

ITEM 6. SECTION 96(2) APPLICATION: 115-119 BATHURST STREET SYDNEY**FILE NO: D/2013/554/A****DEVELOPMENT APPLICATION NO: D/2013/554/A****SUMMARY****Date of Submission:** 24 December 2013**Applicant:** Greenland (Sydney) Bathurst Street Development Pty Ltd**Architect:** BVN Donovan Hill / Woods Bagot**Developer:** Greenland (Sydney) Bathurst Street Development Pty Ltd**Cost of Works:** \$0

Summary: The application is a Section 96(2) modification to amend a Stage 1 consent for a new retail, residential and hotel development approved on 5 November 2013. The application seeks consent to amend the approved building envelope and alter or delete a number of conditions attached to the Stage 1 approval as 'design development' of the project has progressed. A separate and concurrent Stage 2 application has been lodged and the amendments to the subject Stage 1 will allow both applications to 'align' in terms of the siting of the proposed new building.

The changes proposed in the modification application are:

- to amend the position of the high rise part of the proposed tower (levels 25-66) such that it will protrude some 3.1m for 15m along its eastern edge towards Pitt Street;
- to provide an overhang to Pitt Street to accommodate a proposed 'creative hub' within the podium;
- to extend the podium at its western edge and to permit a minor intrusion of balconies beyond the approved building envelope on the western edge.
- move part of the building inwards from the property boundary on the western edge.

- to provide a roof terrace to the 1939 heritage building on the site.

Summary:
(continued)

It is also proposed to amend and/or delete a number of conditions of consent relating to design matters, contamination, a coach parking management plan, floorspace and public art and signage strategies on the basis that they can be appropriately dealt with as part of the Stage 2 DA.

Summary Recommendation:

That approval be granted to the modification of D/2013/554 as proposed in D/2013/554/A by modification to existing conditions 1, 8(c), 10(a) and 15(a) and the deletion of conditions 14, 19, 21 and 27.

Attachments:

- A - Notice of Determination dated 5 November 2013
- B - 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 subject application is a modification to a previously approved Stage 1 development. Neither the previously approved application nor the subject modification application permits any physical works to be undertaken and the amendment will have no impact on traffic generation;
 - (ii) Transport for NSW and the Roads and Maritime Services have been consulted on the accompanying Stage 2 application for the development of the site and have not objected to that proposal.
- (B) the Section 96(2) modification application number D/2013/554/A be approved, subject to:
- (i) modification of conditions 1, 8(c), 10(a) and 15(a), and the deletion of conditions 14, 19, 21 and 27, as follows, (with changes shown in *bold italics* or a ~~striketrough~~):

(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] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 <i>28 March 2014</i>
DA07-2[F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 <i>28 March 2014</i>

Drawing Number	Architect	Date
DA08 [F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 28 March 2014
DA09[F]	Crone Partners	12 August 2013
DA10 [F]	Crone Partners	12 August 2013
DA11 [F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 28 March 2014
DA12 [F] <i>Issue 1</i>	Crone Partners <i>BVN</i>	12 August 2013 20 December 2013
DA13 [F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 28 March 2014
DA14 [F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 28 March 2014
DA15 [F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 28 March 2014
DA16 [F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 28 March 2014
DA17 [F] <i>Issue 2</i>	Crone Partners <i>BVN</i>	12 August 2013 28 March 2014

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.

(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; **and**
- (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.

(10) COMMERCIAL/CREATIVE HUB FLOORSPACE

- (a) The proposed commercial/creative hub floorspace wrapping the car parking shall be at least **predominantly** 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.

~~**(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, **4.6**, 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.

~~**(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.~~

~~**(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.~~

~~(27) 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.~~

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.
5. A plan showing the site location and surrounding properties is provided below.

