

ITEM 6. DEVELOPMENT APPLICATION: 161-165 CLARENCE STREET AND 304 KENT STREET SYDNEY**FILE NO: D/2012/1425****DEVELOPMENT APPLICATION NO: D/2012/1425****SUMMARY****Date of Submission:** 14 September 2012 (additional information received 2 November 2012)**Applicant:** Crown Central Developments Pty Ltd**Owner:** Crown Central Pty Ltd and Sathio Investments Pty Ltd**Architect:** Grimshaw**Developer:** Crown Central Developments Pty Ltd

Proposal Summary: The proposal is a Stage 1 Development Application for a new 80m tower envelope comprising residential, serviced apartments, retail and commercial development, including basement car parking. The proposal includes a new publicly accessible pedestrian space (centrally located between the podium blocks), through site link (connecting Clarence Street and Kent Street) and a laneway connection to Skittle Lane to the south. The application also seeks consent for a 10% uplift in FSR on the basis of a future competitive design process, and seeks to 'lock in' a residential car parking rate.

The uplift in FSR and 'locking in' of parking rates are not supported.

The proposed envelope largely complies with the core building form provisions of the LEP and DCP. The Kent St tower setback of 4m does not comply with the required 8m setback, but is considered to be acceptable on balance. In particular, the envelope is considered to be contextually appropriate (noting the existing approved additions to the neighbouring Red Cross House and the existing commercial buildings opposite), and is a balanced composition of multiple interlocked building elements.

**Proposal Summary:
(continued)**

Seven submissions were received (of which six were from Broughton House at 181 Clarence Street) raising concerns with the development. These concerns include amenity impacts to Broughton House (shadowing, noise and construction related), excessive height and bulk, character of the development, congestion, and the fact that there are existing late night trading licence premises in the vicinity and the proposal should 'design out' potential acoustic impacts to avoid future residential complaints. These concerns are either not considered to be well-founded or able to be addressed as part of the future competitive design process and Stage 2 detailed Development Application.

The site is also located over a future rail reservation, with RailCorp recommending a 'deferred commencement' consent and other conditions.

Summary Recommendation:

That a 'deferred commencement' consent be issued for D/2012/1425.

Attachments:

A - Selected Drawings

RECOMMENDATION

It is resolved that:

- (A) 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, having regard to the following:
- (i) The carrying out of works is not proposed or approved as part of this Stage 1 DA, which is conceptual in nature. Detailed matters in respect of on-site parking, driveway configuration and the like will be further addressed as part of the future Stage 2 Development Application;
 - (ii) The comments of both RailCorp and the Roads and Maritime Services were sought under the provisions of State Environmental Planning Policy (Infrastructure) 2007;
 - (iii) The three existing Kent Street driveway crossings will be consolidated into one driveway crossing. Subject to the future detailed design, this has a positive impact on traffic and transport in general, including the adjacent Kent Street separated cycleway;
- (B) pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted subject to the following:
- (1) The owners of the site of the approved development must enter into an Agreement with RailCorp to address the potential impacts of the approved development on the CBD Rail Link identified in State Environmental Planning Policy (Infrastructure) 2007. The Agreement must provide for the following:
 - (a) the design, construction and maintenance of the approved development so as to satisfy the requirements in condition 11(a) to (h) below;
 - (b) allowances for the future construction of railway tunnels in the vicinity of the approved development;
 - (c) allowances in the design, construction and maintenance of the approved development for the future operation of railway tunnels in the vicinity of the approved development, especially in relation to noise, vibration, stray currents, electromagnetic fields and fire safety;
 - (d) consultation with RailCorp;
 - (e) access by representatives of RailCorp to the site of the approved development and all structures on that site;
 - (f) provision to RailCorp of drawings, reports and other information related to the design, construction and maintenance of the approved development;

- (g) preparation of a summary report that summarises and incorporates material and documents related to the Agreement;
 - (h) creation of a restrictive covenant on each of the titles which comprise the approved project so as to satisfy condition 11(j) below;
 - (i) such other matters which RailCorp considers are appropriate to give effect to (a) to (h) above; and
 - (j) such other matters as the owners and RailCorp may agree.
- (C) evidence that those matters identified in deferred commencement conditions listed above must be submitted to Council within 12 months or 365 days or the consent will lapse;
- (D) the consent will not operate until such time that the Council notifies the Applicant in writing that deferred commencement consent conditions as indicated in Clause (B) above, have been satisfied; and
- (E) upon Council giving written notification to the Applicant that the deferred commencement conditions in clause (B) above have been satisfied, the consent will become operative from the date of that written notification, subject to the following conditions of consent and any other additional conditions reasonably arising from consideration of the deferred commencement consent conditions.

SCHEDULE 1

(1) APPROVED DEVELOPMENT

- (a) Stage 1 development consent is granted only for a building envelope and general arrangement of uses within the development, being basement car parking, mixed use podium blocks containing retail, commercial, serviced apartments and residential apartments, a residential tower, a publicly accessible pedestrian space (centrally located between the podium blocks), east-west through site link and connection to Skittle Lane, in accordance with Development Application No. D/2012/1425 dated 14 September 2012 and the following drawings:

| Drawing Number | Architect | Date |
|----------------------------|---------------------|-------------------|
| A02_1001_DA to A02_1007_DA | Grimshaw Architects | 10 September 2012 |
| A05_1001_DA to A05_005_DA | Grimshaw Architects | 10 September 2012 |
| A06_1001_DA to A06_1002_DA | Grimshaw Architects | 10 September 2012 |

and as amended by the conditions of this consent:

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

(2) SURRENDER OF PREVIOUS CONSENT

Prior to the lodgement of a Stage 2 Development Application, the previous development consent granted under D/2008/150 shall be surrendered, if not already lapsed, in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

(3) MATTERS NOT APPROVED

The following items are not approved and do not form part of this Stage 1 development consent:

- (a) the request for a 10% uplift in floor space ratio and 'locking in' of a residential parking rate;
- (b) any demolition, construction, refurbishment and/or excavation; and
- (c) the layout and number of residential and serviced apartments, car parking spaces, and basement levels.

(4) DESIGN EXCELLENCE AND COMPETITIVE DESIGN PROCESS

- (a) A competitive design process in accordance with the provisions of Sydney Local Environmental Plan 2005 and Central Sydney Development Control Plan 1996 (as may be amended) shall be conducted prior to the lodgement of a Stage 2 Development Application.
- (b) The detailed design of the development must exhibit design excellence.

(5) BUILDING ENVELOPE

Subject to the other conditions of this consent, the building envelope is only approved on the basis that the ultimate building design, including services, will be entirely within the approved envelopes and provide an appropriate relationship with neighbouring and approved buildings. Any projection beyond the building envelope must be fully justified through the competitive design and Stage 2 Development Application process.

(6) CLARENCE STREET TOWER SETBACK

Above the street frontage height, the building is to be setback at least 8m from Clarence Street so as not to protrude forward of the approved addition to 153-159 Clarence Street, Sydney (Red Cross House).

(7) EXPOSED ELEVATIONS

A visually interesting treatment is to be applied to the exposed side elevations along the northern and southern boundaries. In applying this treatment, care should be taken to ensure that there are no unreasonable impacts on the neighbouring properties. Details shall be submitted as part of the future Stage 2 Development Application.

(8) PODIUM DESIGN

For the podium, the competitive design process and Stage 2 DA should have regard to the following matters:

- (a) be a finely designed masonry building with the facade composition responding in a positive way to the adjacent heritage items and the predominant historic warehouse development of the area that is characterised by strong visual depth, a high degree of architectural modelling and articulation, a complex hierarchy of vertical and horizontal proportions and changes in architectural treatment with height and level;
- (b) high quality materials that provide a compatible response to surrounding development should be incorporated into the future design; and
- (c) glazing (at all levels of the building) should maintain a high level of clarity and be neutral in colour. While large richly detailed windows that 'frame' the occupants view out are considered to be more appropriate than balconies, where balconies are proposed, these should be recessed within the line of the facade through punctured openings

(9) BUILDING HEIGHT

The maximum height of the building as defined in the Sydney Local Environmental Plan 2005 (as may be amended) must not exceed 80 metres.

(10) FLOOR SPACE RATIO - CENTRAL SYDNEY

- (a) The Floor Space Ratio of the proposal must not exceed the maximum permissible and calculated in accordance with the Sydney Local Environmental Plan 2005 (as may be amended). Precise details of the distribution of floor space shall be provided with the future Stage 2 development applications.
- (b) The floor space in excess of 8:1 shall be subject to a requirement to purchase heritage floor space (HFS) in accordance with the requirements of Clause 62 of the Sydney Local Environmental Plan 2005 (as may be amended).

(11) WIND

The Stage 2 DA shall be subject to wind tunnel testing to ascertain the impacts of the development on the wind environment and conditions within the publicly accessible pedestrian space (centrally located between the podium blocks), pedestrian laneways (including Skittle Lane), the surrounding streets and neighbouring buildings, and the podium apartment uses, which may rely upon natural cross ventilation from the central void.

(12) OTHER RAILCORP CONDITIONS

- (a) All structures which are proposed for construction or installation, or which are constructed or installed, in connection with the approved development which have a potential impact on the CBD Rail Link must be designed, constructed and maintained so as to:

- (i) ensure that they not inhibit and prevent damage to, or other interference with the approved development which may occur in connection with the future design, construction and operation of the CBD Rail Link in any location, including the risk of any damage which may occur as a result of any rock stress re-distributions, associated load re-distributions, rock movements, other geological events and draw down of the water table;
 - (ii) allow for the future demolition of any part of the approved development without damaging or otherwise interfering with the CBD Rail Link and rail operations in any location. This does not apply where a part of the structure is to be retained because its demolition would damage or otherwise interfere with the CBD Rail Link and train operations, in which case, that part of the structure must have a minimum design life of 100 years;
 - (iii) ensure that liquids and gases cannot transfer into the CBD Rail Link;
 - (iv) avoid any damage or other interference which may occur as a result of stray electrical currents, electromagnetic effects and the like from railway operations; and
 - (v) avoid any damage or other interference which may occur as a result of noise and vibration from railway operations.
- (b) All structures which are proposed for construction or installation, or which are constructed or installed, in connection with the approved development which have a potential impact on the CBD Rail Link must be designed, constructed and maintained in accordance with design criteria specified by RailCorp.
- (c) The design and construction of the basement levels, foundations and ground anchors for the approved development are to be completed to the satisfaction of RailCorp.
- (d) No modifications may be made to that approved design without the consent of RailCorp.
- (e) RailCorp, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principle contractor for the approved development or the owner or occupier of the part of the site to which access is sought.
- (f) A detailed regime is to be prepared for consultation with, and approval by, RailCorp for the excavation of the site and the construction of the building foundations (including ground anchors) for the approved development, which may include geotechnical and structural certification in the form required by RailCorp.

- (g) All requirements contained in the Agreement between RailCorp and the owners of the site must be satisfied during construction and, where appropriate, the operation of the approved development.
- (h) Prior to the issue of an Occupation Certificate a summary report as required in deferred commencement condition 1(g) must be completed to the satisfaction of RailCorp.
- (i) Copies of any certificates, drawings or approvals given to or issued by RailCorp must be delivered to the City for its records.
- (j) Prior to the commencement of any excavation below existing ground level, a restrictive covenant is to be created upon each of the titles which comprise the approved development pursuant to Section 88E of the Conveyancing Act 1919, restricting any alterations or additions to any part of the approved development which are reasonably likely to adversely affect, or which otherwise are likely to interfere with the design, construction and operation of the proposed CBD Rail Link without the prior written consent of RailCorp.

(13) COMPLIANCE WITH ALL RELEVANT PLANNING PROVISIONS

It is expected that the future Stage 2 DA will comply with all relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plan. In particular, it is noted that the future Stage 2 DA will require the concurrence of the rail authority and consultation with the Roads and Maritime Services under State Environmental Planning Policy (Infrastructure) 2007.

(14) WASTE COLLECTION

The future Stage 2 Development Application shall demonstrate compliance with Council's requirements for waste collection for residential development and Policy for Waste Minimisation in New Development 2005 (as may be amended).

(15) ELECTRICITY SUBSTATION

The owner must dedicate to the applicable energy supplier, free of cost, an area of land within the development site, but not in any landscaped area or in any area visible from the public domain, to enable an electricity substation to be installed. The size and location of the substation is to be submitted for approval of Council and Ausgrid with any future Stage 2 DA.

(16) ACID SULFATE SOILS

An Acid Sulfate Soils Management Plan for the development must be prepared by an appropriate qualified consultant and submitted with the Stage 2 Development Application. This plan shall be prepared in accordance with the Acid Sulfate Soils Manual.

