

ITEM 5. DEVELOPMENT APPLICATION: 115-119 BATHURST STREET SYDNEY**FILE NO: D/2013/554****DEVELOPMENT APPLICATION NO: D/2013/554****SUMMARY****Date of Submission:** 26 April 2013. Additional and amended plans received 16 July and 13 August 2013.**Applicant:** Greenland Holding Group Overseas Investment Company Limited**Architect:** Crone Partners**Developer:** Greenland Holding Group Overseas Investment Company Limited**Owner:** Brookfield Bathurst Street Pty Ltd**Proposal Summary:** Stage 1 development application for a mixed retail, commercial, residential and hotel development. The proposal includes concept plan approval for the adaptive re-use of the existing 1939 heritage listed Sydney Water building as a hotel and partial demolition and redevelopment of the adjacent 1965 building (including an addition to its height) for retail, commercial and residential uses with a maximum building height of 235m (being approximately 54 levels). The development includes new pedestrian laneways and car parking for up to 244 vehicles. It is proposed to erect an 'exoskeleton' structure to sleeve the existing building and support the new addition (approximately 133 metres or 28 storeys) to it.

The site has been the subject of a number of previous approvals including the redevelopment of the 1939 building and separate concept plan approvals for the redevelopment of the 1965 building site for commercial and residential developments.

The proposal is Integrated Development as the 1939 building is a State Heritage item. The proposal also requires the concurrence of Roads and Maritime Services (RMS), Transport for NSW (TfNSW) and RailCorp due to the development being 'traffic generating development' and the site being in the proximity of the Sydney Metro and future Sydney CBD Rail Link. Terms of approval and conditions have been received from these agencies and are included in the recommendation.

**Proposal Summary:
(continued)**

Due to the height of the proposed building, Clause 7.16 of the Sydney LEP requires the proposal to be referred to Sydney Airport Corporation to assess its impact on the effective and ongoing operation of the airport. Consent cannot be granted until such time as a response on this matter has been provided. At the time of writing, no response had yet been received.

Several changes have been made to the subject application since it was first lodged, namely that a proposed new driveway to Pitt Street has been deleted and commercial office space proposed on the upper levels of the building has been reconfigured. The original proposal included a rooftop addition to the 1939 building but this too has been deleted.

A total of seven (7) submissions were received. Concerns raised include the height and scale of the development, view loss, overshadowing, inadequate building setbacks, traffic and parking impacts and impacts during construction.

The proposal complies with the core LEP FSR and height controls for the site but not with the DCP requirements for building setbacks. These issues are discussed in more detail in the body of the report.

Consideration has been given as to whether the application will require referral to the Central Sydney Traffic and Transport Committee (CSTTC). City Access and Transport have advised that the development application will not have a significant impact on traffic and transport in the CBD which has been formally agreed to by the Director City Planning, Development and Transport as delegate of the CSTTC.

Summary Recommendation:

Because of the need for Sydney Airport concurrence through the Department of Transport and Infrastructure, and subject only to the outstanding matter of the Sydney Airport Corporation being addressed, it is recommended that authority be delegated to the Chief Executive Officer to determine the DA having regard to the contents of this report and the recommended conditions.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
(Gazetted 14 December 2012, as amended);
- (ii) Sydney Development Control Plan 2012 (in
force on 14 December 2012, as amended);
- (iii) State Environmental Planning Policy 55 –
Remediation of Land;
- (iv) State Environmental Planning Policy 65 –
Design Quality of Residential Flat Development;
- (v) State Environmental Planning Policy
(Infrastructure) 2007;
- (vi) Sydney Regional Environmental Plan (Sydney
Harbour Catchment) 2005 (Deemed SEPP);
- (vii) State Environmental Planning Policy (Building
Sustainability Index: BASIX) 2004.

Attachments:

- A - Selected Drawings
- B - Photomontages

RECOMMENDATION

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine the application having regard to the content of the subject report, including the recommended conditions of consent; and
- (B) determination of the application, in accordance with Clause (A) above, shall only occur following receipt of approval advice from the relevant Commonwealth body of the development and its acceptable impact on the Limitations or Operations Surface for Sydney Airport;
- (C) should the matters in Clause (B) not be completed by 22 November 2013, the Chief Executive Officer may determine the application based on the information submitted to date.

SCHEDULE 1A**Approved Development/Design Modifications/Covenants and Contributions/Use and Operation**

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2013/554 dated 28 April 2013 and the following drawings:

| Drawing Number | Architect | Date |
|-----------------------|------------------|----------------|
| DA01[F] | Crone Partners | 12 August 2013 |
| DA02[F] | Crone Partners | 12 August 2013 |
| DA03[F] | Crone Partners | 12 August 2013 |
| DA04[F] | Crone Partners | 12 August 2013 |
| DA05[F] | Crone Partners | 12 August 2013 |
| DA06[F] | Crone Partners | 12 August 2013 |
| DA07-1[F] | Crone Partners | 12 August 2013 |
| DA07-2[F] | Crone Partners | 12 August 2013 |
| DA08[F] | Crone Partners | 12 August 2013 |
| DA09[F] | Crone Partners | 12 August 2013 |

| Drawing Number | Architect | Date |
|----------------|----------------|----------------|
| DA10[F] | Crone Partners | 12 August 2013 |
| DA11[F] | Crone Partners | 12 August 2013 |
| DA12[F] | Crone Partners | 12 August 2013 |
| DA13[F] | Crone Partners | 12 August 2013 |
| DA14[F] | Crone Partners | 12 August 2013 |
| DA15[F] | Crone Partners | 12 August 2013 |
| DA16[F] | Crone Partners | 12 August 2013 |
| DA17[F] | Crone Partners | 12 August 2013 |

and/or 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) RETENTION OF 1965 BUILDING

The approval is only for the current proposal to retain and redevelop the 1965 building. Any alternative proposal to redevelop the site – for the same or a different building envelope - by demolishing the superstructure of the 1965 building in part or in its entirety shall be the subject of a new separate development application.

(3) MATTERS NOT APPROVED

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

- (a) Any demolition, construction, or excavation;
- (b) The precise quantum of floorspace;
- (c) The layout, mix and number of residential units and car parking spaces.

(4) SUBDIVISION

This approval does not include any subdivision. Any proposal to subdivide the site at a later date will need to be the subject of a separate future application that will be considered on its own merits.

(5) FUTURE STAGE 2 APPLICATION

The future Stage 2 application shall include both the 1965 building (115 Bathurst Street) and the 1939 building (339 Pitt Street) on the site.

(6) STAGE 2 TO BE CONTAINED WITHIN APPROVED ENVELOPE

The detailed design, including services, developed under any future Stage 2 development application shall be contained within the building footprint and envelope approved as part of this consent. Any modification of the envelope must be fully justified through the competitive design process and Stage 2 DA process and be compliant with all relevant planning controls.

(7) CONSERVATION AND RESTORATION OF THE 1939 BUILDING AT 339 PITT STREET, SYDNEY

- (a) The Stage 2 development application submitted for the proposed refurbishment of the 1939 building at 339 Pitt Street shall be for use as a hotel, and for its restoration and conservation.
- (b) A Conservation Management Plan (CMP), including a detailed Schedule of Conservation Works, pertaining to the conservation of the heritage listed 1939 building at 339 Pitt Street, shall be endorsed by the Director City Planning, Development and Transport prior to the commencement of any future design competition. The endorsed CMP and detailed Schedule of Conservation Works shall be submitted and approved by the Director City Planning, Development and Transport prior to any Stage 2 consent. Such a conservation management plan and conservation schedule is to have regard to the conditions of consent imposed upon D/2008/979/A.
- (c) The Stage 2 conservation and reconstruction works shall include, but not be restricted to, the following:
 - (i) The full conservation of the external facades, including the granite base and linings, all faience work and bronze work. Any retention of later bronze over-cladding is to be justified by evidence of the condition of the faience beneath.
 - (ii) The reinstatement of the two storey Ratings Chamber and the reconstruction of its lost components based on documentary and physical evidence. Materials and alignments are to replicate the original.
 - (iii) The reconstruction of lost elements within the Main Entrance.
 - (iv) The conservation of the tiling, bronze framed windows and reveals, hardware and terrazzo sills of the enclosure to the Light Well, Level 2 to Level 7.
 - (v) The conservation of the 'western corridor' of the Basement, Ground Floor and Levels 1, 2, and 4 to 7.
 - (vi) The conservation of lavatories on a minimum of two levels of Levels 4, 5, 6 and 7.
 - (vii) The conservation of the north-south and east-west corridors on Level 5 or Level 7.
 - (viii) The conservation of the Plan Lift alcove, the lift cabinet and controls on Levels 6 and 7.

- (ix) The conservation of the basement level Strongroom and the central stair leading up to the former Ratings Chamber.
- (d) The reconstruction of the northern façade of the 1939 building at ground and first floor levels is to maintain a high level of transparency and daylight access to the proposed exterior courtyard.
- (e) The fire rating solution for the laylight is to utilise fire engineered solutions in preference to physical barrier solutions. Any solution for the laylight is to minimise additional structural loading.
- (f) The Pitt Street lift core is to be retained as operational, albeit with new lift cars and mechanisms.
- (g) No demolition relating to any heritage fabric of the 1939 building is approved by this current consent, and any such demolition and intervention must be applied for as part of the Stage 2 development application.

(8) DESIGN MODIFICATIONS

Any future competitive design process brief and Stage 2 development application must incorporate the following design requirements and modifications:

- (a) That the soffit of the 1,600mm wide cantilever over the main tower feature of the building at 339 Pitt Street is to be a minimum of 12,500mm clear above the 1939 building;
- (b) The tower building, including the cantilever, is to be structurally independent of the heritage listed building at 339 Pitt Street. Further, no structural supports for the new building are to intrude upon the original footprint of the building as established in 1939;
- (c) The proposed courtyard space between the 1939 building and the proposed building is to remain open to the sky; and
- (d) The design for the tower, including its soffit, is to incorporate high quality materials, and achieve a high level of articulation and architectural detail. Balconies should be recessed within the line of the facade through punctured openings.

(9) EXOSKELETON STRUCTURE

The competitive design process must highlight the need for the proposed exoskeleton structure, in particular crossbracing and structural connections, to minimise the impact on the usability of the podium floorspace wrapping the exterior of the above ground car parking currently indicated to be levels 2-8.

