the locality.
77. Section 5.1.3 of the Sydney DCP 2012 provides street frontage heights and specific setback controls above street frontage heights for each site located within a Special Character Area.
78. The Sydney DCP 2012 provides a minimum street frontage height of the height of the heritage item that is contained within the site and a maximum street frontage height of the highest heritage item on the same side of the street block. In the case of the subject application, the highest heritage item along Macquarie Street in Transport House with a street wall height of approximately 21.5 metres above the footpath (RL 38.280). The proposed envelope street frontage height ranges between a height of 20.42 metres and 21.72 metres above the footpath due to the slope of the street (RL 36.000). The street frontage height of the proposed envelope along Macquarie Street is consistent with the control.
79. Along Albert Street, the tallest heritage item along the street is the former Health Department Building with a maximum height above the footpath of approximately 19.81 metres (RL 11.440). The proposed building envelope is initially set back from the street boundary by 5m and provides a recessed street wall height of approximately 8.18 metres (RL 16.800). The street frontage height of the proposed envelope along Albert Street is consistent with the control.
80. The Sydney DCP 2012 then provides maps of each special character area identifying either a numeric setback control along each street frontage of a site or colours the whole site which indicates no additional height above the street frontage height is permitted.
81. The map providing setback controls for the Macquarie Street Special Character Area indicates the subject site is subject to dimensioned controls being an 8 metre setback above street frontage height along Albert Street and a 10 metre setback from Macquarie Street but also erroneously failed to amend the colour leaving the majority of the site in blue which suggests as per the key provided that there is to be no additional height above the areas coloured. See Figure 32 below.

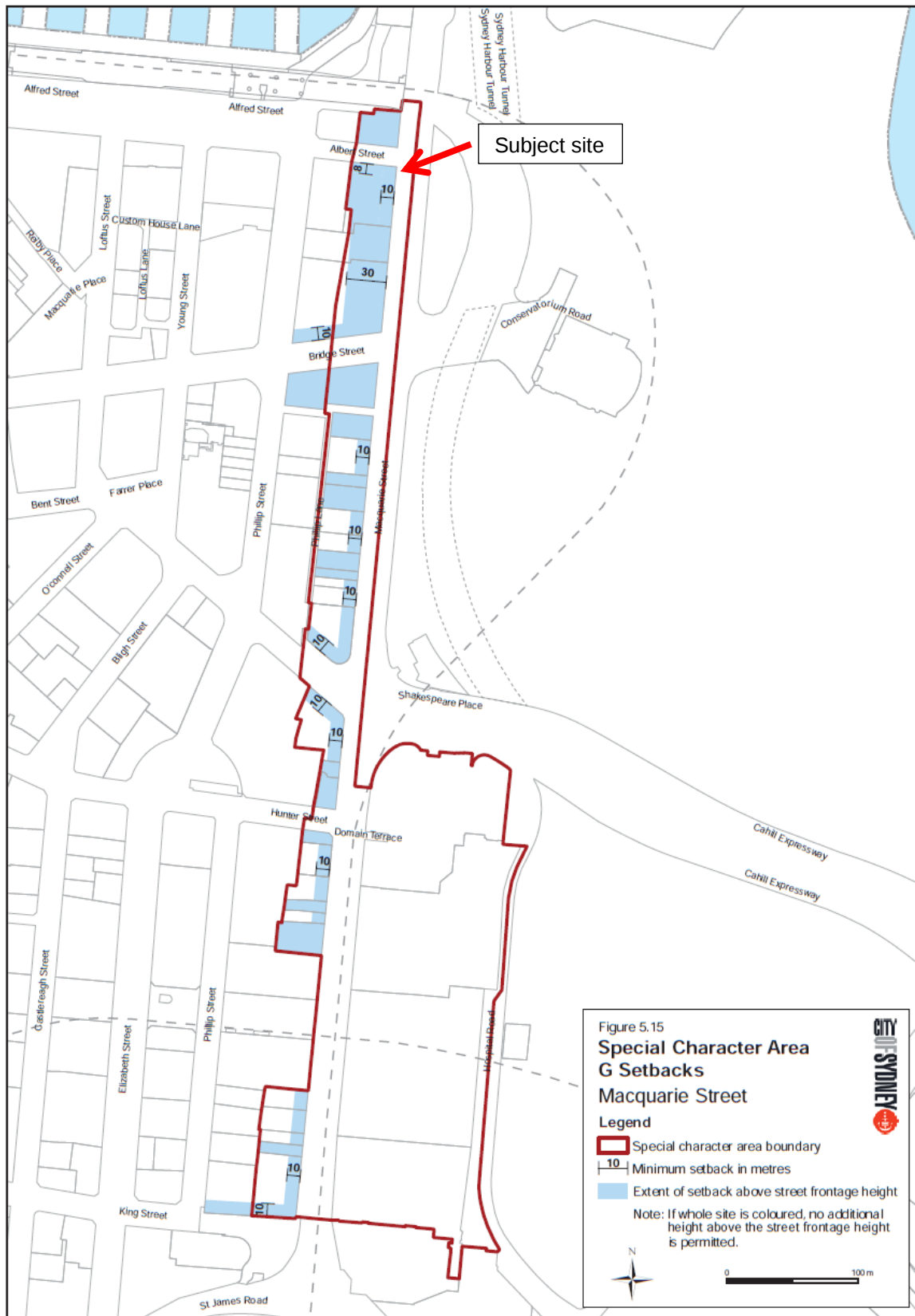


Figure 32: Macquarie Street Special Character Area setbacks map (Section 5.1.3 of the Sydney DCP 2012)

82. Clarification was sought from Council's Strategic Planning Unit who confirmed the site is subject to the numeric controls being an 8 metre setback above street wall height fronting Albert Street and a 10 metre setback to Macquarie Street. As such, the proposed envelope is compliant with the dimensioned street frontage heights as provided in Section 5.1.3 of the Sydney DCP 2012 and the setback controls for the site within the Macquarie Street Special Character Area.
83. The setbacks are consistent with the objectives of the Sydney DCP 2012 in that the historic significance of the area is maintained. A future competitive design process and future detailed design development application will be required to comply with this control and the development must ensure the distinctive character of the locality of the area is enhanced.
84. It is noted that Council has previously acknowledged this inconsistency in the control as an error and proposed rectifying this as part of the draft Central Sydney Planning Strategy and subsequent proposed amendments to the Sydney DCP 2012 controls from 2016. The proposed amendments are a result of comprehensive urban design studies geared towards ensuring Central Sydney continues to be Australia's leading economic centre while balancing other needs. The draft Strategy supports opportunities for additional building height and density in the right locations, so long as the new development contributes to environmental sustainability, design excellence and infrastructure. The proposed DCP amendments include refining setback controls, maximum heights and identifying heritage items on each site. The subject site is proposed to maintain numeric setbacks above street frontage height to provide the possibility of additional height rather than prohibit any additional height above street frontage height.
85. The proposed Sydney DCP 2012 amendments guided by the recommendations in the draft Central Sydney Planning Strategy are now on public exhibition and have been endorsed for exhibition by Council.

Heritage Conservation and Streetscape Significance

86. The subject site is subject to a number of considerations relating to heritage conservation particularly the provisions of the Heritage Act 1977, Sydney LEP 2012 and Sydney DCP 2012. Consideration must be given to the impact of the proposal on heritage fabric within the site and adjoining sites, the impact of the proposed envelope on the historic streetscape setting of Macquarie Street and the general CBD east precinct and the potential impacts or conservation opportunities that a future building may result in through a subsequent detailed design development application.
87. The former Health Department Building is located within the subject site and is identified as a building of State heritage significance. The site is also located within close proximity to a number of heritage items including Transport House to the immediate south (local significance), the former Treasury Building further to the south (State significance), the Justice and Police Museum to the immediate west (State significance) and the Royal Automobile Club across Albert Street to the north (State significance).

Impact on the former Health Department Building - views from Macquarie Street and Albert Street

88. The curtilage in the State Heritage Register listing is constrained to the footprint of the remaining Health building as depicted in Figure 31 above. Similarly the Sydney LEP 2012 listing of the site only covers the former Health Building and not the entirety of the site. The proposal separates the new building from the Health Building by creating open spaces/circulation paths between them. This separation is considered to have a positive heritage impact, resulting in the exposure of other elevations currently not visible and the independence of the heritage building.
89. The proposed envelope includes a street frontage height along Macquarie St which largely matches Transport House to the south of the site and a 10 metre setback is made to the tower above the street wall. The extent of setback of the tower is deeper than the depth of the southern wing of the Health Building. This largely makes the visual impact of the new building similar to the existing hotel building, when viewed from the opposite of Macquarie Street. Given the 3 metre separation of the new podium from the former Health Department Building and the 10 metre setback of the envelope above the street frontage height, the proposal is considered to have acceptable impact on views to the Health Building from Macquarie Street.
90. Similarly, the street wall height and street setback of the northern elevation of the envelope (as amended) respects views to the western elevation of the former Health Department Building and provides improved views of the heritage item. The setback of the envelope podium to the north also provides improved views of the heritage precinct when viewed from the west (from the corner of Albert Street and Phillip Street) as pedestrians can view the Justice and Police Museum as well as the entire northern and remaining western facades of the former Health Department Building.

Potential impacts on the Justice and Police Museum

91. The State listed museum is located on the corner of Phillip Street and Albert Street and ranges in heights between one and two storeys. It is acknowledged that any multi-storey or high-rise development within the vicinity of the museum will form a backdrop to the building due to its low height scale.
92. As discussed under the History of the development application heading above, the original proposed building envelope provided a nil setback to the western boundary and did not satisfy heritage considerations, particularly when considering the bulk of a new building in close proximity to heritage items managing conflicting views from the west towards the item.
93. The amended envelope proposal submitted to Council on 16 January 2019 addressed all issues raised by Council's Heritage Specialists with regard to reducing the bulk along the western elevation and increasing the setbacks from Albert Street. The amended envelope is capable of providing a suitable backdrop to the Justice and Police Museum and provides an appropriate scale around the podium that is of a sympathetic scale responding to the surrounding heritage streetscape.

