

Attachment A

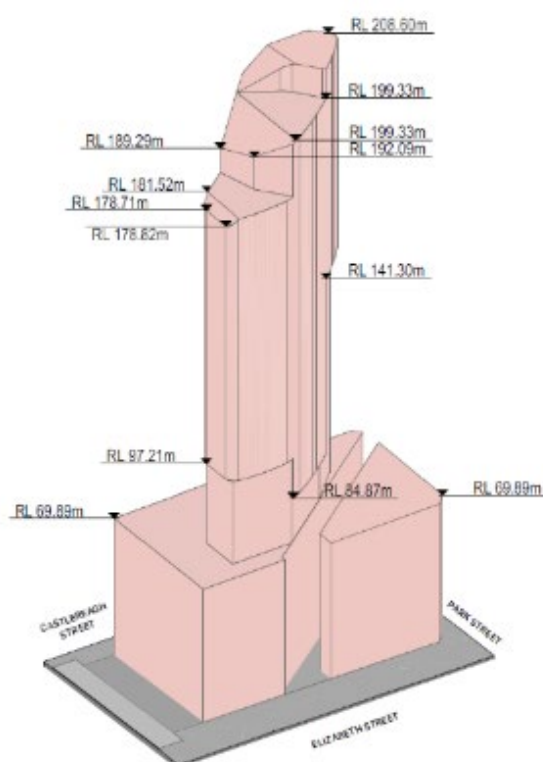
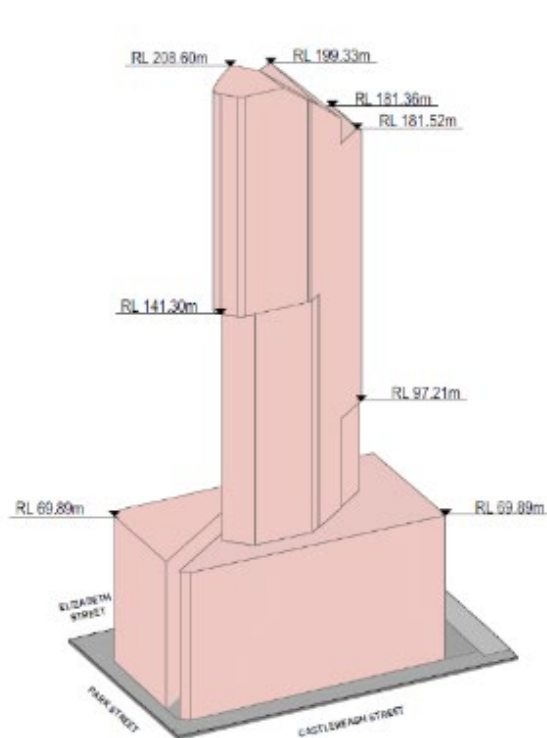
Assessment Report

201 Elizabeth Street – Stage 1 Modification 1

State Significant Development Modification Assessment Report (SSD 8105-Mod-1)

Council reference: D/2017/349/A

June 2025



City of Sydney Council



Acknowledgement of Country

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201 Elizabeth Street – Stage 1 Modification 1 (SSD 8105-Mod-1) Assessment Report

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Preface

- This assessment report provides a record of the City of Sydney Council's (The City) assessment and evaluation of Modification 1 to the 201 Elizabeth Street Stage 1 / Concept development at 201-217 Elizabeth Street, Sydney, lodged by Charter Hall Holdings Pty Limited. The report includes:
 - an explanation of why the project is considered SSD and who the consent authority is
 - an assessment of the project against government policy and statutory requirements, including mandatory considerations
 - a demonstration of how matters raised by the community and other stakeholders have been considered
 - an explanation of any changes made to the project during the assessment process
 - an assessment of the likely environmental, social and economic impacts of the project
 - an evaluation which weighs up the likely impacts and benefits of the project, having regard to the proposed mitigations, offsets, community views and expert advice; and provides a view on whether the impacts are on balance, acceptable
 - a recommendation to the decision-maker, along with the reasons for the recommendation, to assist them in making an informed decision about whether the consent should be modified.

Executive Summary

This report details the City's assessment of a modification application to the 201 Elizabeth Street – Stage 1 Concept Approval (SSD 8105-Mod-1) for a building envelope for the construction and use of a 50 storey (RL198.22) mixed use building providing hotel, retail and residential uses, with basement parking.

The modification application seeks approval for:

- changes to the building envelope (including amendments to setbacks, additional height to the north-west corner of the tower (from RL 198.22 to RL 208.60), and introduction of 2x through-site links within the ground plane) to align with the winning design competition scheme and Detailed Design State Significant Development Application D/2024/854 (SSD-64090972); and
- the amendment of conditions (specifically Conditions 2, 3, 11 and 16) to allow for the modified building envelope.

The modification application has been lodged pursuant to section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) and is being reported up to Central Sydney Planning Committee (CSPC) concurrently with the detailed design State Significant development application D/2024/854 (SSD 64090972). The development has a capital investment value of more than \$50 million and Central Sydney Planning Committee (CSPC) is the consent authority.

The modification is classified as State Significant Development (SSD) in accordance with Section 13 of Schedule 1 of the *State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)* as the SSD approval comprises hotel accommodation with a capital investment value of more than \$100 million.

On 7 February 2017, the then Minister for Planning delegated consent authority functions to the City in respect of the original application D/2017/349. On 23 February 2017, Secretary of the Department of Planning and Environment (as it was previously known) delegated responsibility for the assessment of the application (and related functions) to the City.

Engagement

The City and the Department of Planning, Housing and Infrastructure (the Department) publicly exhibited the application for 28 days from 29 October 2024 to 27 November 2024. During the exhibition period, the City received 1 submission objecting to the proposal.

Key concerns raised related to the concept approval lapsing in September 2024, and whether the proposed building envelope is substantially the same development. The submission also raised concerns with view loss, and the application of controls relating to height and overshadowing to Hyde Park that have since been repealed.

The applicant submitted a submissions report on 20 February 2025 to address the issues raised in submission.

Assessment

The City has undertaken a detailed assessment of the proposal and has carefully considered the issues raised in submissions. The City has identified key issues to be the building envelope modifications,

including the increased building height to the north-west corner of the tower, reduction in the Castlereagh Street setback and the associated amenity impacts resulting from these changes. These issues are discussed in greater detail within this report.

The City considers the proposal is acceptable as:

- It is consistent with the strategic planning framework established for the site. In particular, the proposal is consistent with the Greater Sydney Region Plan and the Eastern City District Plan as it supports an increase in tourist and residential assets within the Central Business District and will foster a lively and engaging city.
- The development as modified is substantially the same as was originally approved and is consistent with the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979.
- The development has been considered against the reasons given by the Central Sydney Planning Committee for the grant of consent that is to be modified, and the proposal is consistent and acceptable, as per Section 4.55(3) of the Environmental Planning and Assessment Act, 1979.
- The proposed modifications ensure that the detailed design development application is consistent with the concept approval to satisfy Section 4.24 of the Environmental Planning and Assessment Act, 1979.
- The proposal is consistent with the aims, objectives, and relevant provisions of the Sydney Local Environmental Plan 2012 for the reasons set out in this report.
- The proposed building envelope is able to accommodate a future building design which is capable of exhibiting design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.
- The increased height and changes to setbacks of the building envelope are in keeping with the desired future character of the area and will not adversely impact the amenity of the surrounding area. These variations are reasonable and justified with regard to the detailed design State Significant development application D/2024/854 (SSD 64090972).
- The changes to the approved building envelope are appropriate and are not likely to significantly impact the overall use of the building or the amenity of surrounding sites or locality.
- The development, as modified, is in the public interest.

The proposed modifications are recommended for approval.

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1 Introduction

1.1 The site

The subject site is located at 201-217 Elizabeth Street, Sydney in the City of Sydney local government area (LGA) and on the eastern edge of the Sydney Central Business District (CBD) (see **Figure 1** and **Figure 2**).

The site is legally described as Lot 1 in DP 868008.

The site is bound by Park Street to the north (at approximately 37m), Elizabeth Street to the east (at approximately 87m), Castlereagh Street to the west (at approximately 87m) and a commercial development at 219-227 Elizabeth Street to the south. Hyde Park is located to the east of the site.

The site is rectangular in shape with a splayed north-western corner adjacent to Park Street and Castlereagh Street, and has a total site area of 3,901sqm. The topography of the site includes a fall in level from Elizabeth Street to Castlereagh Street of approximately 1 metre, and a slight fall in the land from south to north.

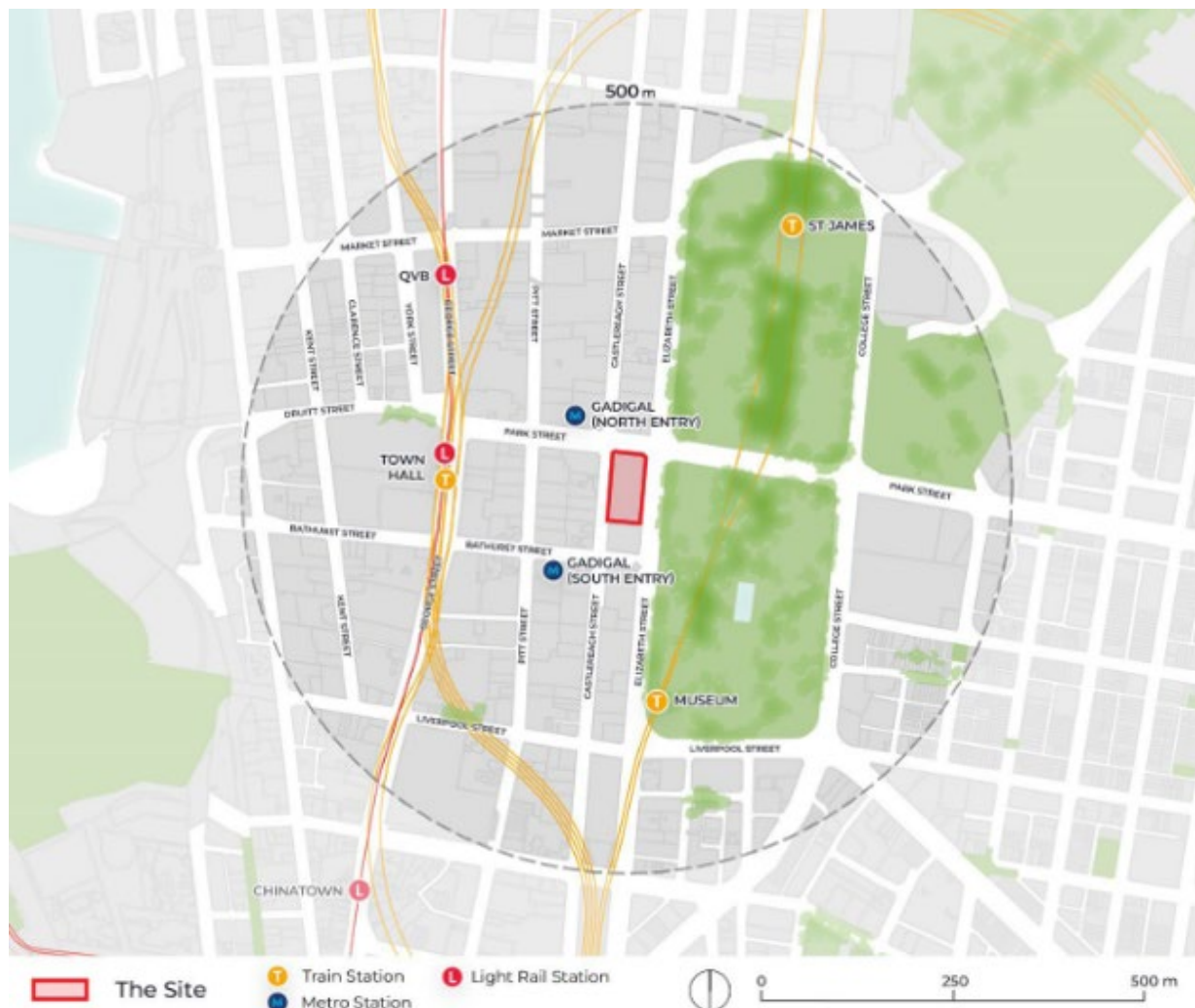


Figure 1 | Site location and context map (Source: Ethos Urban Modification Report)



Figure 2 | Site aerial map (Source: Ethos Urban Modification Report)

The site contains a 38 storey commercial office tower above 2 levels of basement car park accessed from Castlereagh Street via separate entry and exit driveways. Basement access is shared with the neighbouring site to the south at 319-227 Elizabeth Street, with the entry driveway located within the subject site, and the exit driveway located on the neighbouring site.

Primary pedestrian access is from the northern end of the site via entries on Elizabeth Street and Castlereagh Street. A secondary access point is located at the southern end of the commercial lobby, via Elizabeth Street. Access to the lower ground floor is via Park Street. Mid-block pedestrian access is available between Elizabeth Street and Castlereagh Street via stairs which also lead to the lower ground floor.

The lower ground floor constitutes a double height space which presents as single storey to Park Street, in the northern portion of the site, and is open to the sky at the southern end of the site. The lower ground floor contains vacated retail tenancies and an early learning centre with play area. Pedestrian access to Museum Railway Station is also provided, connecting to the neighbouring site at 219-227 Elizabeth Street.

The site abuts the Cross City Tunnel (CCT) westbound tunnel and the Sydney Metro City and South West underground corridor first reserve. The site is also affected by the following easements and covenants:

- Reciprocal right of carriageway providing shared basement access with 219-227 Elizabeth Street
- Right of footway within the site providing pedestrian access on Castlereagh Street
- Lease to the Sydney County Council of substation and control point rooms.

The site is located within the Central Sydney locality and the College Street / Hyde Park Special Character Area. The site is not identified as a heritage item, nor is it located within a heritage conservation area. The site is adjacent to heritage items of local significance including:

- Hyde Park (I1654), including north and south park reserves to the immediate east of the site. Hyde Park contains the state listed Anzac War Memorial (SHR No. 01822) which is diagonally south-east of the subject site
- the Former “CENEF House” including interiors (I1700) at 201 Castlereagh Street to the immediate west
- St Georges Church including interior and forecourt (I1701) at 201A Castlereagh Street to the immediate west
- “Porter House” including interior (I1702) at 203 Castlereagh Street to the south-west of the site
- the “Former Australian Consolidated Press” façade (I1751) at 189-197 Elizabeth Street to the north of the site, across Park Street.

The subject site is not flood affected.

Photographs of the site are provided below.



Figure 3 | View of the subject site from Hyde Park, looking south-west



Figure 4 | View of the subject site from the Anzac Memorial, Hyde Park, looking north-west



Figure 5 | View towards the subject site from Elizabeth Street, looking north, with 219-227 Elizabeth Street in the foreground



Figure 6 | View of the subject site from the intersection of Castlereagh and Park Streets, looking south-east



Figure 7 | View subject site and adjacent residential development on the western side of Castlereagh Street from Hyde Park, looking south-west



Figure 8 | View of lower ground floor, looking towards Castlereagh Street



Figure 9 | View south along Castlereagh Street. Adjacent to the subject site, including the entry driveway shared with the neighbouring site at 219-227 Elizabeth Street



Figure 10 | View of the driveway exit, shared with the neighbouring site at 219-227 Elizabeth Street



Figure 11 | View across the southern end of the subject site from Elizabeth Street to Castlereagh Street, with the mid-block pedestrian access to the right and St Georges Church in the background

1.2 Surrounding site context

To the immediate north of the site, located on the opposite side of Park Street, are 13 storey commercial buildings at 50 and 60 Park Street. These buildings are built to the street wall height of 45m to Hyde Park North, with the Great Synagogue and Sheraton on the Park Hotel further north. The recently completed Gadigal Metro Station and Over-Station Development (OSD) (a 38 storey commercial building) is located to the north-west of the site, across Park Street. To the north-east of the site is the northern half of Hyde Park.

To the immediate east of the site, across Elizabeth Street is Hyde Park South, with the Anzac Memorial to the south-east. Elizabeth Street is a primary arterial road connecting Circular Quay to the Sydney CBD, and a major bus route for buses travelling north and south. Beyond Hyde Park, Park Street becomes William Street, which acts as a major thoroughfare connecting the Eastern suburbs of Sydney to the CBD.

To the immediate south of the site is a 23 storey commercial development at 219-227 Elizabeth Street. There is a basement connection between the subject site and the neighbouring site, as well as shared driveway access. This development has lower ground retail with an underground pedestrian connection to the subject site and Museum Railway Station. Further to the south across Bathurst Street, is a collection of commercial buildings generally built to the street wall height of 45m fronting Hyde Park.

To the immediate west of the site are mixed-use commercial and residential developments. The site at 27 Park Street (known as 'Park Regis') contains a 45 storey building comprising a 5 storey podium with car parking and commercial uses, and a tower containing residential apartments. The site at 197 Castlereagh Street (known as 'Victoria Towers') contains a 39 storey building comprising a 10 storey podium with commercial uses, and a tower containing residential apartments.

The local heritage item known as the former CENEFF House is located at 201 Castlereagh Street. St George's Church is located at 201A Castlereagh Street and is also identified as a local heritage item.

A 36 storey mixed-use development, known as 'Castle Residences' is located at the southern end of the block on Castlereagh Street, at 116 Bathurst Street. The site includes the adaptive re-use of the local heritage listed Porter House and comprises residential apartments, hotel accommodation and retail uses.

Further south, at 296 Pitt Street (also known as 125 Bathurst Street), is the Pitt Street Metro OSD South / 'Indi Sydney', a 37 storey tower including build to rent residential accommodation and retail premises. The development is located above Gadigal Metro Station.

Photographs of the surrounding development, where relevant, are provided below.



Figure 12 | View to Bathurst Street west – residential developments Indi Sydney, Greenland and Castle Residences as indicated



Figure 13 | Castle Residences at 116 Bathurst Street, looking north-west



Figure 14 | View along Castlereagh Street, looking south-west



Figure 15 | View along Castlereagh Street, looking north-west



Figure 16 | View along Park Street, looking north-east (across from the subject site)

1.3 Related projects and approval history

1.3.1 Concept Approval – SSD-8105 / D/2017/349

On 15 February 2018, Central Sydney Planning Committee granted deferred commencement approval to 201 Elizabeth Street – Stage 1 (SSD-8105 / D/2017/349) for:

- A building envelope for the construction and use of a 50 storey (RL198.22) mixed use building providing hotel, retail and residential uses, with basement parking.

The deferred commencement conditions required vehicular access arrangements for the site (including number and location of vehicle cross-overs) to be resolved to the satisfaction of the City and Transport for NSW (TfNSW); and modification of the building envelope to provide a minimum 17m setback from the northern boundary of the site, above the podium between RL 69.89 and RL 76.00.

The deferred commencement conditions were satisfied, and the consent became operational, on 6 September 2018.

Development consent D/2017/349 is due to lapse on 6 September 2025. This is in accordance with Section 4.53(6)(c) of the EP&A Act, where development consent received prior to the commencement prescribed period has an extended lapse date of 2 years after which the development consent would otherwise have lapsed. In this instance, the development consent would otherwise have lapsed on 6 September 2023. The prescribed period is the period commencing on 25 March 2020, ending on 25 March 2022.

This application is the first modification to the concept plan.

Selected approved drawings for D/2017/349 are provided below.