(10) COMMERCIAL/CREATIVE HUB FLOORSPACE

- (a) The proposed commercial/creative hub floorspace wrapping the car parking shall be at least 6 metres in usable width and shall not be impaired in its usability by the proposed exoskeleton structure; and
- (b) Any proposed voids to the maximum possible floor area in the podium wrap between levels 2-8 must not exceed 20% of the floor area.

(11) WESTERN FACADE OF TOWER AND PODIUM

The competitive design process and Stage 2 application must acknowledge the proximity of the new podium and tower to 580 George Street ('the HSBC building') and appropriately address any associated potential impacts including overlooking and loss of privacy. Any glazing and/or openings within the enclosing envelope must be located at least 3 metres from the western property boundary.

(12) PODIUM DESIGN

- (a) The design of the podium of the proposed tower shall:
 - (i) Have a finely designed façade exhibiting a high degree of architectural modelling, articulation and detail.
 - (ii) Retain a sampling of the original façade panels within the car park levels, interpreting the technological significance of the existing building.
- (b) The materials, proportions and modelling of the north, east and south podium facades are to complement the east and north facades of the heritage listed former Metropolitan Water, Sewerage and Drainage Board building. The design is to include contemporary use of high quality materials characteristic to the vicinity and the adjacent heritage item such as Sydney sandstone, faience, granites and bronze metal.
- (c) The ground floor must maximise active street fronts to Pitt and Bathurst Streets. Fire doors, substations, service doors and vents must be minimised on the Pitt and Bathurst Street elevations.

(13) STAGE 2 DA/COMPETITIVE DESIGN PROCESS

- (a) The detailed design of the whole development including both the 1939 and the 1965 building shall be the subject of a Stage 2 development application.
- (b) The detailed design of the whole development shall be the subject of a competitive design process in accordance with the provisions of Clause 6.21 of the Sydney Local Environmental Plan 2012, Part 3.3 of the Sydney Development Control Plan 2012 and the City of Sydney Competitive Design Policy.
- (c) The competitive design process must be held prior to the lodgement of the Stage 2 development application for the development.

- (d) The competitive design process must include the 1939 building both in terms of its interface with the 1965 building, its adaptive re-use as a hotel and in respect of the overall floorspace for the development.

(14) PUBLIC ART

A public art strategy that nominates artists and potential locations must be included as part of the competitive design process and must be lodged as part of the Stage 2 DA.

(15) FLOOR SPACE RATIO - CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed the maximum permissible and shall be calculated in accordance with Clauses 4.4, 4.5, 6.3 - 6.9 and 6.21 of the *Sydney Local Environmental Plan 2012*.
- (b) The floor space in excess of a FSR of 8:1 shall be subject to a requirement to purchase heritage floor space (HFS) in accordance with the requirements of Clauses 6.11 and 6.12 of the *Sydney Local Environmental Plan 2012*.
- (c) The amount of HFS to be purchased may be reduced in accordance with Clause 6.11 of the *Sydney Local Environmental Plan 2012* only if the consent authority is satisfied that the resulting Stage 2 development exhibits design excellence and is the result of a design competition which satisfies the requirements of design competitions in any relevant development control plan.

(16) BUILDING HEIGHT

The height of the proposed tower must not exceed the maximum permissible and shall be calculated in accordance with Clauses 4.3 and 6.21 of the *Sydney Local Environmental Plan 2012*.

(17) ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The detailed Stage 2 design for the whole development shall incorporate ESD initiatives. The minimum criteria the Stage 2 development should strive to achieve is the highest possible ESD targets consistent with current world best practice. The Stage 2 DA shall be the subject of a sustainability report that demonstrates compliance with the above.

(18) WIND

The Stage 2 proposal shall be subject to physical wind tunnel testing in its context to ascertain the impacts of the development on the ground level wind environment and the wind conditions on building balconies. Enclosing or roofing of the areas adjacent to the heritage building is to be avoided on heritage grounds. Any future development must satisfy the provisions relating to ground floor wind speeds in the Sydney Development Control Plan 2012 in this regard.

(19) SIGNAGE STRATEGY

A detailed signage strategy for the whole development shall be submitted with the Stage 2 DA and must be included in the brief for the competitive design process. The signage strategy must include information and scale drawings of the location, type, construction, materials and total number of signs proposed for the development.

(20) SUBSTATIONS

The location and placement of future sub stations required by Energy Australia are to be identified within any Stage 2 development application. Any substations are to be designed and located such that their placement does not deactivate and intrude upon the streetscape and must also be included as part of the brief for the competitive design process.

(21) CONTAMINATION

A Remedial Action Plan (RAP) is to be submitted to Council prepared by a suitably qualified and competent environmental consultant in accordance with the NSW Government Office of Environment and Heritage, Guidelines for Consultants Reporting on Contaminated Sites and Planning NSW Guidelines "Managing Land Contamination Planning Guidelines". The RAP shall be reviewed by a NSW EPA Accredited Site Auditor and include a statement issued by the Auditor certifying that the RAP is practical and the site will be suitable after remediation for the proposed use before any consent is granted.

(22) RMS CONDITIONS

- (a) The layout of the proposed driveway in the Stage 2 development application should be in accordance with AS2890.1-2004 and AS2890.2-2002.
- (b) The layout of the proposed car parking areas, loading docks and access driveway associated with the Stage 2 development application (including, driveway, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004 and AS 2890.2 – 2002 for heavy vehicle usage.
- (c) The Stage 2 development application shall be designed such that the swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSROADS. In this regard, a swept path plan shall be submitted to Council for approval, which illustrates that the proposed development complies with this requirement.
- (d) All works associated with the Stage 2 development shall be at no cost to the RMS.

(23) TRANSPORT FOR NSW CONDITIONS

- (a) The owners of the site of the approved development must enter into an Agreement with Transport for NSW (TfNSW) prior to the issuing of a construction certificate to address the potential impacts of the approved development on the Sydney Metro corridor. The Agreement must provide for the following:
 - (i) the design, construction and maintenance of the approved development so as to satisfy the requirements in conditions (b) to (k) below;
 - (ii) allowances for the future construction of Metro railway tunnels in the vicinity of the approved development;
 - (iii) allowances in the design, construction and maintenance of the approved development for the future operation of Metro railway tunnels in the vicinity of the approved development, especially in relation to noise, vibration, stray currents, electromagnetic fields and fire safety;
 - (iv) consultation with TfNSW;
 - (v) access by representatives of TfNSW to the site of the approved development and all structures on that site;
 - (vi) provision to TfNSW of drawings, reports and other information related to the design, construction and maintenance of the approved development;
 - (vii) such other matters which TfNSW considers are appropriate to give effect to (i) to (vi) above; and
 - (viii) such other matters as the owners and TfNSW may agree.
- (b) The location of any building footings must be determined in consultation with TfNSW prior to excavation works to ensure the structural integrity of the Sydney Metro.
- (c) 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 Sydney Metro must be designed, constructed and maintained in accordance with design criteria specified by TfNSW.
- (d) The design and construction of the basement levels, foundations and ground anchors for the approved development are to be completed to the satisfaction of TfNSW.
- (e) No modifications may be made to that approved design without the consent of TfNSW.

- (f) TfNSW, 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 principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.
- (g) A detailed regime is to be prepared for consultation with, and approval by, TfNSW 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 TfNSW.
- (h) All requirements contained in the Agreement between TfNSW and the owners of the site must be satisfied during construction and, where appropriate, the operation of the approved development.
- (i) Copies of any certificates, drawings or approvals given to or issued by Sydney Metro must be delivered to the Department of Planning 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 Sydney Metro the prior written consent of TfNSW.
- (k) The owners of the site of the approved development must:
 - (i) allow in the design, construction and maintenance of the approved development for the future operations of metro railway tunnels in the vicinity of the approved development, especially in relation to noise, vibration, stray currents and electromagnetic fields; and
 - (ii) prior to the issue of any occupancy certificate, provide TfNSW with drawings, reports and other information related to the design, construction and maintenance of the approved development to allow TfNSW to fully understand the interaction between the approved development and the Sydney Metro.

(24) BICYCLE PARKING

The layout, design and security of bicycle facilities either on-street or off-street in the Stage 2 design must comply with the minimum requirements of Australian Standard AS 2890.3 – 1993 Parking Facilities Part 3: Bicycle Parking Facilities except that:

- (a) all bicycle parking for occupants of residential buildings must be Class 1 bicycle lockers, and

- (b) all bicycle parking for staff / employees of any land uses must be Class 2 bicycle facilities, and
- (c) all bicycle parking for visitors of any land uses must be Class 3 bicycle rails.

(25) CAR PARKING SPACES AND DIMENSIONS

The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities in the Stage 2 application must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan.

(26) COACH PARKING MANAGEMENT PLAN

A Coach Parking Management Plan for the hotel is to be submitted with the Stage 2 application for approval by the City of Sydney.

(27) LOCATION OF ACCESSIBLE CAR PARKING SPACES

Where a car park is serviced by lifts, accessible spaces for people with mobility impairment are to be located to be close to lifts. Where a car park is not serviced by lifts, accessible spaces for people with mobility impairment are to be located at ground level, or accessible to ground level by a continually accessible path of travel, preferably under cover.

(28) SECURITY GATES

Where a car park is accessed by a security gate, that gate must be located at least 6 metres within the site from the street front property boundary.

(29) SERVICE VEHICLES

Adequate space must be provided in the Stage 2 application to allow manoeuvring and turning of different sized vehicles within the designated loading area. The design, layout, signage, line marking, lighting and physical controls for all service vehicles must comply with the minimum requirements of Australian Standard AS 2890.2 – 2002 Off-Street Parking Part 2: Commercial vehicle facilities.

(30) VEHICLES ACCESS

The design of the Stage 2 development must be configured to allow all vehicles to be driven onto and off the site in a forward direction.

(31) LAYOUT OF LOADING SPACE

The layout of the loading space from Bathurst Street is not approved. Additional information is to be provided with the Stage 2 application, in particular addressing the shared nature of the loading area and how potential conflicts between loading vehicles and pedestrians in the space will be avoided.

(32) SERVICE VEHICLE SIZE LIMIT

The Stage 2 application must include swept paths for the largest vehicles to access the proposed loading areas. These will be used to determine a condition for the largest vehicle permitted to service the site.