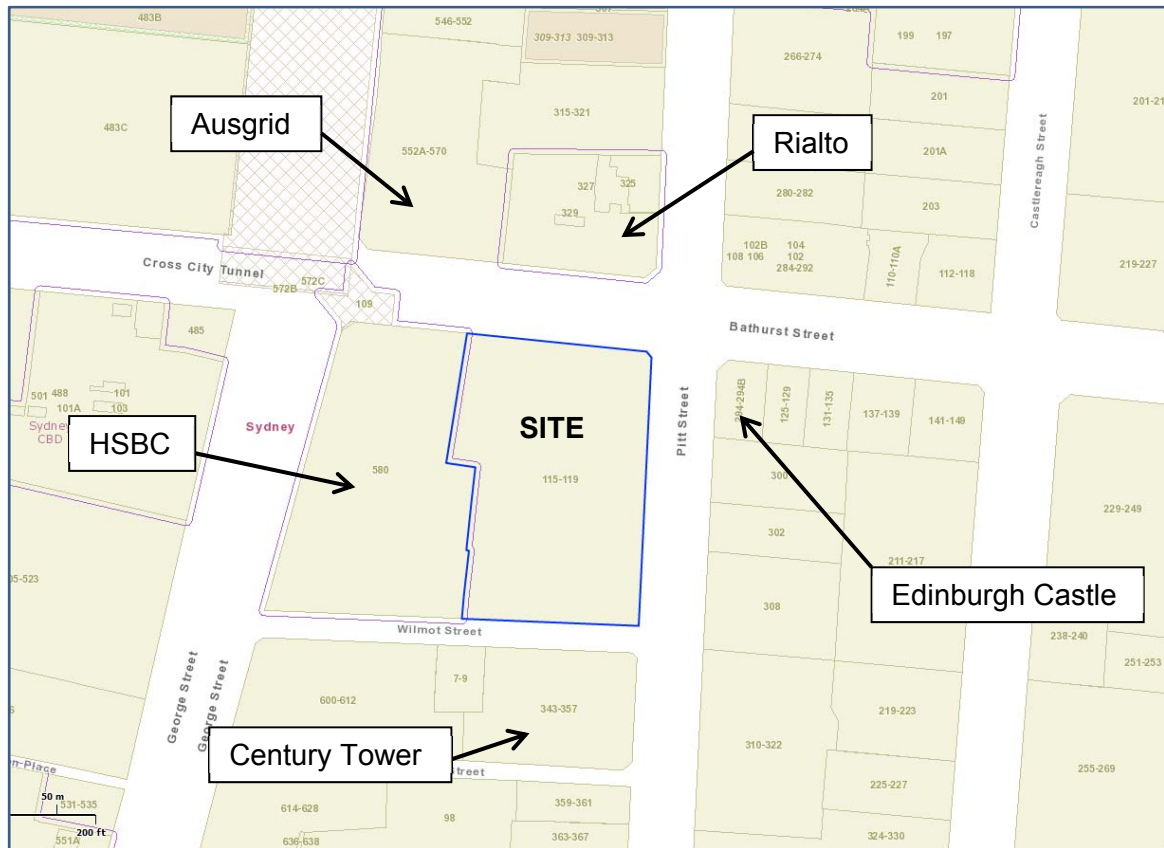


Figure 1: Location Plan

6. Photographs of the site are provided below.

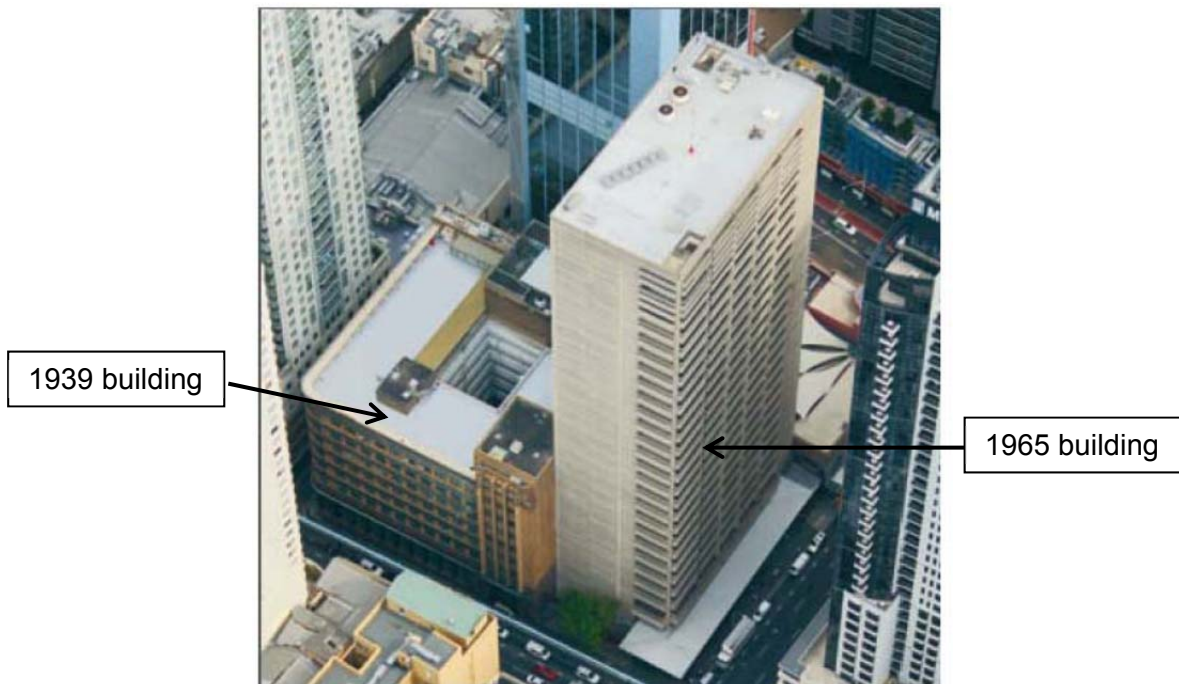


Figure 2: Aerial view of subject site



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



Figure 4: The eastern facade of the 1965 building



Figure 5: The 1939 building on the southern portion of the site



Figure 6: Corner of George and Bathurst Streets



Figure 7: Corner of George and Bathurst Streets

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

Stage 1 Approval

7. Application D/2013/554 (the application that is the subject of this modification application) was granted on 5 November 2013 for 'Stage 1 DA for a mixed retail/commercial/residential/hotel development'. The proposal included 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 building for retail/commercial/residential uses with a maximum building height of 235m. Selected photomontages of the approved building envelope are provided below.



Figure 8: Photomontage looking north along Pitt Street



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



Figure 10: Photomontage looking west along Bathurst Street



Figure 11: Photomontage from George Street

Previous Applications

8. Application D/2008/703 was given deferred commencement consent 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.
9. Application D/2008/979 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.
10. Application D/2008/979/A 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)'*.
11. Application D/2009/1539 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.