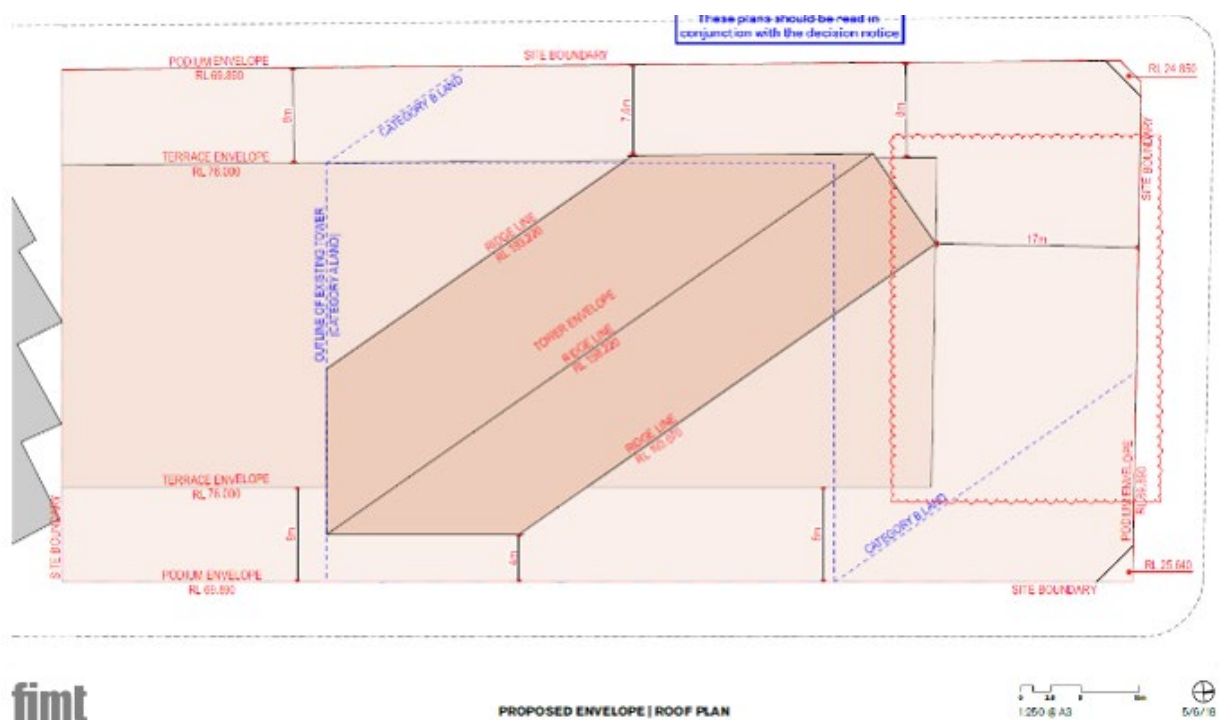


Figure 17 | Approved roof envelope plan for D/2017/349

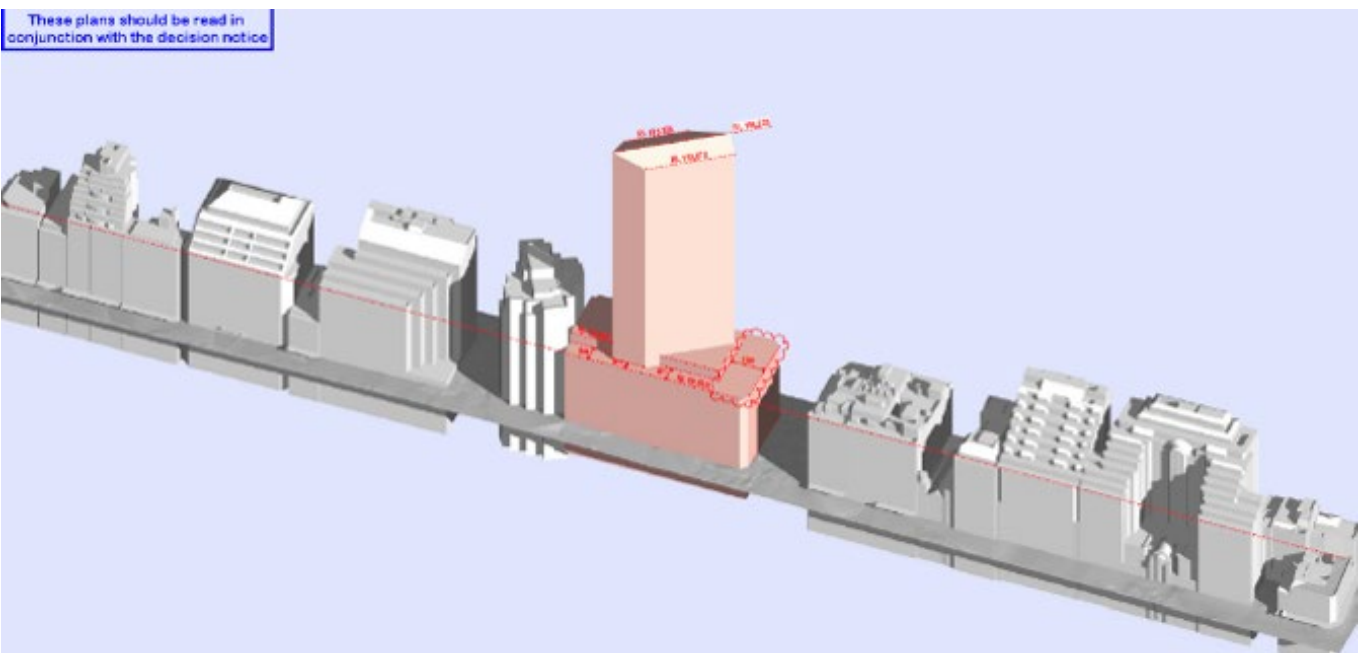


Figure 18 | Approved envelope north-south Elizabeth Street elevation for D/2017/349

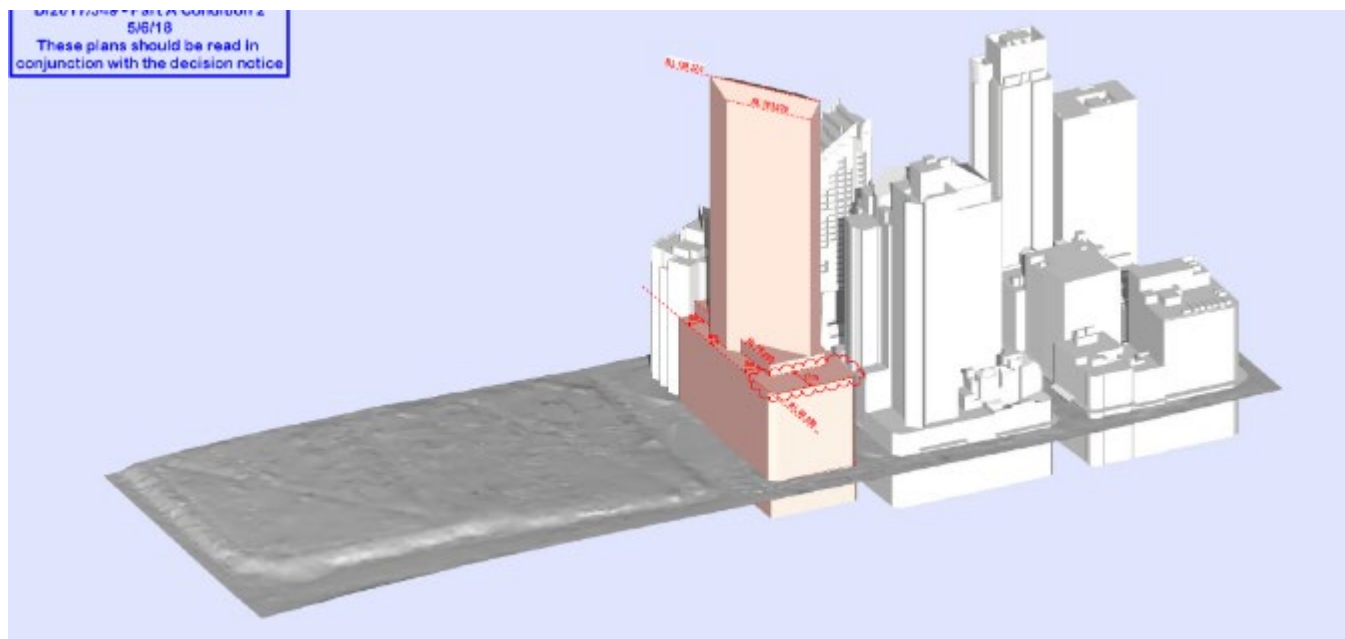


Figure 19 | Approved envelope east-west Park Street elevation for D/2017/349

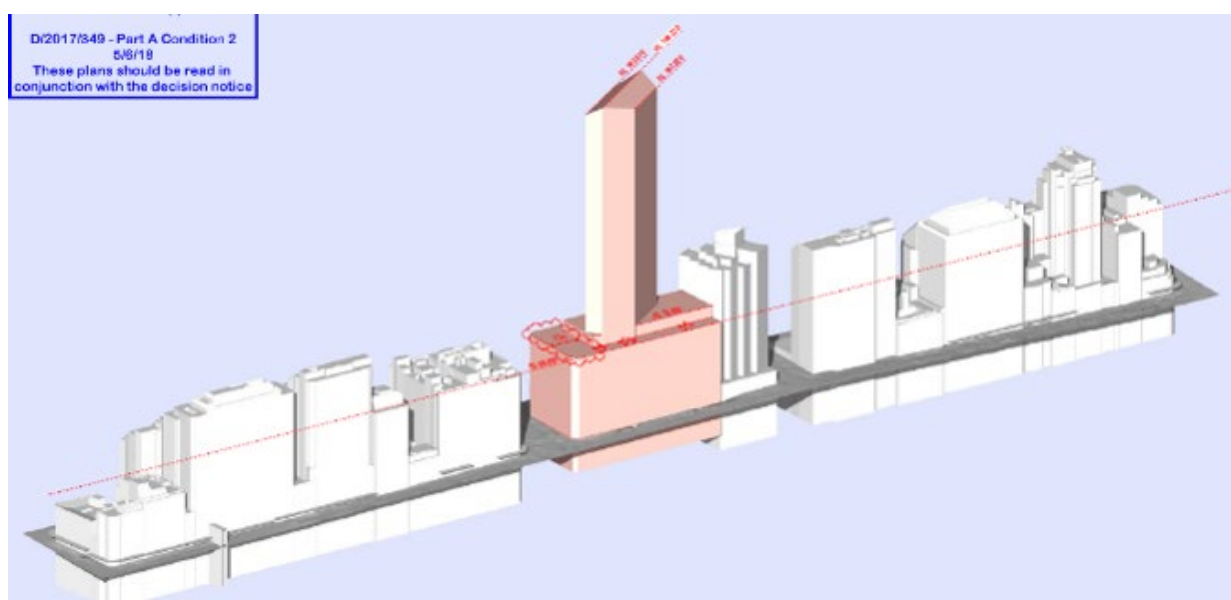


Figure 20 | Approved envelope north-south Castlereagh Street elevation for D/2017/349

1.3.2 Competitive Design Process

An architectural design competition, based on the in-principle approved hotel, retail and residential uses, was undertaken over September to December 2018 in accordance with the provisions of Clause 6.21D of the SLEP 2012 and the City of Sydney Competitive Design Policy.

The developer sought up to 10% additional floor space ratio (FSR) as part of the competitive design process.

FJC Studio (formerly FJMT) was selected as the winning entrant by the six member selection panel, proposing a tripartite tower sitting outside of the approved building envelope (in terms of height and massing). The panel considered the winner to demonstrate the potential for design excellence and

recommended a number of fundamental aspects of the proposal to be retained within the detailed design application. This is discussed further as part of the detailed design State Significant Development Application assessment.



Figure 21 | Photomontage of design competition winning scheme (left – viewed from Hyde Park, top right – aerial view, bottom right – southern through-site link looking south-west to St Georges Church) (Source: Ethos Urban EIS: Design Report for SSDA)

1.3.3 State Significant Development Application SSD-64090972 / D/2024/854

The State Significant Development Application D/2024/854 has been lodged and is being assessed concurrently with this Concept Modification Application.

D/2024/854 seeks approval for the demolition of existing structures, removal of trees, remediation, bulk excavation and construction of a 55 storey mixed-use development comprising a 441 key hotel, 264 residential apartments, ground floor lobby, retail, ground plane public domain works and 5 basement levels for 271 car spaces.

The Capital Investment Value of the hotel exceeds \$100 million and, in accordance with Section 13 of Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021, is State Significant Development (at the time of lodgement).

As noted elsewhere, on 7 February 2017, the then Minister for Planning delegated consent authority functions to the City in respect of the original application D/2017/349. On 23 February 2017, Secretary of

the Department of Planning and Environment (as it was previously known) delegated responsibility for the assessment of the application (and related functions) to the City.



Figure 22 | Photomontage of the State Significant Development Application D/2024/854 (Source: Ethos Urban EIS architectural plans)

1.3.4 Other development applications

D/2022/362

On 8 December 2022, development consent was granted by the Central Sydney Planning Committee for alterations and additions to the existing commercial building, including a new podium addition, changes to the ground plane, lower ground levels and basement. This consent is current and lapses on 8 December 2027.



Figure 23 | Photomontage of D/2022/362 – view from corner of Elizabeth Street and Park Street, facing south-west

2 Proposed modification

2.1 Modification overview

The modification application seeks approval for:

- Changes to the building envelope (including the siting of the tower, additional height) to align with the winning design competition scheme and Detailed Design State Significant Development Application D/2024/854 (SSD-64090972); and
- The amendment of conditions (specifically Conditions 2, 3, 11 and 16) to allow for the modified building envelope.

A summary of the key aspects of the modification is provided in **Table 1**.

Table 1 | Key aspects of the modification

Aspect	Description
Podium	• Accommodation of two through-site links within podium envelope along the southern boundary (Elizabeth Street to Castlereagh Street) and from Elizabeth Street to the corner of Castlereagh and Park Streets. • Reduction in parapet height of the podium to align with the design competition winning scheme – from RL 76 to RL 69.890
Tower	• Modification of the low-rise tower to: ○ Increase the northern tower setback from 17m to 19.3m ○ Increase the southern tower setback by an additional 1.5m, with a total setback of 23.7m ○ Increase the eastern tower setback from 4m to 6m ○ Reduction in the western tower setback along the western edges from 7.6m to 5.7m • Modification of the high-rise tower envelope: ○ Reduction in the northern tower setback from 17m to 16.8m ○ Reduction in western tower setback from 7.6m to 5.7m ○ Reduction in eastern tower setback along eastern edges (approximately 2.4m over the diagonal through-site link) • Reduction in height at the top of the tower envelope in the south-eastern portion by approximately 19m • Increase in height at the top of the tower envelope in the north-west portion by approximately 10m to RL208.60

Aspect	Description
Floor space ratio (FSR)	The proposed envelope changes are not expected to have an impact on the maximum FSR anticipated (based on the in-principle mix of residential, hotel accommodation and retail premises). The anticipated FSR maximum is 15.27:1 (59,551.7sqm). The Detailed SSDA comprises an FSR of 14.81:1.
Conditions	Approved Development description: State Significant Development (SSD 8105) for a building envelope and concept approval for the construction and use of a 50-storey (RL 198.22) RL 208.60 mixed use building providing hotel, retail and residential uses, with basement parking. Condition 2 – Approved Development: to include the amended plans Condition 3 – Building Height: to increase the maximum height of building permitted from RL 198.22 to RL 208.60, and decrease the top of podium height limit to align with the approved podium parapet height of RL 69.89 Condition 11(h) & (i) – Detailed Design of Building: Remove the requirement for no continuous awnings along Elizabeth Street (11(h)) and no removal of street trees to align with the detailed design requirements of the Detailed SSDA (11(i)). Condition 16 – Signage Strategy: Remove the requirement for a signage strategy to accompany the detailed SSDA, allowing a signage strategy to form part of a future separate DA.

Relevant proposed building envelope plans are provided below.

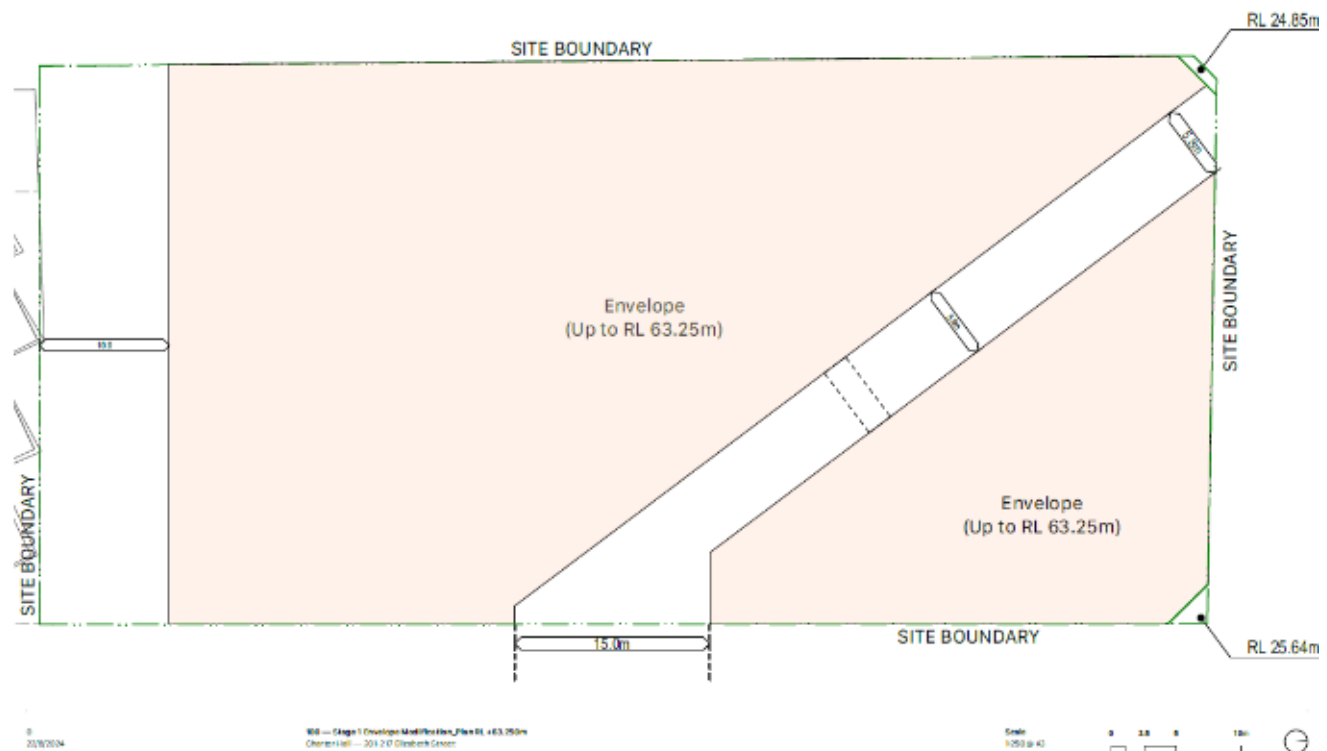


Figure 24 | Proposed podium envelope (up to RL 63.250) (Source: Ethos Urban modification plans)

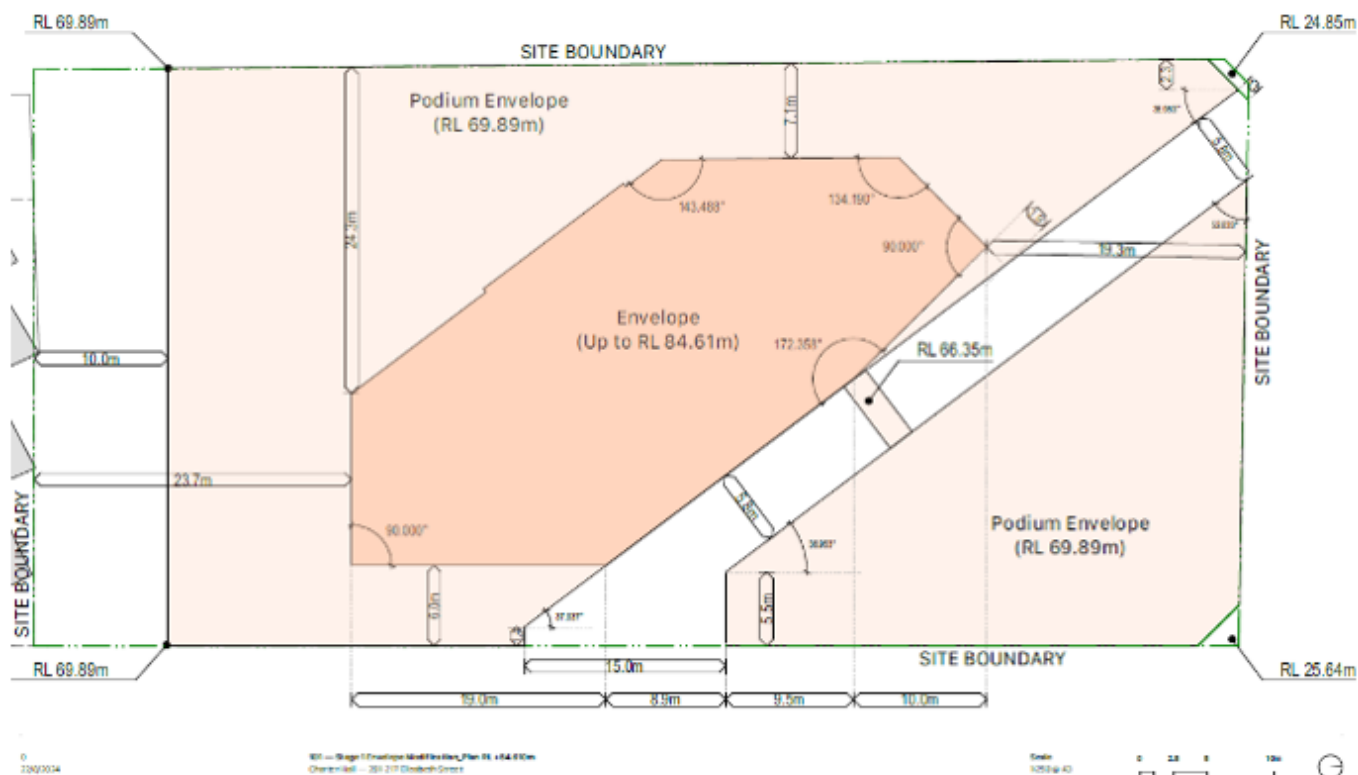


Figure 25 | Proposed podium envelope (up to RL 69.890) and low-rise tower (up to RL 84.610) (Source: Ethos Urban modification plans)