(33) ACCESSIBLE PARKING SPACE

The design, layout, signage, line marking, lighting and physical controls of all off-street accessible parking facilities within the Stage 2 development must comply with the minimum requirements of Australian Standard AS/NZS 2890.6 - 2009 Parking facilities Part 6: Off-street parking for people with disabilities.

SCHEDULE 2

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

SCHEDULE 3**Terms of Approval****Other Integrated Development Approvals**

The Terms of Approval for Integrated Development as advised by the NSW Heritage Council are as follows:

1. All work shall be carried out in accordance with the following documentation:
 - (a) Indicative Scheme drawings ID00 to ID12 dated 15 April 2013 prepared by Crone Architects;
 - (b) Stage 1 Development Application, Statement of Environmental Effects by JBA dated April 2013; and
 - (c) Heritage Impact Statement by Graham Brooks Architects dated April 2013.

EXCEPT AS AMENDED by the following conditions:

2. Removal of some interior original building fabric is accepted in principle only. Further assessment will be made as part of stage 2 application when detailed design will be required with adequate justification for such removal of original building fabric;
3. The proposed cantilever of the building envelope of the new tower over the northern side of the 1939 building is approved only if the cantilever is self-supporting and its structural integrity is not based on demolition of any part of the 1939 building;
4. The separation between the bottom of the cantilever of the new building and the top of the highest point of the 1939 building must be at least 12500mm. Details of how this will be achieved shall be submitted with the section 60 application and approved prior to a construction certificate being issued;

5. Approval for the 1965 building is contingent upon approval and implementation of substantial refurbishment works to the 1939 Building at 339-341 Pitt Street, to be detailed and formalised in a Section 60 application. The refurbishment works would include but not be restricted to the reinstatement of the two-storey Ratings Chamber and the restoration of the building's facades to Pitt Street and Wilmot Street. These works shall be completed prior to the issue of occupation certificate for the proposed building on 115-123 Bathurst Street, Sydney to the satisfaction of the Heritage Council or its delegate;
6. This approval does not include any subdivision and is based on an understanding that both the buildings will be retained by one owner. This approval should not be construed in any way to mean that a subdivision will be possible at a later date. A separate application will need to be submitted if a subdivision is proposed at a later date that will be considered on its own merits;
7. A work method statement must be submitted with the section 60 application to the satisfaction of the Heritage Council or its delegate, demonstrating that adequate precautions have been taken to ensure the safety of the historic building during construction of the proposed tower.
8. Removal of relics of state significance is not approved. Parts of the proposed development may need design changes or even deletion, if required, to avoid removal of archaeological relics of state significance. If any significant archaeological relics are found during the construction, the work must be stopped immediately and the Heritage Division, Office of Environment and Heritage be informed; and
9. An application under section 60 of the NSW Heritage Act must be submitted and approved by the NSW Heritage Council prior to work commencing.

BACKGROUND

The Site and Surrounding Development

1. The site is commonly known as the Sydney Water Board site and has an area of approximately 3969sqm. It is bounded by Bathurst, Pitt and Wilmot Streets with street frontages of 52 metres, 76 metres and 49 metres respectively. The site slopes slightly from north to south with a total cross fall of approximately 3.5 metres.
2. The site incorporates two existing commercial buildings being a 27 storey tower building dating from 1965 on the northern portion of the site and a 7 storey state heritage listed building dating from 1939 on the southern portion of the site. The buildings are internally linked at the two lower levels and the basement level. Vehicular access to the site is currently provided via a loading dock from Bathurst Street and an entrance to the basement car parks beneath both buildings from Wilmot Street.
3. The site is surrounded by multi-storey buildings containing predominantly commercial and residential uses. The 'Rialto' building immediately north of the site across Bathurst Street contains serviced apartments on the upper levels with retail shops at ground floor level. Adjacent to this building and to the north west of the subject site is a commercial office building occupied by Ausgrid.
4. To the immediate west of the subject site and occupying the remainder of the block bound by Pitt, Bathurst, George and Wilmot Streets is 580 George Street known as the 'HSBC building' and containing offices at the upper levels and retail at the lower levels. Century Tower, a residential building, with a lower heritage building on the corner of Wilmot and Pitt Streets, is located on the southern side of Wilmot Street. The heritage listed Edinburgh Castle Hotel is located on the south-eastern corner of the intersection of Bathurst and Pitt Streets with the 'Metro' and 'Princeton' apartment buildings further to the south. The monorail currently runs adjacent to the site along Pitt Street which is currently in the process of being dismantled.
5. A plan showing the site location and surrounding properties is provided below.

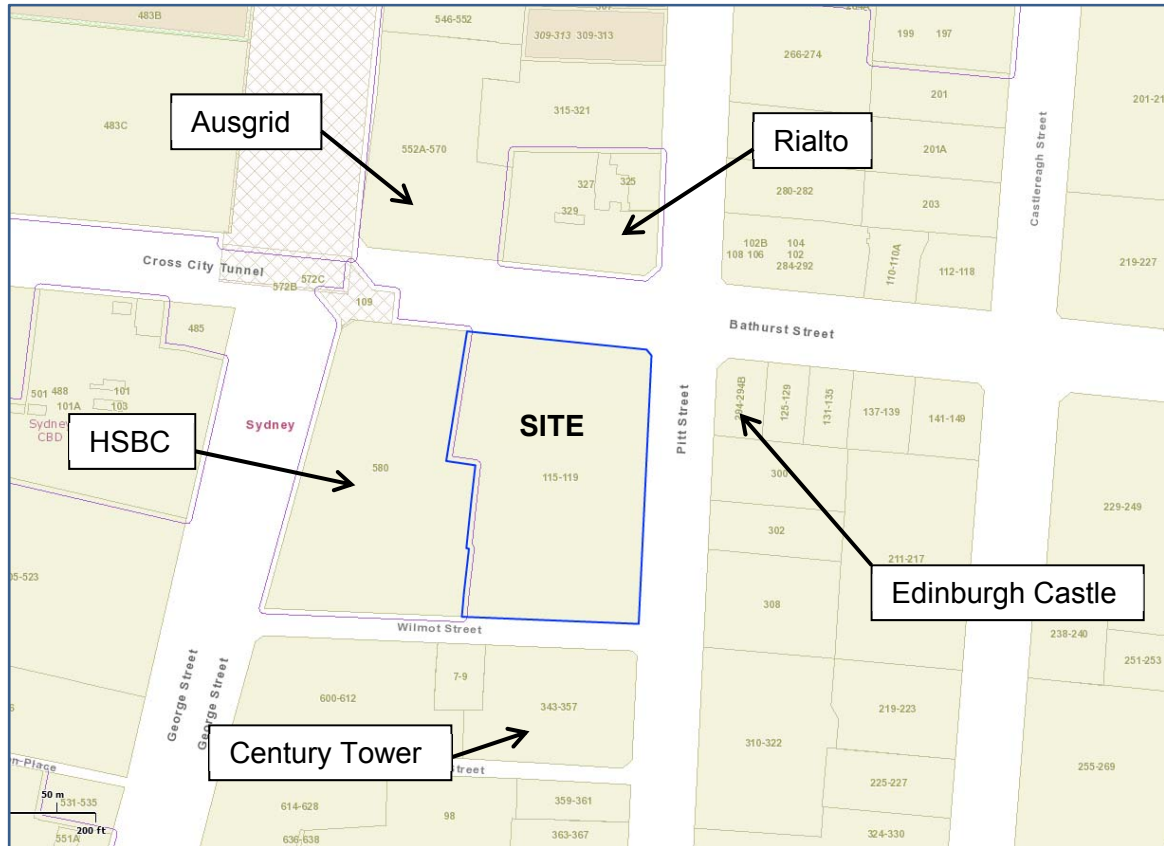


Figure 1: Location Plan

6. Photographs of the site are provided below.

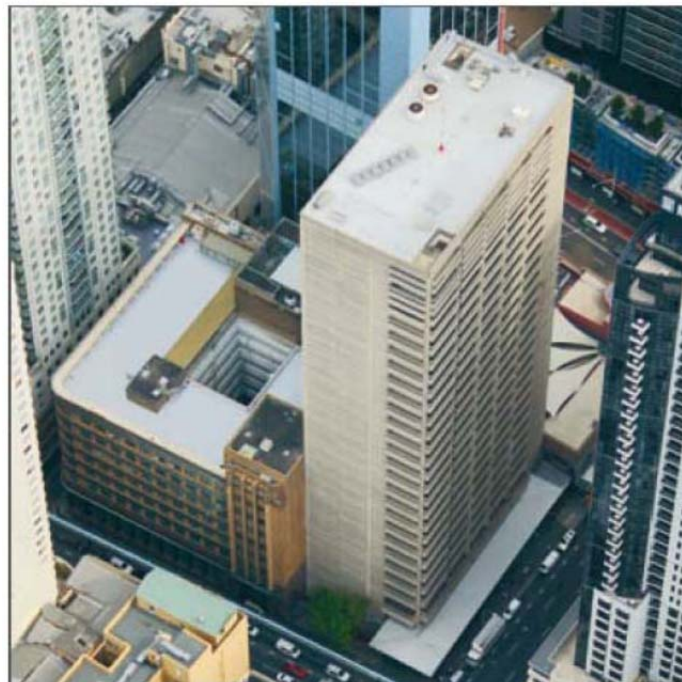


Figure 2: Aerial view of subject site



Figure 3: Looking west along Bathurst Street towards the subject site



Figure 4: Ground floor of the 1965 building



Figure 5: Looking north along Pitt Street



Figure 6: Corner of George and Bathurst Streets



Figure 7: Corner of George and Bathurst Streets

PROPOSAL

7. The Stage 1 DA seeks consent for the following:
 - (a) adaptive re-use of the 1939 building for use as a hotel;
 - (b) retention and redevelopment of the 1965 building for commercial, retail and residential purposes;
 - (c) a building envelope with a maximum FSR of 13.93:1 (being 55,316sqm of floor space comprising 13,970 within the 1939 building, a commercial/retail podium of 3,045sqm and a residential tower of 39,146sqm);
 - (d) erection of a 133m addition to the top of the existing tower resulting in a maximum building height of 235m (RL 260.05) and approximately 54 levels;
 - (e) erection of an 'exoskeleton' structure to sleeve the existing building and support the tower addition within a 1.8m wide zone around the existing tower;
 - (f) erection of a new 9 storey retail and commercial podium with a height of between 23-36m and to bring the building to the street alignment at its lower levels;
 - (g) retail and commercial uses on ground and level 1 of the podium;
 - (h) retention of three basement level car parks;