Impact on other adjacent heritage items

94. Transport House at 99-113 Macquarie St is on the southern side of the development site. There is a 3 metre separation (light and air easement) between Transport House and the existing Stamford building which is maintained under the proposal.

95. The proposed podium fronting Macquarie Street is slightly lower than that of Transport House, providing an appropriate height transition between the former Health Department Building and Transport House. With a 10 metre setback, the tower is considered to have acceptable visual impact on Transport House and the Health Department Building.
96. The Heritage Impact Statement submitted with the application considers design opportunities to increase the visibility of the northern facade of Transport House from Macquarie Street. It recommends glazed walls on both the ground and first level northern and southern facades at the podium. This is largely a matter for the detailed design stage, but should also be considered as part of any competitive design process to further enhance the views to heritage items within the Macquarie Street Special Character Area.
97. Other heritage items, including the former Treasury Building (115-119 Macquarie Street), the Royal Automobile Club (89-91 Macquarie Street) and the AMP building (33 Alfred Street) are separated from the development site by other buildings or by streets. The visual impact of the proposed envelope is not direct, however forms part of the greater heritage streetscape and is discussed in further detail below.

Impact on the surrounding streets and local character

98. The site is located within the Macquarie Street Special Character area and is located directly to the east of the Circular Quay Special Character Area. In addition, the site is located within the curtilage of the proposed Governors' Domain and Civic Precinct proposed for listing on the National Heritage Register. The site also falls just outside of the buffer zone of Sydney Opera House, which is listed as a World Heritage site. The proposed envelope is assessed in the context of city's skylines and established streetscapes in accordance with Clauses 5.10 and 6.21 of the Sydney LEP 2012 and Sections 2.1, 3.2 and 3.9 of the Sydney DCP 2012.
99. The proposed podium portion of the envelope has a direct impact on views from nearby streets. The podium is considered an important design element in responding to the existing building forms, in particular their podiums, in the vistas from Macquarie Street, Albert Street, the Cahill Expressway, Alfred Street and Phillip Street and will form part of the significant historic streetscape along Macquarie Street. The podium is considered to be of an appropriate scale along Macquarie Street and Albert Street and when viewed from the west. Further, the podium responds appropriately to the street frontage heights of surrounding developments. Any future detailed design must respond sympathetically to the historic significance of the streetscape in the building design.
100. When viewed from a distance, the proposed podium bulk has a reduced impact on views and the historic significance of Macquarie Street and the surrounding locality and rather, is assessed on the impact of the setback tower form on the greater city skyline. The major potential impact of the development on the vistas towards the city skyline comes from the tower component above the podium, where it is visible in distance from the surrounding streets and public spaces. The tower can be characterised as a mid-rise form and will form part of the cluster of towers on the eastern edge of Sydney CBD. It is visible from the high grounds in The Royal Botanic Garden including its western and eastern edges and Farm Cove water. The tower's impact mainly lies its height, bulk and form. In distant views, the tower's setback from Macquarie Street has an acceptable impact and does not adversely impact the significance of the special character area of historic significance of the streetscape.

101. Within the existing block bound by Macquarie Street to the east, Albert Street to the north, Phillip Street to the west and Bridge Street to the south, there is a single tower contributing to the high-rise character of the eastern edge of the CBD being the InterContinental hotel. Just north of the block is a similarly sized high-rise tower also contributing to the tower character of the CBD, being The Quay apartment building. Both towers are clearly visible from Macquarie Street and the Botanic Gardens and are also visible from distant views from the east.
102. Although both towers are set back from Macquarie Street by approximately 30 metres, the towers are considerably taller than the proposed envelope. Given the difference of the setbacks and heights, the proposed tower is considered to have a similar visibility to the existing two towers within the block when viewed from the eastern side of Macquarie Street. The proposed height for the tower, in relation to the proposed setback, does not adversely impact the significance of views along the heritage streetscape and will not result in an overbearing tower form that will detract from the lower-scale podium development along Macquarie Street.
103. It is recommended that any future competitive design process and detailed design development application clearly define the importance of a simple podium form along Macquarie Street and Albert Street and ensure that any terrace additions above the podium are restricted in size, to reduce the bulk of a podium as much as possible. This recommendation is included as a condition in Attachment A.

Archaeological potential

104. Part of the site is identified as an area of archaeological potential in the 1992 Central Sydney Archaeological Zoning Plan. The 1988-90's construction work for the hotel addition has likely disturbed historic remains, however, the site has not been substantially excavated, particularly around the north-western corner of the site. A condition is recommended that an archaeological investigation take place as part of any detailed design development application.

Heritage Council of NSW correspondence

105. As discussed above under the Heritage Act 1977 section, the application was lodged as an Integrated Development Application, seeking consent under the Heritage Act 1977 for the future conservation works to the former Health Department Building contained within the site. General Terms of Approval were issued for the conservation of the State heritage building subject to conditions. The Heritage Council of NSW also provided referral comments to the remainder of the concept application in response to the proposed building envelope.
106. The views raised by NSW Heritage Council in response to the proposed envelope which is outside the scope of the GTAs include that:
 - (a) That the proposed 10 metre setback from the Macquarie Street frontage height would have a detrimental impact on the setting of several State listed heritage items and the Macquarie Street Special Character Area; and
 - (b) That the envelope would a permanent detrimental impact on the setting of the significance of the former Health Department Building as a previous government institution building and the historic precinct of which it is an important component.

107. The Heritage Council's views regarding streetscape impact are acknowledged, however, as discussed above, the proposed height and bulk of the envelope within the site provides a relatively mid-scale tower form that is unlikely to have a negative impact on the streetscape. The proposed 10 metre setback from Macquarie Street, with an additional 34 metres in height in the tower form, does not adversely affect views along Macquarie Street towards significant heritage items, and provides and appropriate stepping-up of development towards the high-rise developments further west.
108. With consideration to the concerns raised by NSW Heritage, the proposed envelope is consistent with the relevant heritage considerations and provides and appropriate separation from the adjoining local and State heritage items in which a detailed design development application would be required to respond positively to and enhance their features through sympathetic architectural design.
109. As per Section 3.3 of Council's Competitive Design Policy, a suitably qualified heritage consultant is to be included on any jury of an architectural design competition should a development include a building listed in Schedule 5 of the Sydney LEP 2012. As the former Health Department Building is listed in Schedule 5 of the Sydney LEP 2012, the development triggers this requirement. This will ensure any preferred design scheme resulting from a design competition addresses heritage considerations in a detailed design including how any future building will address Macquarie Street and the adjoining heritage items, views along Albert Street and how it responds to the western elevation, forming a backdrop to the Justice and Police Museum.
110. The NSW Heritage also provided a recommendation that the Sydney Development Control Plan 2012 planning controls be changed to support only low-scale development between 89-121 Macquarie Street. The proposed building envelope however is considered to maintain heritage values in its current proposed form and satisfied relevant heritage considerations at this stage of the development.
111. The proposed building envelope meets the objectives of Clause 4.3 of the Sydney LEP in that the height of the proposed envelope, particularly the podium height and setback of tower, provides an appropriate height transition between the new development and heritage items within the Macquarie Street and Circular Quay Special Character Areas.
112. Further, the proposal meets objectives and relevant provisions of Clause 5.10 of the Sydney LEP 2012 in that the proposal enhances the significance of the former Health Department Building by seeking concept approval to carry out conservation works and by separating any new building around the curtilage of the item to expose significant frontages.
113. The concept application adequately addresses the heritage and streetscape provisions at a concept stage and meets the matters for consideration as to whether the development exhibits design excellence in Clause 6.21(4) of the Sydney LEP 2012.
114. The application also satisfies the character statement and supporting principles of the Macquarie Street and Circular Quay Special Character Areas as per Sections 2.1.4 and 2.1.6 of the Sydney DCP 2012 as discussed in the Sydney DCP 2012 section above.

115. Overall, the proposed development meets the objectives in Section 3.9 of the Sydney DCP 2012 in that the proposed envelope adequately addresses the heritage constraints of the site and is capable of providing a future building that enhances the significance of surrounding heritage items and special character areas and the public domain.
116. The submitted Heritage Impact Statement submitted with the application is considered satisfactory and the proposed conservation works to the former Health Department Building are supported. It is recommended that a detailed Conservation Management Plan be prepared with a future detailed design development application.

View Impacts

Public Views

117. It is noted that the proposed envelope has the potential to be visible from a number of vantage points, both within close range of the site and from distant viewpoints. A number of submissions have raised concern regarding the loss of public views to other heritage items, Sydney Harbour and the Botanic Gardens as a result of the proposal.
118. As discussed in detailed above, the tower form and podium of the proposed envelope does not impact on views from the public to other public places, and is capable of improving and enhancing views to surrounding heritage items from the ground plane.
119. View corridors running north-south along Macquarie Street remain unaffected as the podium development largely mimics the building character of the existing development. As a result of the proposed development, it is likely that views along Macquarie Street to other heritage items are capable of being improved, subject to detailed design development with input from heritage specialists.
120. Views to part of the northern elevation of Transport House are capable of being improved in a future detailed design development application. Further, views to heritage items from the public domain from east-west vantage points are capable of being maintained and enhanced due to the setback of the Albert Street frontage and the exposure of the western elevation of the former Health Department Building. Additionally, views to the Botanic Gardens along Albert Street remain unaffected.
121. From more distant vantage points, particularly from the Botanic Gardens and eastern Sydney, the tower form of the envelope does not adversely impact any significant views to public places or icons. The proposed envelope is considered to be an acceptable addition to the eastern edge of development within the Sydney CBD and the impact on public domain views is considered to be negligible.