12. Application D/2011/452 was given deferred commencement consent on 22 September 2011 for '*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.

Demolition Applications

13. Application D/2013/1350 was granted on 14 November 2013 for 'Internal demolition works within existing 1965 commercial office tower including removal of floor and wall finishes, non-load-bearing wall structures and ceilings and disconnection and partial removal of services'.
14. Application D/2013/1452 was also granted on 14 November for 'Internal demolition works within existing heritage building including removal of mezzanine, escalators, basement ceiling, removal of louvers within lightwell, removal of hazardous materials and disconnection and removal of services'. Some works were also undertaken to the 1939 building without the requirement for development consent.

Marketing Suite Application

15. Application D/2013/1012 was granted on 28 August 2013 to '*Use part of ground floor of building fronting Bathurst Street as a temporary information/marketing suite and associated works and signage*'. That application has subsequently been amended twice.

Stage 2 Approval

16. Application D/2013/1822 was lodged on 26 November 2013 for '*Integrated Development Application for partial demolition of existing buildings, construction of a 67-storey mixed-use building, accommodating 490 residential apartments, 2,092sqm of creative hub floor space and 497sqm of retail floor space and 233 car parking spaces, and the adaptive re-use of the existing heritage building (at 339 Pitt Street) as a 173-room hotel, with associated landscaping and public domain improvement works*'. That application is being presented as a separate report for consideration.