- (i) provision of above ground parking on levels 2-8 of the podium, accessed via two car lifts from basement level, access to which will be via the existing vehicular driveway from Wilmot Street.
 - (j) provision of approximately 2,000sqm of commercial or 'creative hub' (providing space for artists, dance, performing arts etc.) floorspace on the northern and eastern sides of the level 2-6 car park and communal facilities for the residential building on levels 7-8;
 - (k) residential use of the tower element;
 - (l) two storey high 4-6 metre wide pedestrian lanes along the western boundary to the HSBC site, along the northern walls of the 1939 building and from Bathurst Street to the centre of the site;
 - (m) a loading dock/ shared pedestrian way along the western boundary off Bathurst Street; and
 - (n) setbacks above the street wall height ranging from 0.3 – 7.9m (excluding the 'exoskeleton' structure) to reflect the position of the existing tower.
8. Selected photomontages and plans are shown below. More details are provided at **Attachments A and B.**



Figure 8: Photomontage looking north along Pitt Street



Figure 9: Photomontage looking south-east from the corner of Bathurst and George Streets

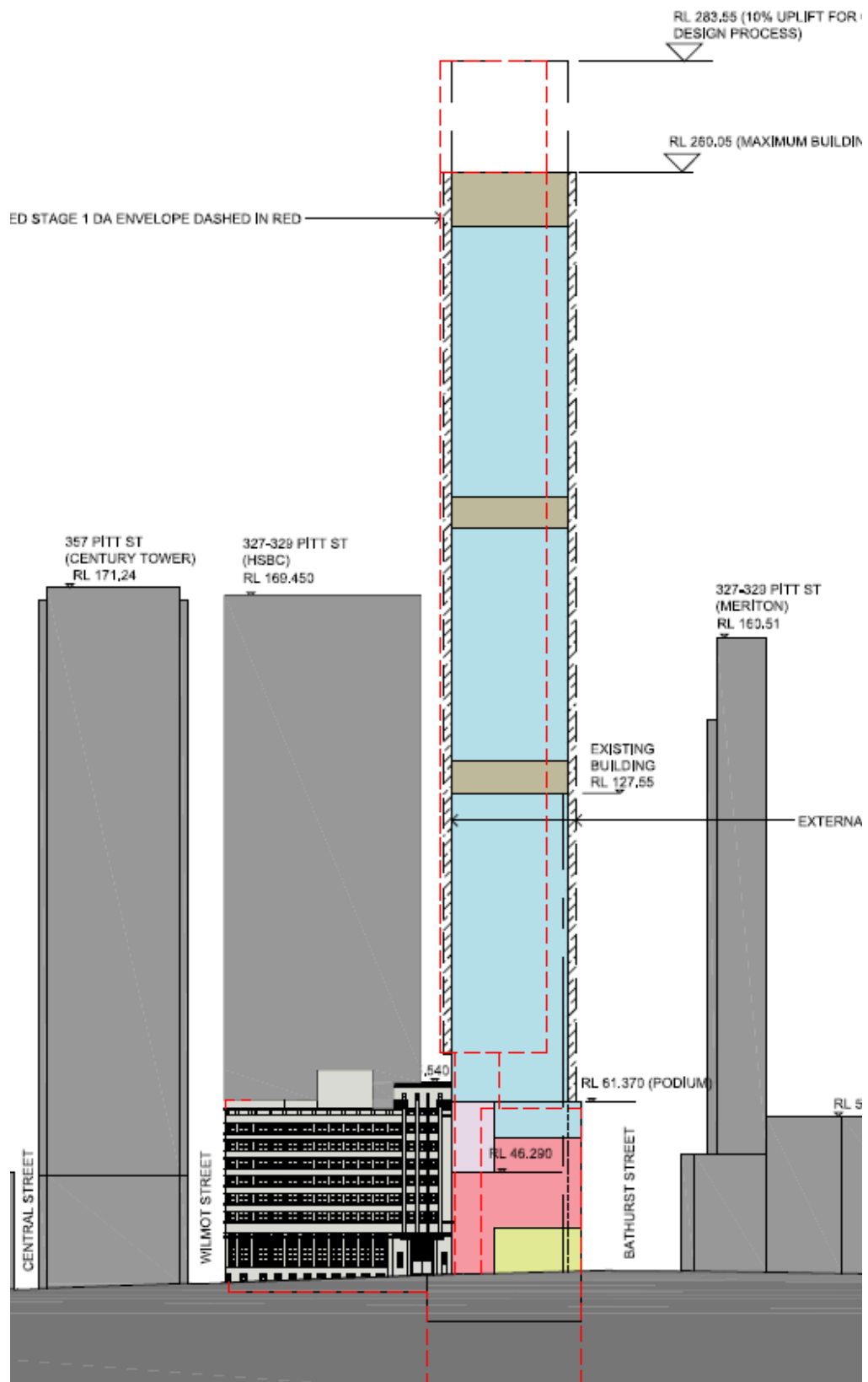


Figure 10: East (Pitt Street) elevation



Figure 11: Photomontage looking west along Bathurst Street



Figure 12: Photomontage from Darling Harbour



Figure 13: Photomontage from George Street

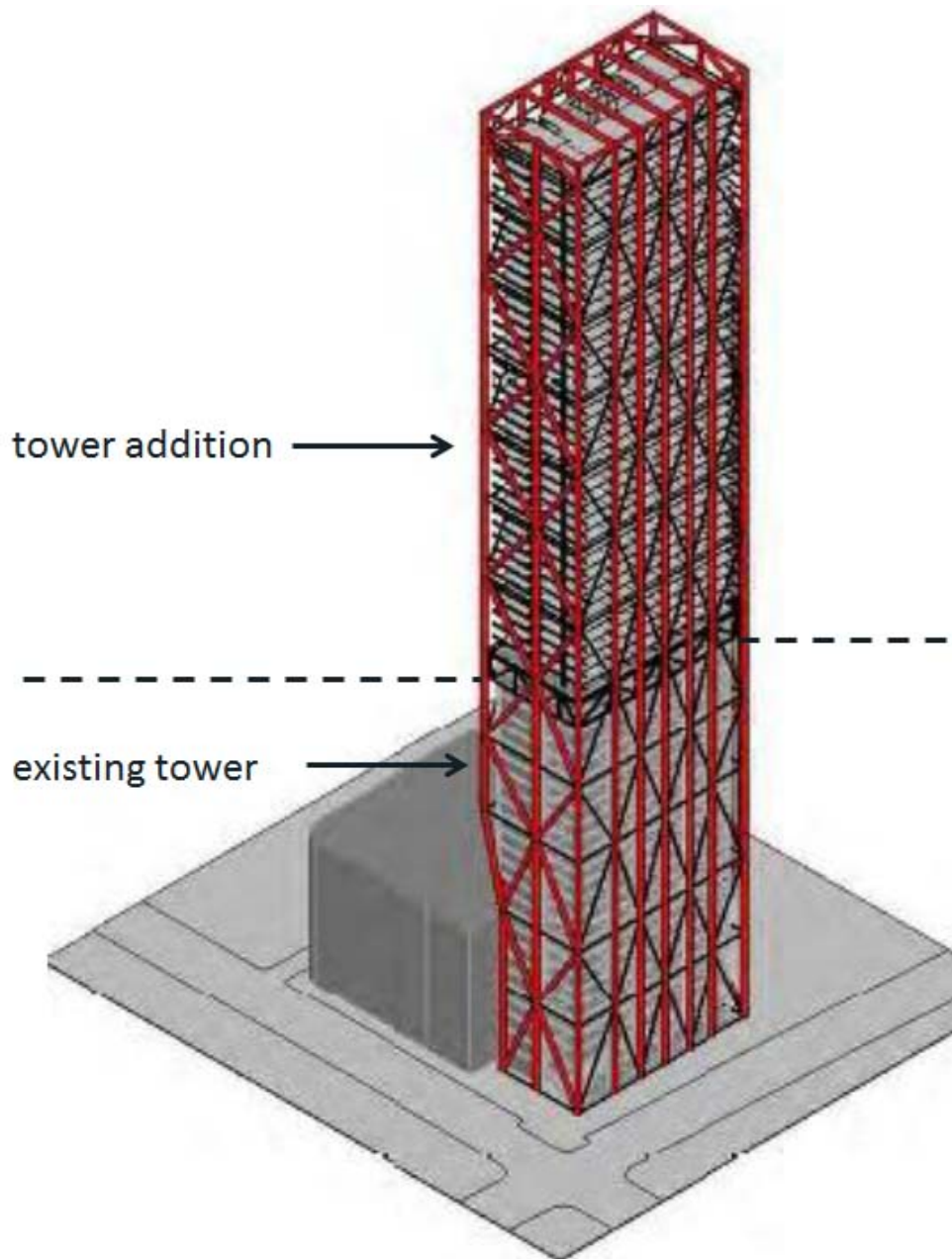


Figure 14: Proposed 'exoskeleton' structure

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

D/2008/703

9. Deferred commencement consent was granted on 22 June 2009 (and became an operational consent on 22 June 2010) for a '*Stage 1 building envelope for future commercial building with ground level retail*'. This was for a building of 168.6m (approximately 38 levels) with a FSR of 12.5:1. This consent lapses on 22 June 2015 and has not been activated.

D/2008/979

10. Consent was granted on 7 May 2009 for *'Extension, alteration and refurbishment of existing 1939 heritage listed Sydney Water building'*. The approval was for an additional floor on the rooftop of the existing building including a number of other changes to refurbish the item. Some of the significant works include those to the Ratings Chamber and restoration of the building's facades. This consent has yet to commence and is due to lapse on 7 May 2014.

D/2008/979/A

11. Consent to modify the above application was granted on 14 June 2012 including *'removal of approved new rooftop level, deletion of fourth lift, demolition of existing links between the 1939 heritage listed Sydney Water building and the adjacent tower and erection of new temporary facades to the lower parts of the heritage building (north elevation) and the tower (south elevation)'*.

D/2009/1539

12. An application for *'Subdivision of the site, former Sydney Water offices, into a two lot subdivision'* (essentially being the 1939 heritage building on one lot and the balance being on the other lot) was withdrawn on 16 November 2011.