Private View Loss

122. A number of submissions received have raised concerns regarding the loss of views from properties within close proximity to the subject site at 2 Phillip Street (The Quay), 123-125 Macquarie Street (The Astor) and 99-113 Macquarie Street (The InterContinental) as a result of the proposal, including views of the Sydney Harbour Bridge, the Sydney Opera House, the Royal Botanic Gardens, Circular Quay and general harbour views.

DAWES POINT

THE ROCKS

THE ROCKS

Port Jackson

Sydney Harbour Tunnel

Sydney Cove

Campbell's Cove

Sydney

The Royal Botanic Garden Sydney

Farm Cove

Farm Cove

Cahill Expressway

Macquarie Street

Bridge Street

Pitt Street

Macquarie Place Park

2 Phillip Street - The Quay

Subject site

115-119 Macquarie Street - The InterContinental Hotel

123-125 Macquarie Street - The Astor

Figure 33: Aerial image of subject site and surrounding area

124. The application was accompanied by a view impact analysis study prepared by Kann Finch comprising 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, The Astor, The Quay and the AMP Sydney Cove tower. Although the view loss analysis did not provide specific heights, levels or camera angles, the view images have been reviewed by Council staff to be an accurate representation of views from each respective building at various heights when compared to an independent view loss analysis conducted by Council's modelling team that did record camera heights, levels and angles.
125. Figures 34 to 37 below provide a sample of the submitted view loss renders from mid-rise locations on surrounding buildings prepared by Kann Finch. A copy of the complete view impact analysis study is found in Appendix E.

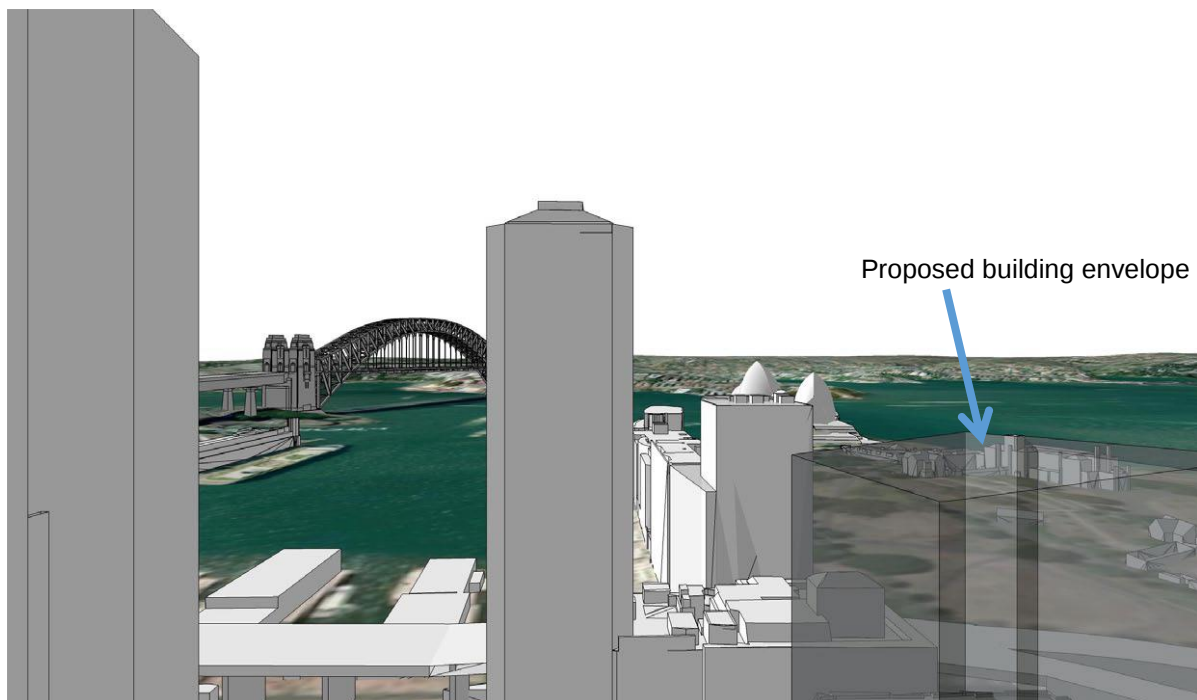


Figure 34: Proposed building envelope as viewed facing north from a typical mid-rise guest room within The InterContinental hotel

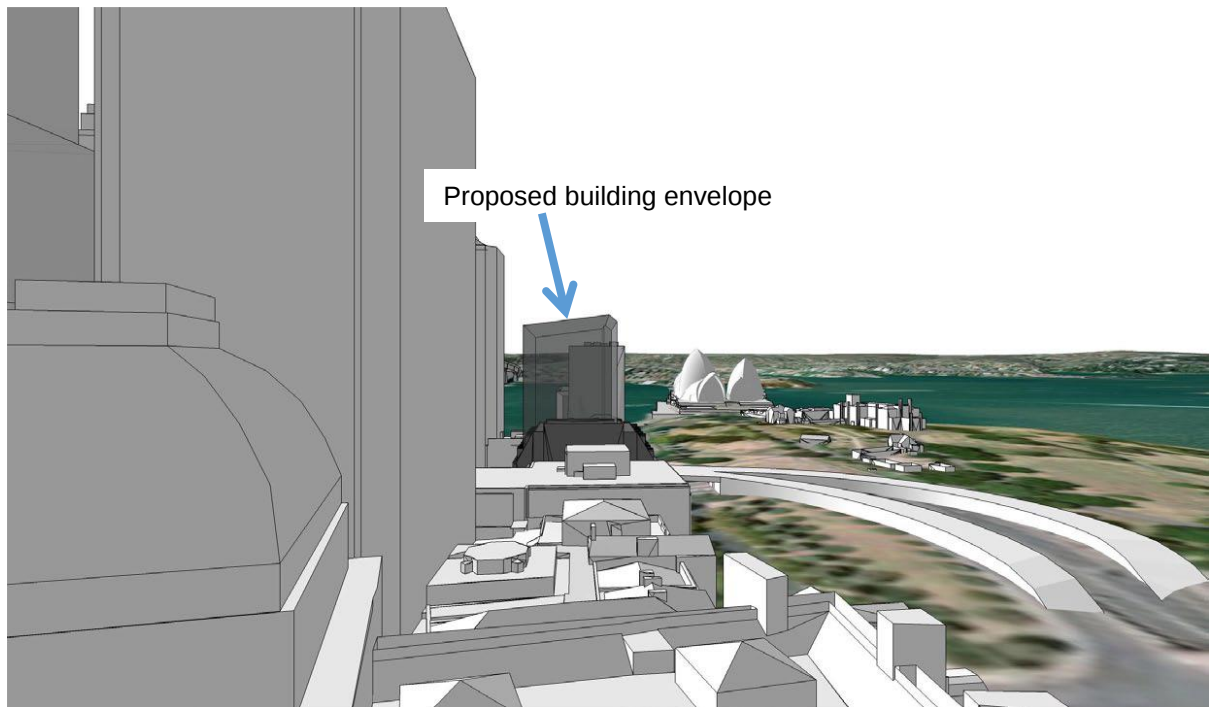


Figure 35: Proposed building envelope as viewed facing north from a typical mid-rise apartment from The Astor



Figure 36: Proposed building envelope as viewed facing south from a typical mid-rise apartment within The Quay

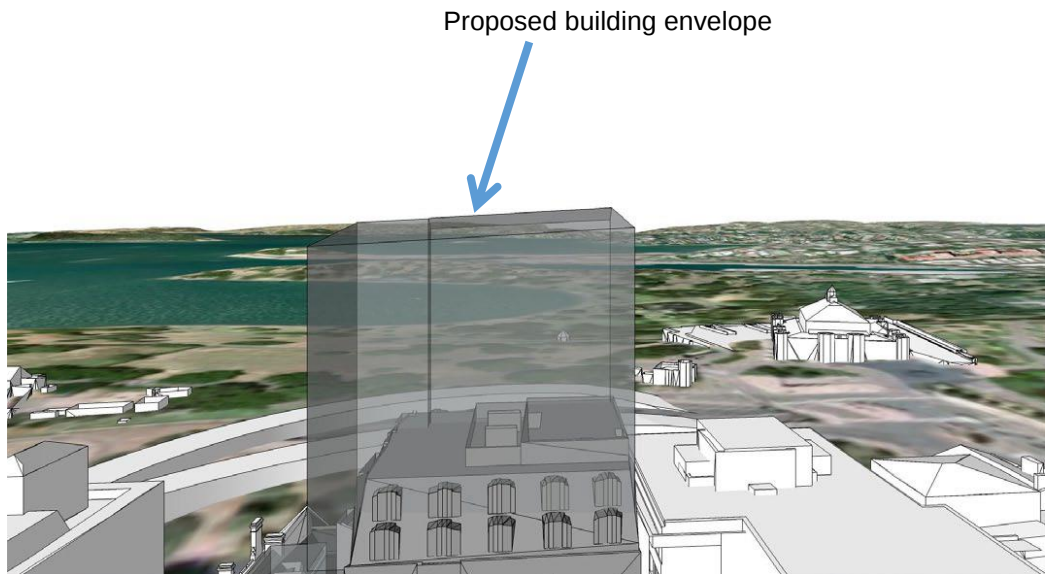


Figure 37: Proposed building envelope as viewed facing north from a typical mid-rise commercial floor within the AMP tower

126. Council staff also conducted an independent view loss analysis from a selection of apartments in The Astor and The Quay and a selection of guest rooms in The InterContinental hotel.
127. Figures 38 to 49 below provide a sample of Council's indicative visual impact assessment. To accurately assess the impact of the development on surrounding views, the images below also include the building massing of the Opera Residences development (currently under construction) at 71-79 Macquarie Street in the existing and proposed images (coloured in white). The proposed building envelope is coloured in blue.