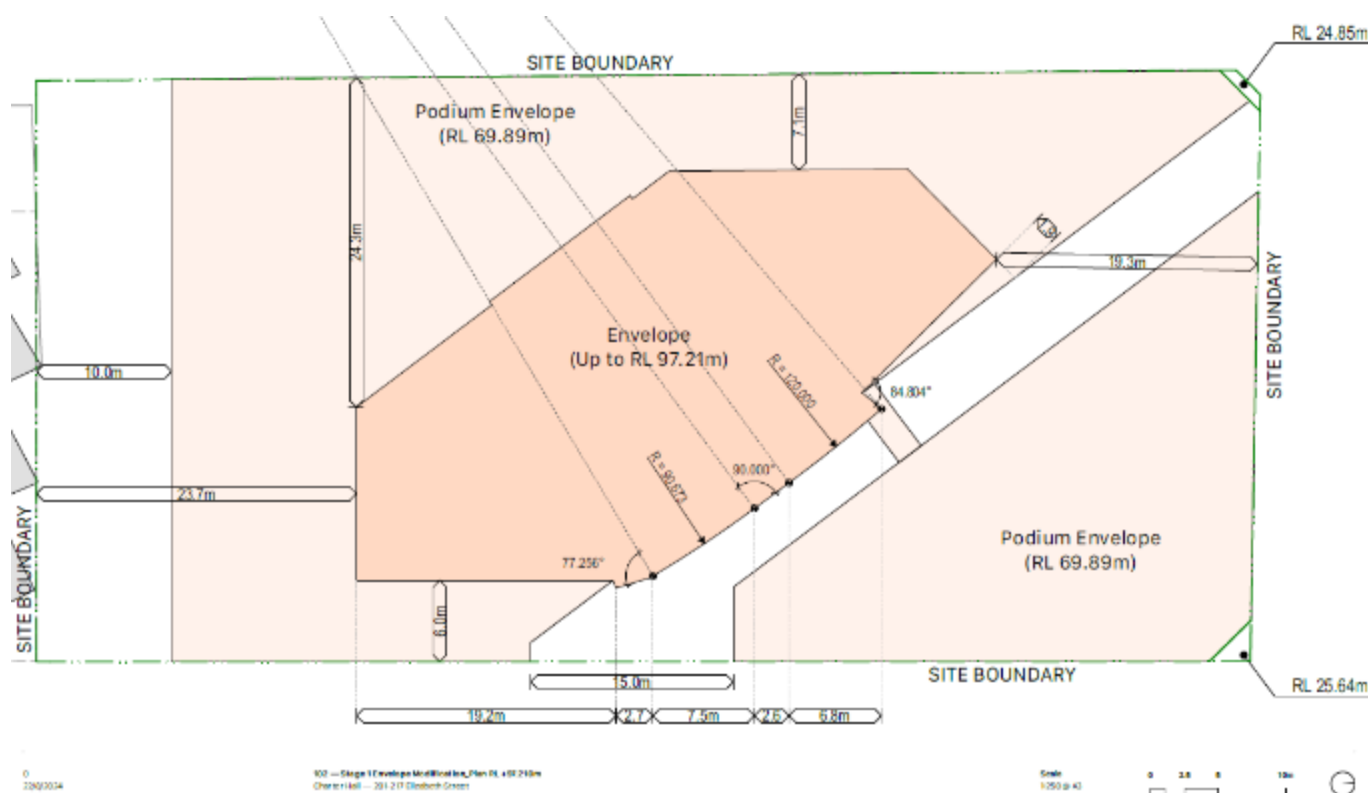


Figure 26 | Proposed low-rise tower (up to RL 97.210) (Source: Ethos Urban modification plans)

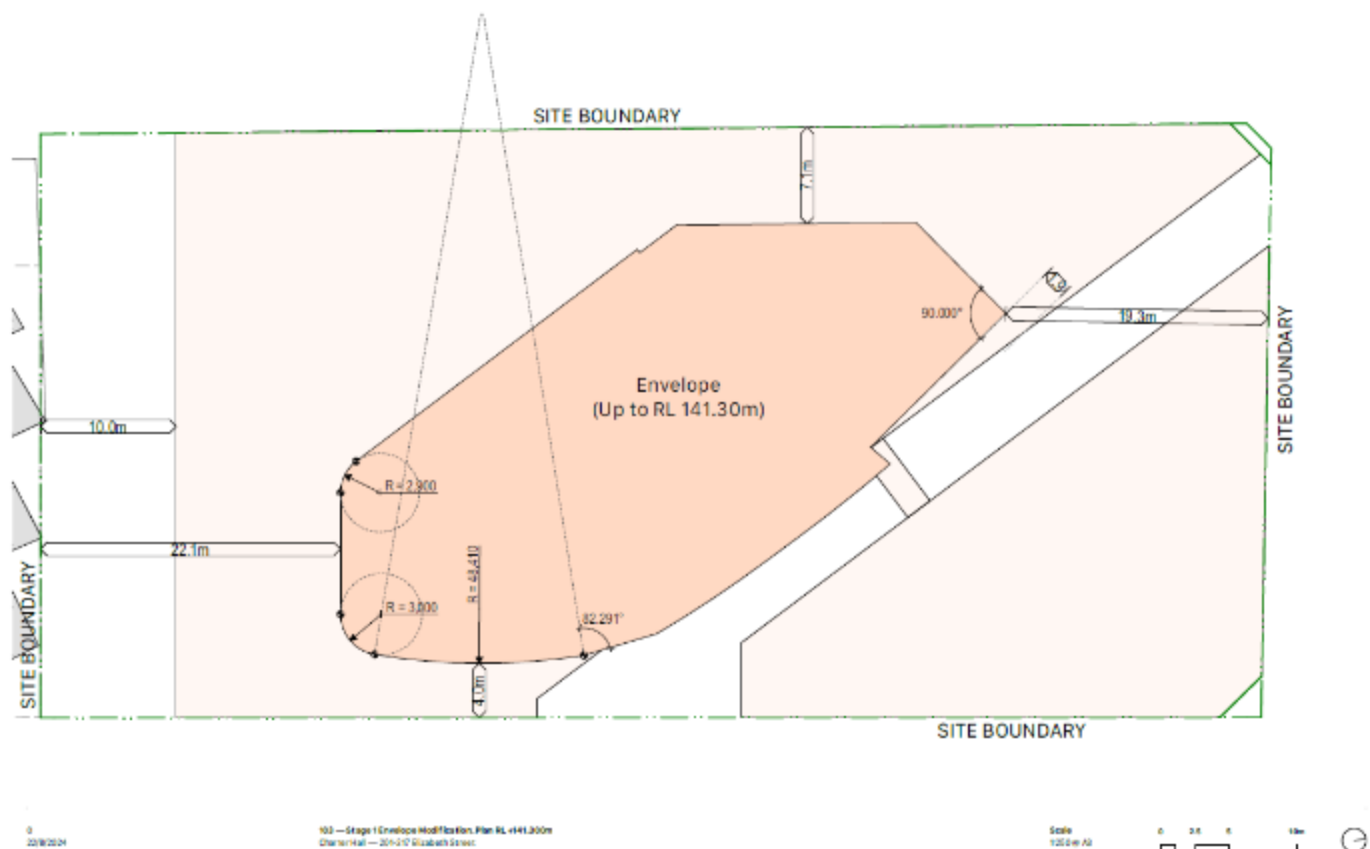


Figure 27 | Proposed low-rise tower (up to RL141.300) (Source: Ethos Urban modification plans)

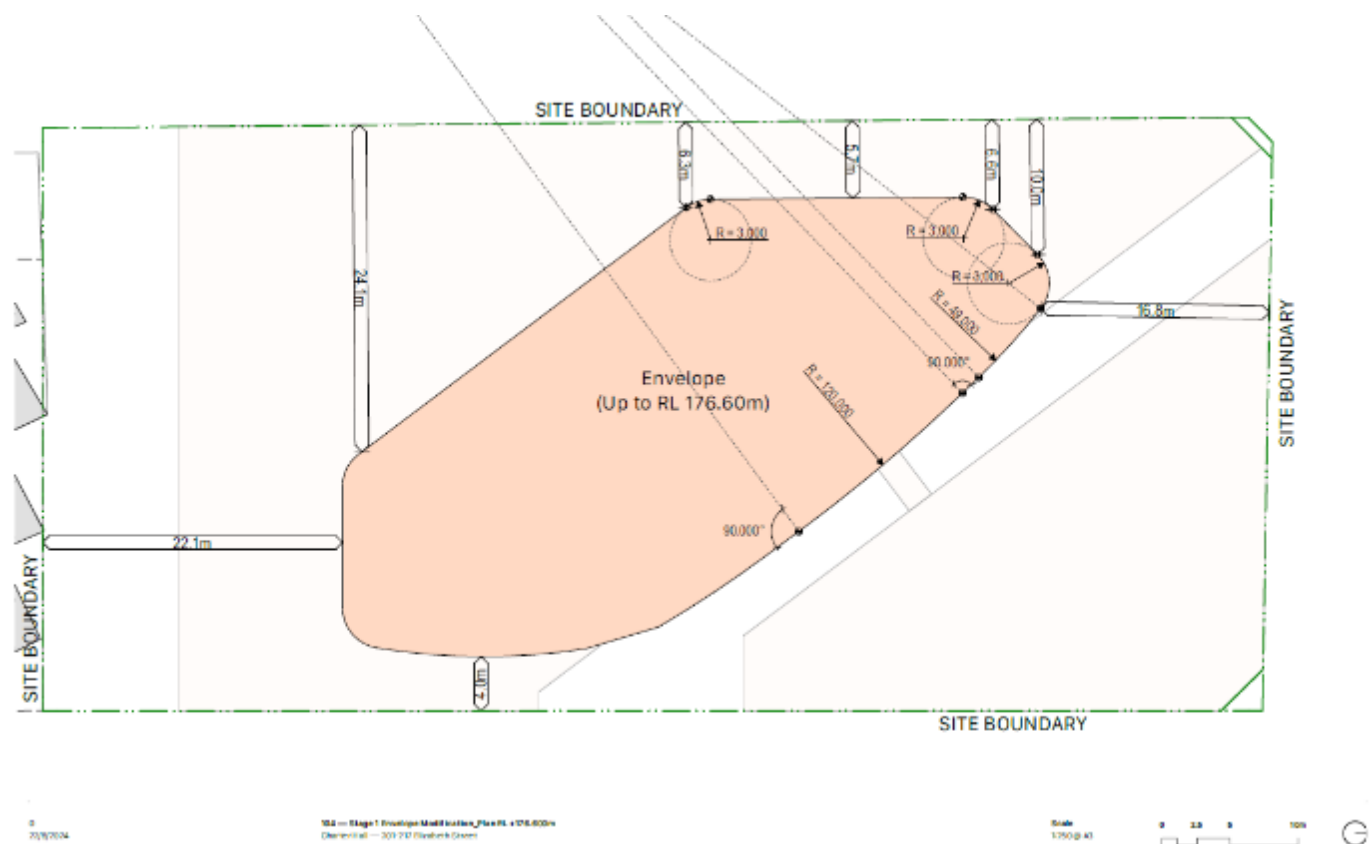


Figure 28 | Proposed high-rise tower (up to RL 176.600) (Source: Ethos Urban modification plans)

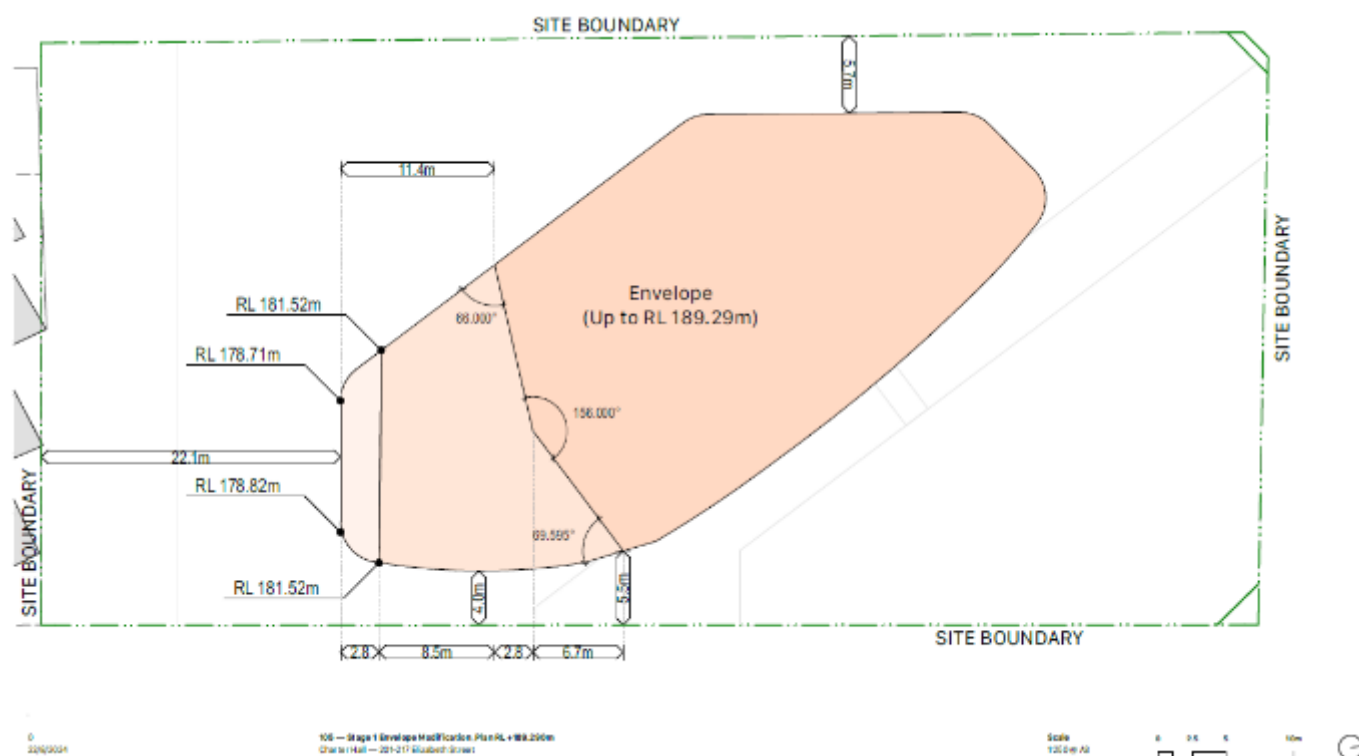


Figure 29 | Proposed high-rise tower (up to RL 189.290) (Source: Ethos Urban modification plans)

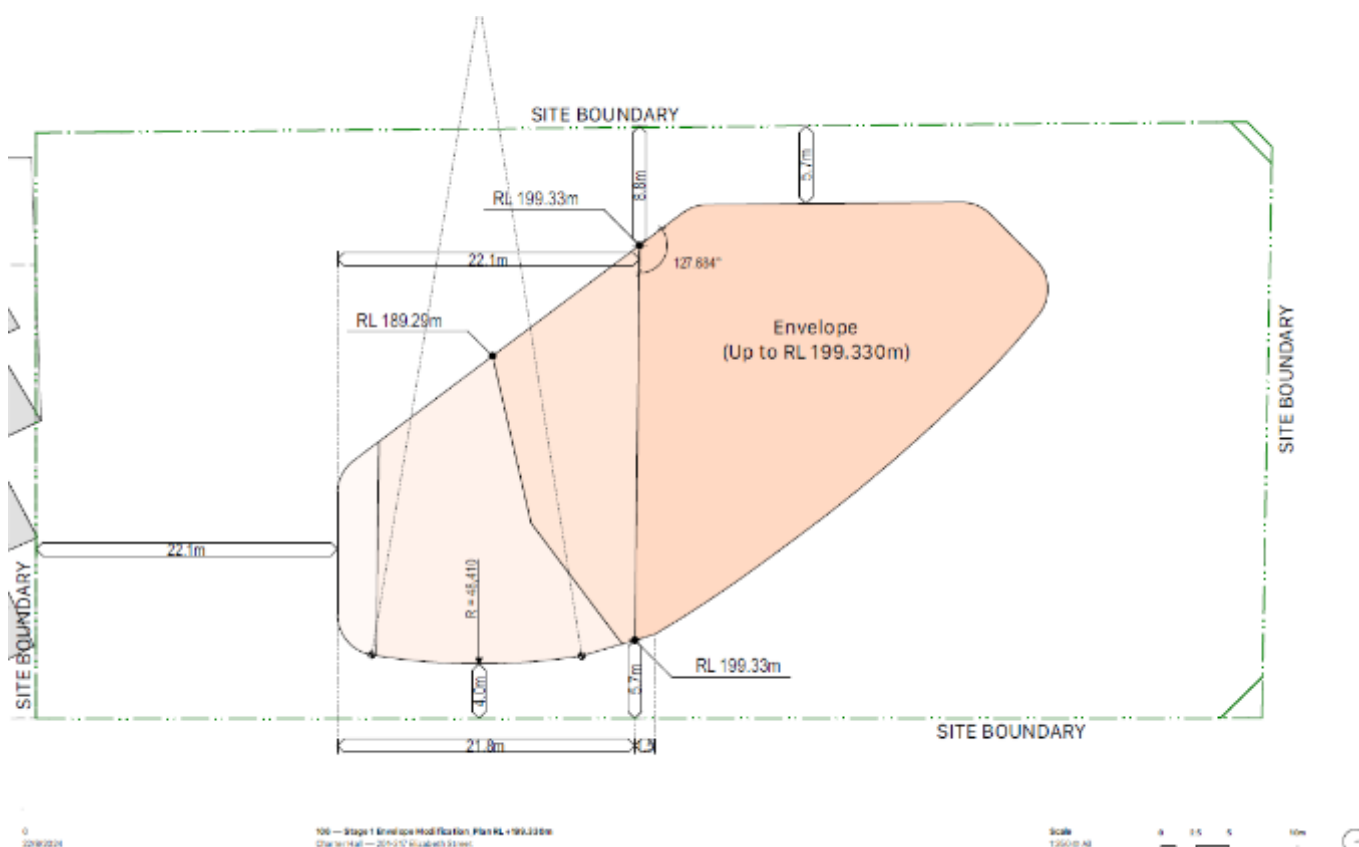


Figure 30 | Proposed high-rise tower envelope (up to RL 199.330) (Source: Ethos Urban modification plans)



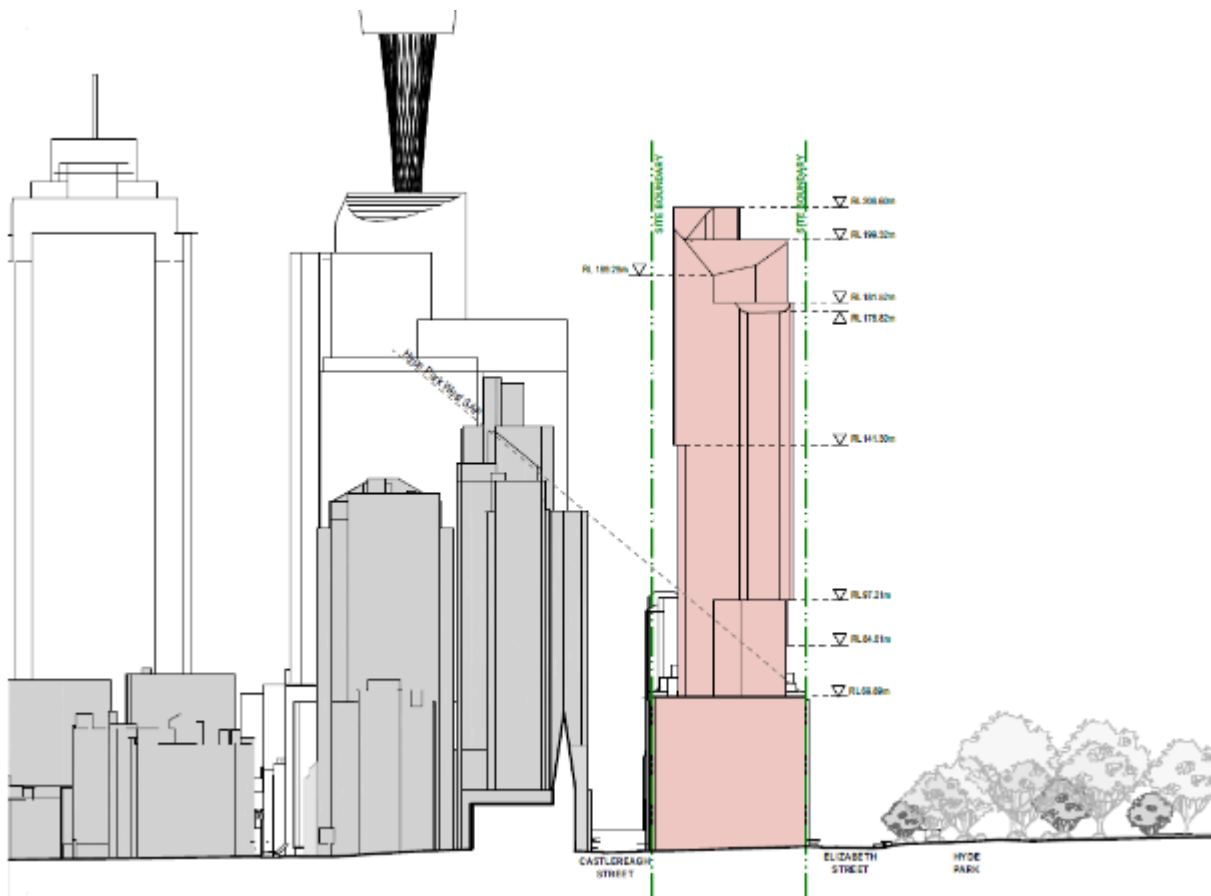


Figure 33 | Proposed south elevation (Source: Ethos Urban modification plans)