PROPOSAL

Changes to Building Envelope

17. The changes proposed to the building envelope are:
 - (a) to shift the building in an eastwards direction on part of the high-rise component of the development (being levels 25-66) up to 3.1m. This will reduce part of the setback from Pitt Street which was approved at 6.1m (see **Figures 12 and 13**);
 - (b) to alter the setbacks on the western edge for that part of the high-rise component of the development (being levels 25-66) such that these will range between 0.1 and 5m (setbacks between 0.3 and 3m approved). This will increase part of the setback to this side of the tower (see **Figure 12**);

- (c) minor intrusion of the balconies on the high-rise (levels 25-66) component (see **Figure 15**);
- (d) introducing an overhang to Pitt Street (2.3m projection along a length of 23m) and Bathurst Street (1-1.8m projection along a length of 18m) across three storeys (levels 2-4) (see **Figure 16**);
- (e) extending the western side of the podium to the property boundary (see **Figure 17**); and
- (f) the inclusion of a rooftop terrace to the 1939 building.

Changes to conditions

18. Condition 1 lists the approved plans. The applicant wishes to amend this condition to reflect the changes discussed above.
19. Condition 8(c) requires that the proposed courtyard space between the 1939 building and the 1965 building to remain open to the sky. The applicant wishes to delete this condition.
20. Condition 10(a) requires that the width of the proposed commercial/creative hub should be no less than 6 metres. The applicant wishes to amend this such that the condition reads 'predominantly'.
21. Condition 14 requires that the applicant lodge a public art strategy as part of the Stage 2 application. The applicant wishes to delete this condition and submits that it is appropriate for it to be imposed as a condition of the Stage 2 consent.
22. Condition 15 states that the Floor Space Ratio of the proposal must not exceed the prescribed maximums in the relevant clauses of the Sydney LEP 2012. The applicant wishes to amend this condition to include reference to Clause 4.6 which is an avenue for an applicant to vary the LEP maximum development standards.
23. Condition 19 requires that the applicant provide a detailed signage strategy with the Stage 2 application. The applicant wishes to delete this condition and submits that it is appropriate for it to be imposed as a condition of the Stage 2 consent.
24. Condition 21 requires that the applicant lodge a Remedial Action Plan. The applicant wishes to delete this condition altogether.
25. Condition 27 requires that the applicant lodge a Coach Parking Management Plan. The applicant wishes to delete this condition altogether.

IMPLICATIONS OF THE PROPOSAL

City Of Sydney Act 1988

26. 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 planning 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.”*

27. Taking account of the above, the following are noted:

- (a) the subject application is a modification to a previously approved Stage 1 development. Neither the previously approved application nor the subject modification application permits any physical works to be undertaken and the amendment will have no impact on traffic generation;
- (b) Transport for NSW and the Roads and Maritime Services have been consulted on the accompanying Stage 2 application for the development of the site and have not objected to that proposal.

Threshold Test

28. Section 96 of the Environmental Planning and Assessment Act 1979 states that a consent authority may modify a development consent if *“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)”*.
29. In noting that the essence of the approved development, being a Stage 1 building envelope for a predominantly residential building is maintained, the proposed modification is considered to be substantially the same development as that originally approved.