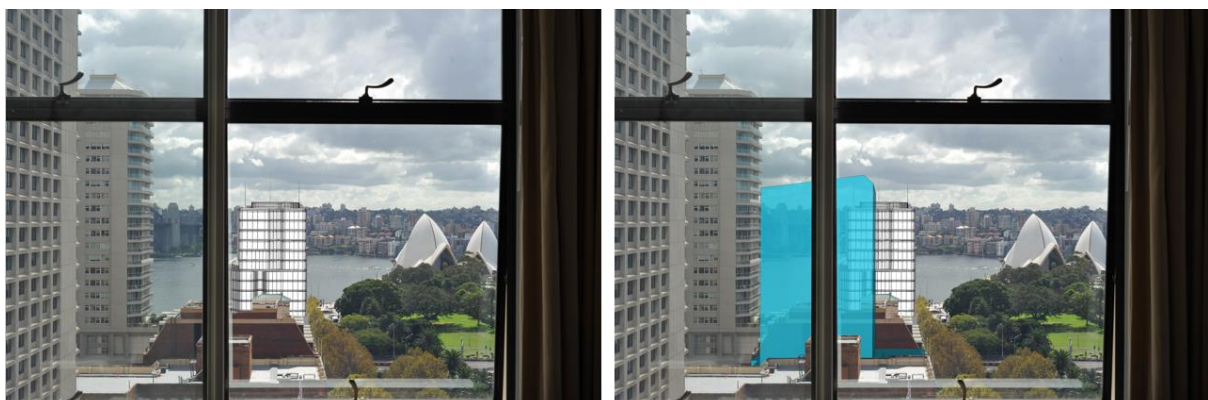


Figure 38: Existing (left) and proposed (right) indicative view from the living and dining areas in unit 10.1 on level 10 of The Astor

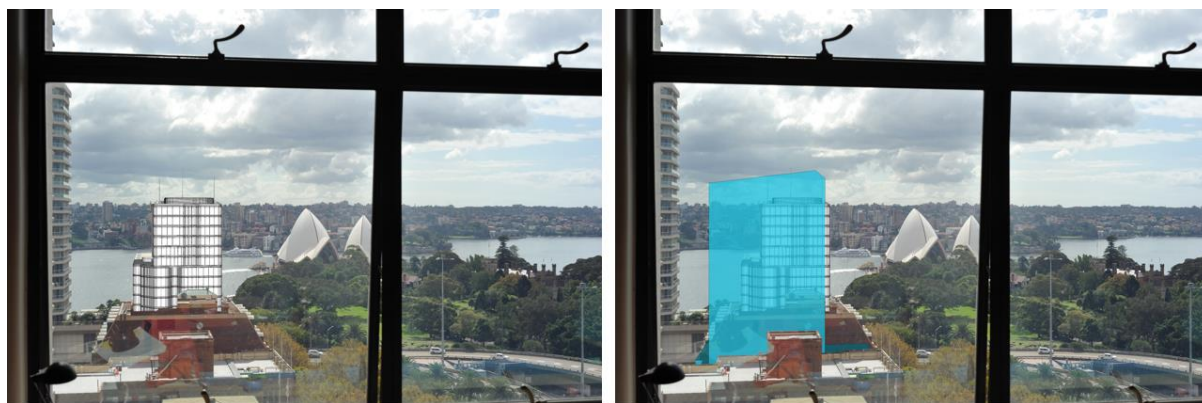


Figure 39: Existing (left) and proposed (right) indicative view from the living and dining areas in unit 10.2 on level 10 of The Astor

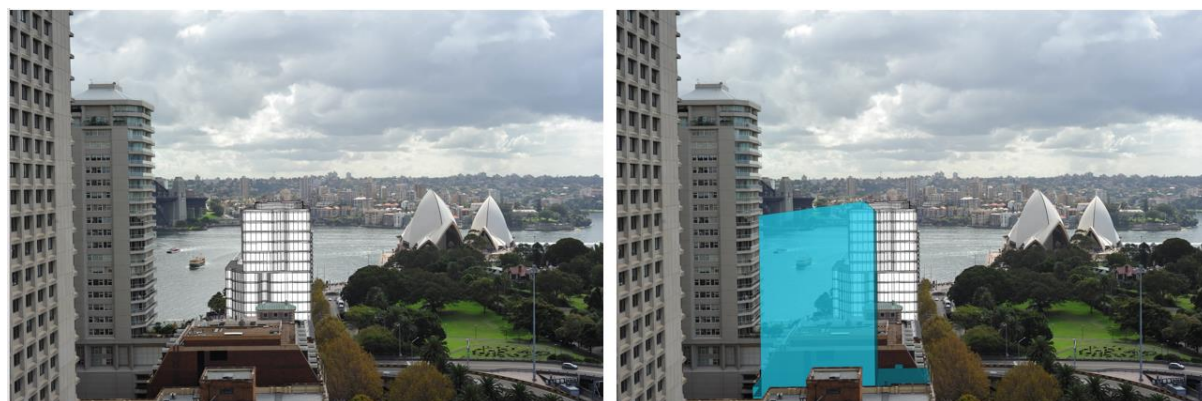


Figure 40: Existing (left) and proposed (right) indicative view from the north-east corner of the rooftop common area of The Astor

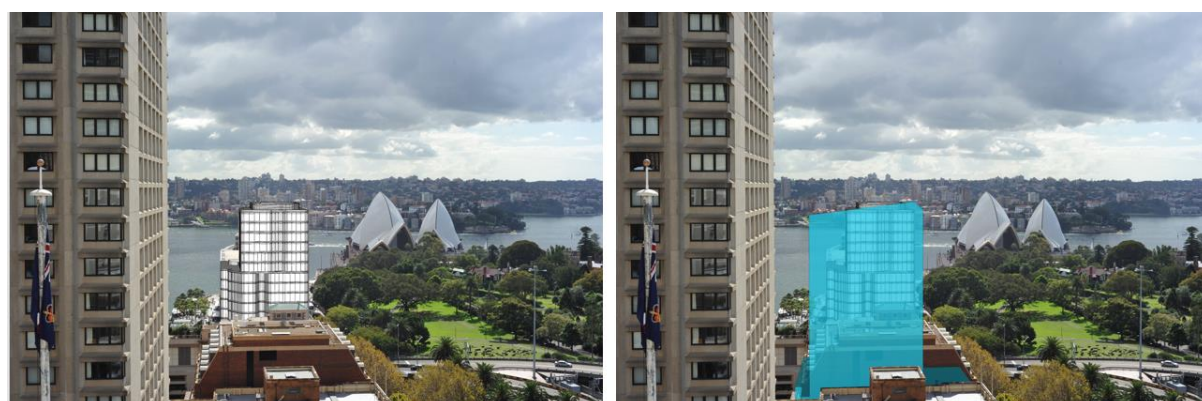


Figure 41: Existing (left) and proposed (right) indicative view from the north-west corner of the rooftop common area of The Astor

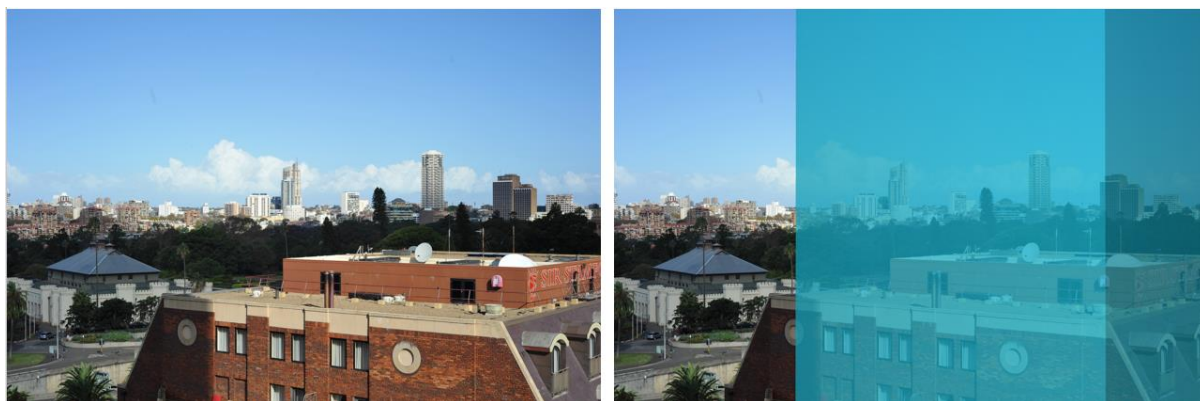


Figure 42: Existing (left) and proposed (right) indicative view from the balcony of unit 1501 on level 15 of The Quay