(17) PUBLIC DOMAIN PLAN

A Public Domain Plan must be prepared by an architect, urban designer or landscape architect and must be lodged with the Stage 2 development application. The Public Domain Plan must be prepared in accordance with the City of Sydney's Public Domain Manual.

(18) STORMWATER AND DRAINAGE - MAJOR DEVELOPMENT

On-site detention, treatment and re-use is encouraged.

Details of the proposed stormwater disposal and drainage from the development including a system of on-site stormwater detention in accordance with Council's standard requirements and details of the provision and maintenance of overland flow paths must be submitted with the Stage 2 application.

The requirements of Sydney Water with regard to the onsite detention of stormwater must be ascertained and complied with.

(19) THROUGH SITE LINK

Details of the proposed through site link are to be submitted with the Stage 2 application. These details are to include;

- (a) view analysis from/to Clarence Street through the link from/to Kent Street and from and to King Street. A visual connection between Clarence Street and Kent Street is to be explored;
- (b) levels;
- (c) easements and future restrictions;
- (d) design of the space; and
- (e) lighting.

(20) PAVING MATERIALS

The surface of any material used or proposed to be used for the paving of colonnades, thoroughfares, plazas, arcades and the like which are used by the public must comply with AS/NZS 4586:2004 (including amendments) "Slip resistance classification of new pedestrian surface materials".

(21) LOCATION OF DRIVEWAY

The access driveway for the site must not be closer than:

- (a) 10 metres from the kerb line of the nearest cross street/lane;
- (b) 20 metres from the kerb line of the nearest signalised cross street/lane;
- (c) 1 metre from the property boundary of the site; and
- (d) 2 metres from any other driveway.

Details shall be submitted with the Stage 2 Development Application.

(22) VEHICLE ACCESS

The site must be configured to allow all vehicles to be driven onto and off the site in a forward direction. Details shall be submitted with the Stage 2 Development Application.

SCHEDULE 2

The prescribed conditions in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000 apply to the development.

BACKGROUND

The Site and Surrounding Development

1. The site comprises three properties (161 Clarence Street, 163-165 Clarence Street, and 304 Kent Street) with a combined area of approximately 1438sqm. The combined properties form an irregular though generally "L" shaped site with street frontages of approximately 28m to Clarence Street and 38m to Kent Street. The site also has frontage to Skittle Lane.
2. Due to the topography of the site, there is a level difference of approximately one floor between Clarence Street and Kent Street.
3. The site currently contains five commercial buildings fronting both Clarence and Kent Streets ranging in height from 4 to 8 levels. These buildings are currently serviced by 3 Kent Street driveways.
4. Surrounding developments include the 9-10 level heritage listed Red Cross House building (153-159 Clarence Street) to the north (which has development consent for an additional 3 commercial floors above a rooftop plant level), a 10 level strata commercial building to the south east (167-175 Clarence Street - corner of King Street), and a 8 level heritage listed commercial building to the south west (306 Kent Street – corner of King Street). Along Kent Street is a two way separated cycleway.
5. A location plan and selected images of the existing building and its surrounds may be found below.



Figure 1 – Location Plan

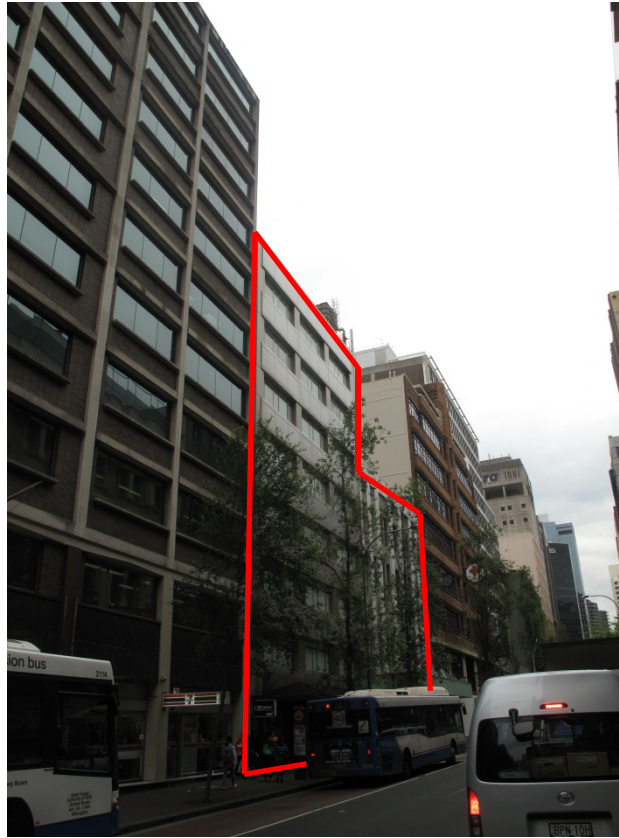


Figure 2 – Looking north along Clarence Street



Figure 3 – Looking north along Clarence Street



Figure 4 – Existing Clarence Street context

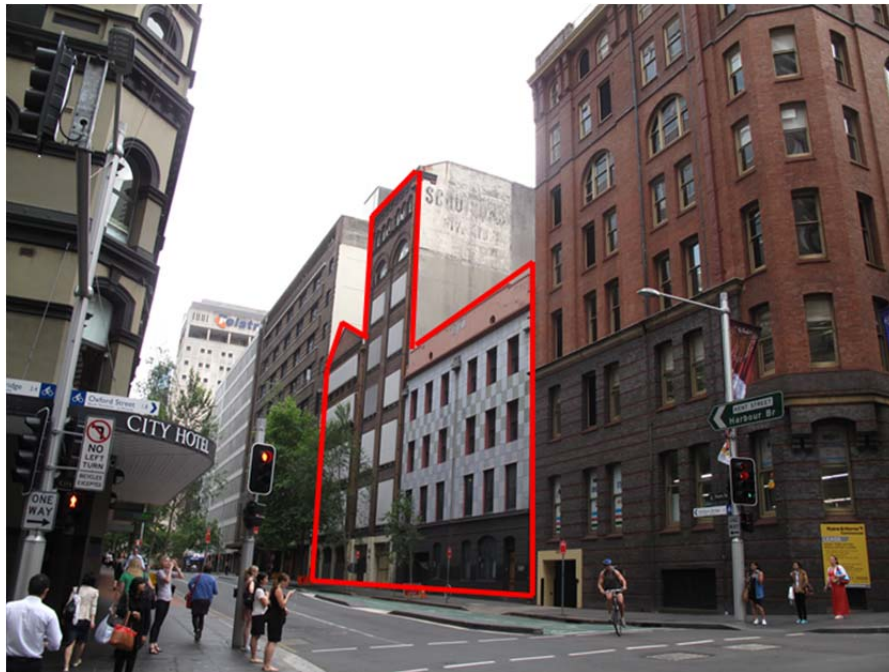


Figure 5 – Looking north along Kent Street

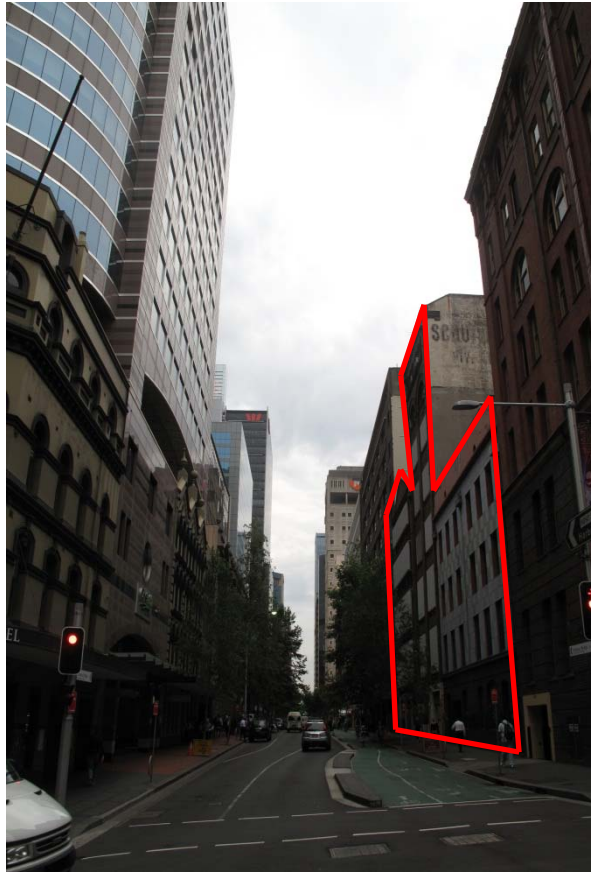


Figure 6 – Looking north along Kent Street



Figure 7 – Existing Kent Street context



Figure 8 – Looking north along Skittle Lane

History of Development Applications Relevant to this Site

Subject Site

6. On 7 April 2003, consent (D/2002/794) was granted by Council for a new 27 level residential building (with basement parking). This consent related to a smaller site (it did not include 304 Kent Street), with residential amenity reliant upon a centrally located 'ravine' (8m x 11.5m) enclosed up to a height of approximately 31m above the lowest residential level, above which is open to the north over the neighbouring Red Cross House. This consent has since lapsed. Selected images of the lapsed development are provided below:



Figure 9 - view of north facing 'ravine' (with Red Cross House removed)
[source: Tonkin Zulaikha Greer Architects]



Figure 10 - 'eastern' views of approved (now lapsed) residential development
[source: Tonkin Zulaikha Greer Architects]

7. On 31 July 2008, the Central Sydney Planning Committee (CSPC) waived the requirement for a development plan (Stage 1 DA) and granted a deferred commencement consent (D/2008/150) for a new 13 storey commercial building with 3 basement levels. The deferred commencement conditions required execution of a Voluntary Planning Agreement, design modifications, and compliance with RailCorp concurrence requirements. The deferred commencement conditions were satisfied in July 2009 and the consent is still current. Selected images of the approved development are provided below:



Figures 11 and 12 - Clarence St and Kent St photomontages of approved commercial development

Red Cross House

8. On 25 June 2012, deferred commencement consent (D/2011/2119) was granted by Council for facade restoration, refurbishment and upgrade of the existing building for future commercial/retail use, addition of three new commercial floors above a new plant level, and the award of heritage floor space. This consent requires the roof top addition to be setback 8m from Clarence Street and 4m from Kent Street, and provision of a possible future vehicular connection to 137-151 Clarence Street to the north. A possible future vehicular connection to the southern neighbour (being the site the subject of this report) was not required due to the location of existing lift cores, stairs and services adjacent to the common boundary.
9. Selected images of this consent are provided below:

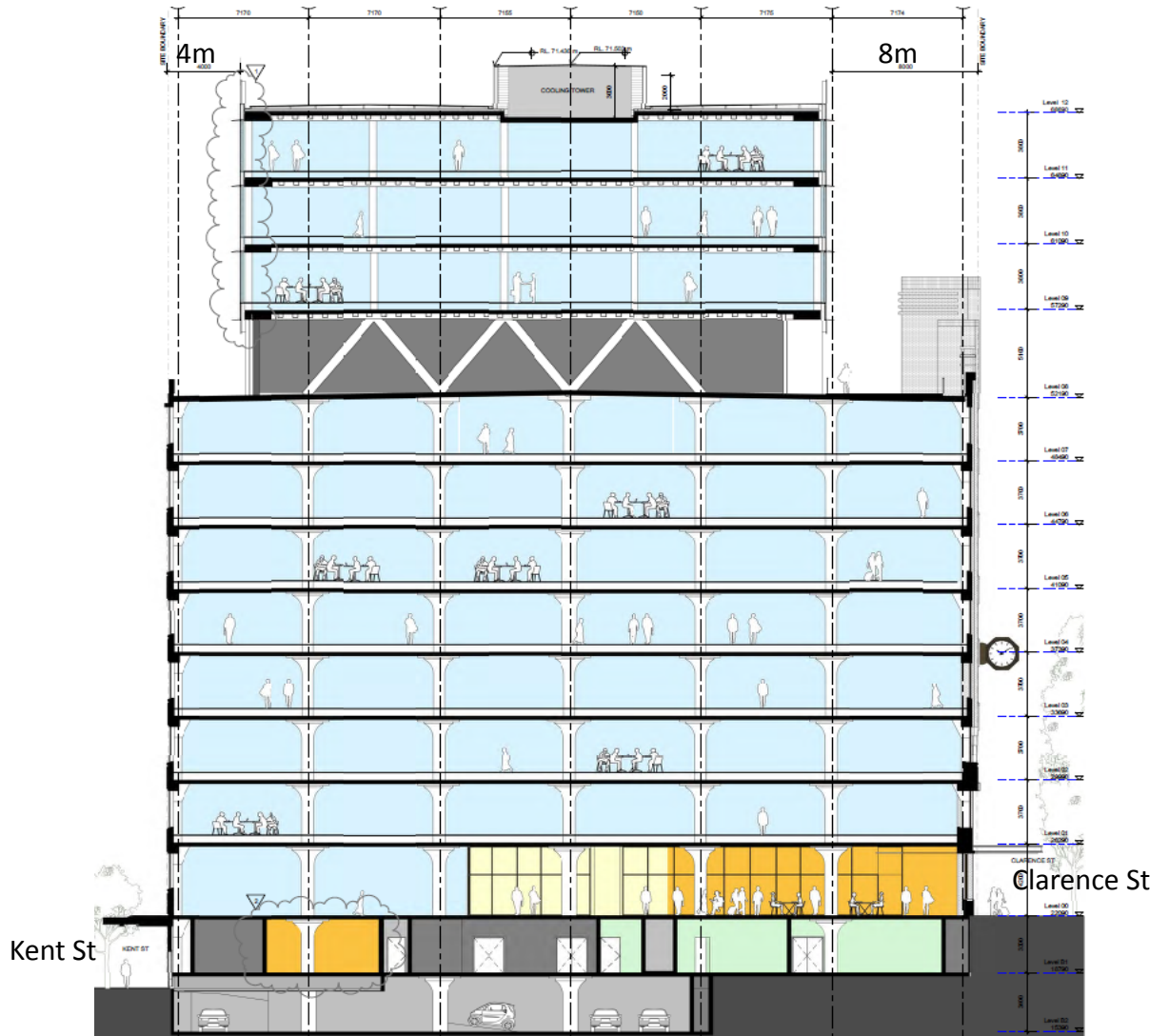


Figure 13 – Cross Section (east-west) of approved Red Cross House development

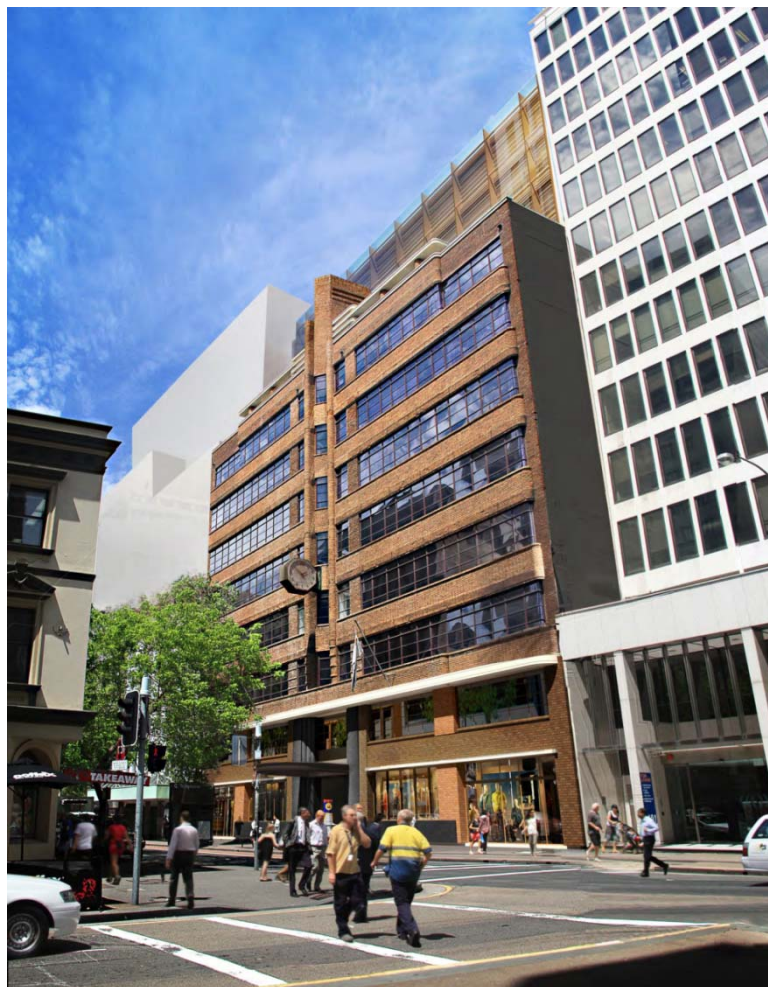


Figure 14 – Photomontage looking generally south along Clarence Street of approved Red Cross House development

137-151 Clarence Street ('Officeworks' site)

10. A Stage 1 DA for a 80m commercial office tower (D/2012/1453) on the site to the immediate north of Red Cross House, is the subject of a separate report for the CSPC's consideration.

PROPOSAL

11. The Stage 1 DA seeks consent for the following:
 - (a) Demolition of the existing buildings;
 - (b) Construction of a mixed use development comprising residential, serviced apartments, retail and commercial;
 - (c) A building envelope comprising the following:
 - (i) 3 podium blocks:
 - a. separated by a centrally located publicly accessible pedestrian space and through site link;
 - b. varying in height to match the adjoining buildings;

- c. the northern block (against Red Cross House) being serviced apartments with ground and mezzanine level retail and commercial uses;
 - d. the other two blocks being residential apartments with ground and mezzanine level retail and commercial uses;
- (ii) A residential tower, up to 80m, comprising two cross bar forms parallel to Clarence and Kent Streets, 'bridged' by a central form. The tower is setback 7.6m from Clarence Street and 4m from Kent Street.
 - (iii) Basement parking levels accessed from Kent Street;
- (d) A floor space area of 17,383sqm (being 1,000sqm (5.75%) of retail/commercial floor area, 2,680sqm (15.42%) of serviced apartment floor area and 13,703sqm (78.83%) of residential floor area). This is a FSR of 12.09 : 1 (based on a site area of 1,438sqm) and includes a 10% uplift for completion of a future competitive process.
 - (e) Car parking rates 'locked in' for the future Stage 2 DA at the following rates:
 - (i) Studio apartments: zero spaces per residential apartments;
 - (ii) 1 bed apartments: 0.5 space per apartment;
 - (iii) 2 bed apartments: 1 space per apartment;
 - (iv) 3 bed apartments: 2 spaces per apartment.

Indicatively, this may result in 6 basement levels accommodating 173 cars.