D/2011/452

13. Deferred commencement consent was granted on 22 September 2011 for a 'Stage 1 DA for a mixed retail/commercial/residential building envelope with a maximum building height of 235m, including new pedestrian laneways and car parking within 11 basement levels'. This was for a building of 235m (approximately 65 levels) with a FSR of 13.49:1. This consent lapses on 22 September 2016 and has not been activated.

IMPLICATIONS OF THE PROPOSAL**Section 79C Evaluation**

14. 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 ENVIRONMENTAL PLANNING POLICIES (SEPPs)**

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

State Environmental Planning Policy No 55—Remediation of Land

16. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

17. A Preliminary Site Contamination Assessment was submitted with the development application. The City's Health Unit have advised that insufficient information has been provided within the reports lodged with the application and that another Remediation Action Plan and Site Audit Statement require to be provided. An appropriate condition is recommended requiring these to be lodged with the Stage 2 application for the site.

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

18. 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 takes into consideration a number of matters relating to design quality. An Architectural Design Statement, which considers amenity among other matters, has been prepared by Crone Partners and has been provided with the application. The 10 design quality principles of SEPP 65 and a consideration of these is discussed below:

- (a) **Principles 1, 2 and 3: Context, Scale and Built Form**

The site is located in a CBD context with other large buildings of a similar height and scale within close proximity of it. The proposed building envelope is consistent with the maximum height and FSR controls in the Sydney LEP 2012 and the required street frontage height controls in the Sydney DCP 2012. Whilst it does not comply with the required building setbacks, these are considered acceptable for the reasons discussed elsewhere in this report.

- (b) **Principle 4: Density**

The proposed building envelope complies with the core planning controls (height and FSR).

- (c) **Principle 5: Resource, energy and water efficiency**

Principles relating to energy efficiency will be assessed during the detailed DA stage which will also be subject to BASIX targets.

- (d) **Principle 6: Landscape**

The proposed building footprint is constructed to the site boundaries, apart from where new laneways are proposed. Accordingly, there is no at grade landscaped area. This is considered acceptable in this CBD context.

- (e) **Principle 7: Amenity**

Indicative drawings have been provided with the application showing between 8 and 10 apartments per floor of the residential tower with orientations to the north, east and south. Whilst the indicative drawings demonstrate that an acceptable level of residential amenity is achievable, the apartment numbers and layout may need to be altered to ensure that the relevant standards are met in respect of apartment size and mix, cross-ventilation and solar access. Details will need to be fully considered as part of the competitive design process and future Stage 2 DA.

(f) **Principle 8: Safety and Security**

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

(g) **Principle 9: Social Dimensions**

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

(h) **Principle 10: Aesthetics**

A comprehensive design process will need to occur prior to the future Stage 2 DA.

19. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, although many of these details will only be able to be assessed at Stage 2.

State Environmental Planning Policy (Infrastructure) 2007

20. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 104

21. The application is subject to Clause 104 of the SEPP as the proposed development will provide over 300 dwellings. In accordance with Clause 104, the application was referred to Roads and Maritime Services for comment.
22. The Sydney Regional Development Advisory Committee (SRDAC) considered the traffic impacts of the development at its meeting on 29 May 2013. No objections were received provided all structures and works are clear of an area of land in stratum which has been acquired by the RMS for the Cross City Tunnel. They have also advised that driveways, car parking areas and loading docks should comply with relevant standards and that all works associated with the proposed development should be at no cost to the RMS.
23. As no construction works would commence until a Stage 2 application is lodged and approved, appropriate conditions are recommended to ensure that the design of the Stage 2 development takes these matters into account.

Clause 88

24. The application is also subject to Clause 88 of the SEPP as the site is situated above an interim corridor for both the CBD Rail Link and the CBD Metro. In accordance with Clause 88, the application was referred to both Transport for NSW (TfNSW) and RailCorp for comment.

25. TfNSW, in a letter received on 25 July 2013, have raised concerns that the proposed development would have an adverse impact on the viability of the CBD Metro as the placing of foundations, other structures or building loads in the proposed Metro alignment would affect the practicability of constructing the Sydney Metro. As such, TfNSW require that if approval is granted, a number of conditions should be included in any approval. TfNSW have also suggested that the applicant should consult with TfNSW prior to lodgement of the Stage 2 DA.
26. Clause 88B of the SEPP requires the consent authority to consider whether a proposed development would adversely affect the development and operation of a proposed metro station, including access to and from it. However, the identified Town Hall Square station 'zone' is located to the north of the site.
27. RailCorp have also raised concerns about the potential impacts of the proposed development on the future construction, operation and maintenance of the CBD Rail Link (CBDRL) and has requested that any development approval should include the conditions recommended by TfNSW.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

28. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
29. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
30. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.
31. The development is consistent with the controls contained with the deemed SEPP.

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

32. BASIX compliance will be required to be addressed as part of the future Stage 2 DA and it is recommended that a condition be imposed upon any consent to require the highest possible ESD targets consistent with current world best practice.

Sydney LEP 2012

33. The site is located within the B8 – Metropolitan Centre zone. The proposed use will be a combination of commercial premises, tourist and visitor accommodation and a residential flat building and associated servicing and parking. These are all permissible uses within the zone and the proposal generally satisfies the objectives for the zone.
34. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

| Compliance Table | | |
|---|-------------------|---|
| Development Control | Compliance | Comment |
| 4.3 Height of Buildings (235m maximum for site) | Yes | A condition is included requiring the development to comply with the maximum permissible height in the LEP. |
| 4.4 Floor Space Ratio (8:1 as a 'base' plus additional floor space for certain purposes and uses in Central Sydney) | Yes | A condition is included requiring the development to comply with the maximum permissible FSR in the LEP. |
| 5.10 Heritage conservation | Yes | The 1939 building is a heritage item. Heritage is discussed in detail below. Subject to conditions, the proposal will not adversely impact on the heritage item. Terms of approval have been provided by the Heritage Council of NSW. |
| Part 6 Local provisions - height and floor space | | |
| Division 1 Additional floor space in Central Sydney | Yes | Additional floor space is being sought as part of the development. As noted above, a condition is recommended requiring the development to comply with the maximum permissible FSR in the LEP. |

| Compliance Table | | |
|--|---------------|---|
| Development Control | Compliance | Comment |
| Part 7 Local provisions—general | | |
| Division 1 Car parking ancillary to other development | Yes | A maximum of 244 car parking spaces are permitted. 244 car parking spaces are proposed. (NB – the final number of spaces allowed will depend on the number and mix of apartments and arrangement of commercial uses. It is therefore not approved as part of this DA. See recommended conditions. |
| 7.14 Acid Sulphate Soils | Yes | The site is identified as containing Class 5 Acid Sulphate Soil. Although the application is a Stage 1 proposal, it is likely that there will be minimal excavation. This provision can be further addressed at Stage 2. |
| 7.16 Airspace operations | Not yet known | The proposed development will penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport. See discussion below. |
| 7.20 Development requiring preparation of a development control plan | Yes | The proposal is for a Stage 1 DA. |
| 7.24 Development near Cross City Tunnel ventilation stack | Yes | The site is approximately 540m from the Cross City Tunnel ventilation stack and as such, this provision requires an assessment of the impact of the building on the operation of the stack and of the impact of emissions from the stack on users of the new building. The applicant has provided an Air Quality Assessment with the application. This has been reviewed by Council's Health Unit who concur with the reports' findings that the pollutants emitted from the Cross City Tunnel ventilation stack would not greatly impact on the proposed development. |

Sydney DCP 2012

35. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

| 3. General Provisions | | |
|--------------------------------|-------------------|--|
| Development Control | Compliance | Comment |
| 3.1 Public Domain Elements | Yes | As far as the proposal can be assessed (it being a Stage 1 application) the development satisfies this provision of the DCP. Although the proposed lanes are not identified as being required in the DCP, they will help activate the ground floor of the development which will include retail uses and an entrance foyer to the proposed new residential tower. The Stage 2 application should investigate the potential for a connection from the site of the new tower and podium to the hotel in the 1939 building. |
| 3.2 Defining the Public Domain | Yes | <p>The site is not located in a sun access plane. Shadow diagrams provided by the applicant show that the development will just fall short of causing additional overshadowing to Hyde Park at 2pm but will result in additional overshadowing at 3pm. This impact will however be negligible compared to the existing consent for the site approved under application D/2011/452.</p> <p>There will be no impact on views from the public domain to highly utilised public spaces.</p> <p>The Stage 2 development will need to demonstrate design excellence at the ground plane. As noted above, the proposal will incorporate active uses at ground floor levels. Again, the Stage 2 development will need to incorporate detailed requirements of this clause including ground floor active frontages.</p> |

| 3. General Provisions | | |
|--|-------------------|---|
| Development Control | Compliance | Comment |
| 3.2 Defining the Public Domain (continued) | | <p>A wind report has been submitted with the application. The report concludes that adequate wind conditions can be achieved subject to a number of mitigation measures including the erection of canopies, parapets and awnings. Whilst this is noted, Council's Heritage Specialist has advised that the canopy between the 1939 and the 1965 building is not supported. As such, an alternative to this mitigation measure is recommended and an appropriate condition is included.</p> <p>Both sides of the site are identified as being 'active frontages'. Following deletion of the proposed new driveway to Pitt Street, the development generally complies with this provision. However, this will only be able to be assessed in detail at Stage 2.</p> |
| 3.3 Design Excellence and Competitive Design Processes | Yes | The Stage 2 application will be subject to a competitive design process. A condition to this effect is recommended. |
| 3.6 Ecologically Sustainable Development | Yes | A BASIX report will be required to be provided with the Stage 2 application. As a large landmark building, conditions requiring best practice ESD initiatives are included in the recommendation. |
| 3.9 Heritage | Yes | <p>The existing 1939 building is a state heritage item. See discussion under the heading Issues below.</p> <p>Clause 3.9.4 of the DCP requires the appointment of a heritage committee in certain circumstances. As the development will be the subject of a competitive design process at Stage 2 and has been considered by both the NSW Heritage Council and Council's Heritage Specialist, it is considered acceptable to waive the requirement for a heritage committee as is permitted by the clause.</p> |