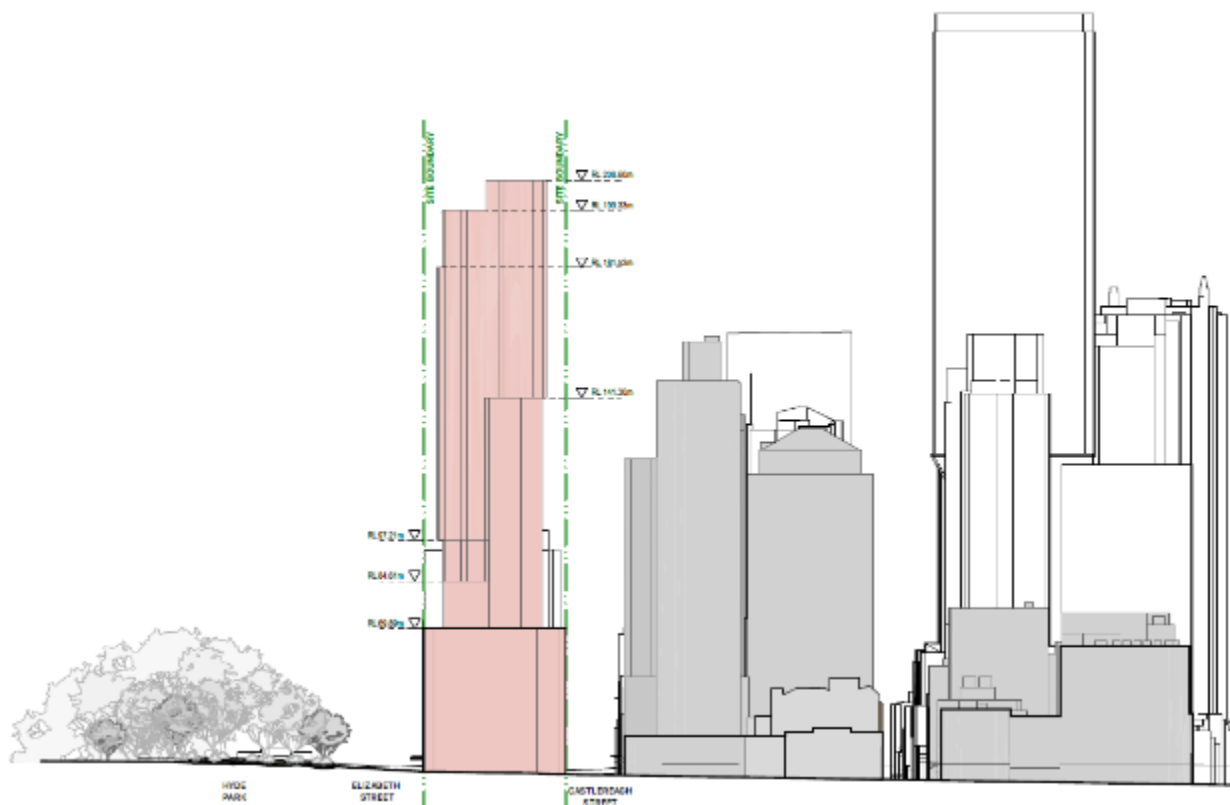


Figure 34 | Proposed north elevation – Park Street (Source: Ethos Urban modification plans)

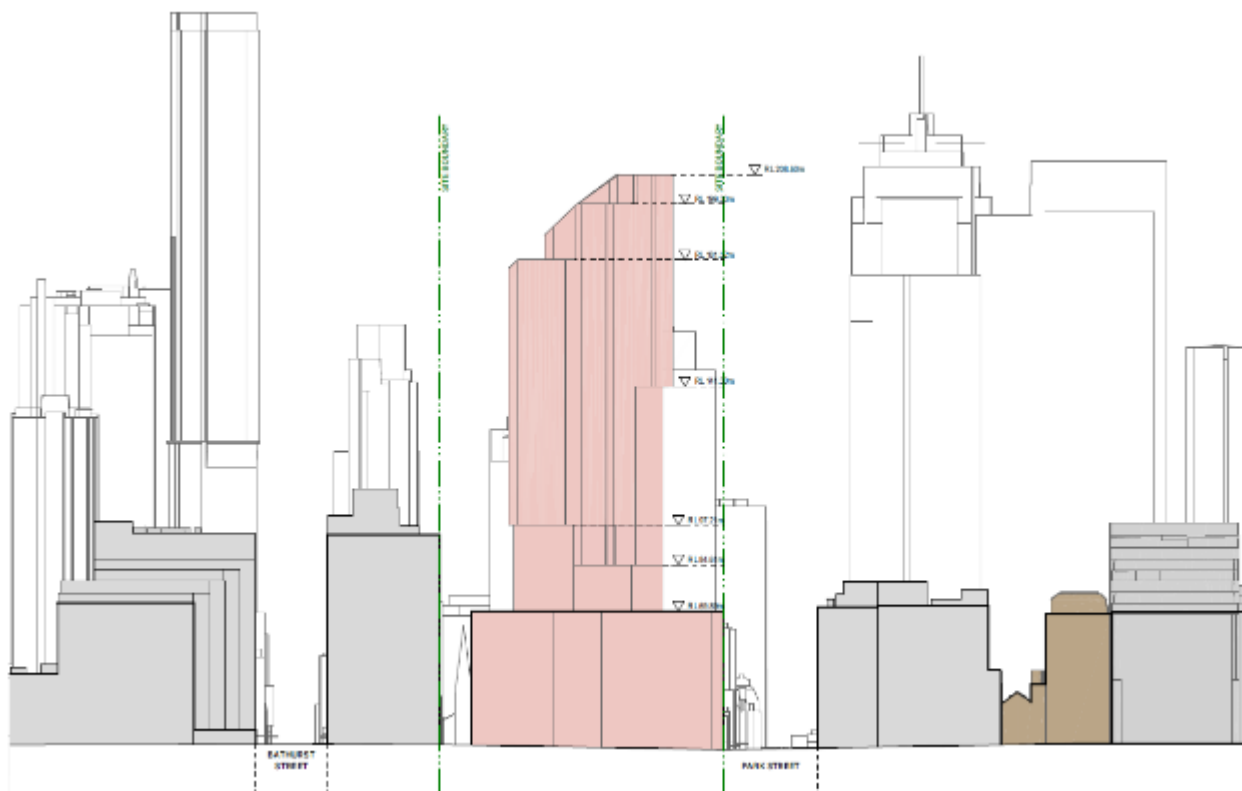


Figure 35 | Proposed east elevation – Elizabeth Street (Source: Ethos Urban modification plans)

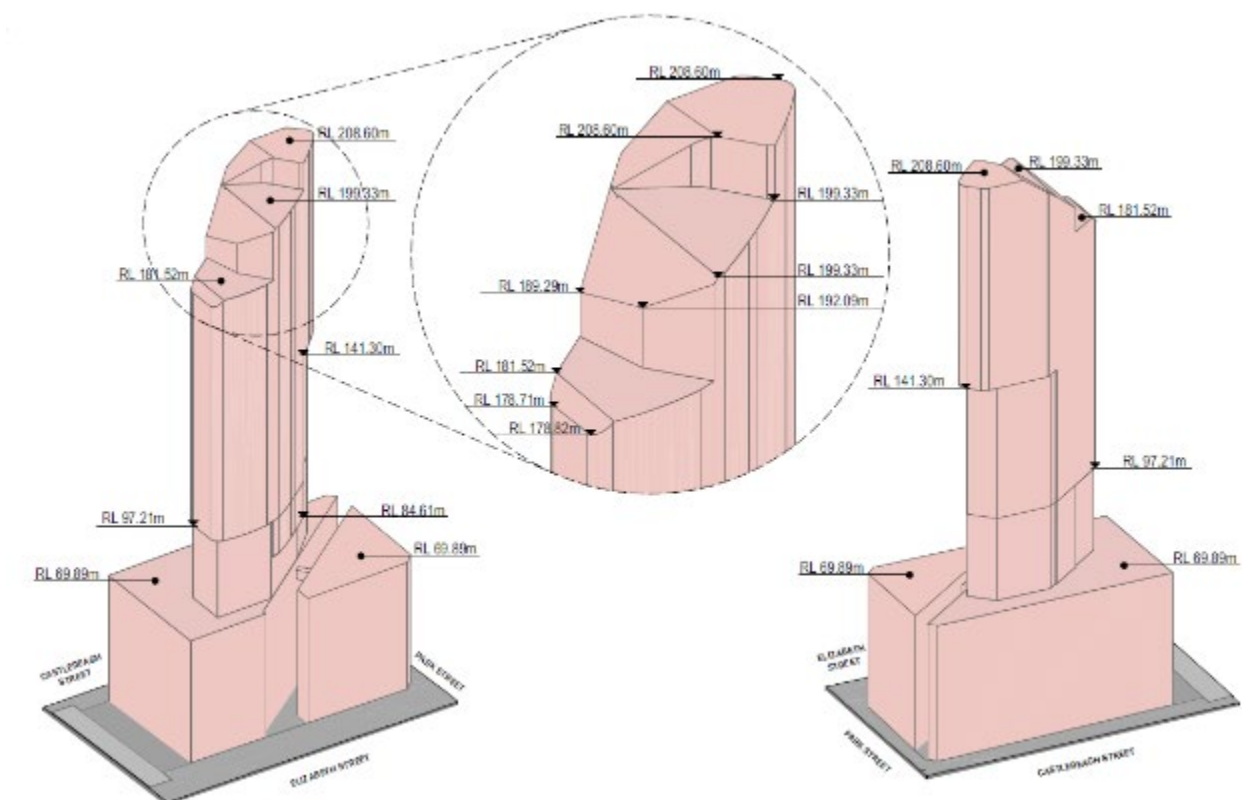


Figure 36 | Proposed axonometric diagrams (Source: Ethos Urban modification plans)

3 Statutory context

3.1 Scope of modification and assessment pathway

Details of the legal pathway under which the modification is sought is provided in **Table 2** below.

Table 2 | Permissibility and assessment pathway

Consideration	Description
Scope of modification	Section 4.55(2) - other modifications The City has reviewed the scope of the modification and considers that it can be characterised as a section 4.55(2) modification as the development to which the consent as modified relates: • will not result in any significantly adverse environmental impacts beyond what was approved by the original development; and • is substantially the same development as originally approved. Accordingly, the City considers that the application should be assessed and determined under section 4.55(2) of the EP&A Act rather than requiring a new development application to be lodged. See Section 5 detailing the threshold test for substantially the same development.
Consent authority	Central Sydney Planning Committee The modification application has been lodged pursuant to section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) and is being reported up to Central Sydney Planning Committee (CSPC) concurrently with the detailed design State Significant development application D/2024/854 (SSD-64090972). The development has a capital investment value of more than \$50 million and Central Sydney Planning Committee (CSPC) is the consent authority. The modification is classified as State Significant Development (SSD) in accordance with Section 13 of Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) as the SSD approval comprises hotel accommodation with a capital investment value of more than \$100 million. On 7 February 2017, the then Minister for Planning delegated consent authority functions to the City in respect of the original application D/2017/349. On 23 February 2017, Secretary of the Department of Planning and Environment (as it was previously known) delegated responsibility for the assessment of the application (and related functions) to the City.
Permissibility	The project is located within the SP5 – Metropolitan Centre zone under the Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The proposed hotel accommodation, residential accommodation and ancillary retail premises are permissible with consent in this zone.

3.2 Mandatory matters for consideration

3.2.1 Matters of consideration required by the EP&A Act

In determining the modification, the consent authority must take into consideration such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the development that is the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified. The City's consideration of these matters is shown in **Table 3** below.

Table 3 | Matters for consideration

Matter for consideration	Department's assessment
Environmental planning instruments, proposed instruments, development control plans & planning agreements	Appendix B & Appendix C
EP&A Regulation	Appendix B
Likely impacts	Section 5 - Assessment
Suitability of the site	Section 1.2 - Project background and Section 5 - Assessment
Public submissions	Section 4 - Engagement & Section 5 - Assessment
Public interest	Section 4 - Engagement, Section 5 - Assessment & Section 6 - Evaluation

3.2.2 Biodiversity development assessment report

Section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all SSD modification applications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the authority or person determining the application is satisfied that the modification will not increase the impact on biodiversity values (as identified in the BC Act and in the *Biodiversity Conservation Regulation 2017*).

The City is satisfied that the modification will not increase the impact on biodiversity values and consequently, neither a BDAR nor a new waiver is required to accompany the modification application.

4 Engagement

4.1 Exhibition of the modification

4.1.1 Public exhibition of the modification application

The City publicly exhibited the modification report from 29 October 2024 until 27 November 2024 (28 days) on the NSW Planning Portal and the Department’s website. Occupiers and landowners in the vicinity of the site were notified about the public exhibition, as well as each person who made a submission in relation to the original development application. The City also notified and invited comment from relevant government agencies. A summary of responses is provided at **Table 4**.

The City received a total of 1 submission in response to the exhibition of the modification. A summary is provided at **Table 5**.

4.1.2 Summary of advice received from government agencies

The City received advice from 1 government agency on the modification.

A summary of the agency advice is provided in **Table 4**. A link to the full copy of the advice is provided in Appendix B.

Table 4 | Summary of agency advice

Agency	Advice summary
Sydney Airport Corporation	On 30 October 2024, Sydney Airport Corporation advised that no response was required as comments would be submitted as part of the detailed design SSDA D/2024/854.

4.1.3 Summary of public submissions

The City received 1 submission¹ during the public exhibition period of the modifications objecting to the project. Further detail is provided in **Table 5** below and a detailed response to the submission is provided in **Appendix C**. A link to the submission in full is provided in **Appendix B**.

Table 5 | Summary of public submissions

Issue	Discussion of concern
Lapsing of consent	The modification cannot be considered as the Concept Approval D/2017/349 has lapsed.

¹ Each petition or submission that contains the same or substantially the same text is counted as one submission in accordance with section 2.7(6) of the Planning System SEPP.

Issue	Discussion of concern
Modification does not comply with section 4.55(2) of the EP&A Act	The proposed modified building envelope is not substantially the same development as originally approved.
The application relies on controls that have been repealed and has not considered Condition 9 of the consent relating to overshadowing of Hyde Park	The modification breaches the Hyde Park Sun Access Plane and relies on controls that allowed this to occur and have since been repealed. The modification also fails to comply with Condition 9 of the consent, which relates to sun access modelling and overshadowing to Hyde Park.
View impacts	The view impact assessment inadequately considers the impact on private domain views.

4.2 Response to submissions

Following the public exhibition period, the City placed copies of all submissions received on its website and requested the Applicant to provide a response to the issues raised.

On 20 February 2025, the Applicant provided its RtS, which included additional information and justification in response to the issues raised during the public exhibition of the proposal. No amendments have been made to the modification application.

5 Assessment

The City has considered the modification report, the issues raised in submissions and the Applicant's RtS and supplementary information in its assessment of the proposal. The City considers the key issues associated with the proposed modification are:

- Whether the proposed modification is substantially the same development (the Threshold Test).
- Building envelope modifications
 - Building height
 - Building setbacks
 - Wind impacts
 - Solar access
 - View impacts
- Modification of conditions

5.1 Threshold Test - substantially the same

The development as proposed to be modified is substantially the same as that originally approved. The overall form of the building envelope is consistent with the intent of the approved concept. The proposed modifications will deliver hotel accommodation, ancillary retail and residential accommodation in an envelope not too dissimilar to that which was approved by D/2017/349. The proposed modifications primarily relate to creating a tri-partite form tower, changes to building height and setbacks; and the inclusion of through-site links that were anticipated as part of the original concept approval.



The approved Stage 1 Concept DA (D/2017/349) building envelope



The proposed amendment to the Stage 1 Concept DA building envelope (to be known as D/2017/349/A,

Figure 37 | Approved concept building envelope and proposed concept building envelope as labelled (Source: Ethos Urban Modification Report – View and Visual Analysis)

The development continues to relate to a concept proposal for a building envelope that accommodates a podium and tower form. The envelope height is proposed to change by approximately 10 metres (5.2% increase in height); however, the envelope will remain as a significant tower above a podium. The proposed height increase does not alter the essential scale of the approved envelope. The changes are the result of the development of a design that won a competitive design process expressly envisaged by the Concept SSD Consent.

The development continues to comply with the maximum FSR under SLEP 2012 (noting the proposal was approved under a FSR with savings provisions as outlined at clause 6.4(1A) of the Sydney LEP 2012) in **Appendix B**. The height, setback and footprint changes are supported as they do not result in unacceptable overshadowing, privacy, wind or view impacts and deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties. The environmental impacts resulting from the proposal are likely to result in essentially the same environmental impacts, compared to those previously assessed, and outlined within this report.

In accordance with Section 4.55(2), an assessment against the relevant provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979 are provided under headings in the Assessment section below.

5.1.1 Environmental Planning and Assessment Act, 1979

The 'development' as proposed to be modified is considered to be substantially the same as that originally approved, satisfying Section 4.55(2)(a) of the EP&A Act, because:

- It remains a concept envelope for the redevelopment of the site, with a building envelope covering the same extent of the site area.
- It continues to facilitate to the approved mixed-use development for the precinct, comprising hotel accommodation, residential accommodation and ancillary retail uses, with the proportion remaining unchanged.
- It generally maintains the relationship between the concept envelope, adjoining properties, and the public domain, with the podium/street frontage height remaining the same, and as the design of the public domain continues to provide for a number of new activated pedestrian connections, with consolidated vehicle access for the site and the neighbouring development at 219-227 Elizabeth Street.
- It remains generally consistent with the objectives of the relevant environmental planning instruments.
- It presents acceptable environmental impacts when compared to those previously assessed and considered acceptable by the original concept consent D/2017/349.
- It is modified to allow for consistency with the proposed development of the concurrent detailed design SSDA (D/2024/854), which is based on the winning scheme of a competitive design process.
- It continues to deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties, as demonstrated in the assessment of the Detailed Design DA.

- It is consistent with the intent of the original approved concept development, in that the location and overall form of the building envelope is maintained, albeit with some changes to setbacks and height of the tower.

Section 4.55(3) of the EP&A Act requires that the consent authority consider the reasons originally given to grant the concept consent (D/2017/349). The application was reported to CSPC on 15 February 2018, resolving that:

- the requirement of Section 51N of the City of Sydney Act 1988 to consult with the Central Sydney Traffic and Transport Committee not apply in this instance as the proposal does not 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; and
- pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. SSD 16_8105, subject to the conditions as detailed in Attachment B to the subject report.

The proposed modification will not carry out any road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD (noting that section 51N of the City of Sydney Act 1988 has since been repealed). Vehicular access arrangements and modification of the building envelope setback at podium level were subject to a deferred commencement condition and addressed on 6 September 2018. The proposed modification is generally consistent with the vehicular access requirements of the original consent. The podium setback has been maintained, where the issue relating to view impact was identified. The other changes to the approved setbacks are acceptable and discussed in greater detail in this report.

The proposed modification is therefore considered to uphold the reasons given by the consent authority originally to grant the concept consent that is being modified, satisfying part of Section 4.55(3) of the EP&A Act.

An assessment against the relevant provisions of Section 4.15(1) of the Act is provided under the headings below and elsewhere in this assessment report, demonstrating that the remaining part of Section 4.55(3) of the EP&A Act is also satisfied, allowing the concept consent to be modified.

5.2 Building envelope modifications

5.2.1 Building height

The Sydney LEP 2012 identifies the site as 'Area 3' under clause 4.3 'Building height'; therefore, no maximum height is shown for this land. Instead, the maximum height is determined by the Hyde Park sun access planes that are taken to extend over the land by Clause 6.17.

The approved Concept SSD relied on the now repealed Clause 6.18(1)(b) and (c) of the Sydney LEP 2012 'Exception to sun access planes' which allowed development to exceed the Hyde Park sun access plane if certain criteria were met:

- (1) (b) *The parts of the building that project higher than the sun access plane are on category B land that adjoins category A land and will not exceed the height of an existing building on category A land;*

- (c) *The parts of the building that project higher than the sun access plane are on category A land and will result in at least a 50% reduction in the overshadowing on land at Belmore Park, Hyde Park or Wynyard Park (as shown on the Sun Access Protection Map) between 12.00 and 14.00 on 21 June in each year, caused by all buildings on the site of the proposed development.*

The approved Concept SSD has a height of RL198.22. The Concept SSD exceeded the Hyde Park West sun access plane and the height of the existing building, and did not satisfy the above criteria under Clause 6.18(1)(b) of the Sydney LEP 2012 at the time of assessment for exceptions to sun access planes and was partly prohibited. This is because the approved building envelope exceeded the Hyde Park West sun access plane and the height of the existing building.

Notwithstanding, clause 4.38(3) of the EP&A Act (then clause 89E(3)) allows for development consent to be granted for an SSD despite the development being partially prohibited by an EPI. The applicant was able to demonstrate the Concept SSDA resulted in a 50% reduction in shadows cast on Hyde Park between 12.00 and 14.00 on 21 June in accordance with subsection (1)(c) and was considered to achieve the intent of Clause 6.18.