12. Selected drawings of the proposal are provided below and at **Attachment A**.

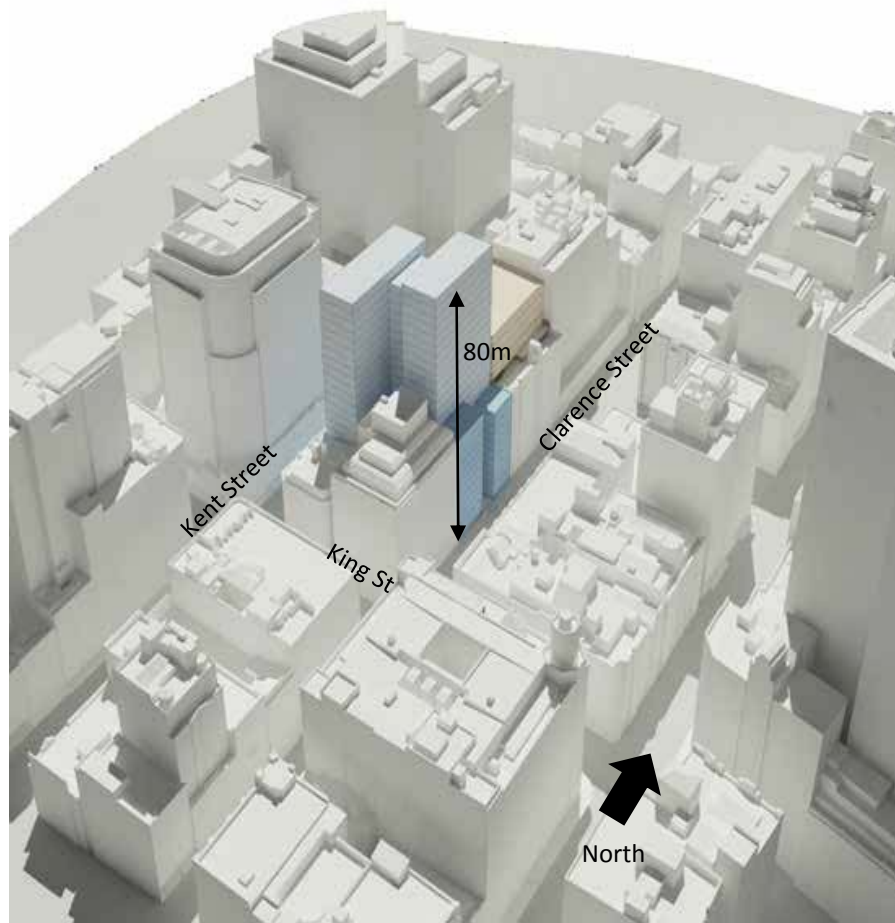


Figure 15 – Aerial view from the south-east

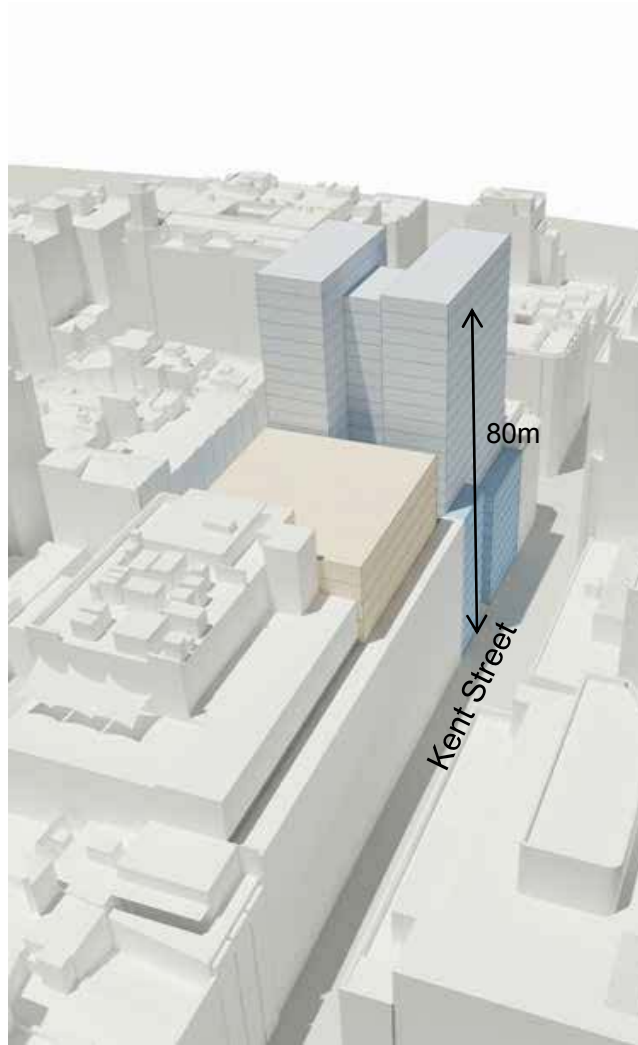


Figure 16 – Aerial view from the north-west

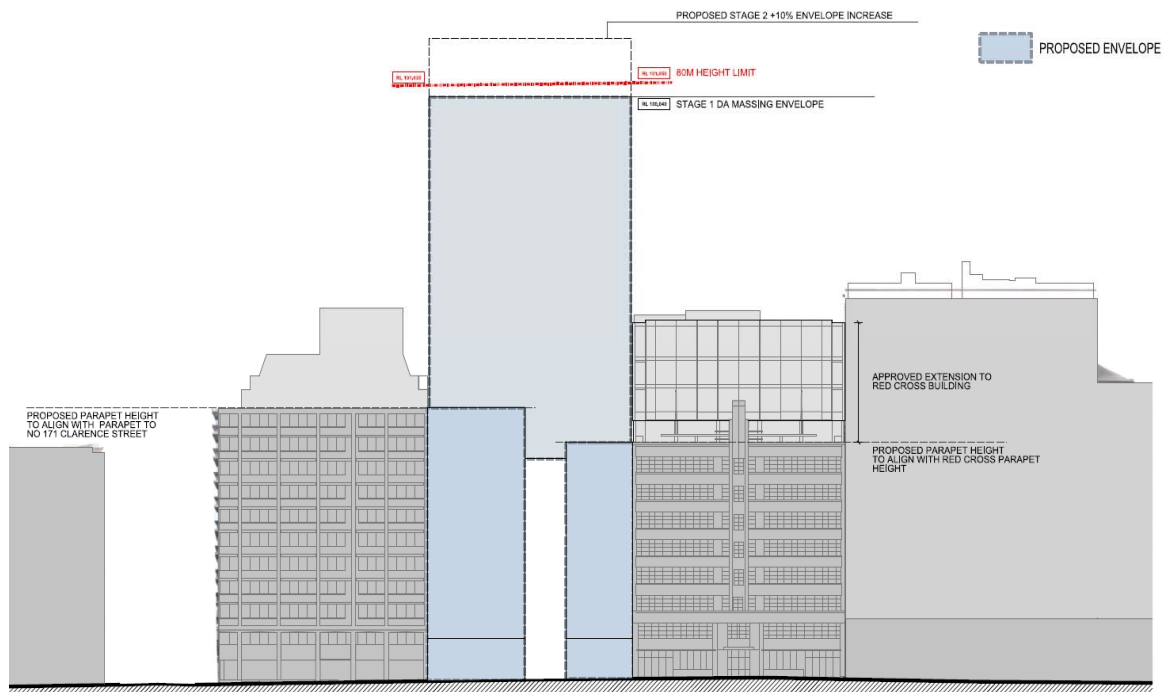


Figure 17 – Clarence Street (east) elevation

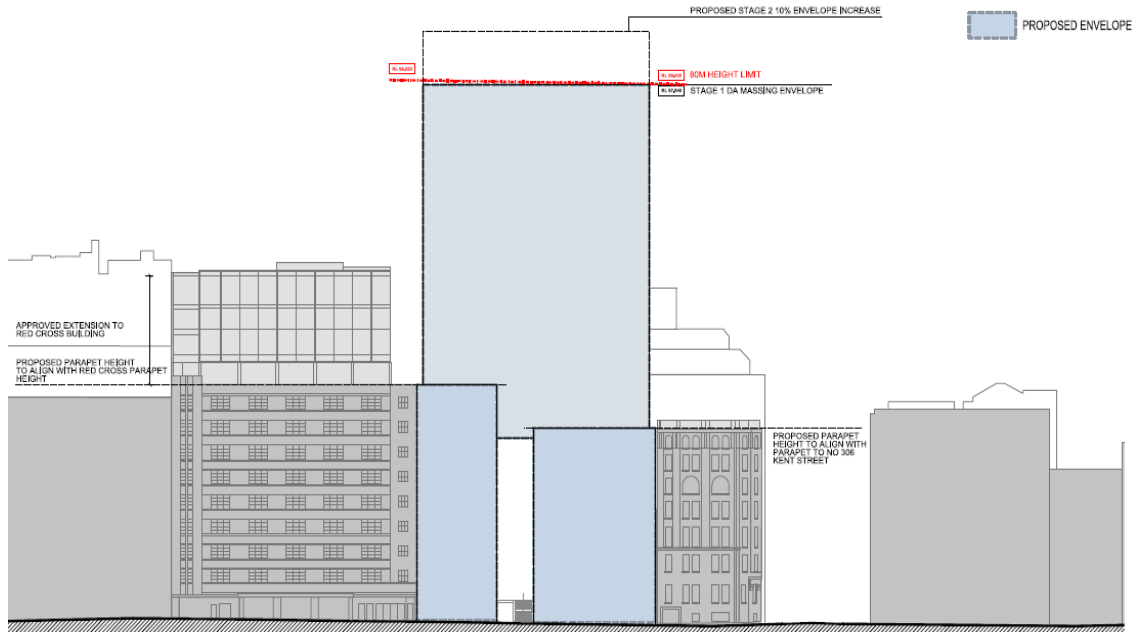


Figure 18 – Kent Street (west) elevation

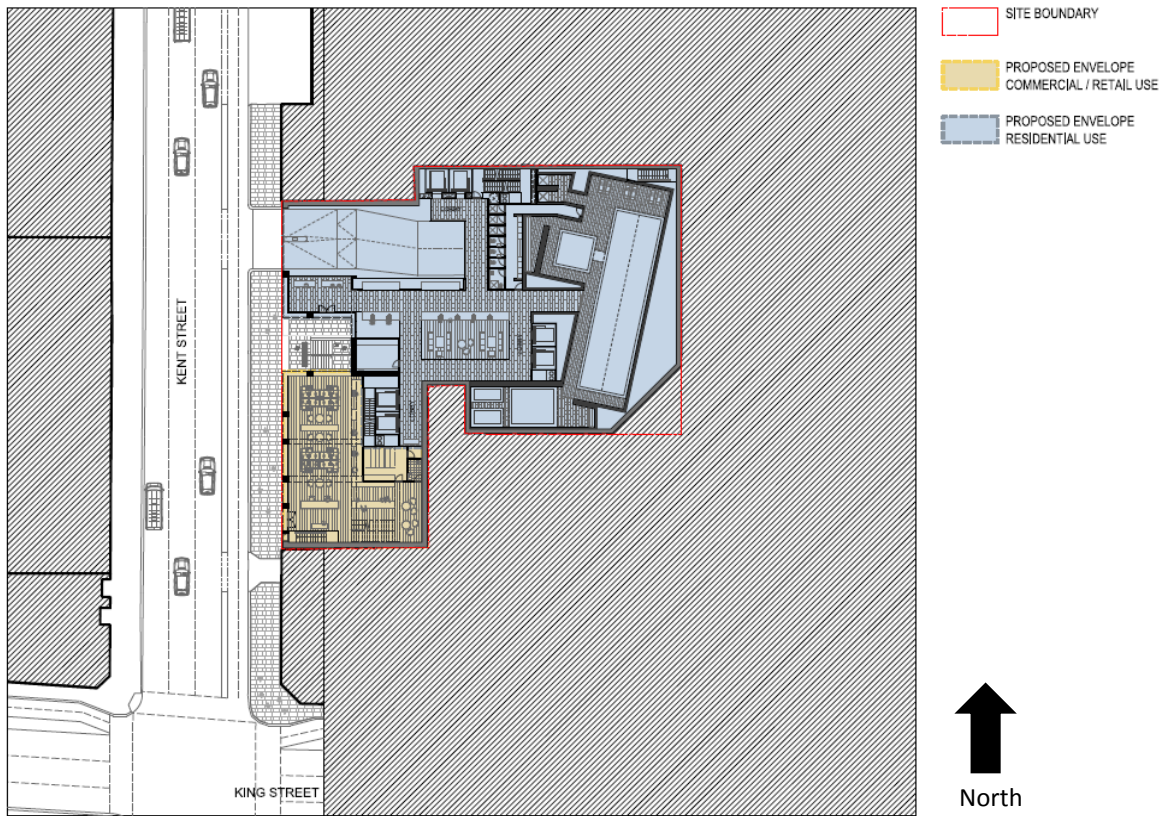


Figure 19 – Lower Ground Level (Kent Street)

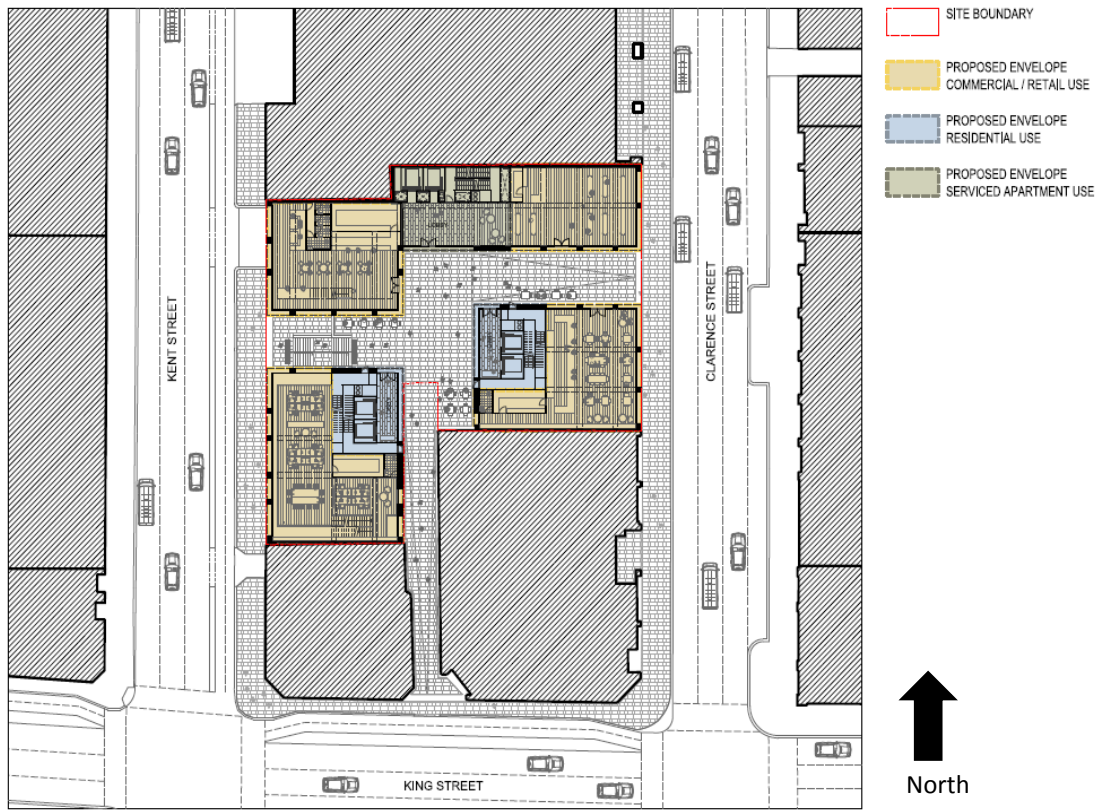


Figure 20 – Ground Level (Clarence Street)

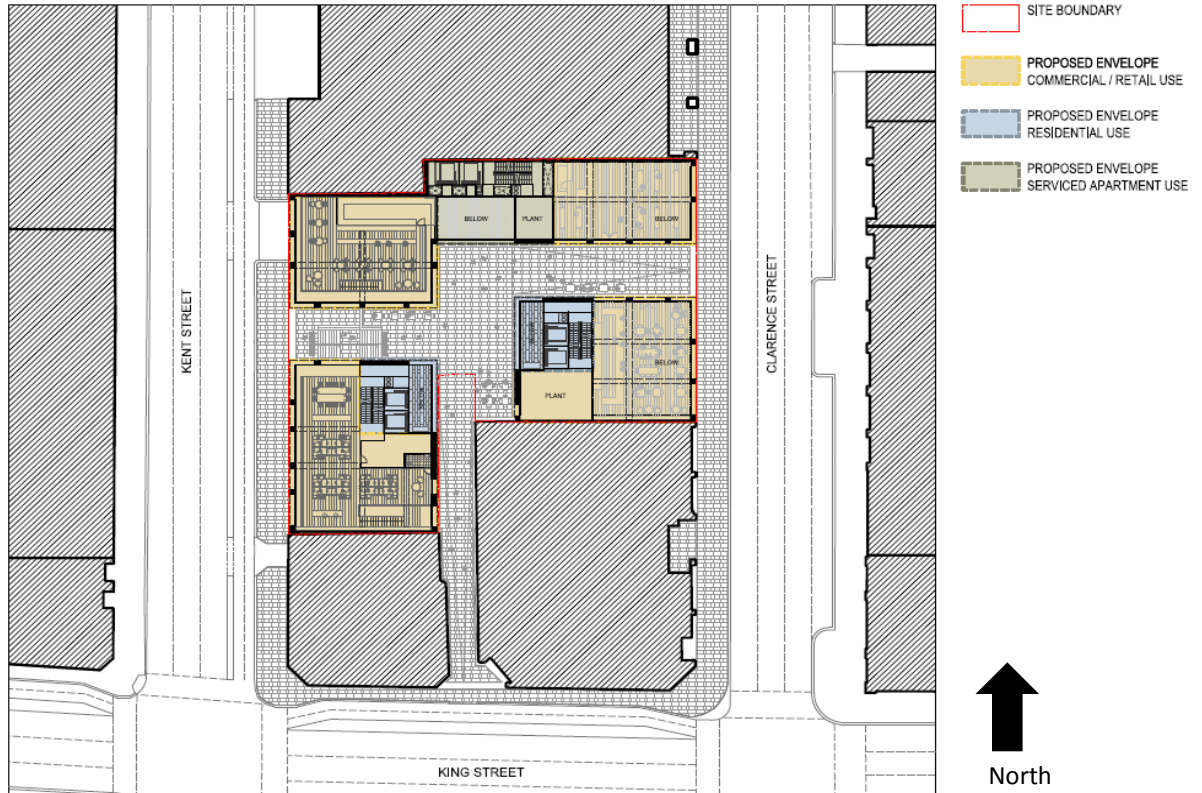


Figure 21 – Mezzanine Level



Figure 22 – Typical Lower Level (within Podium)