Merits Assessment

Changes to Building Envelope

30. The following plans show the extent of the changes between what was approved and what is now proposed.

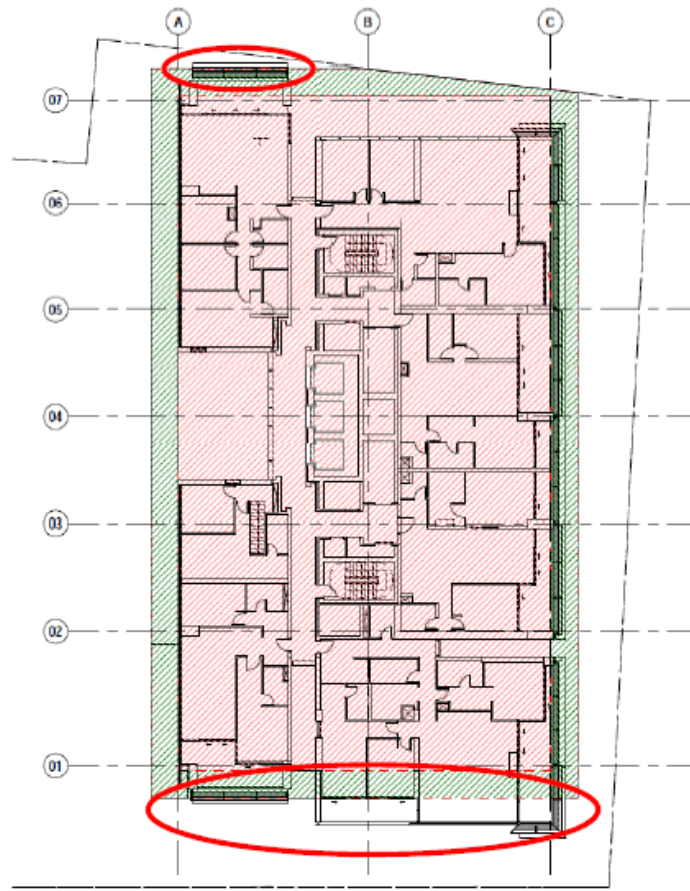


Figure 12: Typical floor plan showing changes between approved and proposed building envelopes

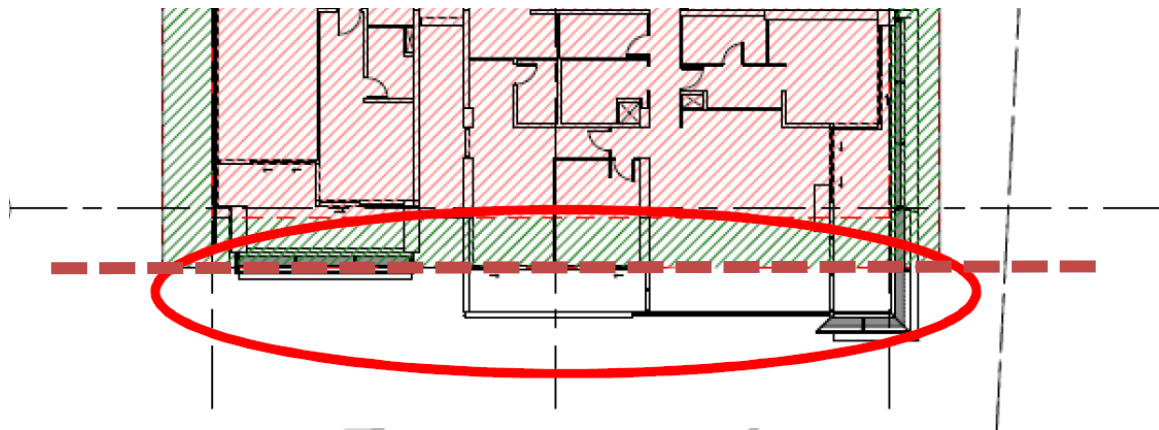


Figure 13: Detail showing changes between approved building envelope (dashed line) and proposed building envelope on eastern side (levels 25-66)