Clause 6.18 'Exceptions to sun access planes' was repealed on 26 November 2021. Clause 6.17(2) 'Sun access planes' states that development consent cannot be granted to a development that breaches the sun access plane. The consent authority, however, has the power to approve an application to modify the Concept SSD despite the prohibition contained in Clause 6.17 as the prohibition applies to the grant of development consent and not an application to modify a development consent. This modification is therefore able to amend the approved height of the Concept SSD.

Note: Although Clause 6.18 of the Sydney LEP 2012 as worded at the determination of D/2017/349 (15 February 2018) has been repealed, the prohibition contained in Clause 6.17 does not apply to the subject Concept Modification SSDA or the concurrent Detailed Design SSDA as they benefit from the savings provisions under Clause 1.8A(5)(b)(ii) of the Sydney LEP 2012.

The proposed modification comprises a maximum height of RL208.60 (182.28m) at the north-western portion of the tower to align with the design competition winning scheme and Detailed Design SSDA, exceeding the approved height by approximately 10m. The proposed modification has essentially removed height from the south (up to 19m) and relocated some of that envelope to the north-west corner (approximately 10m) to create the tri-partite tower form of the design competition winning scheme. The tower elements are stepped in height. See **Figures 37-39** depicting the approved and proposed Concept building envelopes and the tri-partite tower form, as well as the Hyde Park West sun access plane.

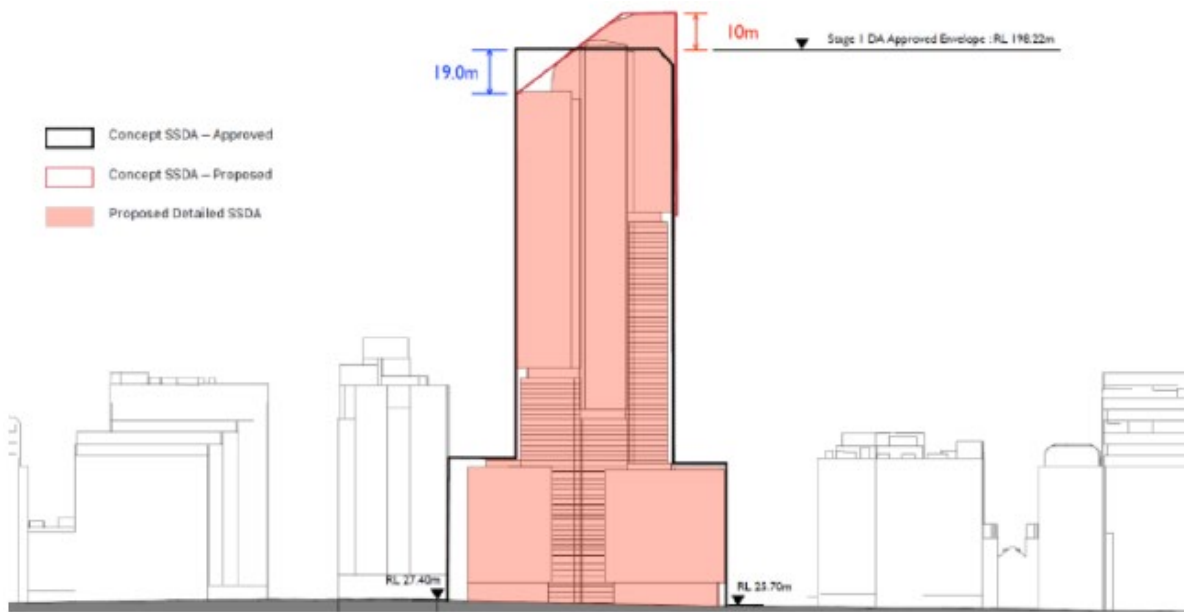


Figure 38 | Proposed variations to approved building envelope. Concept SSDA outlined in black, Concept Modification SSD outlined in red and proposed Detailed Design SSDA shaded red. (Source: Ethos Urban EIS for D/2024/854)

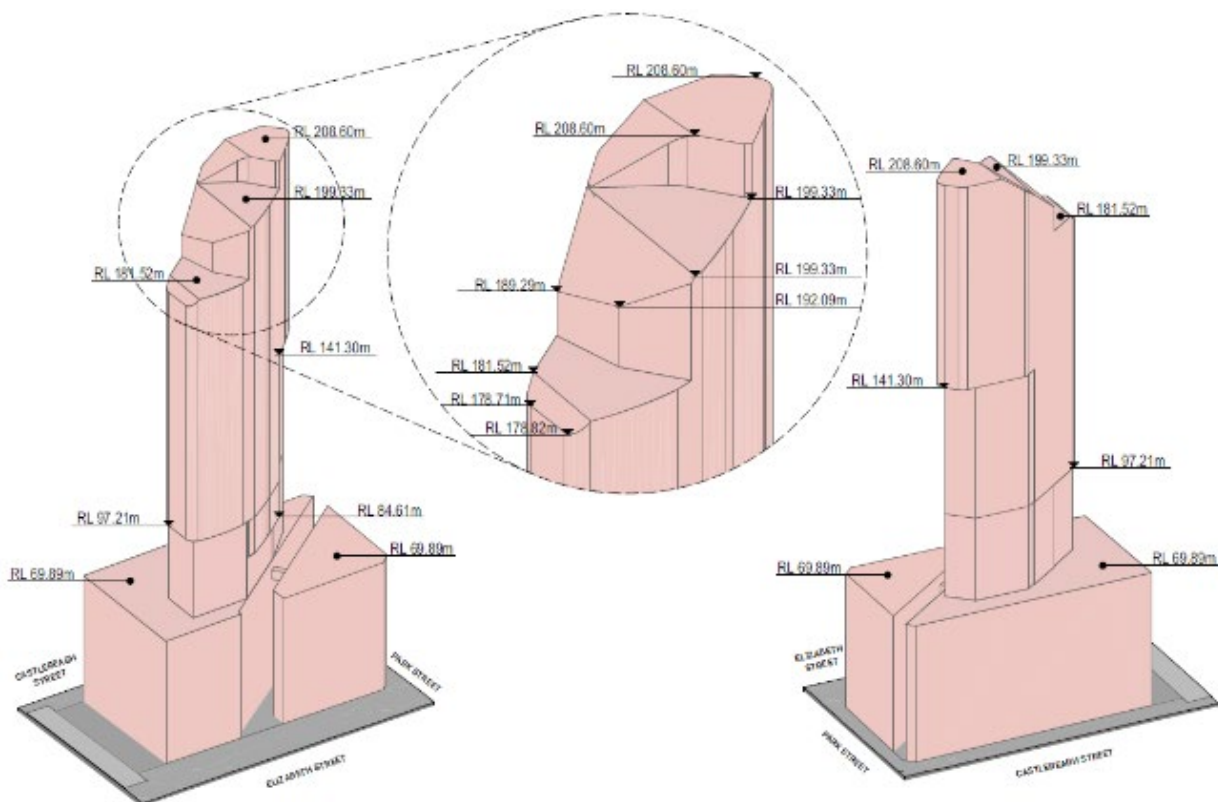


Figure 39 | Proposed axonometric diagrams: Elizabeth Street elevation (left) and Castlereagh Street elevation (right) (Source: Ethos Urban building envelope drawings)

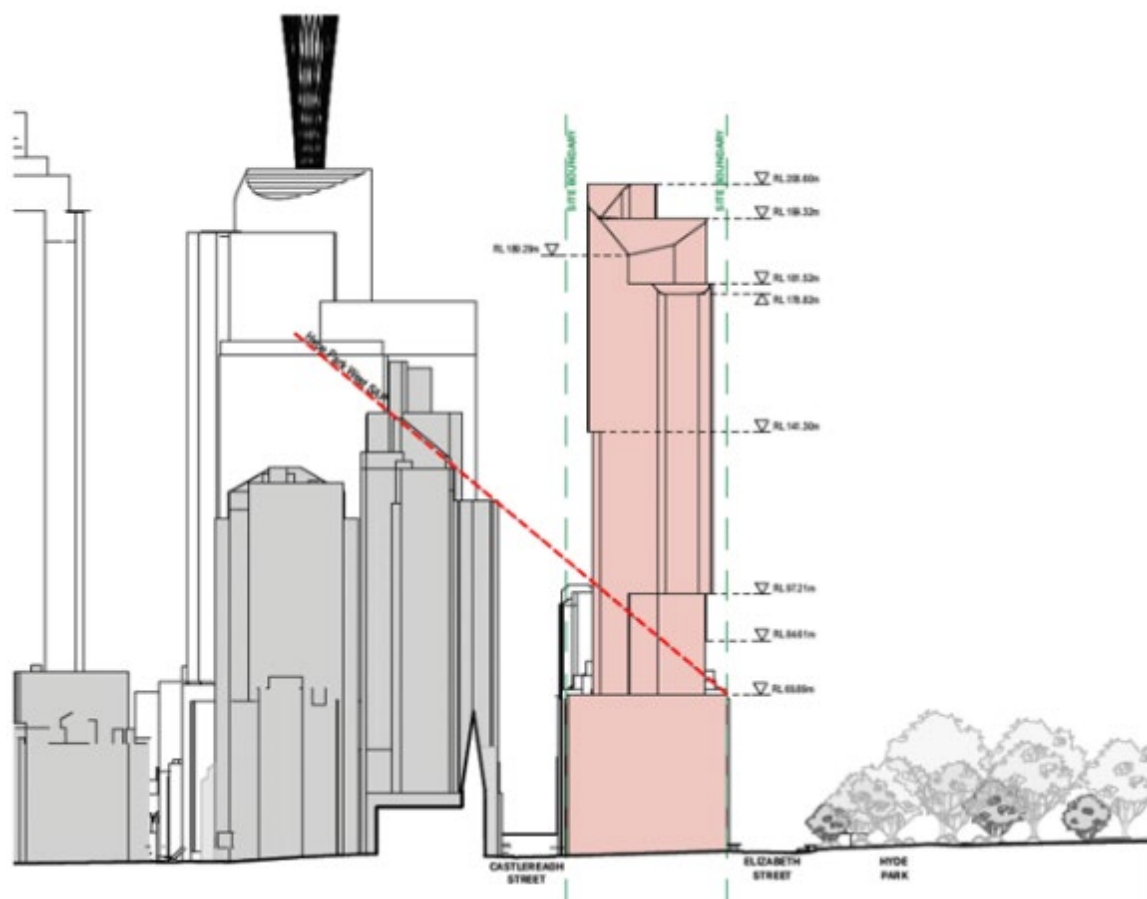


Figure 40 | Proposed south elevation depicting the location of the Hyde Park West sun access plane (in red) in relation to the development (Source: Ethos Urban building envelope design report)

The proposal is accompanied by detailed shadow diagrams demonstrating that the proposed modification to height, and those parts exceeding the sun access plane will result in an improved outcome to Hyde Park and the Anzac Memorial. The Concept Modification SSD will achieve a 50.13% reduction, which is consistent with the Concept Approval SSD, and the Detailed Design SSDA will achieve a 51.42% reduction in shadows cast on Hyde Park between 12.00 and 14.00 on 21 June. This is a 1% improvement compared to the Concept Approval.

The following table and images demonstrate the overshadow impact to Hyde Park.

Table 6 | Hyde Park Overshadowing Reduction Summary (Source: Ethos Urban Modification Report – Building Envelope Design Report)

Time	Existing Condition	Approved Concept SSDA	Proposed Concept Modification	Proposed Detailed SSDA
12:00	64sqm	0sqm	0sqm	0sqm
12:30	4,115sqm	2,593sqm	2,333sqm	2,243sqm
13:00	7,431sqm	4,087sqm	4,115sqm	4,031sqm

Time	Existing Condition	Approved Concept SSDA	Proposed Concept Modification	Proposed Detailed SSDA
13.30	8,578sqm	3,841sqm	4,103sqm	4,025sqm
14:00	6,749sqm	2,913sqm	2,883sqm	2,787sqm
Total	26,937sqm	13,434sqm	13,434sqm	13,086sqm
Percentage	100%	49.87%	49.87%	48.58%
Reduction	-	50.13%	50.13%	51.42%

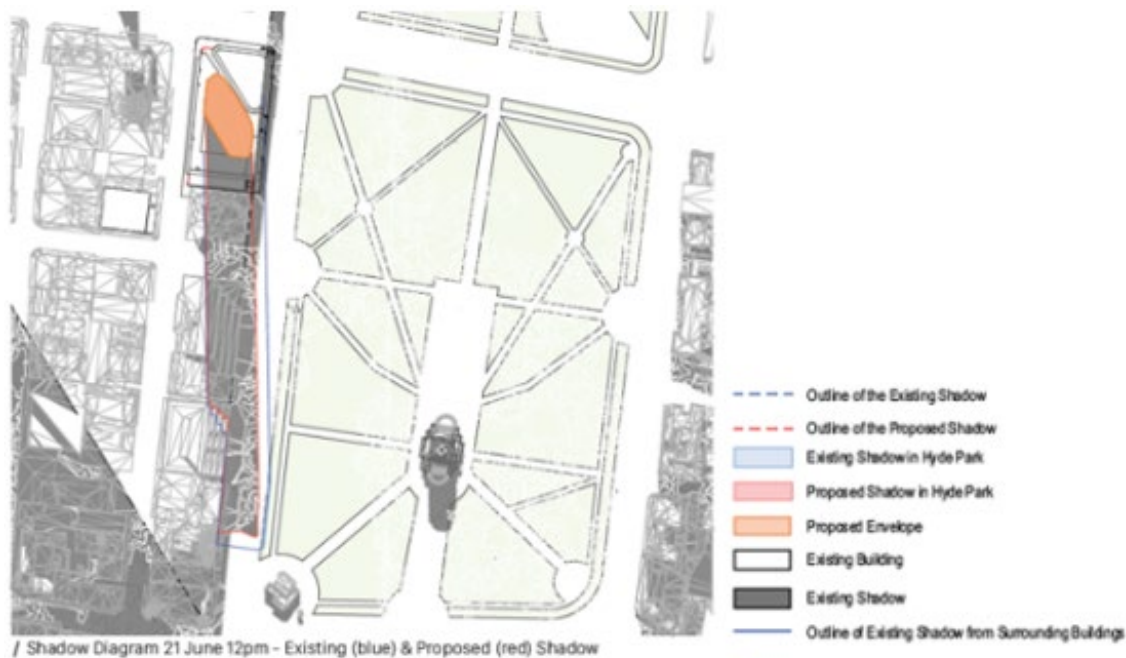


Figure 41 | Shadow diagram 21 June 12pm (existing in blue and proposed in red) (Source: Ethos Urban Modification Report – Building Envelope Design Report)

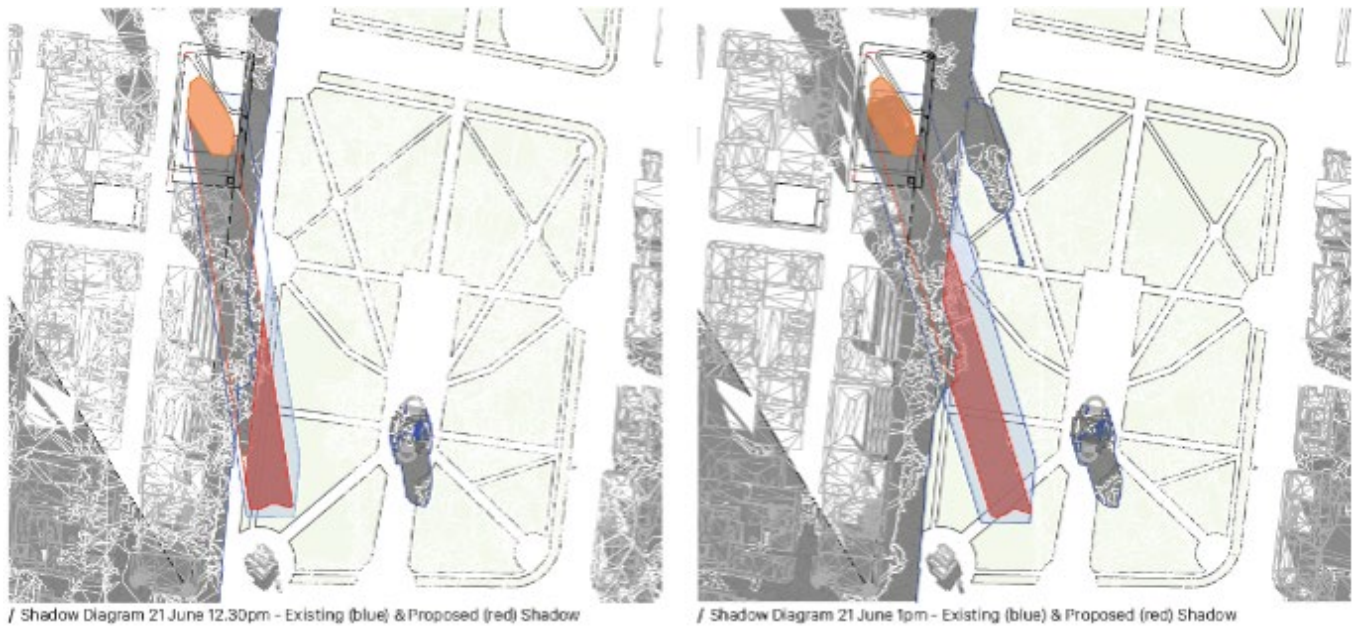


Figure 42 | Shadow diagram 21 June 12.30pm (left) and 1pm (right) (existing in blue and proposed in red) (Source: Ethos Urban Modification Report – Building Envelope Design Report)

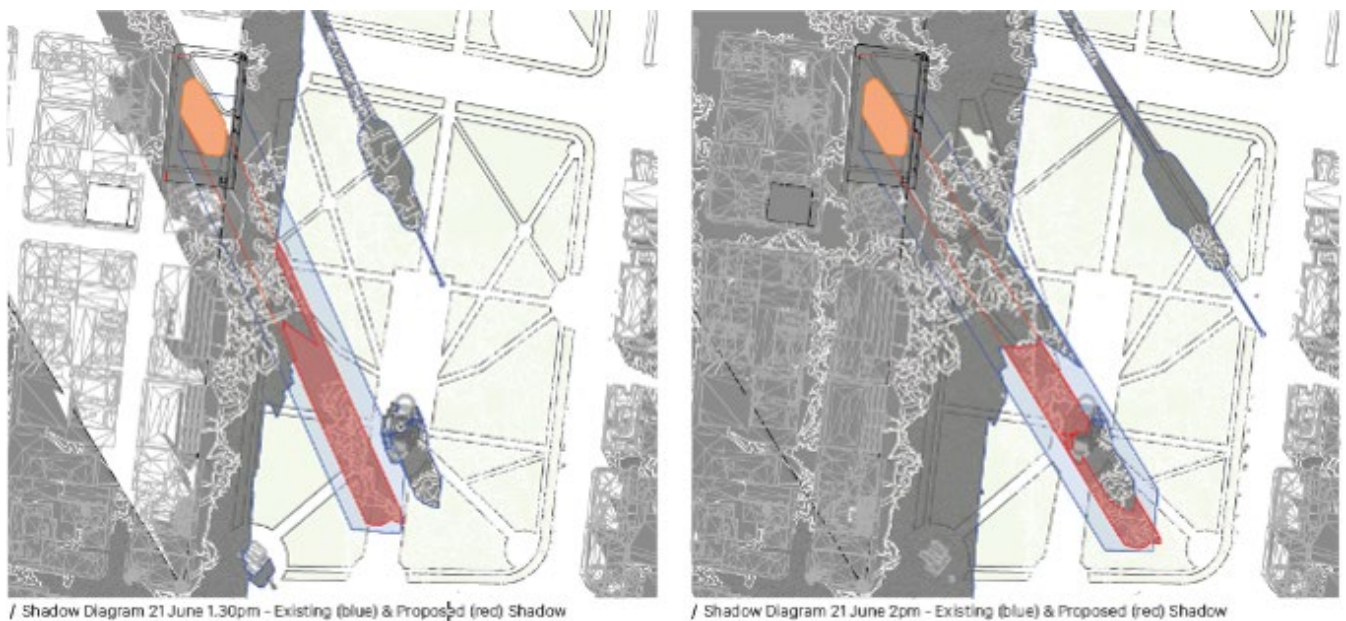


Figure 43 | Shadow diagram 21 June 1.30pm (left) and 2.00pm (right) (existing in blue and proposed in red) (Source: Ethos Urban Modification Report – Building Envelope Design Report)

5.2.2 Building setbacks

The Concept SSD approved a podium and podium terrace with a stepped height of 13 storeys (RL69.89) and 14 storeys (RL76.00) respectively, a street frontage height of 45m, and zero setbacks. The following setbacks for the tower, above the street frontage height, have been approved:

- Castlereagh Street: min. 7.6m
- Park Street: min. 17m
- Elizabeth Street: min. 4m

- Southern boundary: min. 22m

The competition winning scheme comprises a tri-partite tower form, each at a different height and orientated towards the north-east in a varying fan element. The scheme also included a setback to the southern boundary and diagonal through-site link as conditioned by the Concept SSD approval. This tower form and ground plane layout is incorporated into the Detailed Design SSDA.

In order to align with the design competition winning scheme and Detailed Design SSDA, the proposed Concept Modification has removed the 14th storey podium terrace, with the podium height to remain at RL69.89 (retaining the 45m street frontage height). The podium is setback 10m from the southern boundary to allow for the southern through-site link, a diagonal through-site link from the corner of Park Street and Castlereagh Street to Elizabeth Street cuts through the podium envelope and a bridge between the podium envelopes is now proposed at RL66.35.