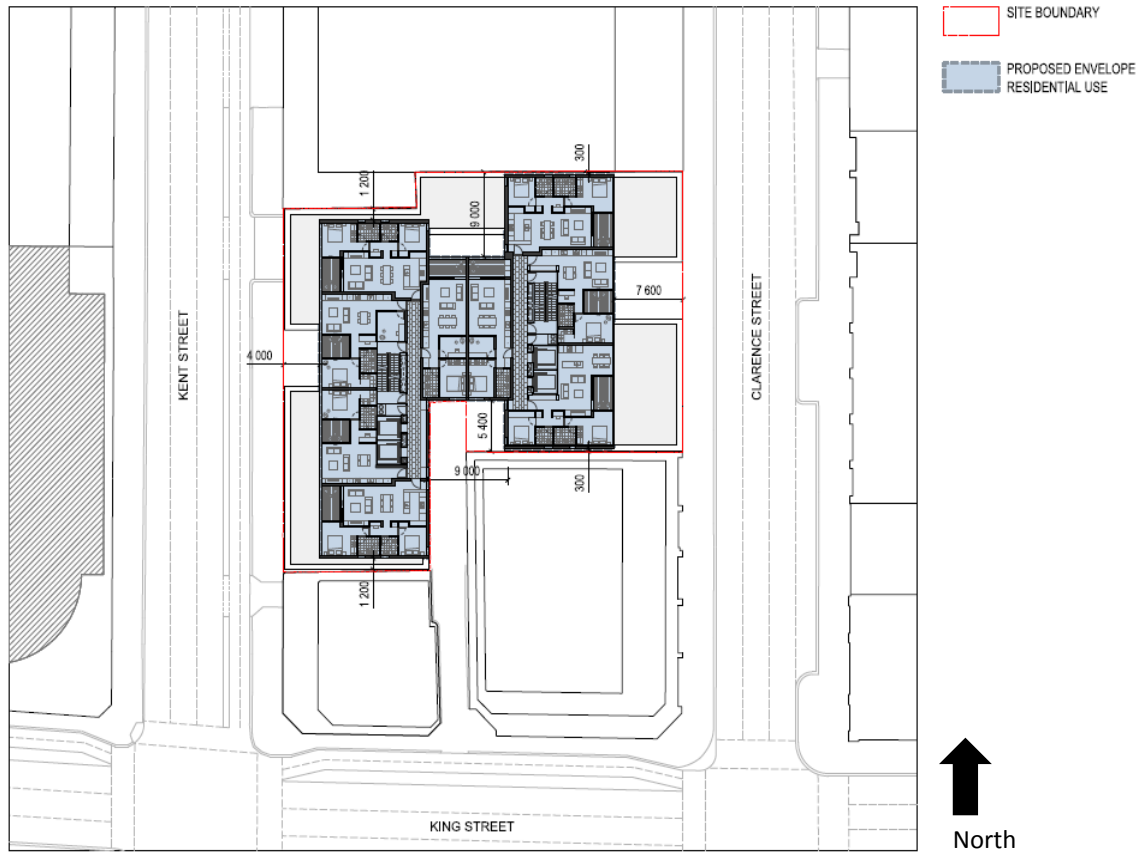


Figure 23 – Typical Upper Level (within Tower)

IMPLICATIONS OF THE PROPOSAL**CITY OF SYDNEY ACT 1988**

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

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

- (1) The Planning Committee must consult the CSTTC before it exercises a function under Part 4 that will result in the making of a decision that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD.*
 - (2) The Planning Committee must take into consideration any representations made by the CSTTC within the period of 21 days (or such other period as is agreed to by the CSTTC and the Planning Committee in a particular case) after consultation takes place.*
 - (3) The Planning Committee may delegate to a subcommittee of the Planning Committee, or the general manager or another member of the staff of the City Council, any of its functions under this section other than this power of delegation. A delegation can be given subject to conditions. A delegation does not (despite section 38) require the approval of the Minister administering that section.*
 - (4) The failure of the Planning Committee to comply with this section does not invalidate or otherwise affect any decision made by the Planning Committee.”*
14. Having liaised with the City’s Access and Transport Unit, in this instance, the proposal is not considered to have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary. In particular, the following are noted:
- (a) The carrying out of works is not proposed or recommended to be approved as part of this Stage 1 DA, which is conceptual in nature. Detailed matters in respect of on-site parking and driveway configuration will be further addressed as part of the future Stage 2 DA;
 - (b) The comments of both RailCorp and Roads and Maritime Services were sought under the provisions of State Environmental Planning Policy (Infrastructure) 2007 – refer discussion further below; and
 - (c) The three existing Kent Street driveway crossings are proposed to be consolidated into one driveway crossing. Subject to the detailed design, this has a positive impact on traffic and transport in general, including the adjacent Kent Street separated cycleway.

Section 79C Evaluation

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

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments**STATE ENVIRONMENT PLANNING POLICIES (SEPPs)**

16. The following State Environmental Planning Policy/Policies are relevant to the proposed development:

SEPP (Infrastructure) 2007RailCorp

17. The SEPP shows the "CBD Rail Link (Zone B – Tunnel)" corridor passing diagonally across the site. Accordingly, the DA was referred to RailCorp seeking their concurrence.
18. RailCorp has provided its concurrence subject to conditions. These include a 'deferred commencement' condition requiring the owners to enter into an agreement with RailCorp to address the potential impacts of the proposed development on the CBD Rail Link.
19. The RailCorp conditions have been included in the Recommendation.

Roads and Maritime Services (RMS)

20. The SEPP requires Council to provide notice to the RMS. This occurred on 20 September 2012.
21. As of the date of preparation of this report, no comments had been received from RMS. Nevertheless, the Central Sydney Planning Committee may now determine the Development Application, particularly noting that:
- the SEPP only requires the consent authority to consider any submissions received within 21 days;
 - the carrying out of works is not proposed or recommended to be approved as part of this Stage 1 DA, which is conceptual in nature;
 - detailed matters in respect of basement and driveway design, number of parking spaces and the like, will be further addressed as part of the future Stage 2 DA, which will also be subject of a separate notice to RMS; and
 - a precautionary condition is recommended advising that as part of the future competitive design process and Stage 2 DA, compliance with the SEPP will be required.

SEPP 55 – Remediation of Land and City of Sydney Contaminated Land DCP 2004

22. SEPP 55 provides that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
23. The provisions of SEPP 55 are effectively replicated in the City of Sydney Contaminated Land DCP 2004.
24. The applicant's consultant submits that:
- "The site has previously been deemed suitable for commercial and residential uses and there is no reason to suggest that the status of the site has changed since the last approval in 2008 with respect to contamination issues. We therefore believe that the site is suitable for mixed use purposes and meets the objectives of SEPP 55."*
25. The applicant's submission is reasonable and has merit. It is also noted that the proposal is a Stage 1 DA of a conceptual nature and that detailed matters in respect of contamination and the remediation of the site can be further addressed as part of the future Stage 2 DA.

SEPP 65 – Design Quality of Residential Flat Development

26. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 10 design quality principles.
27. Due to the conceptual nature of a Stage 1 application a detailed assessment against SEPP 65 and the Residential Flat Design Code can only be made when the future Stage 2 DA is submitted. Notwithstanding this, a limited assessment is provided below where it is concluded that the proposed building envelope is acceptable when considered against the design quality principles, which are replicated in a large part within Council's controls.

Principles 1, 2 and 3: Context, Scale and Built Form

- (a) The proposed building envelope is consistent with the maximum height and FSR controls (subject to conditions) in Sydney LEP 2005. The proposed setbacks and street frontage height controls are considered to be contextually appropriate and provide an acceptable built form within this locality. This is discussed further below in the 'Issues' section.

Principle 4: Density

- (b) Subject to conditions, the proposed building envelope is able to comply with the core planning controls (height and FSR).

Principle 5: Resource, energy and water efficiency

- (c) Principles relating to energy efficiency will be assessed during the detailed Stage 2 DA which will also be subject to the BASIX targets.

Principle 6: Landscape

- (d) In the CBD context, the proposed publicly accessible space and pedestrian connections are considered to be acceptable.

Principle 7: Amenity

- (e) Subject to the discussions below regarding the relationship between the publicly accessible space (centrally located between the podium blocks) and pedestrian connections with the amenity of the podium blocks, an acceptable level of amenity is able to be achieved. In any case, details will need to be fully considered as part of the future Stage 2 DA.

Principle 8: Safety and Security

- (f) Separate and secure entrances are able to be provided to the different building uses. Details will need to be fully considered as part of the future Stage 2 DA.

Principle 9: Social Dimensions

- (g) Issues regarding social dimensions and appropriate apartment mix will be considered as part of the future Stage 2 DA.

Principle 10: Aesthetics

- (h) A competitive design process will need to occur prior to the future Stage 2 DA.

SEPP (BASIX)

- 28. The application indicates that the proposed development is intended to comply with the BASIX requirements. Compliance will be required to be addressed at part of the future Stage 2 DA.

Sydney Regional Environmental Plan Sydney Harbour Catchment 2005

- 29. The REP aims to ensure that the Sydney Harbour Catchment is protected, enhanced and maintained. The REP also aims to achieve a high quality and ecologically sustainable urban environment and encourage a culturally rich and vibrant place for people. The proposal is considered to be consistent with the aims and objectives of the REP.

Sydney Local Environmental Plan 2005

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

COMPLIANCE WITH SYDNEY LEP 2005

| Development Controls | Permissible under Sydney LEP 2005 | Proposal as assessed under Sydney LEP 2005 |
|---|---|---|
| Consistency with Development Plan | Development Plan/Stage 1 DA required | Proposal is for a Stage 1 DA |
| Zoning | City Centre | Complies |
| Floor Space Area | ~15,734sqm | 17,383sqm (includes 10% uplift) |
| Floor Space Ratio (Site area = 1,438m²) | 10.94 : 1 (based on the LEP mixed use formula and the proposed proportional distribution of floor area between the uses) | 12.09 : 1 (includes 10% uplift) Refer discussion below. |
| Heritage Floor Space to be Allocated | Allocation of HFS as the building is over 55m and 8:1 | The amount of HFS to be allocated will be considered as part of the future Stage 2 DA. |
| Height | 80m above street level | 80m above street level |
| Parking | Maximum dependent upon proposed uses and mix of apartments | Proposal seeks to 'lock in' residential parking rates – refer discussion below. |
| Special Areas | York Street Special Area | Part of the site is located within the Special Area. Details will need to be submitted with the future Stage 2 DA to demonstrate compliance |

COMPLIANCE WITH LEP Chapter 1 Part 5 – Urban form, design excellence and environmental design

| Matters to be Considered | Complies | Comment |
|---|----------|---|
| Design excellence (included in more detail below in Matters to be Considered - Clause 26) | ✓ | Able to comply While no design details have been provided, the envelope is capable of accommodating a future building that will exhibit design excellence. It is also noted that prior to the future Stage 2 DA, a competitive design process will need to be undertaken. |

| Matters to be Considered | Complies | Comment |
|---|----------|---|
| Envelope appropriate to site and context | ✓ | Able to comply While no design details have been provided, the envelope is capable of accommodating a future building that is appropriate to the site and its context. |
| Appropriate design response to site and context | ✓ | Able to comply While no design details have been provided, the envelope is capable of accommodating a future building design that is appropriate to the site and its context. |
| Suitability of land for development | ✓ | Complies The site is suitable for a mixed use multi-level development. |
| Existing and proposed uses and use mix | ✓ | Complies The site is suitable for a mixed use multi-level development. |
| Heritage issues and streetscape constraints | ✓ | Able to comply While no design details have been provided, the proposal, which includes street wall heights that align with the adjoining heritage items, is capable of having an acceptable heritage impact. |
| Relationship with other towers | ✓ | Complies The proposal is sufficient separated from other existing and proposed towers. |
| Bulk, massing and modulation of buildings | ✓ | Able to comply The development is consistent with the height controls and proposes a tower that maintains appropriate setbacks. The modulation detailing of the building will be refined as part of the future competitive design process and Stage 2 DA. |
| Street frontage heights | ✓ | Complies The varied street wall height for the 3 podium blocks contextually respond to the immediately adjoining buildings. |

| Matters to be Considered | Complies | Comment |
|---|----------|--|
| Sustainable design, overshadowing, wind and reflectivity | ✓ | Complies Shadow diagrams have demonstrated that the development will not unreasonably overshadow existing public spaces. Further detail of the environmental impacts will be addressed as part of the future Stage 2 DA. |
| Ecologically sustainable development | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Pedestrian, cycle, vehicular and service access, circulation requirements | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Impact on and improvements to the public domain | ✓ | Able to comply As discussed further below, the proposal retains and improves Skittle Lane. Otherwise, details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Design excellence – result of a competitive process | ✓ | Able to comply Prior to the future Stage 2 DA, a competitive design process will need to be undertaken. |

LEP PART 6 – Heritage Provisions and City of Sydney Heritage Development Control Plan 2006

31. The site is not a heritage item. The site however, adjoins the State heritage listed Red Cross House (153-159 Clarence Street) and the local heritage listed 306 Kent Street (corner of King Street).
32. In noting that the podium blocks have deliberate varied heights to align with the street wall height of the adjoining heritage buildings, and the tower setbacks are intended to match the approved addition above Red Cross House, the proposal is not considered to unreasonably impact on the significance of the adjoining heritage items.