| 3. General Provisions | | |
|--|-------------------|---|
| Development Control | Compliance | Comment |
| 3.11 Transport and Parking | Yes | <p>As noted above, the number of car parking spaces proposed will not exceed the prescribed maximum in the LEP.</p> <p>The proposal includes above ground car parking at levels 2-8 but this will be sleeved by commercial or 'creative hub' and residential facility floorspace on the sides fronting Pitt and Bathurst Street.</p> <p>A Traffic, Parking and Access Statement has been provided with the application and the proposal has been considered by Council's Traffic Unit and (as 'traffic generating development') the RMS. Neither have raised any objections on traffic generation grounds and appropriate conditions are recommended.</p> |
| 3.12 Accessible Design | Yes | <p>Access and facilities for persons with disabilities in accordance with the DCP and the BCA should be incorporated in the Stage 2 application.</p> |
| 3.13 Social and Environmental Responsibilities | Yes | <p>Consideration of the proximity of the site to the Cross City Tunnel ventilation stack is discussed above.</p> <p>The Stage 2 development will need to satisfy the applicable provisions in respect of passive surveillance and CPTED principles.</p> |
| 3.14 Waste | Yes | <p>The Stage 2 application will need to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.</p> |

| 4. Development Types | | |
|--|-------------------|--|
| 4.2 Residential Flat, Commercial and Mixed Use Developments | | |
| Development Control | Compliance | Comment |
| 4.2.1 Building height | Yes | The floor to ceiling height in the existing commercial building will comply with the required minimums in the DCP. |
| 4.2.3 Amenity | Yes | Amenity provisions for the residential apartments will be assessed as part of the Stage 2 development. Solar Access to existing residential buildings around the site will be affected by the proposal although this is already affected to an extent by the existing building and any overshadowing will be as a result of impacts from a height-compliant building. |
| 4.2.4 Fine grain, architectural diversity and articulation | Yes | These principles will require to be taken in to consideration in the assessment of the Stage 2 development. |

| 5. Specific areas – Central Sydney | | |
|---|-------------------|--|
| Development Control | Compliance | Comment |
| 5.1.1 Street frontage heights | Yes | With a street frontage height ranging between 23-36m, the proposed redevelopment of the 1965 building will comply with the required frontage height of between 20-45m. Refer to more detailed discussion under 'Issues' below. |
| 5.1.2 Building setbacks | No | An average of 8m is required with a minimum of 6m. With the exception of the Pitt Street frontage, the development does not comply with this provision. Refer to discussion under 'Issues' below. |

| 5. Specific areas – Central Sydney | | |
|------------------------------------|------------|--|
| Development Control | Compliance | Comment |
| 5.1.4 Building bulk | No | Above a height of 45m, controls restrict floor plates to a maximum of 1000sqm with a maximum horizontal dimension of 40m. At between 770-915sqm the floor plates comply with this provision but the Bathurst Street elevation is approximately 44m in length. Refer to discussion under 'Setbacks and Building Width' below. |

ISSUES

Airspace Operations

36. As noted above, the proposed development will penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport. At the subject site, development proposals for any structures above 156m in height require to be considered in this regard. The height of the proposed building is 235m. At the time of writing, a response from Sydney Airport had not been received.
37. Clause 7.16 of the LEP states that Council cannot grant development consent until such time as the relevant Commonwealth body advises that:
- (a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or
 - (b) the development will not penetrate the Limitation or Operations Surface.
38. As such, consent cannot be granted until this advice has been received. It is recommended that a decision on the application be delegated to the Chief Executive Officer pending receipt of a response from the Sydney Airport Corporation.

Retention of existing tower and erection of 'exoskeleton' structure

39. As already noted, the proposal is to retain the existing 1965 building structure and to add approximately 35 additional storeys to it. Although conceptual at this stage, it is anticipated that this will involve removing the existing facade and retaining the majority of the existing structural elements of the tower including the basement levels. The 'exoskeleton' structure would then be erected around the existing building and support the addition above (the floorplates of which would match those in the existing building).
40. Supplementary information from the applicant to support this part of the proposal has been lodged with the application. This has been reviewed at Council's request by the Robert Bird Group who have also carried out an inspection of the building. The conclusions of that review are that the proposal is structurally feasible, subject to further testing being undertaken as the detail of the development becomes known.

41. The proposed 'exoskeleton' structure will protrude into the existing building setbacks which (as discussed below) are already non-compliant on the north, west and south elevations. In addition (although preliminary in scope) the plans lodged with the application show the columns supporting the structure being partially located within the proposed new laneways and protruding through the commercial or 'creative hub' space located on levels 2-8 (refer to **Figures 15** and **16** below). The preliminary plans lodged with the application show that the structure could have a significant impact on the both the usability of this space and on the ground floor laneways. As such, an appropriate condition is recommended to ensure that the impact of the structure on the commercial or 'creative hub' space wrapping the car park is minimised.

42. In addition, the Heritage Council have stipulated that the separation between the bottom of the cantilever of the structure and the top of the highest point of the 1939 building must be at least 12500mm (refer to location of this on **Figure 17** below). This is also included as a condition and will need to be taken into account in the applicant's future design of the exoskeleton and building.

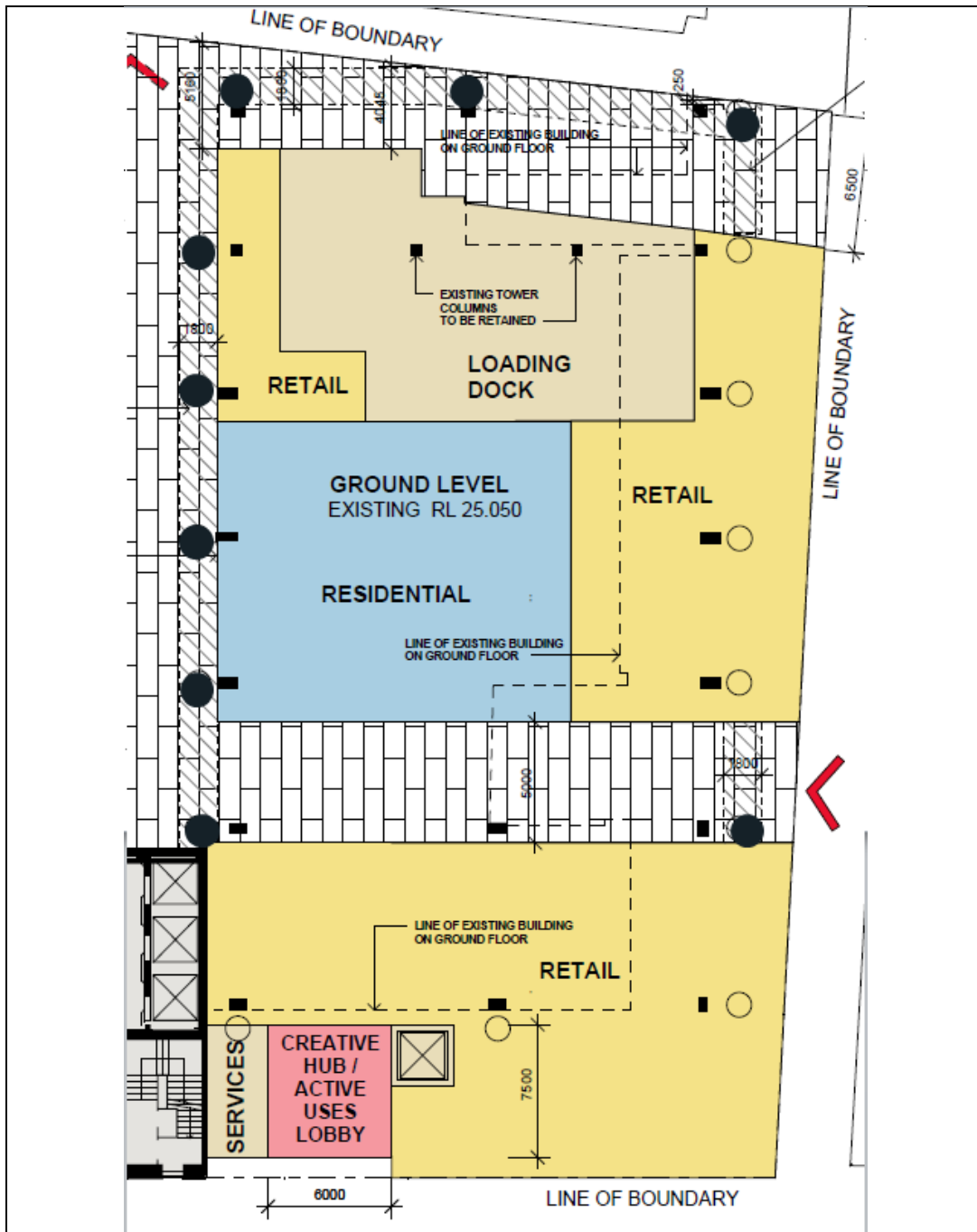


Figure 15 – Indicative position of ‘exoskeleton’ columns within laneways shown as black dots.