The tower form has shifted towards the north-west and north-east, with the envelope depicting the tri-partite form, and has increased in height as discussed above. By incorporating the tri-partite form, the tower now has the following setbacks:

- Castlereagh Street: min. 5.7m (reduction of 1.9m) to the high-rise levels of the tower above RL176.60 (otherwise 7.7m below)
- Park Street: min. 16.8m (reduction of 0.2m) to the high-rise levels of the tower above RL176.60 (otherwise 19.2m below)
- Elizabeth Street: min. 4m (no change)
- Southern boundary: min. 22m (no change)

The Concept SSD consent approved reduced setbacks as the proposal generally met the 8m requirement; and as the non-compliant area to Elizabeth Street was localised and minor (occupying approximately 18% of the Elizabeth Street frontage).

Note: While the City acknowledges DCPs are not applicable to State Significant Development, Section 5.1.1 of the Sydney DCP 2012 has been amended since the issue of the concept consent (which assessed compliance with the then Section 5.1.1 of the Sydney DCP 2012). An 8m setback above the recommended street frontage height is now recommended without variation for the site as it is located within the College Street and Hyde Park Special Character Area.

The Concept Modification proposes to reduce the Park Street setback above the street frontage height from 17m to 16.2m at RL176.600 and above (the high-rise portion of the tower envelope). This setback still complies with that recommended by the Sydney DCP 2012. This reduced setback does not affect Condition 2 of the deferred commencement conditions of D/2017/349 in that the building envelope is to provide a minimum setback of 17m from the northern (Park Street) boundary above the podium between RL69.89 and RL76.00. This condition was imposed to address view impacts from level 14 of the podium and is discussed under **Section 5.2.5**. The reduced Park Street setback at RL176.600 by 0.2m has minimal impact on overshadowing and views as discussed below.

It is also proposed to reduce the Castlereagh Street setback by 1.9m, from 7.6m to 5.7m, as shown **Figure 44** below. This occurs from RL141.30 and above as part of the high-rise tower. The proposed reduction is in response to the tri-partite tower form. The shifting of the tower envelope, compared to the approved envelope, is also shown.

As demonstrated by **Figures 44** and **45**, there are portions of the proposed envelope that have been reduced compared to the approval (particularly within the low-rise tower), and areas have been added beyond the envelope (within the high-rise tower). The proposed reduction in setback to Castlereagh Street, along with the other changes to setbacks, will enable the redistribution of floor space, ensuring that the concept envelope can reasonably accommodate the permissible floor space to support a feasible development scheme. The setbacks will also preserve solar access to Hyde Park between 12.00 and 14.00 at 21 June, as discussed above.

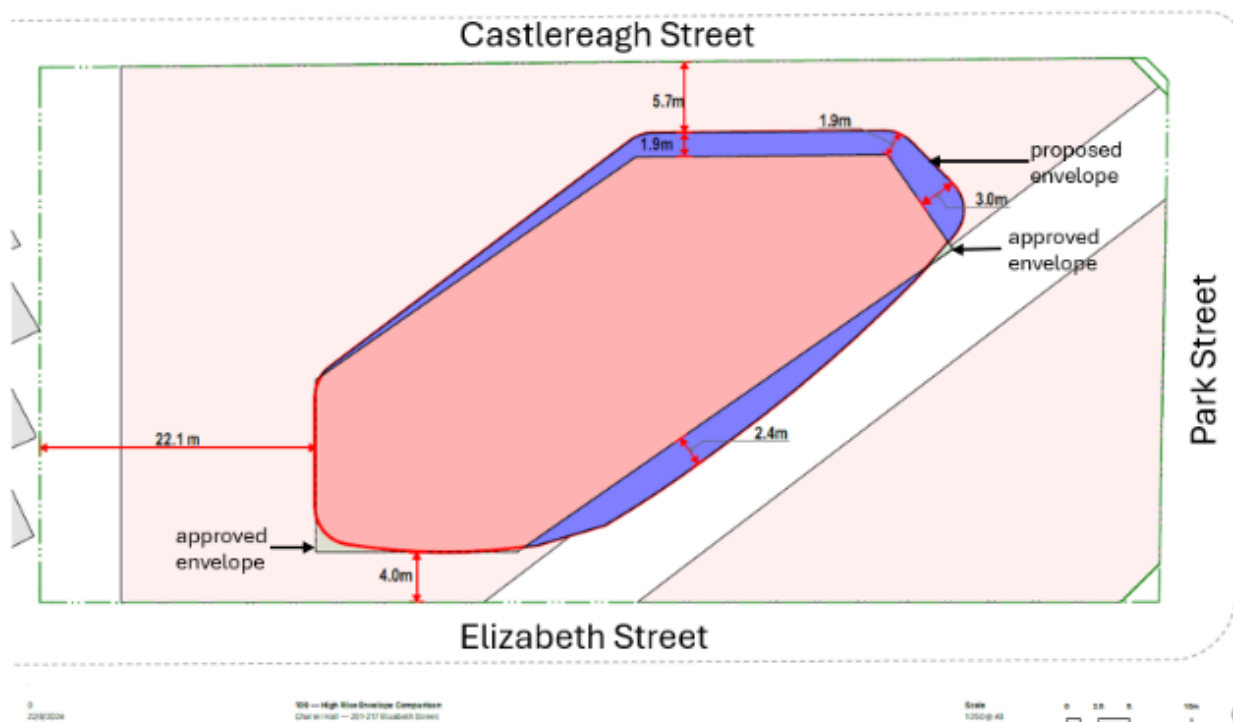


Figure 44 | Comparison of the approved and proposed concept high-rise tower envelope. The approved concept envelope is highlighted in green, the proposed concept modification envelope (where it exceeds the approved envelope) is highlighted in blue. Where the concept envelopes overlap, the plan is highlighted in red (Source: Ethos Urban – Building Envelope Drawings)

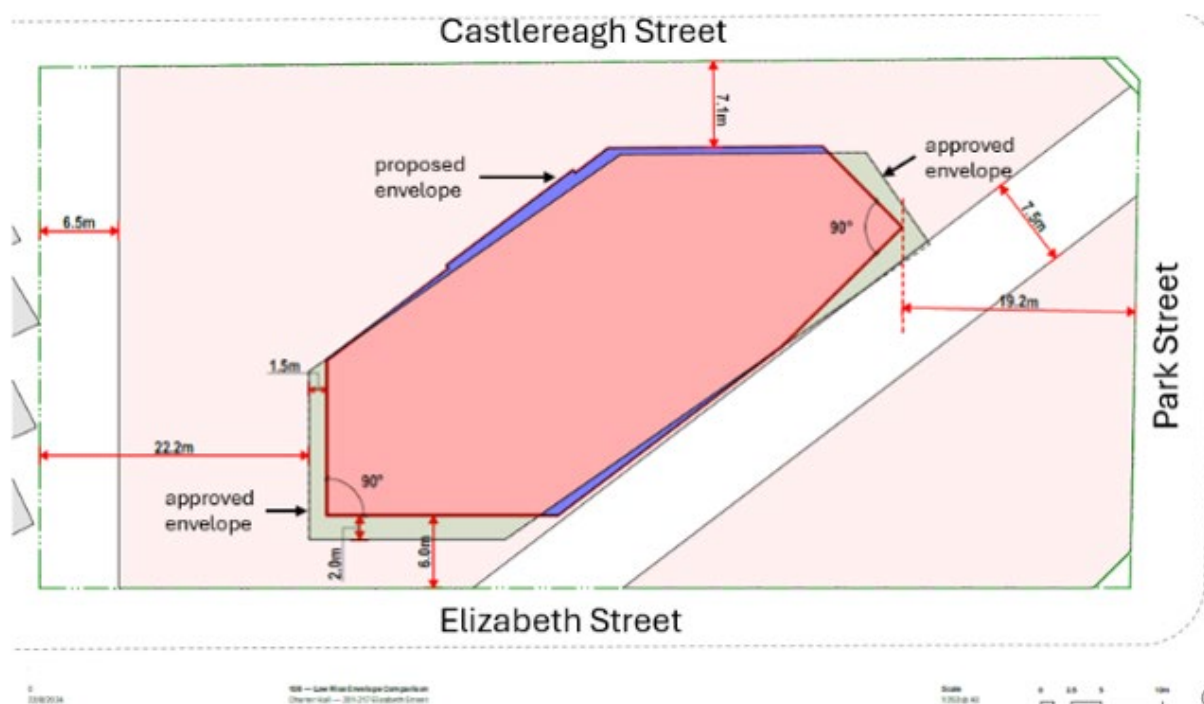


Figure 45 | Comparison of the approved and proposed concept low-rise tower envelope. The approved concept envelope is highlighted in green, the proposed concept modification envelope (where it exceeds the approved envelope) is highlighted in blue. Where the concept envelopes overlap, the plan is highlighted in red (Source: Ethos Urban – Building Envelope Drawings)

The proposed 5.7m setback to Castlereagh Street above the street frontage height is acceptable considering:

- The new tower, with the proposed 5.7m setback occurs within the high-rise portion, whereas the low-rise tower maintains a setback of 7.1m which is generally consistent with the Concept SSD. The largely imperceptible change to the setback starts from RL141.30 and occurs across approximately 22% of the Castlereagh Street frontage at these levels;
- The new tower is setback in line with 219-227 Elizabeth Street to the south, and will ensure an acceptable stepped relationship on the eastern side of Castlereagh Street;
- Given the orientation of Castlereagh Street, and the lower street wall height and overall building heights on the western side, the proposed 5.7m setback at higher levels will maintain adequate daylight access and sense of openness to Castlereagh Street.
- The wind impact assessment submitted with the Concept Modification SSD and the concurrent Detailed Design SSDA demonstrates that the surrounding public domain will continue to achieve the relevant wind comfort and safety criteria (as detailed under **Section 5.2.3** of this report).

5.2.3 Wind impacts

The proposed Concept Modification is accompanied by a Pedestrian Level Wind Assessment that compares existing conditions, the Concept Approval SSD and the proposed Detailed Design SSDA. The wind assessment addresses the City of Sydney wind comfort criteria, indicating that conditions on the ground level would generally be classified as acceptable for general pedestrian access/thoroughfare in most areas with some locations experiencing stronger events for transient use only.

The assessment concludes that the proposed amendments to the Concept Approval SSD generally improves the wind conditions on the ground plane, primarily due to the rounding of the tower corners, and increased porosity of the site. The amendments have reduced the local concentration of exposed winds from the north-east, improving the average comfort and safety wind speeds to existing conditions and the Concept Approval SSD by 8% and 7% respectively. The proposed envelope achieves a suitable level of pedestrian safety and comfort with regard to the City of Sydney comfort and safety criteria.

5.2.4 Solar access

Objective 4A-1 of the Apartment Design Guide (ADG) states that living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter. Up to 15% of apartments are permitted to receive no direct sunlight.

The Concept SSD Approval assessed the impact of the original building envelope to be acceptable, as it did not result in a reduction in solar access to the apartments on the western side of Castlereagh Street at 27 Park Street (Park Regis) and 197 Castlereagh Street (Victoria Tower). Castle Residences at 116 Bathurst Street experienced a 30-minute reduction in solar access to 7 of 131 apartments (5%) between 9.00am and 10.00am, however did not reduce the total number of apartments receiving 2 hours minimum solar access in accordance with Objective 4A-1 of the ADG.

The Concept Modification reduces setbacks to Castlereagh Street and increases the height of the tower at the north-west corner, warranting further assessment of solar access to Castle Residences at 116 Bathurst Street (to the south-west), and the new Pitt Street OSD South development known as Indi Sydney at 296 Pitt Street (further south-west). See aerial map below depicting the proximity of the residential developments in question to the subject site.



Figure 46 | Aerial view of subject site and nearby residential developments – Castle Residences at 116 Bathurst Street and Indi Sydney at 296 Pitt Street

Detailed solar isolation diagrams have been submitted to demonstrate solar access to both residential towers as a result of the proposed modifications to the building envelope and Detailed Design SSDA. These diagrams are provided as an appendix to this report and indicate that there is impact to both development sites between 9.00am and 10.00am due to the changes in setbacks and height to the Castlereagh Street elevation of the proposal.

SSD approval SSD 10376 for Indi Sydney noted that 49.6% of apartments receive 2 hours solar access as required by the ADG. These apartments face north and north-west and remain unaffected by the Concept Modification SSD as they all receive solar access from 10.00am onwards for at least 2 hours.

Castle Residences was approved under D/2014/797, which documented that approximately 59% of apartments achieved solar access. City staff requested that the applicant provide additional information to demonstrate that the solar access is not reduced as a result of the amendments to the building envelope and Detailed Design SSDA. The applicant has provided sun eye views for the neighbouring site at 5 minute intervals for mid-winter between 9.30am and 11.00am for the SSDA. The diagrams note

that the existing situation allows for 58.8% compliance (77 apartments); and this is maintained as a result of the proposal.

Solar diagrams provided with the Detailed Design SSDA also demonstrate that the proposal is capable of achieving the minimum 2 hours of direct sunlight to approximately 85% of living rooms and private open space within the residential component of the tower. A maximum of 13% of apartments receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

In light of the above, it has been sufficiently demonstrated that the proposal is capable of achieving an acceptable level of solar access to future residential development within the site and does not result in adverse overshadowing impacts to nearby residential development.

5.2.5 View impacts

The view impact assessment accompanying the Concept Modification SSD comprises 3D digital modelling and survey aligned photomontages of existing and proposed viewpoints in the public domain and the private domain, as follows:

Viewpoints in the public domain:

Views generally from the east of the site

1. Anzac Memorial, Hyde Park
2. St Mary's Cathedral
3. The Domain
4. William Street near College Street
5. Oxford Street near College Street
6. Mrs Macquarie's Chair
7. Kings Cross (William Street, Darlinghurst Road and Victoria Street)

Views along Elizabeth Street

8. Elizabeth Street near King Street
9. Elizabeth Street near Goulburn Street

Views generally from the west of the site

10. Druitt Street



Figure 47 | Locations in the public domain considered for the visual impact assessment (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

Viewpoints in the private domain:

1. Victoria Tower, 197 Castlereagh Street: a 39 storey residential tower (views 1-5)
2. Castle Residences, 116 Bathurst Street: a 36 storey mixed use hotel and residential tower (views 6-10)
3. Indi Sydney, 296 Pitt Street: a 37 storey retail and residential tower (views 11-13)
4. Century Tower, 343-357 Pitt Street: a 48 storey retail and residential tower (views 14-16)
5. Park Regis, 27 Park Street: a 45 storey retail and residential tower (views 17-18)

6. Greenland Centre, 115 Bathurst Street: a 67 storey mixed use building accommodating residential apartments and a creative hub (views 19-21)



Figure 48 | Location of buildings considered in private domain for the visual impact assessment (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

The Concept Modification proposes an increase to the overall height of the building envelope by up to 10m at the north-western corner, a reduction in height to the south-east and a minor reduction in setbacks above the street frontage height. The changes to the approved Concept envelope have an acceptable impact on views from the public and private domain, given that, for the most part, the bulk of the tower envelope increases at the east and west elevations which have more of an impact on the distance between buildings rather than views. Where height results in an impact, this is discussed below.

With regard to public views, the existing building on the site is visible from a number of vantage points. The Concept SSD approval assessed the impact as acceptable, particularly when viewed along William Street and Oxford Street, and from within Hyde Park. The Concept Modification will result in a building bulk that is generally consistent with the Concept SSD Approval, and in keeping with the character of adjoining high-rise development. It is noted that the development maintains view corridors to St George's Church at 201A Castlereagh Street (in accordance with Condition 11(d) of D/2017/349) and provides a new view corridor to the Anzac Memorial in Hyde Park from Park Street as a result of the proposed through-site links.

The Concept SSD Approval provided a comprehensive assessment of views from residential apartments at the nominated sites within the View and Visual Impact Analysis provided by the applicant. Since the Concept Approval was issued however, the Pitt Street Over Station Development has been approved and constructed; and the City has requested that Greenland Centre at 115 Bathurst Street be included in

the view impact assessment given its close proximity. A representative selection of sites and apartment levels are provided below.

In order to assess the impact of the modified building envelope on existing views, and compared to the approved envelope, an assessment of private views has been made against the planning principles established by Senior Commissioner Roseth in the Land and Environment Court decision of *Tenacity Consulting V Warringah [2004] NSWLEC140* in relation to view sharing.

Assessment of views to be affected

Views with the potential to be affected are in a north-eastern and eastern direction of Hyde Park, St Mary's Cathedral, and William Street, as well as distant views of Woolloomooloo and Sydney Harbour (North Head). Views in a south-eastern direction include views of the Anzac Memorial located in Hyde Park and distant views of Oxford Street.

Majority of views in question are considered to be partial views, as opposed to uninterrupted or panoramic views. Greenland Centre at 115 Bathurst Street has largely uninterrupted views to Sydney Harbour at levels 60 and above. All views are obtained across adjoining property boundaries and include existing development in the foreground.

Which part of the site is the view available from?

The views under assessment are available from living room windows and balconies/wintergardens of apartments within Victoria Tower, 197 Castlereagh Street, Castle Residences, 116 Bathurst Street, Indi Sydney, 296 Pitt Street, Century Tower, 343-357 Pitt Street, Park Regis, 27 Park Street, and Greenland Centre, 115 Bathurst Street.

For buildings with their primary address fronting Castlereagh Street or Pitt Street views are mainly obtained across front boundaries. For buildings with their primary address fronting Park Street or Bathurst Street views are mainly obtained across side boundaries. Views may be obtained from both sitting and standing positions.

As per Tenacity, the loss of views from living room windows is considered to be of greater impact than the loss of views from balconies, bedrooms or kitchens.

Extent of the impact in relation to views available

The Concept SSD Approval assessed views from Park Regis at 27 Park Street, Victoria Tower at 197 Castlereagh Street, Castle Residences at 116 Bathurst Street and Century Tower at 343 Pitt Street.

The views assessed at these locations are neutral or improved as a result of the proposed changes to the concept building envelope.

This assessment relates to the Pitt Street OSD South and Greenland Centre, in addition to apartments 1403A and 1403B at Victoria Tower at 197 Castlereagh Street to address a submission received for the Detailed Design SSDA.

Views from Indi Sydney at 296 Pitt Street

Indi Sydney tower is located at 296 Pitt Street and is a 37 storey retail and residential (build-to-rent) tower above the Gadigal South Metro Station. It has some views to the north-east towards the high value element of Hyde Park, as well as Woolloomooloo, Potts Point and Sydney Harbour (being an iconic value element) from level 22 and above. The views are assessed as moderate as the water, iconic and

other high value elements are partially seen from these apartments. Apartments 2205A and 3604 are assessed below.

Apartment 2205A (viewpoint 12)



Figure 49 | Viewpoint kitchen window: Pitt Street OSD South (level 22, apartment 2205A existing view) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

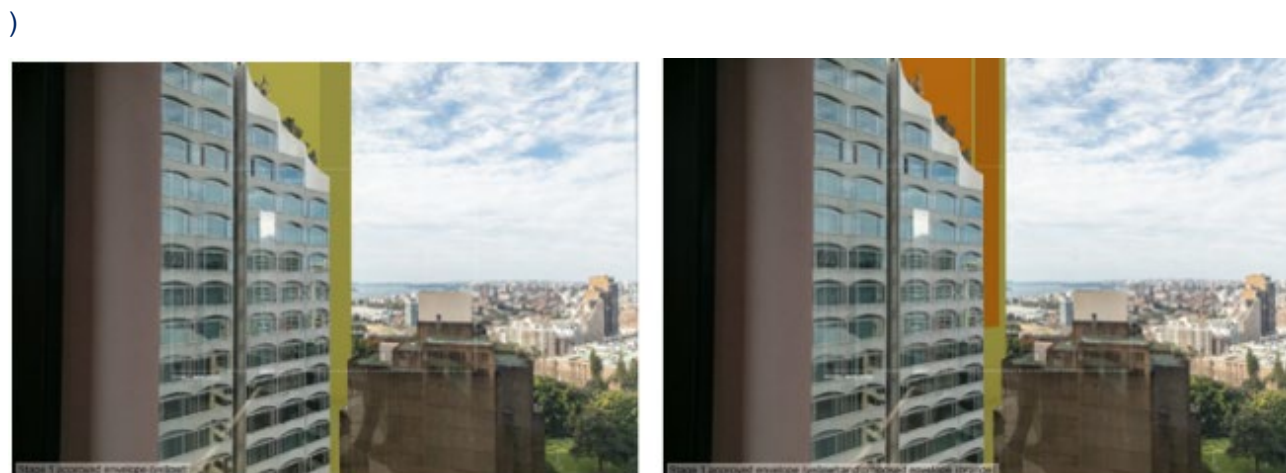


Figure 50 | Viewpoint kitchen window: Pitt Street OSD South (level 22, apartment 2205A) approved envelope (left) and proposed envelope in orange (right) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 51 | Viewpoint kitchen window: Pitt Street OSD South (level 22, apartment 2205A) proposed detailed design in white (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

The view is a side, standing view, obtained from a kitchen window. Sydney Harbour is an iconic element, seen in part from the window. The landmark Hyde Park is also visible, as well as partial views to Woolloomooloo, Potts Point and beyond.