Draft Sydney LEP 2011

33. The exhibition of the Draft Sydney LEP 2011 has now been completed. Council have adopted the Draft LEP and have referred the document to the Department of Planning for gazettal. The provisions of the Draft LEP have been taken into consideration in the assessment of the proposal.

34. It is noted that the 'savings provision' of the draft LEP are such that the future Stage 2 DA will need to be considered primarily against the then current LEP at the time of DA lodgement. In other words, the provisions and definitions of Sydney LEP 2005 under which the Stage 1 DA is assessed against, will not be carried through to a Stage 2 DA that relies on the earlier consent. In any case, this is not considered to be significant as the Stage 1 DA will only establish a maximum building envelope.
35. The site is located within the Metropolitan Centre zone. The proposal is permissible.
36. The proposal complies with the draft height control of 80m. The mixed use proposal does not comply with the draft floor space ratio of 10.94 : 1 (based on the proposed proportional distribution of floor area between the uses).
37. The site is within the vicinity of two draft heritage items (Red Cross House at 153-159 Clarence St and 306 Kent Street). As discussed in this report, the proposal will not adversely impact on the significance of the draft heritage items.
38. The draft LEP locates the site within a Class 5 acid sulphate soil zone. Clause 7.16 of the draft LEP states that development consent must not be granted for the carrying out of works unless an acid sulphate soils management plan has been prepared. The carrying out of works is not proposed or recommended to be approved as part of this Stage 1 DA, which is conceptual in nature. Nevertheless, the future Stage 2 DA will need to address this matter. A condition to this effect has been included in the Recommendation.

Central Sydney DCP 1996

COMPLIANCE WITH THE CENTRAL SYDNEY DCP 1996

| Matter to be Considered | Complies | Comment |
|--|----------|--|
| Building to the street alignment CI 2.1 | ✓ | Complies |
| Street frontage heights CI 2.2 | ✓ | Complies The podiums range in height from approximately 31m to 36.5m on both street frontages. These varied heights are deliberate and align with the street wall height of the adjoining buildings. |
| Building setbacks – front; side and rear CI 2.3 | ✓/✗ | Partly Complies Refer discussion below. |
| Street frontage activities CI 2.5 | ✓ | Able to comply While active frontages are proposed, the detailed design will be the subject of a future DA. |

| Matter to be Considered | Complies | Comment |
|---|----------|--|
| Building bulk CI 2.6 | ✓ | Complies The tower has a floor plate of approximately 710sqm. This is within the 1200sqm maximum. The proposed envelope is also within the maximum 40m horizontal width (parallel to the street) provision. |
| Building exteriors CI 2.7 | ✓ | Able to comply The detailed design of the building exterior will be considered as part of the future competitive design process and Stage 2 DA. |
| Views CI 2.8 | ✓ | Complies There are no significant views identified in the DCP affected by the proposal. |
| Access to mixed use development CI 2.13 | ✓ | Able to comply Separate lift access and entrances are provided. Details will need to be fully considered as part of the future Stage 2 DA. |
| Lanes and Midblock connections CI 3.1 and 3.2 | ✓ | Able to comply Skittle Lane is identified as an existing lane to be retained and improved. The DCP does not nominate an east-west mid-block connection for this site. Nevertheless, this is supported as it assists in activating and improving Skittle Lane. Details will need to be fully considered as part of the future Stage 2 DA. |
| Vehicle access and footpath crossings CI 3.3 | ✓ | Complies Three existing Kent Street driveway crossings are proposed to be consolidated into one driveway crossing. Subject to the detailed design, this has a positive impact on traffic and transport in general, including the adjacent Kent Street separated cycleway |
| Artworks CI 3.6 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Paving for street footpaths and public spaces CI 3.7 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |

| Matter to be Considered | Complies | Comment |
|---|----------|--|
| Easy access CI 3.8 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Sunlight to public spaces CI 4.1 | ✓ | Complies The proposal, which is height compliant, does not unreasonably overshadow any publicly accessible spaces. |
| Wind standards CI 4.2 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Energy efficiency of buildings CI 4.3 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Noise reduction CI 4.4 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Reflectivity CI 4.5 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| External lighting of buildings CI 4.7 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Design and location of on-site parking CI 5.1 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Parking for people with mobility impairment CI 5.3 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Delivery & service vehicles CI 5.4 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Bicycle parking CI 5.5 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Motor cycle parking CI 5.6 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |

| Matter to be Considered | Complies | Comment |
|--|----------|---|
| Amenity for residential buildings and serviced apartments Cl. 6 | ✓ | Able to comply Details will need to be submitted with the future Stage 2 DA to demonstrate compliance. |
| Award and Allocation of HFS Cl. 7 | ✓ | Able to comply The amount of HFS to be allocated will be considered as part of the future Stage 2 DA. |
| Design excellence and competitive process Cl. 12 | ✓ | Able to comply While no design details have been provided, the envelope is capable of accommodating a future building that will exhibit design excellence. It is also noted that the prior to the future Stage 2 DA, a competitive design process will need to be undertaken. |

Issues

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

Request for 10% uplift in Floor Space Ratio (FSR)

40. As part of this Stage 1 DA, the applicant seeks consent for a floor space area of 17,383sqm. This is a FSR of 12.09 : 1 (based on a site area of 1,438sqm) and includes a 10% uplift for completion of a future competitive process.
41. This request is premature and not supported. In noting that the future Stage 2 DA will be considered under the future LEP, the following matters are pertinent in reaching this conclusion:
- (a) the conducting of a competitive design process does not guarantee design excellence;
 - (b) any uplift is 'up to 10%'; and
 - (c) amongst other things, and notwithstanding the recommendation of the competitive design jury, the consent authority will need to be satisfied that the proposal exhibits design excellence.
42. Based on the LEP mixed use formula and the proposed proportional distribution of floor area between the various uses, the maximum permitted FSR is 10.94 : 1 (without a 10% uplift). This represents 15,734sqm.
43. In noting that the final mix of uses will only be finalised as part of the future Stage 2 DA, and that the mixed use formula results in a 'precise' FSR, it is not recommended that an actual FSR be approved per se, but rather that the FSR be compliant with the LEP (without a 10% uplift).

Request to 'lock in' residential parking rates

44. The applicant seeks consent to 'lock in' residential parking rates for the future Stage 2 DA to provide 'certainty'.
45. The Table below provides a comparison between what the applicant proposes, the Sydney LEP 2005, and the draft LEP:

| | Applicant's proposed rate (spaces per unit) | Sydney LEP 2005 (spaces per unit) | Draft LEP 2011 LUTI: Category A (spaces per unit) |
|--------------------------|---|---|--|
| Studio apartments | Zero | 0.25 | 0.1 |
| 1 bed apartments | 0.5 | 0.5 | 0.3 |
| 2 bed apartments | 1 | 1.2 | 0.7 |
| 3 bed apartments | 2 | 2 | 1 |

46. The applicant advises that their proposed 'rate' could indicatively result in 6 basement levels accommodating 173 cars.
47. This request is not supported. In particular, the following matters are noted:
- the Stage 1 DA is conceptual in nature and not an appropriate mechanism to 'lock in' more generous parking rates given the change in the future LEP;
 - the 'savings provision' of the future LEP is such that the future detailed Stage 2 DA, even though reliant on the Stage 1 DA, will need to be considered primarily against the LEP at the time of Stage 2 DA lodgement. The provisions of the future LEP provide 'certainty' to the applicant;
 - the number of residential parking spaces (and thus the number of basement levels) will be dependent on the apartment mix proposed in the future Stage 2 DA; and
 - the site is reasonably serviced by existing public transport.