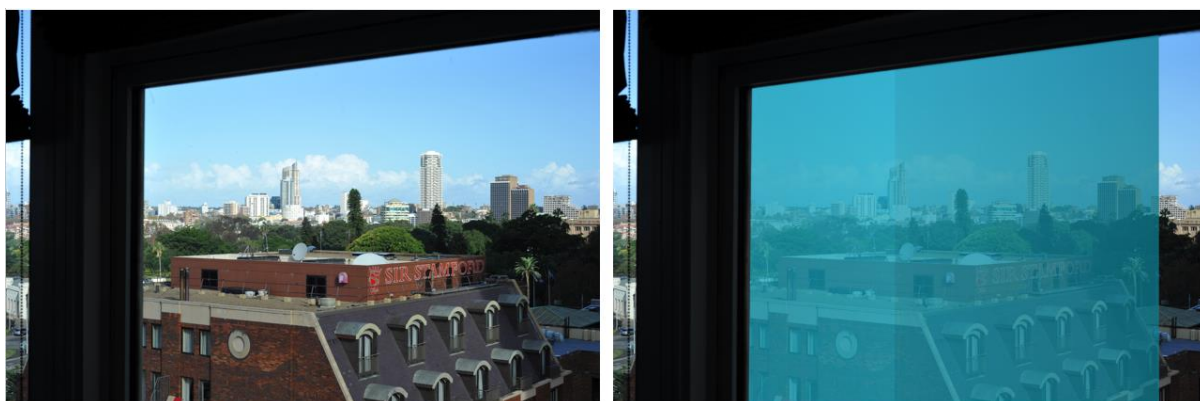


Figure 43: Existing (left) and proposed (right) indicative view from the kitchen of unit 1501 on level 15 of The Quay

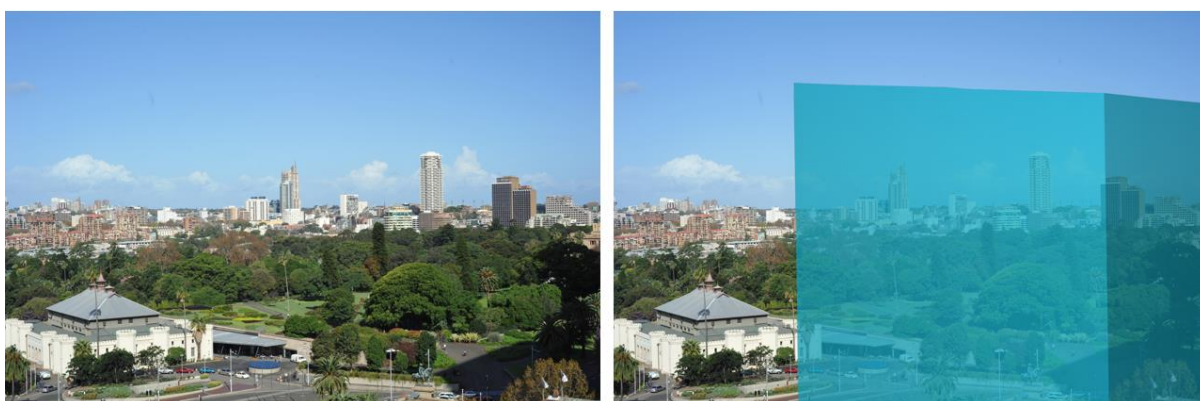


Figure 44: Existing (left) and proposed (right) indicative view from the balcony of unit 1901 on level 19 of The Quay



Figure 45: Existing (left) and proposed (right) indicative view from the kitchen of unit 1901 on level 19 of The Quay



Figure 46: Existing (left) and proposed (right) indicative view from room 1826 on level 18 of The InterContinental



Figure 47: Existing (left) and proposed (right) indicative view from room 1926 on level 19 of The InterContinental



Figure 48: Existing (left) and proposed (right) indicative view from room 2226 on level 22 of The InterContinental



Figure 49: Existing (left) and proposed (right) indicative view from room 2326 on level 23 of The InterContinental

128. While the relevant planning controls make no provision for the preservation of private views, in order to assess the impact of the proposal on existing views, an assessment has been made against the planning principles established by Senior Commissioner Roseth in the LEC decision *Tenacity Consulting v Warringah* [2004] NSWLEC140 in relation to view sharing.

Assessment of views to be affected

129. Views with the potential to be affected consist of views in a north-eastern, north-western and south-eastern direction of the Sydney Harbour Bridge, the Sydney Opera House, the Royal Botanic Gardens, The Domain Circular Quay and general harbour views. In this assessment, reference to the Royal Botanic Gardens includes Government House and the Sydney Conservatorium of Music.
130. It is noted that the Sydney Harbour Bridge and Sydney Opera House are considered "iconic" views and the Royal Botanic Gardens, Circular Quay and general harbour views are considered desirable land and water views.
131. All iconic views in question are partial views, as opposed to uninterrupted or panoramic views. Additionally, views to icons from surrounding properties are across adjoining boundaries and include existing development in the foreground.

Which part of the site is the view available from?

132. The views under assessment are available from the following locations:

- (a) South-east facing living room windows, a range of kitchen and bathroom windows, and balconies within 2 Phillip Street (The Quay)
- (b) North-facing living room and bedroom windows of north-facing apartments and the rooftop communal space at 123-125 Macquarie Street (The Astor)
- (c) A selection of north-facing guest rooms within the mid-rise levels of the InterContinental hotel

133. The loss of views from living room windows is considered to be of greater impact than the loss of views from balconies, bedrooms, kitchens or bathrooms. For the purposes of assessing view loss from within a hotel development, standard hotel guest rooms are considered to be the same use as a living room however, due to the commercial nature of a hotel use with a view being seen only temporarily by guests, any view impact is considered to be lesser than those of a living room within a residential development.

134. Further, as mentioned above, views to icons particularly from The Astor and the InterContinental are across side property boundaries. It is unrealistic to expect that all existing views alongside boundaries can be protected, particularly when the loss of views are already identified as partial views and only impact some levels within a building.

Extent of the impact in relation to views available

135. Views from 2 Phillip Street (The Quay)

- (a) Residential apartments are located between levels 10 and 23 of The Quay. The general planning of apartments within the building provide windows along the southern elevation from kitchens, bathrooms and bedrooms. Balconies are located along the eastern elevation of the building and are accessed from either living rooms or bedrooms.
- (b) Views from living room windows (in apartments with living rooms located in the south-eastern corner of the building) face predominantly towards the east and provide wide views of the Royal Botanic Gardens and general views towards the south and the eastern suburbs. Views from the eastern facing balconies also provide views to the north, including complete views of the Sydney Opera House and of Sydney Harbour.
- (c) Due to the orientation of living room windows within apartments facing predominantly towards the east, the potential view loss caused by any future building contained within the proposed building envelope from living areas within The Quay will be relatively minor. Views to surrounding icons and desirable land will be largely maintained with the majority of view loss from living room windows being of the southern parts of the Royal Botanic Gardens and part of the city skyline to the south. See figure 50 below showing existing views to the east from living room windows that will not be impacted by the development.

- (d) View loss from other southern-facing windows including kitchens and bathrooms are more impacted than those from living room windows in that the majority of views to the city skyline to the south are obstructed including part of the Royal Botanic Gardens. The impact is not severe however, and general view loss from apartments within The Quay is not significant.



Figure 50 Existing view to the east from the living room windows on Level 16 of The Quay

136. Views from 123-125 Macquarie Street (The Astor)

- (a) The general planning of The Astor provides four apartments on each level being in the north-east, north-west, south-east and south-west corners of the building. North-facing apartments within the building are provided with views to the north towards the Sydney Opera House, Royal Botanic Gardens and the harbour.
- (b) Some apartments within the building also have obscured views of part of the northern pylon of the Sydney Harbour Bridge. Views to the north and east from within apartments are from living rooms and bedrooms. Apartments do not have private balconies but are provided with a large communal rooftop space that has the same views of those within the apartments being part of the northern pylon of the Harbour Bridge, complete views of the Sydney Opera House and expansive views of Sydney Harbour and the Royal Botanic Gardens.
- (c) The impacts on views from north-facing apartments and the rooftop common open space are fairly negligible as the only loss in views is to the northern pylon of the Sydney Harbour Bridge and part of the harbour around Circular Quay. Views to the Sydney Opera House and towards the east over the harbour and the botanic gardens remain unchanged.

137. Views from 115-119 Macquarie Street (The InterContinental)

- (a) Some north-facing rooms between levels 10 and 30 will be affected by the proposed development.
- (b) Currently, north-facing rooms are provided with almost-complete views of the Sydney Harbour Bridge and expansive views of the harbour towards the east and the Royal Botanic Gardens. Views towards the Sydney Opera House will largely be obscured by the building currently under construction at 71-79 Macquarie Street as per Figures 46-49 above, providing a partial view of the eastern section of the Opera House sails at the lower levels of the hotel. Upper-level rooms have more complete views of the Opera House that will not be impacted by the development.
- (c) The proposed building envelope at the subject site will remove views to the remainder of the portion of Opera House sail from some rooms at the lower levels of the hotel while rooms at a higher viewpoint will not be impacted. Some of the northern areas of the Royal Botanic Gardens and some coastline views are also obstructed by the proposed envelope, however, views to the Sydney Harbour Bridge and general harbour views are not impacted.
- (d) The view loss impact caused by the development on a small portion of the north-facing hotel rooms is moderate as the remaining views of the Opera House are removed (only partial) however, overall, the cumulative impact from north-facing rooms within the InterContinental hotel is considered to be negligible. Of the 147 north-facing rooms within the hotel, it is believed only a small portion will lose the remainder of the partial iconic view to the Sydney Opera House whilst the cumulative loss of harbour and botanic gardens views is not significant.

Reasonableness

138. The degree to which an impact is considered to be reasonable depends on the extent to which the development complies with the relevant planning controls, and whether impacts could be mitigated by a more skilful design. In the case of the proposed building envelope, most moderate view impacts are as a result of a compliant western setback.
139. Overall, the loss of views to icons occur predominantly over side property boundaries. As mentioned above, it is unreasonable to expect that all existing views along side boundaries can be protected.
140. From residential developments the loss of views are not significant. It's acknowledged that from the Astor, the loss of the partial view to an icon (Sydney Harbour Bridge) is a moderate view loss in terms of severity, however, the cumulative impact on views of the development is negligible as the majority of views to other, more complete icons and desirable water, coastline and land views are relatively unaffected.
141. 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. An assessment of whether or not the proposed development adversely impacts views from other developments has been undertaken and the proposed envelope has an acceptable impact. The proposed building envelope does not significantly or unreasonably reduce the amenity enjoyed by surrounding residential and hotel uses. The proposed envelope provides adequate view sharing to surrounding icons and desirable views from surrounding developments and is acceptable.