The approved envelope, the proposed envelope and the detailed design model are substantially the same as the envelope of the existing building.

Apartment 3604 (viewpoint 13)

The apartment has views to the north-east to the Sydney CBD with the high value element of Hyde Park and Sydney Tower in the midground and the Domain, Royal Botanic Gardens, Potts Point and iconic Sydney Harbour in the background. The view is assessed as moderate, as the iconic and other high value elements are partial views.



Figure 52 | Viewpoint kitchen window: Pitt Street OSD South (level 36, apartment 3604 existing view) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

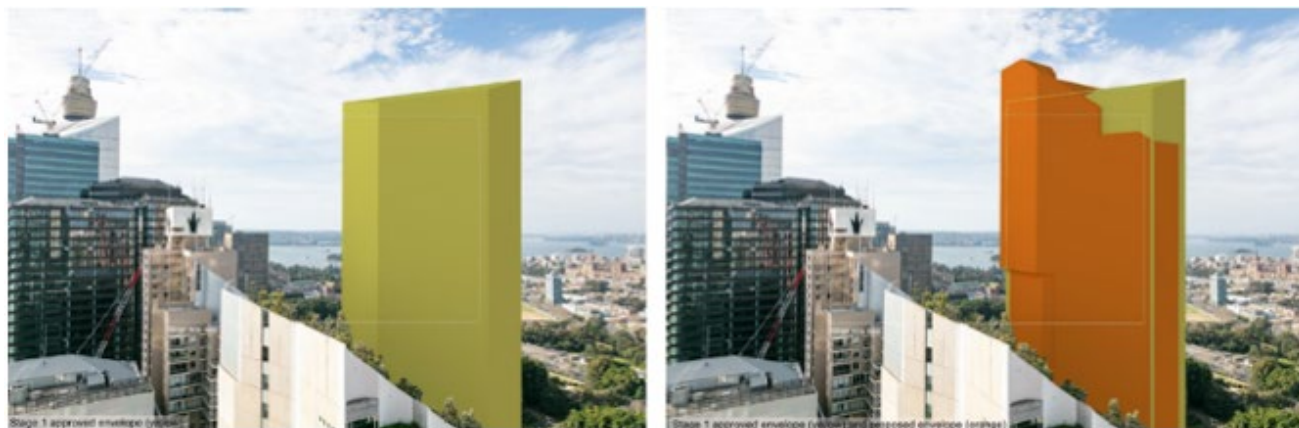


Figure 53 | Viewpoint kitchen window: Pitt Street OSD South (level 36, apartment 3604) approved envelope (left) and proposed envelope in orange (right) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 54 | Viewpoint kitchen window: Pitt Street OSD South (level 36, apartment 3604) proposed detailed design in white (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

The view from apartment 3604 is obtained from a balcony.

Similar to level 22, the approved envelope, the proposed envelope and the detailed design model are substantially the same as the envelope of the existing building. Views of Sydney Harbour are largely unaffected, and views of Hyde Park, Woolloomooloo and Potts Point are not impacted. The additional height of the proposed envelope (and detailed design) is shown at the north-west portion of the tower (where the height difference is approximately 10m).

The qualitative level of impact of the proposed concept building envelope and the detailed building is considered to be minor when assessed against the existing situation, and negligible compared to the approved concept building envelope.

Views from Greenland Centre at 115 Bathurst Street

This site has views to the north-east, primarily of buildings within the CBD, partial views of Sydney Harbour, Hyde Park and the Royal Botanic Gardens.

Apartment 38.03A – Level 35 (viewpoint 19)

The apartment has a view to the north-east, with a view to the iconic Sydney Harbour that is obscured by buildings, including the subject site. Hyde Park and the Royal Botanic Gardens, which are also landmark features, are also partially visible. The existing view is considered to be of moderate value, as the dominant elements in the view are the buildings of the CBD. Iconic elements are partial views only.



Figure 55 | Viewpoint: Greenland Centre (level 35, apartment 38.03 existing view) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 56 | Viewpoint: Greenland Centre (level 35, apartment 38.03) approved envelope (left) and proposed envelope in orange (right) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 57 | Viewpoint: Greenland Centre (level 35, apartment 38.03) proposed detailed design in white (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

The view from apartment 38.03 is obtained from the balcony and the qualitative level of impact of the proposed concept building envelope and the detailed building is negligible. Views of Sydney Harbour are almost entirely unaffected, and views of Hyde Park and the Royal Botanical Gardens are not impacted. The additional height of the tower has minimal impact on views, as it affects parts of the sky rather than land or water elements.

Apartment 78.02 (viewpoint 20)

The apartment has large, uninterrupted views to the north-east, to the iconic Sydney Harbour, Woolloomooloo Bay and North Head. Hyde Park and the Royal Botanic Gardens are also partially visible. The existing view is considered to be of high value, with unobstructed views of Sydney Harbour and Woolloomooloo Bay, although the foreground is dominated by large buildings (including the subject site) in the Sydney CBD.

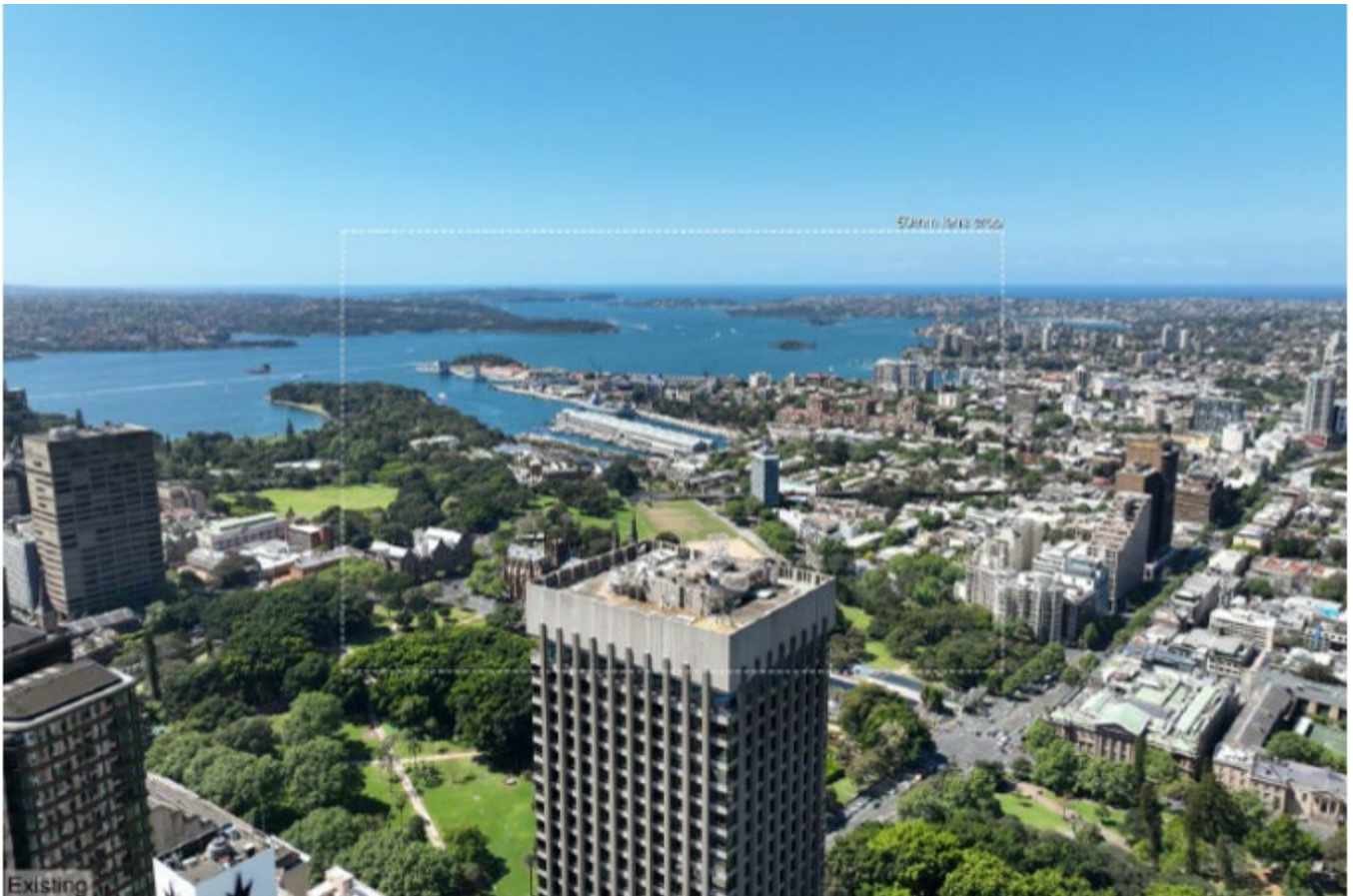


Figure 58 | Viewpoint: Greenland Centre (level 61, apartment 78.02 existing view) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 59 | Viewpoint: Greenland Centre (level 61, apartment 78.02) approved envelope (left) and proposed envelope in orange (right) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 60 | Viewpoint: Greenland Centre (level 61, apartment 78.02) proposed detailed design in white (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

Apartment 78.02 obtains standing views from the balcony and the qualitative level of impact of the proposed concept building envelope and the detailed building is considered minor. Views of Sydney Harbour are unaffected, and views of Hyde Park and the Royal Botanical Gardens are not impacted. The additional height of the tower (at the north-west) does obscure views to the high value element of St Mary's Cathedral, which is already partially obscured by the existing building and would not be visible with the approved concept envelope in place. Additional views to Hyde Park and Cook and Phillip Park, which are also considered to be high value elements, open up to the north-east as a result of the reduced south-east corner of the tower. The qualitative level of impact of the proposed concept building envelope and the detailed building is considered moderate compared to the existing situation, and minor compared to the approved envelope.

Apartment 82.02 (viewpoint 21)

Similar to apartment 78.02, apartment 82.02 at level 65 has uninterrupted views to Sydney Harbour, Woolloomooloo Bay and North Head. These views are considered to be iconic elements. The high value elements of Hyde Park and the Royal Botanic Gardens are also partially visible.



Figure 61 | Viewpoint: Greenland Centre (level 65, apartment 82.02 existing view) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 62 | Viewpoint: Greenland Centre (level 65, apartment 82.02) approved envelope (left) and proposed envelope in orange (right) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 63 | Viewpoint: Greenland Centre (level 65, apartment 82.02) proposed detailed design in white (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

Apartment 82.02 obtains standing and sitting views from the balcony and the qualitative level of impact of the existing situation, the approved envelope and the proposed concept building envelope and detailed building is considered moderate. The high value element of St Mary's Cathedral is partially visible in the concept approval, whereas it would not be visible with the proposed concept envelope in place. However, additional views to Hyde Park and Cook and Phillip Park, which are also considered to be high value elements, open up to the north-east as a result of the reduced south-east corner of the tower.

Views from apartment 1403A and 1403B of Victoria Tower at 197 Castlereagh Street

Impacts of the Concept Approval were assessed against the first 14 floors in a north-eastern, eastern and south-eastern direction given the location of the podium. A submission has been received with the SSDA during notification from Victoria Tower at 197 Castlereagh Street. The submission is concerned that the view impact assessment inadequately considers the impact of the podium, failing to note that the existing views from the lower part of 197 Castlereagh Street, in particular apartment 1403, are significant views. The submission goes on to state that the views are clear when seated throughout the balcony and living rooms and extending to the kitchen and concludes that it is incorrect to conclude that from the dining room the impact on views is low.

The submission received relates to 1403A and 1403B on the 14th floor, with a north-eastern orientation and views to the high valued element of St Mary's Cathedral and the iconic Sydney Harbour. These views are considered to be of moderate value.

Apartment 1403A

High valued elements St Mary's Cathedral and Hyde Park are seen in the foreground of the view from Apartment 1403A, with partial views of Sydney Harbour and Woolloomooloo in the background.



Figure 64 | Viewpoint: Victoria Tower (level 14, apartment 1403A existing view) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

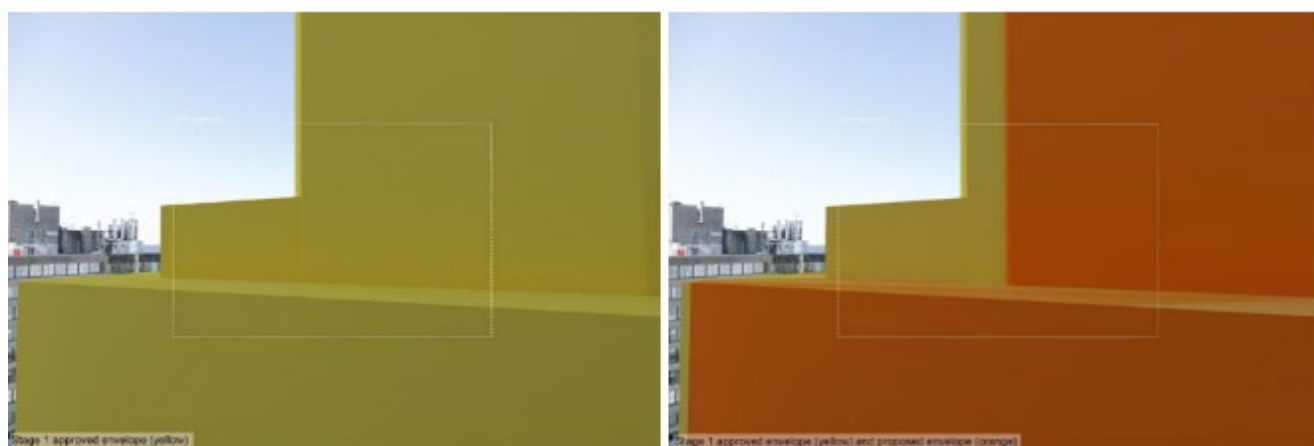


Figure 65 | Viewpoint: Victoria Tower (level 14, apartment 1403A) approved envelope (left) and proposed envelope in orange (right) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 66 | Viewpoint: Victoria Tower (level 14, apartment 1403A) proposed detailed design in white (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

Apartment 1403A obtains the above views from the front of the apartment, via a balcony at both seated and standing positions.

It is noted that the area of the approved envelope that extends above the podium was conditioned to be deleted as part of the deferred commencement conditions. See **Figure 67** below.

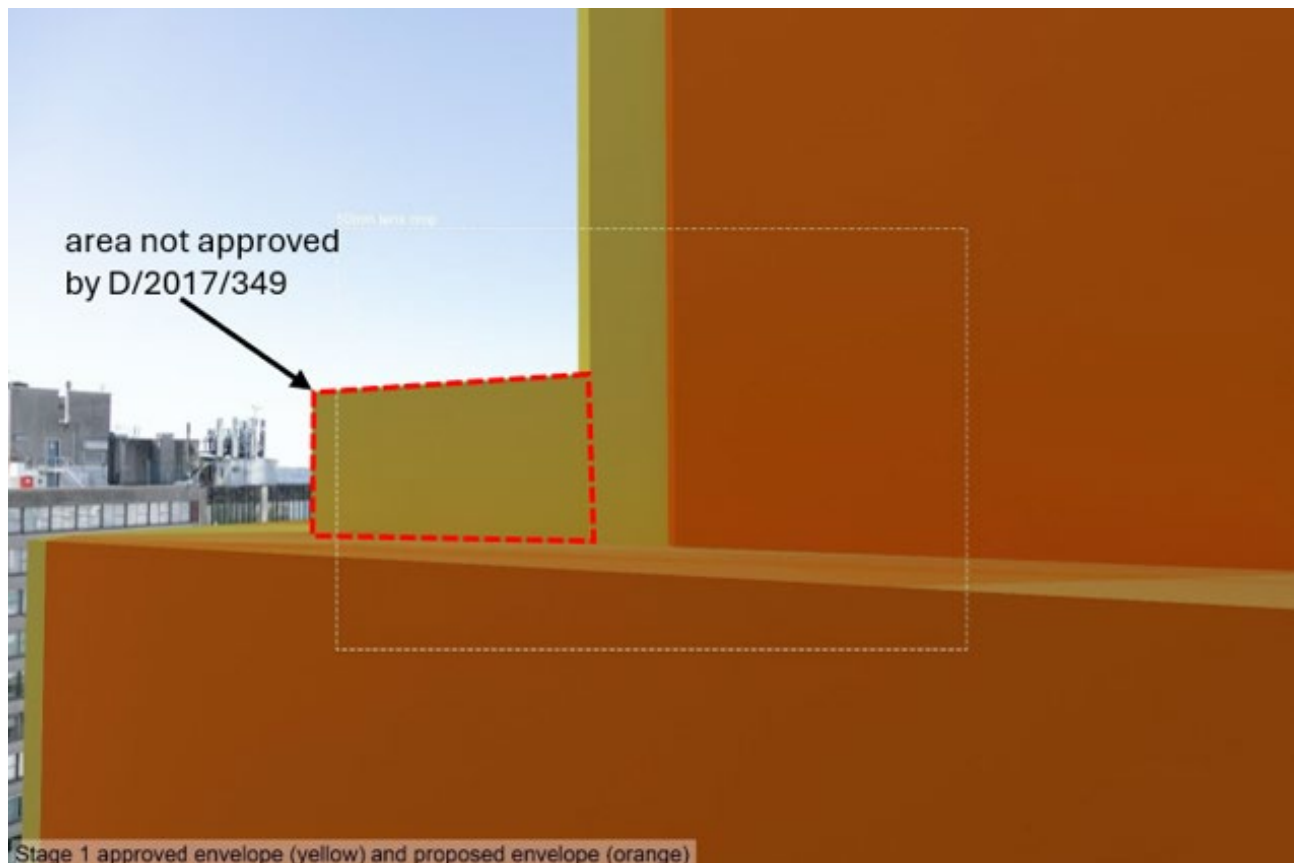


Figure 67 | Viewpoint: Victoria Tower (level 14, apartment 1403A). Red dashed lines indicate area not approved by D/2017/349. A setback of 17m was required by Condition 2 of the deferred commencement consent. (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

Notwithstanding, the proposed tower is setback 19.2m at this level (compared to 17m for the Concept SSD Approval) which improves views across this sightline.

The approved concept and proposed detailed design SSDA block views to Hyde Park, however partial views to St Mary's Cathedral (the spires in particular) remain. In this instance, it is considered that the qualitative level of impact of the proposal is severe (as per the original Concept SSD Approval assessment report) when compared to the existing situation; and negligible when compared to the approved envelope.

Apartment 1403B

Apartment 1403B obtains views to iconic elements in the form of Sydney Harbour. High value elements of Hyde Park and St Mary's Cathedral are visible, seen in part in the centre foreground and background of the view in existing conditions.



Figure 68 | Viewpoint: Victoria Tower (level 14, apartment 1403B existing view) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

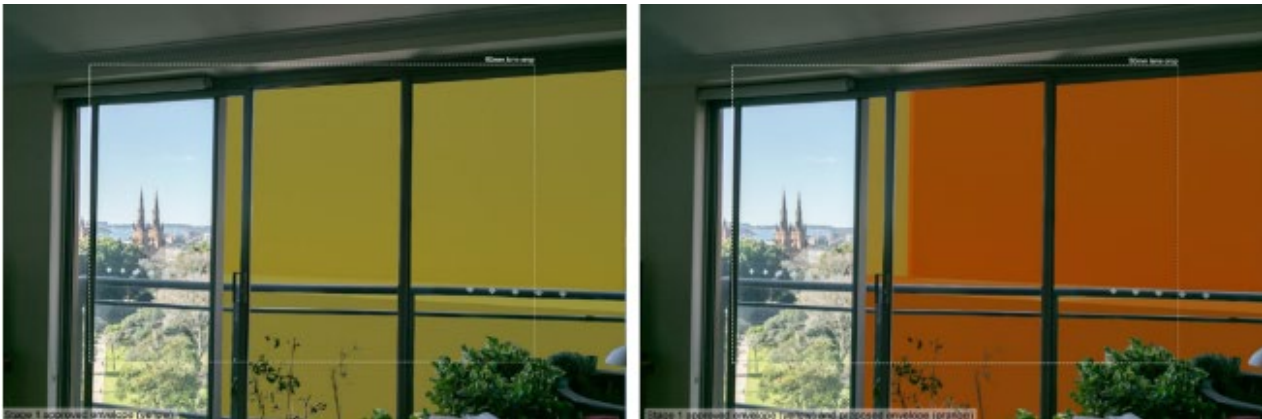


Figure 69 | Viewpoint: Victoria Tower (level 14, apartment 1403B) approved envelope (left) and proposed envelope in orange (right) (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)



Figure 70 | Viewpoint: Victoria Tower (level 14, apartment 1403B) proposed detailed design in white (Source: Ethos Urban Modification Report – View and Visual Impact Analysis)

Apartment 1403B obtains the above views from the front of the apartment, via a living room window at both seated and standing positions. As per Tenacity, the loss of views from living room windows is considered to be of greater impact than the loss of views from balconies, bedrooms or kitchens. It is acknowledged that, as the submission for this apartment details, that there are views from the kitchen albeit of lesser impact in line with Tenacity.