Tower Setbacks

48. The following image outlines the varied setbacks proposed for the tower.

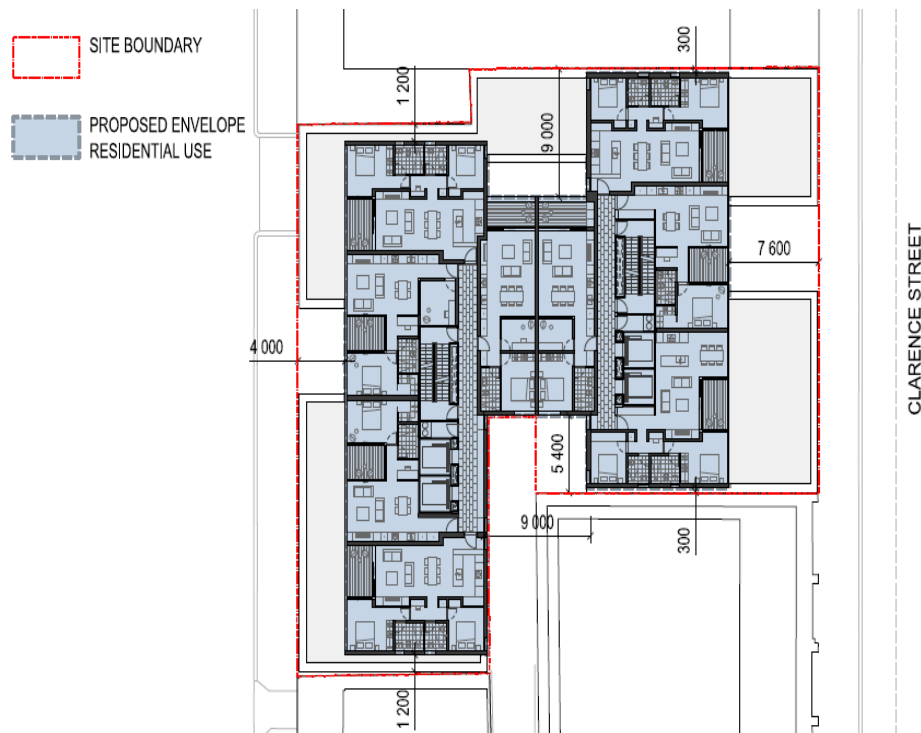


Figure 24 - typical upper level floor plan

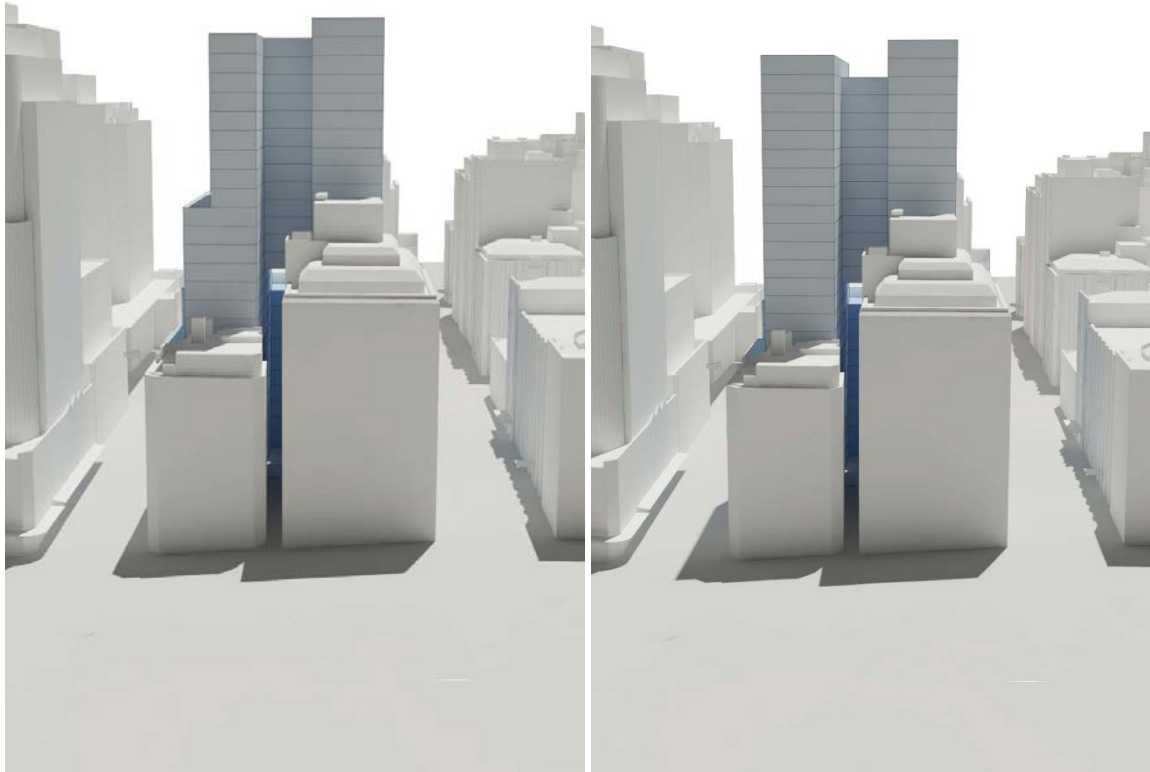
Front / street setbacks

49. Central Sydney DCP 1996 requires a weighted average tower setback of 8m from the street wall, with a minimum setback of 6m.
50. The applicant intends to align the Clarence Street setback with the approved setback for the Red Cross House addition. This 'intention', however, is not reflected in the submitted drawings – proposed 7.6m setback; approved Red Cross House setback of 8m. A condition is recommended to increase the Clarence Street setback such that it does not protrude forward of the Red Cross House addition.
51. The 4m Kent Street setback does not comply with the DCP. The applicant, in responding to the requirement to provide an 8m setback for that part of the tower above the Red Cross House addition, submits that:
 - (a) *“The upper level floorplate configuration is materially impacted by the setback and becomes unviable as currently proposed. The required redesign of this floor plate would also impact the configuration and location of the core and lifts through the full height of the building.”*
 - (b) *The fine grain building base with its distinctive sequence of open laneways and public spaces is reliant on multiple building cores in very specific locations. If the cores move, then the fine grain building base as proposed would not be achievable.*
 - (c) *The relationship with the heritage buildings adjoining the site with their varied parapet heights is successfully and elegantly negotiated through the introduction of the full height laneway void spaces. If these are lost, then the resolution of the street elevations will be compromised.*

- (d) *The laneway voids also help to reduce the perceived mass of the building from street level. A compliant scheme, with an additional high level setback but continuous street wall, will likely appear more imposing.*
- (e) *Architecturally, the current scheme is a balanced composition of multiple interlocked building elements. The introduction of an additional high level step diminishes the overall cohesiveness and generates a very weak building leg that extends towards the south of the site.”*
52. The following images provide a visual comparison of a DCP compliant setback with the current proposal.



Figures 25 and 26 – aerial view from north showing 8m tower setback above Red Cross House addition (left) and proposed 4m tower setback (right)



Figures 27 and 28 – views from south showing 8m tower setback above Red Cross House addition (left) and proposed 4m tower setback (right)

53. On balance, the 4m Kent Street setback is considered to be acceptable as it is:
- (a) contextually appropriate noting the approved 4m setback for the Red Cross House addition and the limited setback for the existing commercial tower on the opposite side of the street ; and
 - (b) part of a building envelope with a balanced composition of multiple interlocked building elements.



**Figure 29 – Looking north along Kent Street with subject site highlighted.
Note the limited setback opposite the site.**

54. It is also noted that Council's Design Advisory Panel has reviewed the proposal and did not raise any objection to the Kent Street setback.

Side boundary setbacks

55. The DCP requires side boundary setbacks for residential towers ranging from zero metres (where no windows are provided) to 6m (where principal windows or balconies are provided), with the objective to enhance the amenity of occupants.
56. In noting that:
- (a) the adjoining Red Cross House to the north is a heritage item that has been awarded heritage floor space (which has the effect of 'capping' the building to the approved envelope);
 - (b) the two adjoining buildings to the south (306 Kent Street and 167-175 Clarence St) are either a heritage listed building or a strata titled commercial building, both with limited redevelopment potential;
 - (c) the indicative apartment layout, with the exception of the central 'bridging' tower form, provides principal windows and balconies with an outlook away from the side boundaries and out to the street; and
 - (d) the indicative apartment layout within the central 'bridging' tower form, are setback 5.4m to 9m from the boundaries;

the proposed side boundary setbacks are not considered to unreasonably impact on the amenity of the adjoining properties.

57. Nevertheless, given the exposed nature of the side walls of the tower, particularly as viewed from the Barrack and Clarence Street intersection and from the south above the neighbouring buildings, as part of the future competitive design process and Stage 2 DA, the architectural modelling and articulation of these walls will need to be carefully resolved.

Publicly accessible pedestrian space (centrally located between the podium blocks) and pedestrian links

58. The DCP:
- (a) does not require a mid-block connection between Clarence and Kent Streets on this site;
 - (b) requires the mid-block connection further north on the 'Officeworks' site (137-151 Clarence Street); and
 - (c) requires retention and improvement of Skittle Lane.
59. The proposal includes a new publicly accessible pedestrian space (centrally located between the podium blocks) and pedestrian links connecting Clarence Street, Kent Street and Skittle Lane. The publicly accessible space and pedestrian connections will be defined by vertical voids, part open to the sky, part enclosed, and activated by retail uses and residential entries. This arrangement, particularly the opportunity to revitalise Skittle Lane, has merit and is supported.
60. As part of the future competitive design process and detailed Stage 2 DA, the pedestrian links will need to carefully consider the significant level change between Clarence and Kent Streets, and should explore the merit of providing a visual connection between the two streets. Detailed design and view analysis should be submitted as part of the future application.

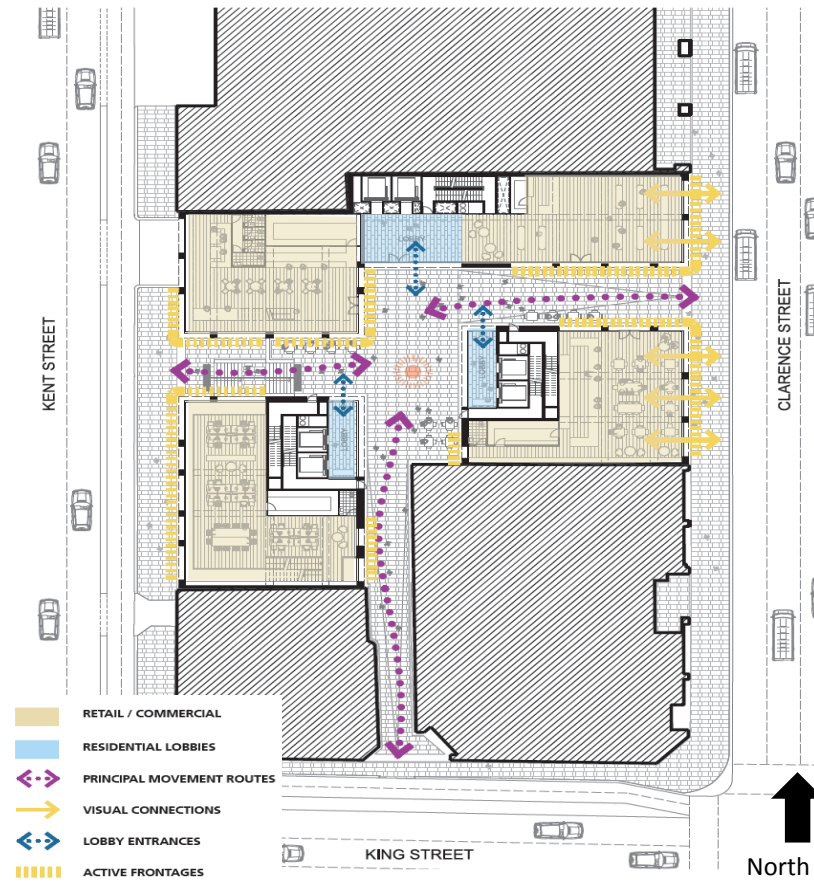


Figure 30 - Ground level publicly accessible pedestrian space (centrally located between the podium blocks) and laneways

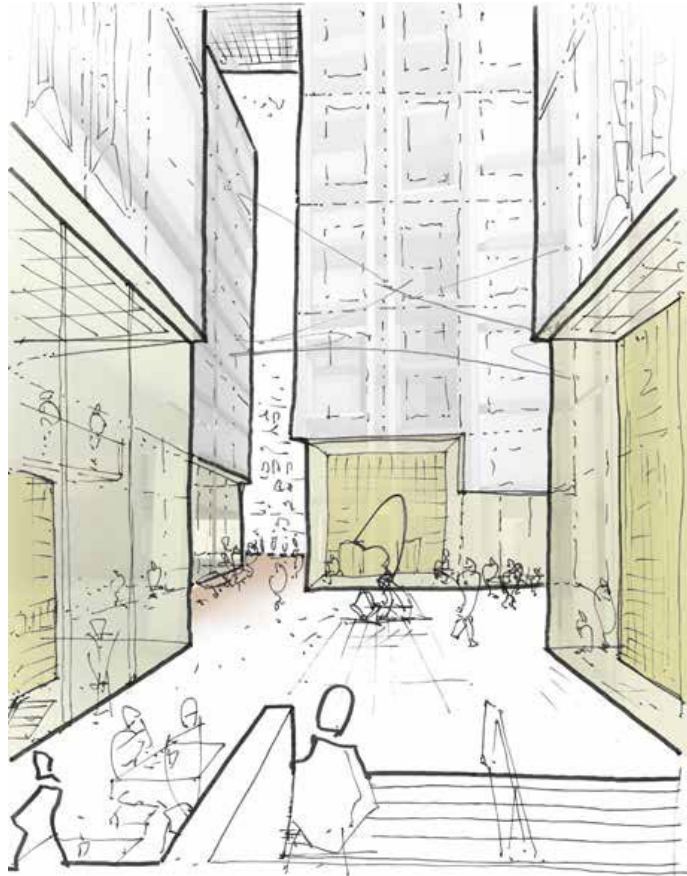


Figure 31 – Artist impression of laneways and publicly accessible space from Kent Street stairs

Relationship of the publicly accessible space and pedestrian links with residential amenity

61. The provision of the publicly accessible space and pedestrian links, activated by retail uses, will need to be carefully balanced with the amenity of the apartments within the podium blocks, particularly in terms of both acoustic attenuation and ability to provide meaningful cross ventilation.

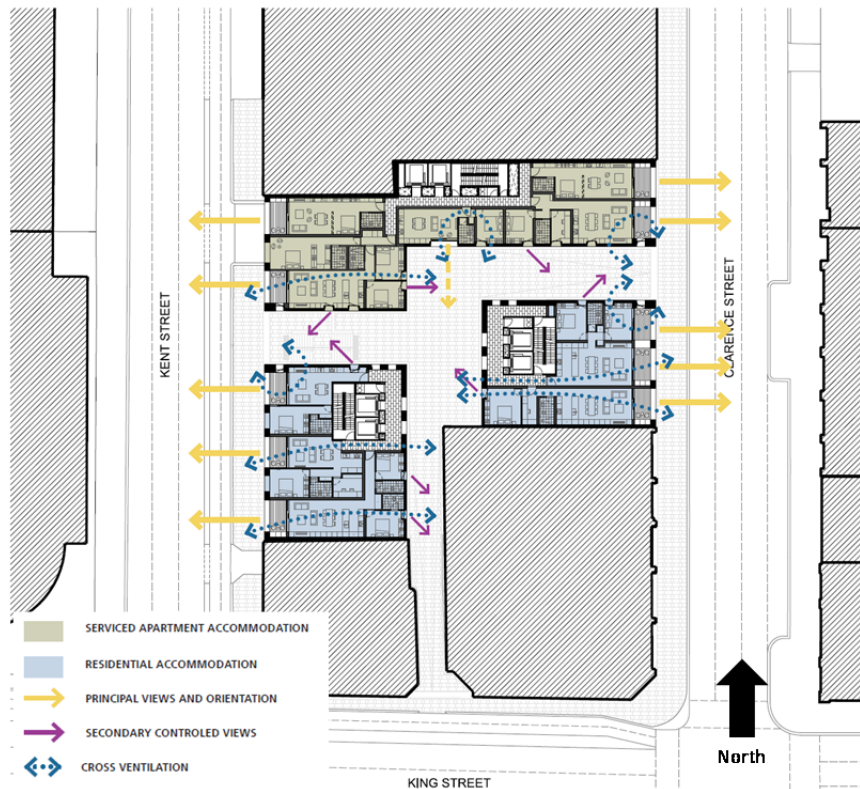


Figure 32 - Indicative apartment layout within podium block with cross ventilation paths shown by dotted arrows. How meaningful the cross ventilation may or may not be will be partly dependent on the extent and design of wind protection provided (if required) for the publicly accessible space and laneways.