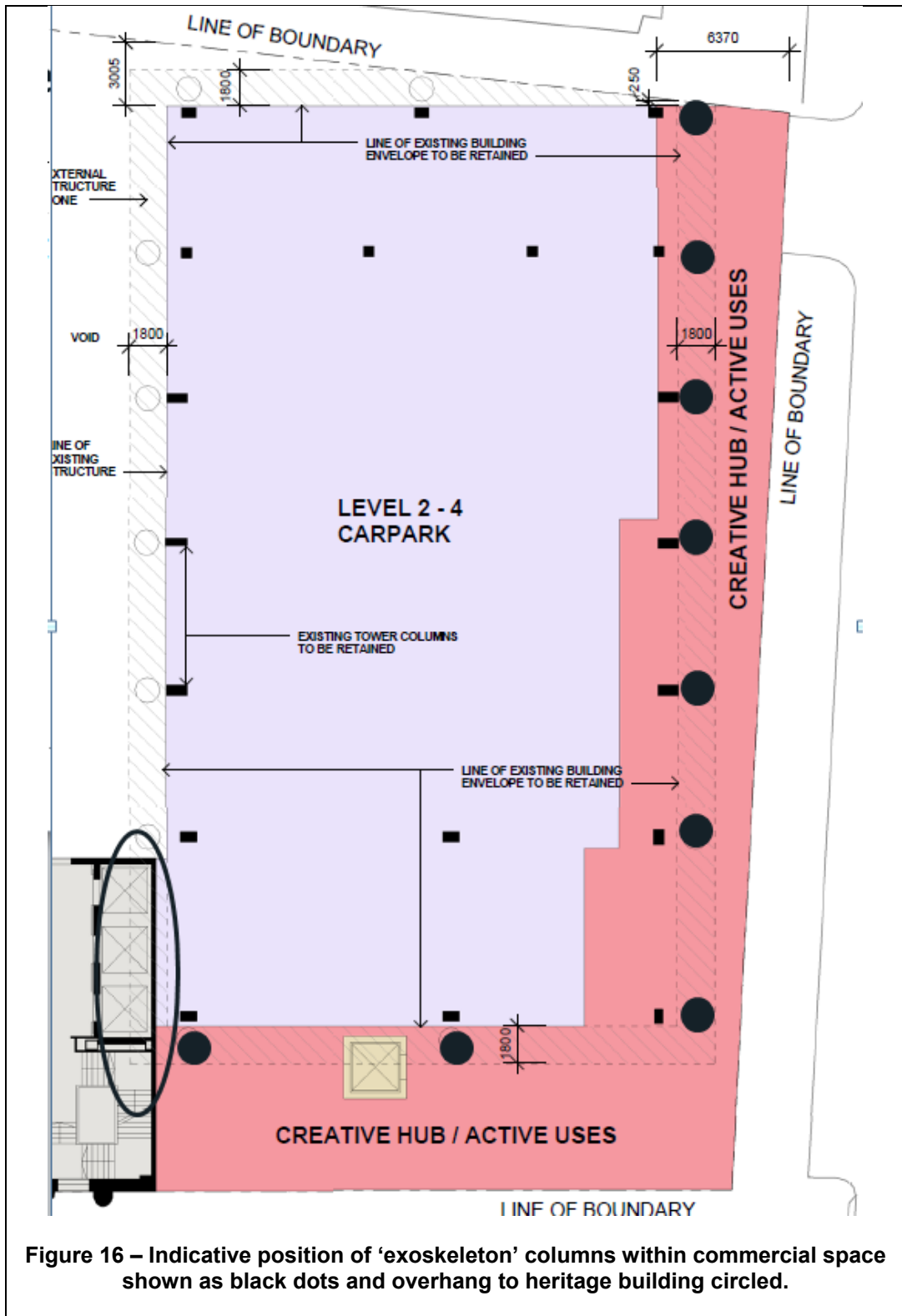


Figure 16 – Indicative position of ‘exoskeleton’ columns within commercial space shown as black dots and overhang to heritage building circled.

Upper Level Car Parking and Commercial Floorspace

43. The proposal includes the retention of the existing basement level car park but unlike the previous approvals for the site, will not involve further basement excavation to provide additional parking. It is however proposed to utilise upper levels 2-8 as car parking which would be accessed via two vehicle lifts from the existing basement level. The north and east sides (being the street frontages) of the upper level parking would be 'wrapped' by the proposed commercial floorspace at these levels (see above).
44. The principle of providing upper level parking is considered acceptable but only if it is 'wrapped' by a high quality podium with usable floor space. The plans lodged with the application show that this will range from between 5-7.6m in width which could be further impacted on by the proposed exoskeleton structure. As such, appropriate conditions are recommended to ensure that the space remains of a sufficient width and is unimpeded by the proposed exoskeleton structure.
45. Council's Traffic Unit have advised that operationally, the parking areas can be serviced from the lifts from the basement level. Whilst the parking levels will not be visible from the street, there are no proposals to 'wrap' the parking levels on the west and south sides. However, these sides will be visible from surrounding buildings and as such, will need to be satisfactorily resolved – whilst taking account of any ventilation requirements - in the Stage 2 application for the site.

Podium Height

46. The applicant proposes a podium ranging in height between RL 46.2 (adjacent to the 1939 building on Pitt Street for a distance of approximately 4 metres) increasing to RL 61.37 (approximately 36m) around the remainder of the site perimeter. The City's controls require a street wall height of between 20 and 45m. With up to 8 levels in the podium, the proposal falls within this range.
47. The previous commercial and residential Stage 1 applications approved lower podium heights of RL 38.375 (approximately 13.325m above Bathurst Street) and RL 50.31 (approximately 26m above Bathurst Street) which were dictated by a number of heritage items on the southern side of Bathurst Street (in the case of the commercial approval) and the stipulations of the Heritage Council (in the case of the residential approval). In this case, the higher podium proposed as part of the subject application has however been accepted by the Heritage Council.
48. Taking account of the predominant building wall height along the west side of Pitt Street (see **Figure 17** below) this is considered acceptable.

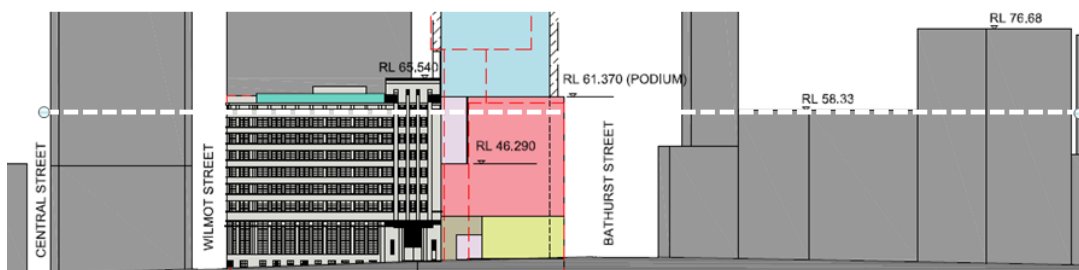


Figure 17 – site and predominant building wall height shown dashed along west side of Pitt Street

49. Although the building wall height along the south side of Bathurst Street is generally lower (see **Figure 18** below) this is considered acceptable taking account of a generally higher building wall height on the north side of the street (see **Figure 19**). However, as the podium will be higher than the HSBC podium adjacent and will be in close proximity to it, this will need to be satisfactorily resolved in the Stage 2 application.



Figure 18 – site and predominant building wall height shown dashed along south side of Bathurst Street



Figure 19 – photo showing predominant building line along north side of Bathurst Street (approx. 7-8 levels)

Setbacks and Building Width

50. The DCP requires tower setbacks that are an average of 8m with a minimum of 6m with side and rear setbacks of 3m. As it is proposed to retain the existing tower structure and build on top of it, the proposed setbacks have been established by the position of the existing building. At 7.9m, the proposed Pitt Street setback is compliant as is the setback adjacent to the boundary at the south eastern corner of the site at between 6.8-7.1m.
51. The setbacks on Bathurst Street (ranging between 2.9-5.2m) and on the western boundary (ranging between 0.3-3m) are non-compliant however. These setbacks are further eroded when the 'exoskeleton' structure (at 1.8 metres in width) is taken into consideration.
52. The non-compliances will be to the tower and not to the podium and the nearest point to the ground where the non-compliance will occur will be approximately 36 metres above street level. This being the case, the visual impact of the non-compliance as viewed from ground level will be negligible. It is noted that a number of buildings on the north side of Bathurst Street do not comply with minimal setbacks. As such, when the surrounding context is taken into consideration, any proposal to increase setbacks would be unreasonable.
53. In acknowledgement of the proximity of the proposed tower and podium to the HSBC building at 580 George Street, a condition is recommended requiring the interface to be appropriately addressed in the competitive design process and at Stage 2. Furthermore, any glazing or openings proposed in this facade must be located at least 3 metres from the property boundary.

Loading

54. All cars and small vans are proposed to enter the development via the existing driveway on Wilmot Street. The original proposal to include a new driveway off Pitt Street has been deleted. Larger vehicles requiring greater height clearance are proposed to manoeuvre on the proposed western laneway from Bathurst Street. Whilst not ideal, this loading area is in the same location as an existing driveway and as such, the concept is approved in principle. However, fine detailing of how this is to occur including detailed vehicular access arrangements needs to be provided at Stage 2. This detail can accompany the exact detail of the lanes and ground floor layout during the design competition and Stage 2 DA.

View Impact

55. Issues of view impact were raised in one of the submissions. The view impacts of the proposal have been assessed by carrying out a site inspection from the property of the objector in question.
56. Case 10996 of 2003 [Tenacity Consulting Pty Ltd v Warringah Council] in the Land and Environment Court of NSW established a planning principle for views and view sharing. Senior Commissioner Roseth established a four (4) step assessment process to determine whether view sharing is reasonable. An assessment of the current proposal against these four steps is discussed below.

1. Assessment of views to be affected

The objector who raised concerns about view loss is an owner of an east facing apartment within the 'Lumiere' building located some 65m across George Street to the west of the subject site. Although no others were received from Lumiere, it is likely that the view impact would be similar from other east facing apartments in the building. Furthermore, it is possible that there could be a view impact from other tall residential buildings in close proximity to the site although this was not specifically raised as an issue of concern by other objectors (as opposed to general concerns about the height and scale of the building for example). The subject apartment enjoys an eastward outlook over the existing 1965 building towards Kings Cross, the Eastern Suburbs and the ocean and horizon beyond across a span between the existing HSBC and other tall buildings to the north of Bathurst Street. The view includes that of the iconic 'Coca Cola' sign at the top of William Street.

2. What part of the property the views are obtained

The views are obtained from the main living area and bedrooms of the subject apartment and are visible from both a sitting and standing position.

3. Extent of the impact

The extent of the impact differs very slightly from one room to the other within the apartment (and would differ to a larger extent between apartments in the building). Whilst view loss is of the existing horizon (approximately 60%) and buildings in the Eastern Suburbs, there will still be a partial view as shown on **Figure 20** below.



Figure 20 – photomontage showing approximate impact of 1965 building extension as viewed from east facing apartment within 'Lumiere' building.

4. Reasonableness of the proposal that is causing the impact

The proposed building height and FSR will be compliant with the relevant controls. Although the building setbacks do not comply with the relevant controls (and in impression at least, the 'exoskeleton' will further increase the bulk of the building from some view points) these exceedences will have a negligible impact compared to a 'compliant' building envelope when measured from a vantage point as far away as the Lumiere building (approximately 65m from the site). Although there will undoubtedly be a view impact, it is considered unreasonable that the entirety of such a view could be maintained given the high density CBD context and as the height of the building will comply with the applicable controls for the site.