The qualitative level of impact of the proposed concept building envelope and the detailed building is considered negligible. Views to Hyde Park are partially blocked, however St Mary's Cathedral and Sydney Harbour remain largely unaffected. The qualitative level of impact of the proposal, when compared to the existing situation is severe (as per the original Concept SSD Approval assessment); and negligible when compared to the approved envelope.

Reasonableness

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 approved building envelope, severe view impacts were generally associated with the podium, with some minor and negligible impacts associated with the northern portion of the proposed tower.

As demonstrated above, the proposed amended building envelope has similar impact, given the height of and extent of the podium, as well as the north-west setback of the tower are generally consistent with the approval. The podium as proposed, complies with the street frontage height controls and is contained within the sun access plane, and impacts on partial views arising from the podium are

generally considered to be reasonable. It is also noted that the area of upper-level podium (to the north-west) considered to result in severe view impacts as part of the assessment of D/2017/349 has not been encroached upon by the proposed envelope or detailed design.

Where the proposed tower has increased in height (at the north-west corner), the view impact to Greenland Centre in particular, has been assessed as moderate as views to St Mary's Cathedral (a high value element) are obscured. The south-east corner of the tower, however, has been lowered compared to the approved building envelope, which in turn reveals more of Hyde Park and Cook and Phillip Park which are also considered to be high value elements. Notwithstanding, Greenland Centre retains largely uninterrupted views of iconic elements, such as Sydney Harbour and North Head, as well as Woolloomooloo Bay, the Royal Botanic Gardens and Hyde Park. In light of this, the additional height of the proposed tower, which is generally localised to the north-west corner, is not considered to have a significant impact on views and is supported.

On balance, the impacts on views identified as a result of the proposed amendments are acceptable and view sharing is reasonable.

5.3 Condition modifications

Table 7 | Condition modifications

Condition	Description	Discussion
Approved Development description	The approved development description is to be amended to reflect the increased height of the building envelope (amendments in strike through (deleted) and <i>bold italics</i> (inserted): "State Significant Development (SSD 8105) for a building envelope and concept approval for the construction and use of a 50 storey (RL198.22) <i>RL208.60</i> mixed use building providing hotel, retail and residential uses, with basement parking."	Acceptable.
Condition 2: Approved Development	Condition 2 is to include the amended building envelope plans.	Acceptable.
Condition 3: Building Height	Condition 3 is to be amended to increase the maximum building height from RL198.22 to RL208.60 and decrease the top of podium height to align with the Detailed Design SSDA which has a podium height of RL69.89.	This amendment is supported. The proposed overall height increase is considered acceptable as discussed in this report. The Concept Approval SSD comprised a part 13 and 14 storey podium with a general street wall height of 45m. The proposal seeks to reduce the podium height so that it is 13 storeys only (with no podium terrace). The podium

Condition	Description	Discussion
		height aligns with the permitted 45m street wall height of the Sydney DCP 2012 and predominant height approved by the Concept Consent.
Condition 11(h) & (i): Detailed Design of Building	It is requested that the following subsections be deleted to align with the design of the Detailed Design SSDA: <i>(h) There is to be no continuous awning in Elizabeth Street. Any awning is to be limited to entrances;</i> <i>(i) All street trees surrounding the site are to be retained;</i>	It is recommended that subsection (h) be deleted as the awning to Elizabeth Street is assessed as acceptable as part of the Detailed Design SSDA (noting that the City's controls encourage an awning in this location). Subsection (i) is to remain as the Detailed Design SSDA no longer proposes any street tree removal.
Condition 16: Signage Strategy	The application seeks to remove the requirement for a signage strategy to accompany the Detailed Design SSDA. The signage strategy is to form part of a future separate DA.	This condition can be deleted, and the signage strategy requirements are addressed as part of the Detailed Design SSDA assessment.

6 Evaluation

The City's assessment has considered the relevant matters and objects of the EP&A Act, including advice from government agencies and public submissions (**Section 4**), and strategic government policies and plans (**Section 3**).

The proposed modifications to the approved building envelope will deliver consistency between staged development applications for the site, as required under Section 4.24 of the Environmental Planning and Assessment Act, 1979.

The development as proposed to be modified is substantially the same as that originally approved. The overall form of the building envelope meets the intent of the approved concept. As per the originally approved concept application, the proposed modifications will deliver a hotel accommodation and residential accommodation building envelope with through-site links. The proposed modifications primarily relate to building height, creation of a tri-partite tower envelope and changes to setbacks.

The modifications to the envelope are supported as they do not result in unacceptable amenity impacts and deliver an envelope capable of achieving an acceptable level of amenity for future occupants and adjoining properties.

The proposed building envelope is able to accommodate a future building that exhibits design excellence in accordance with Clause 6.21C of the Sydney LEP 2012. The detailed design SSDA application D/2024/854 being considered concurrently by the CSPC demonstrates that a generally compliant scheme can be provided within the amended envelope that delivers design excellence in accordance with Clause 6.21C of the Sydney LEP 2012.

The proposed modifications are therefore in the public interest and recommended for approval.

7 Recommendation

It is recommended that the Central Sydney Planning Committee (CSPC), as a Committee of the delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application SSD-8105 MOD 1 falls within the scope of section 4.55(2) of the EP&A Act
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies the consent** for 201 Elizabeth Street (SSD-8105) subject to the conditions in the attached instrument of modification

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Glossary

Abbreviation	Definition
AHD	Australian height datum
ADG	Apartment Design Guide
The City	City of Sydney Council
CIV	Capital investment value
Council	City of Sydney Council
CSPC	Central Sydney Planning Committee
Department	Department of Planning, Housing and Infrastructure
DPI	Department of Primary Industries within the Department of Regional NSW
EIS	Environmental impact statement
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental planning instrument
FRNSW	Fire and Rescue NSW
Heritage	Heritage NSW, within the NSW Department of Climate Change, Energy, the Environment and Water
LEP	Local environmental plan
Minister	Minister for Planning and Public Spaces
NCC	National Construction Code
OSD	Over-station Development

Abbreviation	Definition
Planning Systems SEPP	State Environmental Planning Policy (Planning Systems) 2021
SEARs	Planning Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Housing and Infrastructure
SEPP	State environmental planning policy
SSD	State significant development
TfNSW	Transport for NSW

Appendices

Appendix A – List of referenced documents

- Modification Report
 - Submissions and agency advice
 - Response to submissions
 - Additional information
- <https://www.planningportal.nsw.gov.au/major-projects/projects/201-elizabeth-street-stage-1-modification-1>

Appendix B – Statutory considerations

Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects as set out in section 1.3 the Act. The objects of the EP&A Act are the underpinning principles upon which the assessment is conducted. The City is satisfied that the proposed modification is consistent with the objects of the EP&A Act.

Section 4.55(2) of the EP&A Act

A consent authority may modify the consent if it is satisfied that the proposed modification application meets the requirements of section 4.55(2) of the EP&A Act. An assessment of the proposed modification application against the requirements of section 4.55(2) of the EP&A Act is included in **Table 8**.

Table 8 | Consideration of section 4.55(2) of the EP&A Act

Section 4.55 (2) Evaluation	The City’s assessment
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The City has assessed the potential impacts associated with the modification at Section 5. The City concludes the proposal would have will not result in any significantly adverse environmental impacts beyond what was approved by the original development, and will not create additional adverse visual, heritage or amenity impacts. The City is satisfied the proposed modification application is substantially the same development as that originally approved, given that key components of the Concept Approval, including its use, and the

Section 4.55 (2) Evaluation	The City's assessment
	general provision of a podium and tower design, remain consistent.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	The original application was not subject to concurrence or general terms of approval by any government authority.
(c) it has notified the application in accordance with— (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	The application has been notified in accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2024 for a period of 28 days between October and November 2024. Details of the notification are provided in Section 4 of this report.
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	Consideration has been given to the submission received during the exhibition of the proposal as summarised in at Section 4 and Appendix C .

Section 4.15(1) of the EP&A Act

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development. **Table 9** identifies the matters for consideration under section 4.15 of the EP&A Act that apply to the proposed modification.

Table 9 | Consideration of section 4.15(1) of the EP&A Act

Section 4.15(1) Evaluation	The City's assessment
(a)(i) any environmental planning instrument	The modified development is consistent with the relevant EPIs, as addressed within the following sections of this Appendix.
(a)(ii) any proposed instrument	Not applicable.

Section 4.15(1) Evaluation	The City's assessment
(a)(iii) any development control plan	Under clause 2.10 of the Planning Systems SEPP, Development Control Plans do not apply to SSD.
(a)(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,	Not applicable. The modified development does not involve a planning agreement.
(a)(iv) the regulations	The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications, the requirement for notification and fees.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The likely impacts of the proposed modification are acceptable and have been appropriately addressed at Section 5 .
(c) the suitability of the site for the development	The site remains suitable for the development.
(d) any submissions made in accordance with this Act or the regulations	The City has considered the submissions received from the community and government agencies at Section 4 .
(e) the public interest	The City considers the proposed modification to be in the public interest.

Environmental Planning Instruments (EPIs)

To satisfy the requirements of Section 4.15(a)(i) of the Act, this report includes references to the provisions of the EPIs that govern the carrying out of the proposal and have been taken into consideration in the Department's environmental assessment.

The following EPIs are relevant to the modification application:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and its accompanying Apartment Design Guide (ADG)
- Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

The City also undertook a comprehensive assessment of the application against the relevant EPIs in its original assessment. The City is satisfied the modifications do not result in any inconsistency with the EPIs addressed in the original assessment. The above EPIs are addressed in further detail below.

State Environmental Planning Policy (Planning Systems) 2021

The Planning Systems SEPP aims to identify development that is of State significance due its size, economic value or potential impact.

The modification is classified as State Significant Development (SSD) in accordance with Section 13 of Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) as the SSD approval comprises hotel accommodation with a capital investment value of more than \$100 million. The proposed CIV of the tourist related component of the development has a CIV of \$348,225,477.

On 7 February 2017, the then Minister for Planning delegated consent authority functions to the City in respect of the original application D/2017/349. On 23 February 2017, Secretary of the Department of Planning and Environment (as it was previously known) delegated responsibility for the assessment of the application (and related functions) to the City.

State Environmental Planning Policy (Housing) 2021

Chapter 4 – Design of Residential Apartment Development

The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.

When determining an application for a residential flat development of three or more floors and containing four or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.

The applicant has submitted a design verification statement prepared by FJC Studio. The statement is deemed to satisfy Clause 102 of the EP&A Regulation 2021. The modification application has been reviewed by the City's Design Advisory Panel along with the detailed design SSD.

Where relevant to the proposed modifications, the design quality principles in Schedule 9 to the Housing SEPP have been considered.

(a) Principle 1: Context and Neighbourhood Character

The amended building envelope allows for a development that is contextually appropriate and consistent with the existing and desired future character of the area.

(b) Principle 2: Built Form and Scale

The amended envelope is capable of providing a built form that has appropriate massing and scale.

(c) Principle 3: Density

The proposed building envelope enables the site to achieve the maximum FSR available under the Sydney LEP 2012 without adverse or unacceptable amenity impacts to neighbouring properties.

In addition to the above, the proposed modifications allow the development to achieve a reasonable level of amenity for residential occupants under the Apartment Design Guide.

(d) Principle 4: Sustainability

Detailed design applications are required to comply with BASIX requirements. The detailed design proposal has demonstrated that sustainability targets can be met by the amended envelope.

(e) Principle 5: Landscape

The amended envelope allows for ample landscaping to be provided within communal areas at podium rooftop.

(f) Principle 6: Amenity

The amended envelope can accommodate a development with a reasonable level of amenity for future occupants, as well as adjoining properties.

(g) Principle 7: Safety

The amended envelope allows for a development that can achieve the principles of Crime Prevention Through Environmental Design (CPTED).

(h) Principle 8: Housing Diversity and Social Interaction

The amended envelope allows for a development that can provide a suitable mix of dwelling types.

(i) Principle 9: Aesthetics

The amended envelopes are generally consistent with the design competition winning scheme, which was considered by the Jury as the entrant most capable of demonstrating design excellence.

The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). A detailed assessment of the proposal against the ADG is provided below.

Table 10 | ADG assessment

2F Building Separation	Consistency with objectives	Comment
Up to 4 storeys (approximately 12m): • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 5-8 storeys (approximately 25m): • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 9 storeys and above (over 25m):	Able to meet the objectives	A detailed assessment of building separation is provided as part of the detailed design SSD.

2F Building Separation	Consistency with objectives	Comment
24m between habitable rooms / balconies 18m between habitable and non-habitable rooms 12m between non-habitable rooms		

3F Visual Privacy	Consistency with objectives	Comment
Up to 4 storeys (12m): 6m between habitable rooms / balconies 3m between non-habitable rooms 5 to 8 storeys (25m): 9m between habitable rooms / balconies 4.5m between non-habitable rooms 9 storeys and above (over 25m): 12m between habitable rooms / balconies 6m between non-habitable rooms	Able to meet the objectives	A detailed assessment of building separation is provided as part of the detailed design SSD.

Sydney Local Environmental Plan 2012

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

Table 11 | Sydney LEP 2012 Compliance Assessment

Part 1 | Preliminary

Provision	Comment	Compliance
1.8A Savings provisions relating to development applications	The amendments made to the SLEP by the SLEP 2012 (Amendment No 64) on 26 November 2021 do not apply to the subject development application in relation to height of buildings (clause 4.3) and the sun access plane (clause 6.17), in accordance with subclause (5)(b)(ii) of Clause 1.8A of the SLEP 2012.	Yes

Provision	Comment	Compliance
	These provisions relate to the amendments to the LEP to facilitate the Central Sydney Planning Strategy. The amended provisions are not applicable in this instance as they apply to the grant of development consent and not an application to modify a development consent. With regard to accommodation floor space (clause 6.4), clause 6.4(1A) of the Sydney LEP 2012, which was inserted as part of Amendment 64, <i>(a) applies to a development application subsequent to, and made in reliance on, a development application or concept development application made in relation to the same development, and (b) is calculated by reference to the additional floor space available on the date the application being relied on was made.</i> This application is to modify a development consent, relying upon Concept SSD Approval D/2017/349, which was made on 21 March 2017. Therefore, the accommodation floor space available prior to 30 June 2022 applies to this application.	

Part 2 | Permitted or prohibited development

Provision	Comment	Compliance
2.3 Zone objectives and Land Use Table	The site is zoned SP5 Metropolitan Centre. There are no changes proposed to the approved uses. The development remains consistent with the objectives of the zone	Yes

Part 4 | Principal development standards

Provision	Comment	Compliance
4.3 – Height of buildings 6.17 – Sun access planes	The site is in 'Area 3' pursuant to the Sydney LEP 2012; therefore no maximum height is shown for this land. Instead, the maximum height is determined by the Hyde Park sun access planes that are taken to extend over the land by Clause 6.17. The approved Concept SSDA relied on the now repealed Clause 6.18 of the Sydney LEP 2012 'Exception to sun access planes' which allowed development to exceed the Hyde Park sun access plane if certain criteria were met. The control was repealed on 26 November 2021 and Clause 6.17 now states that development consent cannot	Yes

Provision	Comment	Compliance
	be granted to a development that breaches the sun access plane. The consent authority has the power to approve an application to modify the Concept SSDA despite the prohibition contained in Clause 6.17 as the prohibition applies to the grant of development consent and not an application to modify a development consent. This modification is therefore able to amend the approved height of the Concept SSDA. The Concept SSDA established a maximum height of RL198.22. The proposed modification comprises a maximum height of RL208.60 (182.28m), exceeding the approved height by approximately 10m. The proposal is accompanied by detailed shadow diagrams demonstrating that the proposed modification to height, and those parts exceeding the sun access plane will result in an improved outcome to Hyde Park and the Anzac Memorial. Refer to Section 5 of this report for detailed discussion.	
4.4 – Floor space ratio	The Concept SSDA included a maximum building envelope that was designed to accommodate 59,551sqm of GFA, or an FSR of 15.27:1. It considered the base FSR under Clause 4.4 (8:1) as well as accommodation floor space (up to 6:1) in accordance with Clause 6.4 and a 10% bonus for achieving design excellence. The Modification Application seeks to amend the approved building envelope to align with a concurrent Detailed SSDA (D/2024/854) and the competition winning scheme. Although no quantum of floor space has been approved, the Detailed SSDA comprises an FSR of 14.81:1 and therefore the modified envelope is consistent with the FSR envisioned as part of the approved Concept SSDA.	Yes

Part 5 | Miscellaneous provisions

Provision	Comment	Compliance
5.10 - Heritage conservation	The site is not a heritage item, nor is it located within a heritage conservation area. The site is located within the College Street/ Hyde Park Special Character Area and is in close proximity to a number of heritage items of State and Local significance, including but not limited to:	Yes

Provision	Comment	Compliance
	- Hyde Park (SHR 01871, Local Item No. I1654); - Anzac War Memorial including Pool of Reflection, pavements, plantings, flagpoles, staircase, platform, interiors, lightwells, bas reliefs, statues, sculptures and movable heritage (artefacts and memorabilia at 120 Elizabeth Street (SHR 01871, Local Item No. I1742); - Museum Railway Station including interiors (SHR 01207, Local Item No. I1743); - Municipal sewer vent corner of Elizabeth and Bathurst Streets (SHR 01642, Local Item No. I1752); - Former Australian Consolidated Press facade' at 189–197 Elizabeth Street (Item No. 1751); 'Former CENEF House" including interiors' at 201 Castlereagh Street (Item No. I1700) 'St George's Church including interior and forecourt' at 201A Castlereagh Street (Item No. I1701) 'Porter House" including interior' at 203 Castlereagh Street (Item No I702) 'Former tram shelter including interior' at 110 Elizabeth Street (Item No. I741). The proposed changes to the building envelope allow for views from Hyde Park to St Georges Church at 201A Castlereagh Street and solar access to the façade of the Church, which were identified as issues in the original assessment of the Concept SSDA and conditioned as a requirement for the detailed design proposal to address.	
5.21 – Flood planning	The proposed modifications will not affect flood behaviour.	Yes

Part 6 | Local provisions – height and floor space

Provision	Comment	Compliance
Division 4 Design Excellence		
6.21 Design Excellence	The proposal remains capable of exhibiting design excellence in accordance with the objective and matters for consideration in clause 6.21C of Sydney LEP 2012 as demonstrated by the detailed State Significant development application considered concurrently.	Yes

Part 7 | Local provisions – general

Provision	Comment	Compliance
7.20 Development requiring or authorising preparation of a development control plan	The approved concept plan satisfies this provision by virtue of section 4.32 of the EP&A Act. The proposed modifications to the concept plan adequately address the matters for consideration specified in this clause with respect to height, bulk, massing, streetscape and environmental impacts.	Yes

The section 4.55(2) modification application does not alter the compliance of the development with other relevant provisions in the Sydney LEP 2012.

Sydney Development Control Plan 2012

In accordance with clause 2.10 of the Planning Systems SEPP, Development Control Plans do not apply to SSD. Notwithstanding, objectives of relevant controls under the Sydney Development Control Plan 2012 have been considered throughout Section 5.

Appendix C – Response to community submissions

Table 12 | Response to community submissions

Issue	Consideration
The modification application cannot be considered as the Concept Approval D/2017/349 has lapsed (on 6 September 2024) and the subject modification was lodged after this date.	Development consent D/2017/349 is to lapse on 6 September 2025. This is in accordance with Section 4.53(6)(c) of the EP&A Act, where development consent received prior to the commencement prescribed period has an extended lapse date of 2 years after which the development consent would otherwise have lapsed. In this instance, the development consent would otherwise have lapsed on 6 September 2023. The prescribed period is the period commencing on 25 March 2020, ending on 25 March 2022.
The modification application does not comply with Section 4.55(2) of the EP&A Act as the proposed envelope is not substantially the same development	A comprehensive assessment of the modification application has been made against section 4.15(1) and section 4.55(2) of the EP&A Act, including a threshold test and an assessment against the reasons originally given to grant the concept consent. As demonstrated in this report, the proposed modification is considered substantially the same development in accordance with section 4.55(2) of the EP&A Act and is consistent with the intent of the original approved concept development. The proposal continues to facilitate the approved mixed-use development, covers the same extent of the site area and presents acceptable environmental impacts not dissimilar to the original approval.
The application relies on provisions (height, overshadowing of Hyde Park and floor space ratio) that have been deleted. The proposal does not satisfy Condition 9 of the concept consent in that it does not maximise sunlight access to Hyde Park. If the Concept approval has lapsed, the proposal is required to comply with Clause 6.17 and overshadowing in excess of the Hyde Park sun access plane is not permissible.	The provisions relating to height, overshadowing of Hyde Park and floor space ratio (that have since been repealed) still apply to this concept modification application, as detailed in this report. The proposed overshadowing impacts to Hyde Park have been assessed in accordance with Condition 9 of the Concept SSD Approval. The proposal is accompanied by detailed solar access diagrams demonstrating a 51.42% reduction in shadows cast between 12.00pm and 2.00pm at the winter solstice.

Issue	Consideration
View impacts: - The view and impact assessment inadequately considers the impact on private domain views and dismisses the impacts of the podium	An assessment of public and private view impacts has been undertaken. The proposal is considered to have an acceptable impact when viewed from Hyde Park and has been assessed as having a negligible impact on private views when compared to the Concept SSD Approval. This is discussed in greater detail in this report.

Appendix D – Recommended instrument of consent