Privacy Impacts

142. As noted elsewhere in this report, the proposed building envelope achieves the minimum building separation requirements under the ADG. It is considered that the detailed design of the future mixed use development of the site will be able to adequately mitigate potential overlooking and impacts on acoustic privacy between the subject site and adjoining residential and commercial developments.
143. Any subsequent detailed design development application must address relevant amenity provisions contained in the ADG, Sydney LEP 2012 and Sydney DCP 2012 through skilful design such as providing appropriate setbacks and offsetting or obscuring windows.

Transport, Parking, Traffic and Access

144. The site is constrained in relation to transport and servicing considerations, particularly in relation to existing driveways from the site to adjoining properties, the narrow width of Albert Street and the heritage significance of buildings on site and directly adjoining the site.
145. The site is well served by existing and planned public and private transport infrastructure in the locality, including on-street parking and loading zones, bus and taxi zones, bus routes, bicycle lanes and light, heavy and metro rail stations.
146. The indicative reference design scheme proposes:
- (a) 57 general residential vehicle parking spaces
 - (b) 2 retail parking spaces
 - (c) 4 service vehicle spaces in a loading dock to accommodate a council waste truck
 - (d) 1 SRV and two B99 service van spaces
 - (e) 97 bicycle parking spaces (78 resident, 3 staff, and 16 visitor)
 - (f) 6 motorcycle spaces
147. The indicative reference scheme proposed access to basement parking via two car lifts with access from the street to generally remain in the same location from Albert Street.
148. Section 3.11 of the Sydney DCP 2012 applies to the development and is discussed in detailed below.

Vehicle Access

149. Maintaining the location of the existing vehicle access from Albert Street is supported, however, it is recommended that future detailed design considers reducing the width of the driveway crossover to prioritise pedestrian safety along Albert Street. One combined vehicle access to cater for both the service vehicle and resident car is recommended. In accordance with Section 3.11.11 of the Sydney DCP 2012, wherever practicable, vehicle access and egress is to be a single crossing with a maximum width of 3.6 metres over the footpath, and perpendicular to the kerb alignment.

Quantum of car parking

150. Residential parking spaces are proposed at the maximum permissible under the Sydney LEP 2012. It is preferable if parking was further reduced in this location to encourage modal shift towards sustainable transport. Innovation in this area should be considered (including but not limited to) the provision of additional car share spaces.
151. Car share spaces must be provided as per Section 3.11.2 of the Sydney DCP 2012. Two car share spaces are proposed, however, as those are proposed to be used by car lifts, and is not acceptable as mechanical parking installations, like car lifts, should not be used for visitor parking or parking for car share schemes.
152. It is recommended that the proponent discuss the proposed location of car share parking spaces with car share operators during the detailed design process to ensure that the needs of both the developer and the car share operator can be met. Car share spaces must be provided for the exclusive use of car share scheme vehicles.
153. Further, it is noted that accessible parking space should be provided per adaptable unit per Section 7.8.5 of the Sydney DCP 2012 and motorbike parking space be provided per adaptable unit per Section 7.8.5 of the Sydney DCP 2012.
154. Car parking numbers, types and final layout are not approved as part of this application and is subject to further consideration and approval during the assessment of a future detailed design development application.

Bicycle Facilities

155. The indicative reference design proposes a number of bicycle facilities for residents, workers and visitors to be located within basement levels. Bicycle parking is to be provided in accordance with Section 3.11.3 of the Sydney DCP 2012. This should include as a minimum:
 - (a) Resident bicycle parking facilities to be Class 2 facilities which are consolidated in one area within the ground or basement level 1 car park area, for easy access and identification.
 - (b) Visitor parking to be class 3 facilities, located separate to the residential spaces and provided in an easy to access location on the ground floor.
156. The layout, design and security of bicycle facilities must comply with Australian Standard AS 2890.3:2015 Parking Facilities Part 3: Bicycle Parking Facilities. It is noted that if a basement storage space allocated to a residential title is large enough to store a bicycle in accordance with the Australian Standards, it could be acceptable.
157. Future detailed design development should consider relocating all visitor and commercial bicycle parking to the ground or first basement and be included in any future detailed design development application.

Traffic Impact / Trip Generation from the development

158. The submitted traffic report prepared by PTC Consultants has used trip generation rate as 0.19 vehicle trip/unit at am peak hour. The average value for Sydney has been picked from the latest RMS technical direction TDT 2013/04a. Given that, the journey to work (2011 data, as latest available) shows that this area (TZ 612) had a high mode share of car (58% car driver) travel, the estimated traffic generation is likely to be under reporting values.
159. The application was referred to Council's Transport and Access Unit who were generally supportive of the proposed development as a concept, but suggested that the trip generation coefficient should be chosen from a comparable site. It is recommended that updated, more accurate data be applied to any future modelling exercise and be included in a future detailed design development application and is included in recommended conditions in Attachment A.

Construction Impacts

160. A number of submissions received raised concerns regarding potential construction impacts. Specifically, concerns raised relate to:
- (a) General noise and vibration;
 - (b) Construction traffic management; and
 - (c) Cumulative construction impacts associated with other developments under construction in the CBD.
161. In this regard, it is noted that the proposal does not involve any demolition or construction works. Prior to the lodgement of any subsequent detailed design development application, detailed investigations will be undertaken, including:
- (a) Geotechnical investigations and modelling;
 - (b) Noise and vibration impact assessment;
 - (c) Environmental Management Plans (where relevant);
 - (d) Construction Management Plan; and
 - (e) Construction Traffic Management Plan.
162. Subject to further investigations and consultation with any relevant state agencies where required (including RMS, Transport for NSW, Sydney Water and Council), it is considered that the proposal will be able to adequately address construction impacts associated with any future detailed design development application. Appropriate conditions of consent have been recommended which incorporate the specific requirements identified by relevant agencies in their submissions, and which are considered to adequately identify the further information required to assess potential construction impacts as part of any future application.

Design excellence

163. The proposed concept application has been assessed against the design excellence provisions of Section 6.21(4) of the Sydney LEP 2012. As a concept design, the application satisfies the matters for consideration in this clause in that the form and bulk of the building adequately responds to the existing streetscape constraints of the Macquarie Street special character area and provides appropriate street wall heights and setbacks as required by the Sydney DCP 2012 and the future Central Sydney Planning Strategy.
164. Further, the concept application and indicative reference scheme demonstrates a future building can provide appropriate amenity to future residents, workers and visitors and provides an appropriate interface at the ground level between the building and the public domain. A comprehensive view impact analysis provided above also demonstrates that the proposed envelope has acceptable impacts on views from private developments and the public domain to surrounding icons.
165. As the subject application is for a concept proposal, no architectural design details have been provided and a competitive design process will need to be undertaken prior to lodgement of any development application for the detailed design of the building to determine.
166. Clause 6.21(7) of the Sydney LEP 2012 states a building demonstrating design excellence may have a building height that exceeds the maximum height nominated on the land of up to 10% or may be eligible for additional floor space of up to 10%. Due to the constraints within the site however, it was determined that the site is unlikely to be able to accommodate additional floor space or height without projecting higher than the Botanic Gardens Sun Access Plane, inconsistent with Clause 6.21(8) of the Sydney LEP 2012, or by reducing setbacks above street wall height from Macquarie Street and Albert Street as required in the Sydney DCP 2012. As such, it was agreed that any future building would not be seeking additional height or floor space and is reflected in the supported Design Excellence Strategy in Attachment D.
167. A competitive design process is required prior to lodgement of a future detailed development application for the proposed development. Three types of competitive design processes are open to the applicant, namely:
 - (a) An 'open' architectural design competition;
 - (b) An 'invited' architectural design competition; or
 - (c) An 'invited' competitive design alternatives process.
168. The applicant has chosen to undertake (b), an 'invited' architectural design competition as the competitive design process associated with the development, with a minimum of five invited competitors.
169. A Design Excellence Strategy was prepared by Mecone on behalf of Stamford Property Services Pty Ltd, a copy of which is included as Attachment D to this assessment report.

170. The competitive process will be undertaken in order to achieve an enhanced urban outcome with a building of a high design quality. In particular, the Design Excellence Strategy was developed in accordance with the objectives set out in Section 3.3 of the Sydney DCP 2012 as follows:
- (a) Ensure high quality and varied design through the use of competitive design processes for large and prominent developments;
 - (b) Ensure development individually and collectively contributes to the architectural and overall urban design quality of the local government area; and
 - (c) Encourage variety in architectural design and character across large developments to provide a fine grain which enriches and enlivens the City's public realm.
171. The Design Excellence Strategy requires the selection of architects participating in the competitive process to be undertaken in consultation with the City.
172. Each competitor will be a person, corporation or firm registered as an architect in accordance with the NSW Architects Act 2003 or, in the case of interstate or overseas competitors, eligible for registration.
173. It is noted that the Design Excellence Strategy includes the conservation works to the former Health Department Building as part of any future competitive design process. As per Section 3.3 of the City of Sydney Competitive Design Policy, it is recommended that one member of the jury be an appropriately qualified heritage consultant.
174. The Design Excellence Strategy is therefore satisfactory and is recommended for approval as part of this concept development application.

Other Impacts of the Development

175. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to the recommended conditions in Attachment A.

Suitability of the site for the Development

176. The proposal is in keeping with the desired future character for the site and locality.
177. The site is situated in the Sydney Central Business District, located amongst similar uses to that proposed and is suitable for the proposed development.