62. Accordingly, while the Stage 2 DA design of the laneways, publicly accessible space and apartments will be the subject of a competitive design process and detailed wind and acoustic analysis, the general intent of the concept has merit and is supported. It is nevertheless prudent to include a condition of consent to outline the Council's expectations for the future application, and the need to carefully balance residential amenity and the quality of the publicly accessible space and laneway space.
63. It is noted that the northern podium block is proposed for short stay service apartment use.

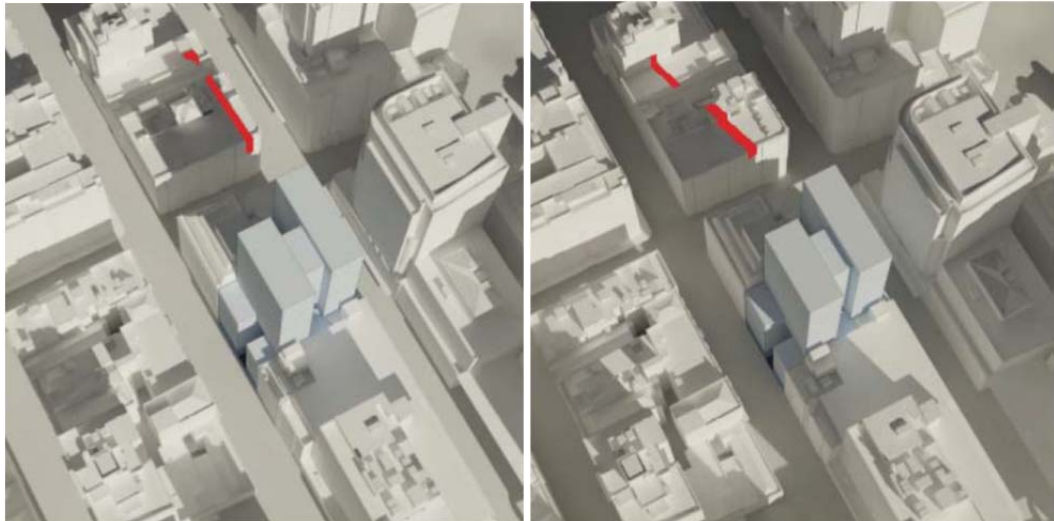
Overshadowing and Broughton House

64. Broughton House (181 Clarence Street) is an 8 storey heritage listed residential apartment building, with a rooftop recreation area, on the neighbouring street block to the south. Broughton House has a northern frontage to King Street, and eastern and western frontages to Clarence and Kent Streets respectively. Broughton House is generally due south of the development site.



Figure 33 – Broughton House

65. The proposal will result in additional overshadowing of Broughton House. This impact, however, is considered to be reasonable, particularly noting the following:
- (a) The proposed building envelope is LEP and DCP compliant (with the exception of the 4m tower setback from Kent Street) with the shadow casted largely the result of a compliant development;
 - (b) As discussed earlier, the proposed 4m tower setback from Kent Street is acceptable;
 - (c) In mid-winter (21 June), the additional shadow cast (from a 4m Kent Street setback as opposed to an 8m setback) only lands on the upper facade and rooftop of Broughton House from around 1pm onwards, as illustrated on the following images:



Figures 34 and 35 – Mid-winter shadows at 1pm (left) and 2pm (right) – additional shadows cast by proposed envelope shown in red

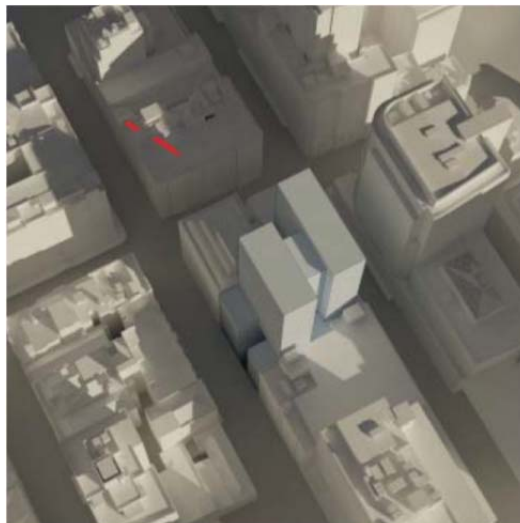
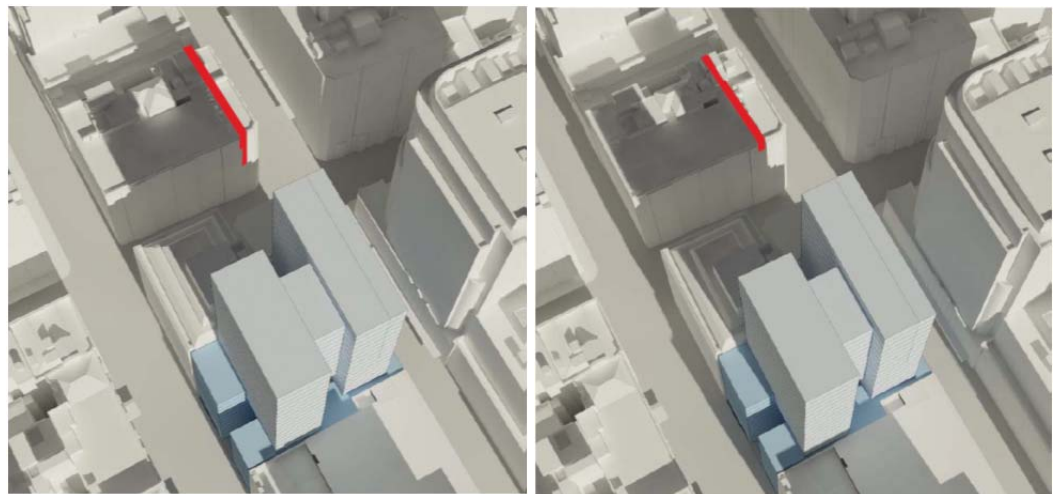


Figure 36 – Mid-winter shadows at 3pm

- (d) More precisely, the additional mid-winter impact is some 15 minute in duration as illustrated in the following images:



Figures 37 and 38 – Mid-winter shadows at 1pm (left) and 1.15pm (right) – additional shadows cast by proposed envelope shown in red

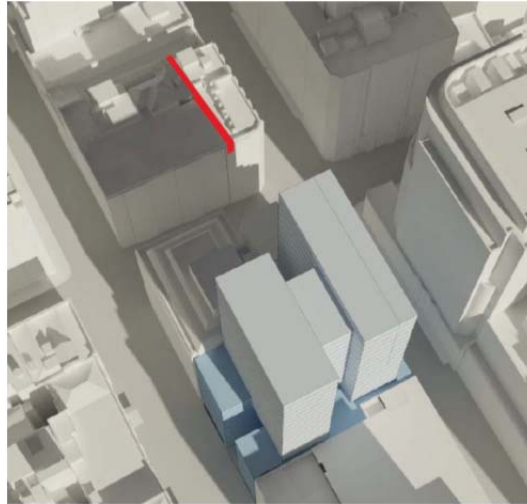


Figure 39 – Mid-winter shadows at 1.30pm

- (e) Under the LEP, Broughton House is vulnerable to overshadowing as the neighbouring north and north west street blocks both have high densities and a 80m height limit;
- (f) In the context of inner city living, the expectation of protecting sunlight access is not strong.

General design matters

- 66. The site is located within the York Street Special Area. The Stage 2 DA podium design should be a finely designed masonry building with the facade composition responding in a positive way to the adjacent heritage items and the predominant historic warehouse development of the area that is characterised by strong visual depth, a high degree of architectural modelling and articulation, a complex hierarchy of vertical and horizontal proportions and changes in architectural treatment with height and level. High quality materials that provide a compatible response to surrounding development should be incorporated into the future design. Glazing (at all levels of the building) should maintain a high level of clarity and be neutral in colour. While large richly detailed windows that 'frame' the residential occupants view out are considered to be more appropriate than balconies, where balconies are proposed, these should be recessed within the line of the facade through punctured openings.
- 67. The interface with all neighbouring buildings will require careful resolution so as not to unnecessarily expose any side boundary walls.

Surrender of previous DA consent

- 68. A DA consent (D/2008/150) exists for a commercial building on the site. If not commenced, this consent is due to lapse in July 2014.
- 69. A condition is recommended requiring the surrender of this previous commercial building consent (if it has not lapsed), should the applicant decide to take the benefit of the mixed use tower consent the subject of this report.

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

- 70. The relevant matters are discussed elsewhere in this report.

BCA Matters

71. The development is capable of complying with the BCA.

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

72. The development is suitable for the site.

Section 79C(1)(e) Public Interest

73. The proposed development is generally consistent with the relevant controls. In this regard, it is considered that the proposal will not unreasonably affect the public interest, subject to conditions.

POLICY IMPLICATIONS

74. Not applicable to this report.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

75. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2002. An appropriate condition will need to be included in the future Stage 2 DA.

PUBLIC CONSULTATION**Section 79C(1)(d)****EXTERNAL REFERRALS**

76. The application was placed on public exhibition from 20 September to 19 October 2012. Adjoining and nearby owners and occupiers of residential buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications DCP 2005.

77. Seven submissions were received. Of these submissions, six were from Broughton House at 181 Clarence Street.

78. The grounds for objection are summarised as follows:

- (a) There are existing late night trading licence premises in the vicinity. To the fullest extent possible, the proposal should 'design out' potential acoustic impacts to avoid future residential complaints.

Comment: The detailed design, including acoustic impacts, will be considered as part of the competitive design process and Stage 2 DA.

Submissions from Broughton House

- (b) Excessive height and building bulk and mass will result in overshadowing of apartments and rooftop recreation area.
- (c) Overshadowing will restrict the viability of installing future solar panels, with their associated benefits.

Comment: As discussed above, the building height complies with the controls, and the proposed building envelope is considered to be acceptable. In addition, the shadows cast are considered to be reasonable.

- (d) Development is out of character with the existing Clarence Street streetscape and Red Cross House

Comment: The proposal is for a building envelope, rather than a detailed design. A future competitive design process will occur prior to a Stage 2 DA. This competitive design process and Stage 2 DA will need to have regard to any conditions of the Stage 1 consent. As noted earlier, general design conditions are recommended.

- (e) Will add to traffic and pedestrian congestion in the vicinity

Comment: As discussed earlier, the density of the development largely complies with the controls. In addition, it is noted that the proposal is not of a nature requiring notification to the Central Sydney Traffic and Transport Committee.

- (f) No licences premises should be allowed on Skittles Lane, which is an integral part of the public access to the proposal and in close proximity to Broughton House

Comment: The future uses of the ground floor tenancies will be the subject of separate development applications. These future applications will also be subject to the relevant planning provisions, which include Council's DA notification requirements.

- (g) Construction related impacts (noise, dust, hours etc), particularly noting the other developments in the vicinity (137-151 Clarence St, extension to Fours Point Hotel at Darling Harbour)

Comment: The carrying out of works is not proposed or recommended to be approved as part of this Stage 1 DA, which is conceptual in nature. The future Stage 2 DA, should it be approved, will be the subject of standard construction related conditions.

Ausgrid

79. The application was referred to Ausgrid who advised that an electricity substation within the premises should be provided. An appropriate condition has been included in the Recommendation.

INTERNAL REFERRALS

80. The application was referred to Council's Specialist Surveyor, Urban Designer, Building Services Unit, Public Domain Unit, Transport and Access Unit. No fundamental objection to the proposed development was received, subject to the imposition of appropriate conditions.
81. Where appropriate, conditions have been included in the recommendation of this report to reflect these requirements.

RELEVANT LEGISLATION

82. The Environmental Planning and Assessment Act 1979.

CRITICAL DATES / TIME FRAMES

83. Nil.

CONCLUSION

84. The proposed envelope largely complies with the core building form provisions of the LEP and DCP. The Kent St tower setback of 4m does not comply with the required 8m setback, but is considered to be acceptable on balance. In particular, the envelope is considered to be contextually appropriate (noting the existing approved additions to the neighbouring Red Cross House and the existing commercial building opposite), and is a balanced composition of multiple interlocked building elements.
85. The applicant's request for a 10% uplift in FSR and 'locking in' of parking rates are not supported.
86. The concerns raised by the seven submissions have been considered and are either not well-founded or able to be addressed as part of the future competitive design process and Stage 2 detailed DA.
87. The site is located over a future rail reservation, with RailCorp recommending a 'deferred commencement' consent and other conditions.
88. The application is recommended to be approved subject to conditions.

GRAHAM JAHN

Director City Planning, Development and Transport

(Michael Soo, Senior Area Planning Manager)