Heritage

54. The 1939 building on the site is a heritage item and is therefore subject to the heritage provisions of the DCP. As a state item, the application is 'Integrated Development' requiring the approval of the NSW Heritage Council. Following a meeting of the Council, Terms of Approval have been provided and are included in the recommendation of the consent. The proposal has also been considered by Council's Heritage Specialist.
55. Conceptual plans have been lodged with the application to show how the 1939 building may be redeveloped and show potential restaurant, kitchen, cafe, reception, bar and associated spaces on the ground floor with hotel rooms (around a void) on the levels above. Works to this building will need to be in compliance with a CMP for the site and a condition requiring lodgement of a CMP at Stage 2 is recommended.
56. A number of heritage related conditions are recommended, including a stipulation about the location of the 'exoskeleton' structure as discussed above and other matters that need to be taken into consideration in the Stage 2 application.

Use of Sandstone

57. On 8 May 2006, Council resolved to encourage the use of sandstone on the lower or podium levels of buildings in the CBD should the context demonstrate that the material is appropriate. It also resolved that unbanded sandstone cladding be recommended for use and that the detail, fixing method and lime mortar mix be submitted for the City's consideration prior to the release of any Construction Certificate.
58. In this instance, the use of sandstone is considered appropriate given the context of the site. An appropriate condition is included to recommend its use in the Stage 2 application.

Access

59. Access for disabled persons will need to be taken into account in the design of the Stage 2 proposal.

Other Impacts of the Development

60. The proposed development is capable of complying with the BCA which can be addressed in detail when a Stage 2 application is lodged for the site.

61. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

62. The site is located in a mixed commercial and residential area within the CBD and surrounded by similar uses. The proposed uses within the building are compatible with those in the vicinity of the site.

INTERNAL REFERRALS

63. The conditions of other sections of Council have been included in the proposed conditions. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; City; Surveyors and Transport and Access who have raised no objection to the proposal. Where appropriate, their recommended conditions have been added.

EXTERNAL REFERRALS

Notification, Advertising and Delegation

64. The application constitutes integrated development and as such the application was notified and advertised for 30 days (from 3 May to 3 June) in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification, seven (7) submissions were received. The issues that were raised in the submissions and responses to these are detailed below:

Building Separation

- (a) The proposed building is too close to the HSBC building to the west and the gap between the buildings should be opened up.

Response – As noted above, the setbacks of the redeveloped 1965 building have largely been established by those of the existing building. Whilst these are non-compliant, it is considered that any negative impacts arising from this non-compliance (proximity of windows or balconies to the boundary for example) can be addressed in the design of the building at Stage 2. An appropriate condition is recommended.

- (b) Lack of detail on how the tower will be constructed so close to the HSBC building to the west of the site.

Response – This is a matter for the applicant (in conjunction with the owner of the HSBC site if access onto the site is required) to consider at the later stages of the development.

Height of Building

- (c) The building is too high and is disproportionate to the size of the land.
- (d) The height of the building may increase again if approval is given for the proposed height.

Response – The indicative height of the building in the application is 235m which is permissible. Under the City’s controls, the building may be able to be increased in height by a further 10% at Stage 2 if the development satisfies a number of key tests in terms of design excellence.

Loss of Views, Privacy, Overshadowing and Solar Access

- (e) The building will result in unacceptable overshadowing to nearby buildings and streets.

Response – The shadow impact on other buildings is discussed above. Because of the height of the existing building and others in its proximity, there will be no additional shadow impacts to surrounding streets.

- (f) Loss of ocean views from the ‘Lumiere’ building.

Response – View impact is discussed above.

- (g) Loss of privacy to apartments within the ‘Lumiere’ building.

Response – As a Stage 1 application, no details have been provided on the position of windows within the new building to ascertain whether there would be any privacy or overlooking impacts. Whilst this will be considered at Stage 2, the buildings are approximately 65 metres apart which is considered an appropriate distance to mitigate against any overlooking impacts (if any windows are installed in the west facing facade of the building).

- (h) The application does not comply with the solar access ‘rule of thumb’ under the RFDC.

Response – Solar access to residential units within the building will only be able to be fully assessed at Stage 2.

- (i) Loss of sunlight to apartments within the ‘Lumiere’ building

Response – Shadow diagrams provided by the applicant show that there will be no additional overshadowing between 9am and 3pm on either 22 March or 22 June. Whilst no details have been provided outside these hours, it is likely that other buildings in the area already overshadow the ‘Lumiere’ building.

Traffic and Pedestrian Impacts

- (j) The development will introduce more traffic and pedestrians to an already congested area.

- (k) Wilmot Street is too narrow and congested to cope with the increase in traffic that this development will generate.

Response – The traffic impacts of the proposal have been considered both by the RMS and Council’s Traffic Engineer. Based on the information lodged with the Stage 1 application, neither have raised any objections to the development on traffic generation grounds nor have concerns about traffic congestion either on Wilmot Street or on other streets surrounding the site. Taking account of the nature of the development and the current pedestrian footfall in the area, it is not anticipated that the development will lead to an unacceptable increase in pedestrian movements in and around the site.

- (l) A 'proper' taxi rank should be provided outside the proposed hotel.

Response – Council's Traffic Unit have advised that the location of taxi ranks in the CBD is likely to be reviewed as part of the light rail proposal on George Street.

- (m) The surrounding footpaths should be upgraded to stone paving.

Response – There will be a requirement for the applicant to lodge a Public Domain Plan at Stage 2. At that time, the street frontages to the site will require to be upgraded in accordance with Council's Public Domain Manual.

- (n) Concerns about the proposed new car park exit near to the corner of Bathurst and Pitt Streets.

Response – This part of the original proposal has been deleted.

Impact of exoskeleton structure

- (o) The loading dock driveway will be penetrated by the proposed exoskeleton structure.

Response – At this stage, the proposed exoskeleton structure is indicative only. However, this concern is noted and appropriate conditions have been recommended requiring the exoskeleton to be appropriately designed into the structure to ensure that it does not adversely impact on the proposed upper level commercial space or the new ground floor laneways.

Active Uses around Car Park

- (p) The active uses around the car park will not be of a sufficient depth.

Response – There is no required minimum depth for space such as this above ground floor level. As a guide, a minimum of 6 metres applies for ground floors. Following amendments by the applicant to increase the width of the commercial space, the proposal is considered acceptable.

Design of the Building

- (q) The building needs to make a positive contribution to the city skyline.

Response – The Stage 2 application will require to be the subject of a competitive design process where the contribution the tower makes to the city skyline will be assessed in detail.

Security

- (r) Strict conditions should be imposed to ensure there is adequate security for access and mailboxes.

Response – The Stage 2 development application will be required to take CPTED (crime prevention through environmental design) principles into consideration.

Overcrowding

- (s) Conditions should be imposed so that the building cannot be used for short term letting and to ensure that apartments are not overcrowded.

Response – Any approval at Stage 2 for residential apartments would require them to be used in that manner and not for serviced apartments or any other use.

Notification to Residents

- (t) Residents were first made aware of the plans for this building through an article in the paper. Council or the developer should have advised residents in the vicinity of the site about the development.

Response – In this case, the applicant chose to publicise their development in advance of a development application being made. Until an application is lodged, the City is not in a position to notify residents about development proposals. The application was placed on public notification as soon as it was received.

Construction Impacts

- (u) This building will be constructed at the same time as other developments in the locality which could lead to construction noise and traffic impacts in the vicinity of the site.

Response – This building may not necessarily be constructed at the same time as other developments in the locality. If approved, appropriate conditions of consent will be attached to the Stage 2 consent to mitigate against problems arising from noise and traffic during construction.

Other Developments

- (v) Large development proposals are being considered individually with no Council officers looking at the overall impact of these.

Response – All applications are considered on their individual merits and against the applicable planning controls for the site and as such, it is not necessary for similarly sized large scale development proposals to be considered concurrently.

Details Lodged with the Application

- (w) The drawings lodged with the application are not entirely adequate as they show an approved development in red which is not entirely accurate as the consent required a setback of 6 metres.

Response – Noted. However, the position of the approved building has been provided for indicative purposes only and has no bearing on the assessment of the current application.

- (x) A BASIX certificate should have been lodged with the development application.

Response – It is not necessary for a BASIX certificate to be lodged at this stage.

Floorspace

- (y) The amenity of the area in and around the development site has not been demonstrated so opportunity floorspace should not be granted.

Response – The ‘award’ of opportunity floorspace will only be able to be assessed at Stage 2. A condition is included requiring the development to comply with the LEP in respect of floorspace.

Noise and Amenity

- (z) Noise and music vibration from the rooftop restaurant and bar in the 1939 building.

Response – Any proposal to use the rooftop of the 1939 as a restaurant and bar would be determined as part of a Stage 2 application. The acoustic and vibration implications of any such use would be assessed and addressed at that time.

- (aa) Garbage odours and removal hours.

Response - The location of garbage storage facilities and removal arrangements will only be assessed at Stage 2.

PUBLIC INTEREST

65. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

66. The cost of the development will be in excess of \$200,000 and will therefore subject to a development levy at Stage 2.

RELEVANT LEGISLATION

67. The Environmental Planning and Assessment Act 1979, Heritage Act 1977.

CONCLUSION

68. The application seeks Stage 1 approval for the redevelopment of the site including the adaptive re-use of the 1939 building as a hotel and an extension to and major refurbishment of the 1965 structure to provide a new retail, commercial and residential building.
69. The proposed height and floor space ratio is compliant. Building setbacks and the width of the building are non-compliant but these are considered justified as these matters are largely dictated by the existing building. It is also considered that any future resultant impacts in respect of matters such as overlooking can be taken into consideration in the detailed Stage 2 application. Taking account of the surrounding context, the proposed podium height is considered acceptable.
70. It is recommended that conditions of consent ensure that a number of matters are taken into account in the brief for the competitive design process and the future Stage 2 application including the impact of the proposed ‘exoskeleton’ structure on the new laneways and upper level commercial space, the requirement for the competitive design process to include both the 1939 and the 1965 building and to ensure that the design of the redeveloped 1965 building does not adversely impact on the setting of the 1939 building.

71. As no response has yet been received from the relevant Commonwealth body on the impact of the development on the airspace operations of Sydney Airport as required under Clause 7.16, it is recommended that the decision be delegated to the Chief Executive Officer following receipt of this advice.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Philip Jamieson, Senior Planner)