Internal Referrals

178. The application was referred to, or discussed with the following referral officers and bodies for review:
- (a) Design Advisory Panel;
 - (b) Design Excellence team;
 - (c) City Model team;

- (d) Environmental Projects team;
 - (e) Cleansing and Waste Services Unit;
 - (f) Public Art Specialist;
 - (g) Heritage Specialist;
 - (h) Urban Design Specialist;
 - (i) Health and Building Unit;
 - (j) Public Domain Unit;
 - (k) Specialist Surveyor; and
 - (l) Access and Transport Unit.
179. The revised concept proposal addresses the issues raised by Council's Heritage Specialist, Urban Design Specialist and Design Excellence team and is acceptable, subject to the recommended conditions.

External Referrals

180. The application was referred to the following external referral bodies for review:
- (a) NSW Heritage;
 - (b) Transport for New South Wales (TfNSW);
 - (c) Roads and Maritime Services (RMS);
 - (d) Sydney Water; and
 - (e) Ausgrid.
181. Comments from all the relevant external referral requirements are addressed or included in the recommended conditions of consent in Attachment A where relevant.

Notification, Advertising and Delegation

182. The application constitutes integrated development and as such the application must be notified and advertised for a minimum period of 28 days in accordance with the provisions of Environmental Planning and Assessment Regulations 2000.
183. The application was advertised and notified for a total of 70 days between 28 November 2017 and 4 January 2018 and between 16 January 2018 and 16 February 2018. An amended envelope and supporting documentation was re-notified and advertised for a period of 41 days between 25 January 2019 and 6 March 2019.

184. As a result of the three notification periods, 62 submissions were received and are discussed below.

- (a) The tower will adversely impact on the significance of surrounding heritage items and the surrounding heritage precinct and is not consistent with the objectives of the Macquarie Street Special Character Area.

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. The proposed envelope is considered to have an acceptable impact on the Macquarie Street locality. The proposed street frontage heights are of a similar scale to adjacent buildings and the setbacks above the street wall are considered to provide appropriate separation from the ground plane. Any future detailed design development application must ensure the building responds successfully to the adjacent heritage items in terms of materials and architectural detailing whilst also being in keeping with the character of the locality.

- (b) The envelope is too tall and bulky for the site and does not comply with the 30 metre setback above street wall height as per the Sydney DCP 2012 or the 45 metre height control.

Response - As discussed above, the site is subject to a 55 metre height control over the majority of the site with part of the site being within the Royal Botanic Gardens sun access plane. The proposed envelope complies with the relevant height controls. Further, the discussion above highlights the inconsistency in setback controls in the Sydney DCP 2012 is that the site has two setback controls. As confirmed by Council's Strategic Planning Unit who have acknowledged the inconsistency, the dimensioned control for the site is a 10 metre setback over the street frontage height from Macquarie Street and an 8 metre setback from Albert Street is correct. The proposed envelope complies with the setback controls. The reference to a 45 metre height control in the Sydney DCP 2012 is in regards to a street wall height, which is different to an overall height. The street wall height of the proposed envelope is considerably below 45 metres on both Macquarie Street and Albert Street. Above these heights, the building is then set back 8 metres along Albert Street and 10 metres from Macquarie Street, consistent with the controls for the Macquarie Street Special Character Area.

- (c) The envelope is not consistent with the prevailing scale, form and character of nearby developments.

Response - The special character area controls in Sections 2.1 and 5.1 of the Sydney DCP 2012 considers the significance of special character areas and guides future development in terms of street frontage heights and setbacks, where other sections in the Sydney DCP 2012 provide controls for tower bulk. The proposed envelope is consistent with these controls and is not considered to have an unacceptable impact on the character of the locality. The proposed envelope is similar in bulk to surrounding existing and future developments within close proximity to the site and it is not likely that a future building, subject to successful design outcomes, will have an adverse impact on the area.

- (d) The envelope does not maintain or enhance vistas to the harbour and Sydney Opera House to the north, nor Hyde Park to the south and will have a negative visual impact when viewed from the public domain.

Response - View impacts from the public domain and private developments have been assessed in detail throughout this report. The impact of the envelope on surrounding views from private developments has been determined to be negligible while views to icons from the public domain will not be impacted.

- (e) The envelope will adversely impact views from surrounding developments to Circular Quay, the Sydney Harbour Bridge, the Sydney Opera House, Royal Botanic Gardens and the harbour. The submitted view loss analysis is incorrect and downplays the loss of significant views from residential dwellings.

Response - An assessment against the view sharing principles set out in *Tenacity Consulting v Warringah* [2004] NSWLEC140 has been undertaken by Council officers as detailed in the Issues section above. When referring to the requirement regarding whether a more skilful design could provide the applicant with the same development potential but reduce the view loss impact on neighbours, this will be a consideration in a design competition and detailed design application. This concept application is to set out a maximum building envelope and the design of the building is subject to a separate application. The envelope has also been reduced in size, particularly to the western and northern boundary to reduce impacts on outlook from surrounding developments and adjacent heritage items. The submitted view loss analysis, although not setting out exact heights and camera angles in renders, has been confirmed as - accurate in its analysis and is corroborated by independent modelling prepared by Council staff.

- (f) The cumulative impact of new development in the CBD negatively impacts outlook and privacy from existing residential developments.

Response - The impacts of the development on view loss, privacy and outlook have been addressed in detail in the report above and are considered to be acceptable at this stage of the development. A detailed design development application must ensure that any future building addresses privacy and outlook from surrounding developments.

- (g) The development will remove public car parking spaces reducing the availability of parking for local residents and visitors.

Response - The loss of public car parking is not a matter for consideration in this assessment. A Concept Application does not approve any physical works or the removal of existing car spaces and any future development must be consistent with parking rates as prescribed by the Sydney LEP 2012 and DCP 2012. Planning controls do not require developments to provide public car spaces on private land.

- (h) The existing hotel facilities that provide amenity to surrounding residents and visitors will be lost as a result of this development

Response - Planning objectives do not prohibit the approval of a development that results in the loss of private hotel amenities. A number of commercial uses and public facilities that provide similar amenities, such as gyms, spas and pools, are still located within close proximity of the site.

- (i) The development will result in increased overshadowing on surrounding developments.

Response - The submitted shadow diagrams indicates the envelope will have acceptable overshadowing on surrounding developments. Current planning controls do not require the protection of direct solar access to commercial uses while the envelope does not cause any overshadowing to nearby residential uses.

- (j) The development will have increased noise and traffic impacts.

Response - This application is for a concept building envelope and does not propose the demolition or construction of a building. Any construction traffic and noise impacts resulting of any future development within the site will be assessed as part of a detailed design application.

- (k) The loss of hotel floor space and public parking is inconsistent with the objectives of the B8 Metropolitan Centre zone.

Response - Although hotel development is consistent with the objectives of the B8 Metropolitan Centre zone, the proposed indicative uses within the development being residential, commercial and retail are also consistent with the objectives of the zone and are permissible uses.

- (l) The proposal indicates food and drink uses on the ground floor. The area is already inundated with several food and drink uses and additional premises are not required.

Response - This application does not grant consent to specific uses of tenancies within a future building and are subject to a separate development application. The indicative uses suggested in the application include food and drink, general commercial use and residential and are all permissible within the B8 Metropolitan Centre zone.

- (m) Council should remove short-stay coach parking along Macquarie Street in favour of short-stay parking for private vehicles.

Response - Changes in kerbside parking restrictions are not considered in a concept application.

- (n) Further design development should be undertaken to respond to the wide driveway on Albert Street. An extra-wide driveway, regardless of the beneficiaries to an easement, does not adequately address pedestrian amenity within the public domain and does not achieve design excellence.

Response - This concern is reiterated in this report and is recommended to be considered as part of a future competitive design process and subsequent detailed design development application.

- (o) The public domain, specifically the footpaths surrounding the development must be upgraded to be consistent with surrounding developments.

Response - Any upgrades to the pedestrian footpaths surrounding the development are considered at a later stage as part of the detailed design development application.

- (p) The Design Excellence Strategy seeks an additional 10% FSR but does not explain how the additional floor space will be accommodated within the development without impacting surrounding developments.

Response - This issue was raised with the applicant and has since been addressed. The amended Design Excellence Strategy does not seek any additional floor space or height and development will be bound by the proposed envelope.

- (q) Council should undertake an Urban Design Study similar to that of the APDG Block (Alfred, Pitt, Dalley and George Streets) to determine the future development potential of the buildings and public domain of the block bound by Macquarie, Alfred, Phillip and Bridge Streets.

Response - Planning controls do not require an undertaking of an urban design study of a city block when a single application is lodged for assessment. Council's Strategic Planning unit have undertaken a review of Central Sydney controls within the Central Sydney Planning Strategy and are currently proposing updated controls to suit the strategic direction of development in Central Sydney. Currently, the urban design considerations in the Sydney LEP 2012 and Sydney DCP 2012 are relevant to the proposal and have been adequately addressed.

- (r) The future design of the building must be totally contained within the building envelope including all services and balconies so it does not further impact any heritage streetscapes or views and vistas.

Response - A condition of consent is recommended to ensure any future building is consistent with an approved building envelope including any balconies and plant.

- (s) An Interim Heritage Order should be placed on the existing hotel (the 1990's Michael Dysart addition to the Health Department building) as it is a sympathetic addition to the Macquarie Street precinct, has notable architectural value, contains a significant interior fitout and is worthy of separate heritage listing.

Response - The 1990's hotel addition has been considered by Heritage Specialists in Council's Planning Assessments and Strategic Planning Units who have determined the addition does not meet the criteria for local heritage listing. Further, advice received from NSW Heritage confirms the 1990's addition does not meet the criteria for consideration for State Heritage listing. Additionally, advice provided by the Australian Institute of Architects reiterates that the hotel addition is not considered significant and will not currently be listed on the Institute's register.

- (t) The development is inconsistent with the recommendations from the NSW Heritage Council in that the envelope is a not low-scale development of a similar height of surrounding heritage items.

Response - The advice received from NSW Heritage has been considered and addressed in the body of the report above. The proposed envelope is considered to have an acceptable heritage impact and is consistent with the objectives of the Macquarie Street Special Character Area.

- (u) The application should be referred to the State Government to be considered in its review of the Macquarie Street East Precinct review.

Response - The existing review involves reviewing and improving access, amenity and use of the public buildings on the eastern site of Macquarie Street between Shakespeare Place and Prince Albert Road. The subject site is not a State-owned building and does not fall within the Macquarie Street East Precinct.

- (v) The development will decrease values of surrounding residential apartments and impact the viability of adjoining commercial developments.

Response - The proposal is considered to be generally in accordance with the relevant planning controls and is consistent with the objectives of the B8 Metropolitan Centre zone in that it has the potential to support surrounding uses within the Central Sydney area. The commercial value of surrounding developments is not specifically a matter for consideration in accordance with the EP&A Act 1979.

- (w) Planning controls should be amended to ensure heights of developments are restricted to low-scale development only.

Response - The subject application has been assessed against the current development controls applicable to the site and is considered to be satisfactory. As discussed in the report body above, although not a matter for consideration in this report, reducing height controls in Central Sydney is not consistent with the strategic direction of development within the CBD as per proposed development control amendments.

- (x) The applicant's reliance on proposed amendments to the Sydney DCP 2012 in relation to setback controls is unwarranted.

Response - This assessment has not considered any draft development controls that have yet to be publicly exhibited.

- (y) A blank wall up to 50 metres in height along the southern boundary is unacceptable and the 3 metre setback is not compliant with the DCP.

Response - This application is for a building envelope only and does not approve the construction of a blank wall along the southern site boundary. A Detailed Design DA will consider the size, finishes and setback of any boundary walls. Further, Section 5.1.2.2 of the Sydney DCP 2012 states only principal windows within residential developments must be set back from a side boundary by a minimum of 6 metres. The indicative plans do not show any principal windows fronting the side boundary and those that are within this setback are either skewed away from directly facing the boundary or are windows from common circulation areas. Any future detailed design must include appropriate side setbacks in accordance with the Sydney DCP 2012.

- (z) The application relies on borrowed amenity from adjoining sites, particularly the Justice and Police Museum site to the west.

Response - The envelope has subsequently been amended to include appropriate setbacks in accordance with the minimum setback controls as stipulated in the ADG. The envelope includes the 6 metre light and air easement over the adjoining site in the setbacks and is considered acceptable.

- (aa) There is no basis to waive the requirement of Clause 7.20 of the Sydney LEP 2012 requiring the preparation of a site specific DCP (and, even if there is, the matters required by Clause 7.20(4) have not been sufficiently addressed).

Response - Section 4.23 of the Environmental Planning and Assessment Act, 1979 allows a concept application to be lodged in lieu of preparing a development control plan. The matters under Clause 7.20(4) of the Sydney LEP 2012 are satisfied by the documentation submitted with the application. The applicant has also elected to undertake a competitive design process. A Design Excellence Strategy has been reviewed by Council officers a number of times and is considered satisfactory.

- (bb) The development will adversely impact the heritage significance of the State Heritage former Health Department Building within the site and the Conservation Management Plan has given insufficient regard to the context and setting of the proposed development.

Response - As discussed in the body of the report, the proposed envelope is considered to have an acceptable heritage impact on surrounding heritage items. The existing conservation management plan is also considered to be acceptable and will be required to be updated to be more detailed in any future detailed design development application.

- (cc) The DA is deficient in its urban design and does not exhibit design excellence.

Response - The application is a concept envelope only and does not include any specific architectural design. The proposed envelope is generally consistent with the relevant planning controls and is capable of accommodating a future building which can exhibit design excellence in accordance with the objective and matters for consideration in Clause 6.21 of the Sydney LEP 2012.

- (dd) The DA is inconsistent with opinions expressed by the applicant's own consultants in the objections submitted for developments on adjoining sites.

Response - The objections a person submits in response to adjoining development applications, regardless of the consultants an applicant chooses to use, are not a matter for consideration.

- (ee) The applicant should seek amendments to the Sydney DCP 2012 to request the controls be amended to allow a tower development as proposed in this DA. The proposed controls changes should then be publicly exhibited and determined by Council prior to a formal envelope DA being proposed.

Response - As discussed in the body of the report above, the proposed envelope is generally consistent with the existing planning controls applicable to the site and an amendment to the Sydney DCP 2012 is unnecessary.

- (ff) If the proposal proceeds, it will create an unacceptable precedent for development along Macquarie Street with smaller setbacks above significant heritage items.

Response - The proposed building envelope is consistent with the relevant controls prescribed to the site including street wall heights and setbacks and is considered to be appropriate in scale for its Macquarie Street setting. The street block in which the subject site is located within and surrounding development

provides a range of building heights and it is not agreed that development of this size is unprecedented in the locality.

- (gg) Insufficient consideration has been given to the 3-dimensional low scale streetscape and the unique character of the remnant block.

Response - The application has been considered against streetscape controls and has taken into consideration low, mid and high-rise developments located within close proximity of the site. It is considered that the proposed envelope height and bulk is acceptable in its setting and does not adversely impact the special character area or the character of the development block.

- (hh) The indicative plans show non-compliances with the ADG and demonstrates how a building could not be accommodated within the site.

Response - As per the detailed assessment above, it is considered the indicative reference scheme is generally consistent with the aims and objectives of SEPP 65 and controls in the ADG. Where non-compliances are presented in the indicative scheme, appropriate design solutions can be implemented to adequately address the specific issue.

- (ii) The envelope is generic and looks to utilise all possible space on site to meet floor space and height development standards and if the envelope is approved, the building envelope may become the final building form, notwithstanding facade renderings.

Response - A concept application seeks to set out the absolute maximum parameters in which a future building could be constructed within. A future building must be designed to comply with all relevant planning controls including design excellence. The assessment report above notes that subject to further design development, a building capable of complying with all relevant controls can be accommodated within the proposed building envelope.

- (jj) Providing 57 residential car parking spaces is inconsistent with Council's policy of reducing traffic congestion and parking.

Response - This application does not grant consent to the allocation of parking to the site. Council's parking rates for residential and commercial developments have been created to respond to the aim of reducing private car use in the area. Any future detailed design development application must comply with the current Council parking rates.

- (kk) The proposal is not consistent with the objectives of the Central Sydney Planning Strategy relating to providing a land use that will increase employment opportunities.

Response - The Central Sydney Planning Strategy is consistent with the proposal. The application has been assessed against all current controls as detailed in the discussion above.

- (ll) The City of Sydney Competitive Design Policy does not provide enough direction for sites containing buildings of State Heritage significance.

Response - Section 3.3 of the policy requires a suitably qualified heritage consultant to be on any jury of an architectural design competition should a development include a building listed in Schedule 5 of the Sydney LEP 2012. The former Health Department Building is listed in Schedule 5 of the Sydney LEP 2012 and triggers this requirement. This is suitable for the stage of development in that a member of the jury being a suitably qualified heritage consult will provide advice and recommendations to any conservation works to the heritage item and consider the impact of any detailed design on the heritage item located within the subject site and surrounding heritage items.

- (mm) The Heritage Council must assess the Integrated application as a whole and not just the part of the development that will impact the building within the listing curtilage

Response - As discussed in the development application history above, Court proceedings have determined that the Heritage Council has met their obligation under the Heritage Act 1977 and the EP&A Act 1979 in providing GTAs for the proposed development within the curtilage of the heritage listing while providing "advice" for the remainder of the development.

Public Interest

185. The proposal will have no significant detrimental effect on the public interest, subject to the conditions included in Attachment A to the subject report.

Section 61 Contribution

186. The development is exempt from the provisions of Central Sydney (Section 61) Contributions Plan 2003 as the proposal is for an indicative concept building envelope. A Section 61 contribution will be applicable to any future Detailed Design development application.

Relevant Legislation

187. Environmental Planning and Assessment Act 1979.
188. City of Sydney Act 1988.
189. Heritage Act 1977.

Conclusion

190. The proposed concept development is appropriate in its setting and is generally compliant with the relevant planning controls in the Sydney LEP 2012, the Sydney DCP 2012, SEPP 65 and the ADG.
191. The proposal was amended to address Council's concerns relating to heritage conservation and compliance with the ADG and to improve residential amenity. The amended proposal is satisfactory, subject to the recommended conditions included in Attachment A.
192. The application seeks Integrated Development approval under the Heritage Act 1977 as the site contains the State heritage listed former Health Department Building. General Terms of Approval have been granted by NSW Heritage and are included in the list of recommended conditions.
193. The proposed building envelope is compliant with the applicable height controls. The envelope does not pose any significant or unreasonable impacts upon the existing or likely future development surrounding the site.
194. The potential impacts on the heritage significance of the heritage items located on the site and surrounding the site are generally acceptable, subject to conditions.
195. The indicative reference design scheme submitted with the application adequately demonstrates that an acceptable level of amenity could be achieved for dwellings within the proposed envelope.
196. Where the assessment of the subject proposal has identified potential issues for a future detailed design development application, such as heritage conservation and vehicle access and servicing, these matters are identified in the recommended conditions of consent as requiring further consideration.
197. The proposal will provide for new residential, retail and general commercial uses in the Central Sydney, on a site which is highly accessible to existing and planned employment, services, public transport infrastructure and community facilities.
198. Subject to the recommendations in this report, and the imposition of the recommended conditions, the proposal is capable of accommodating a future detailed design that responds to the constraints of the site and contributes to the existing and desired future character of the locality.

GRAHAM JAHN, AM

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