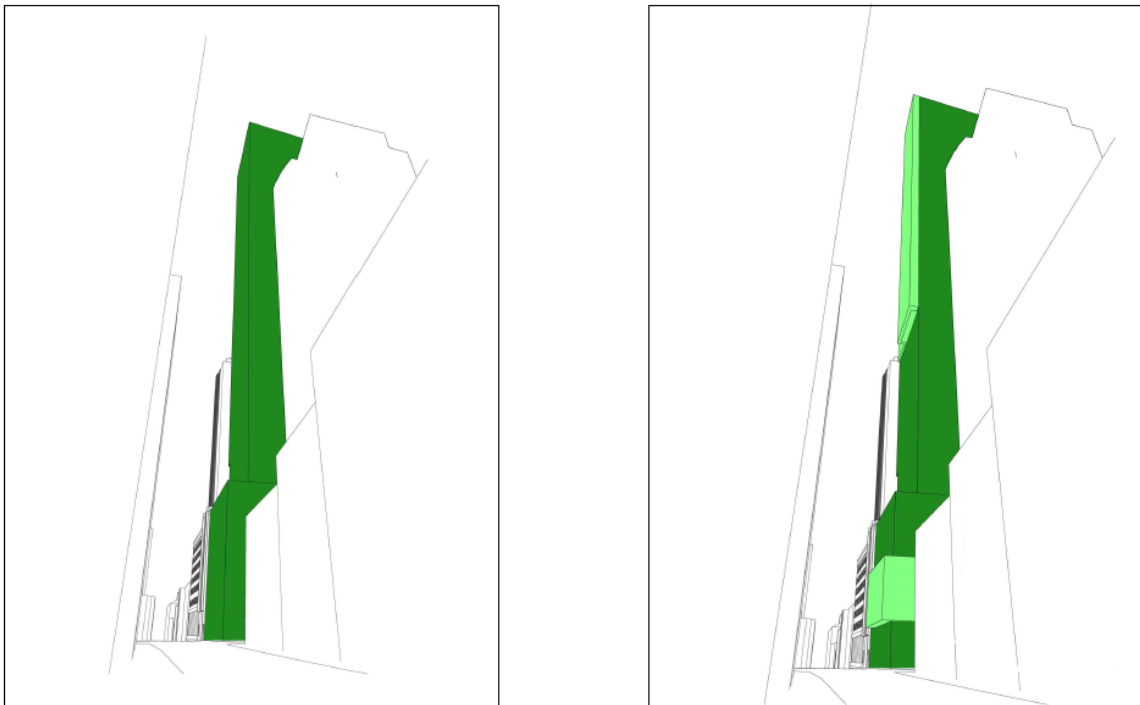


Figure 14: Impact of proposed changes when viewed from Pitt Street looking south (approved – left, proposed – right)

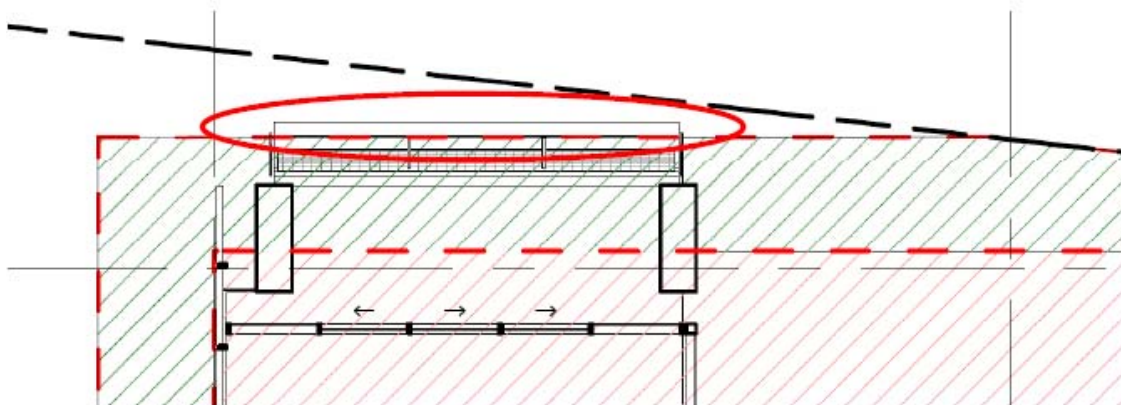


Figure 15: Detail showing extent of protrusion of balconies beyond approved building envelope (levels 25-66)

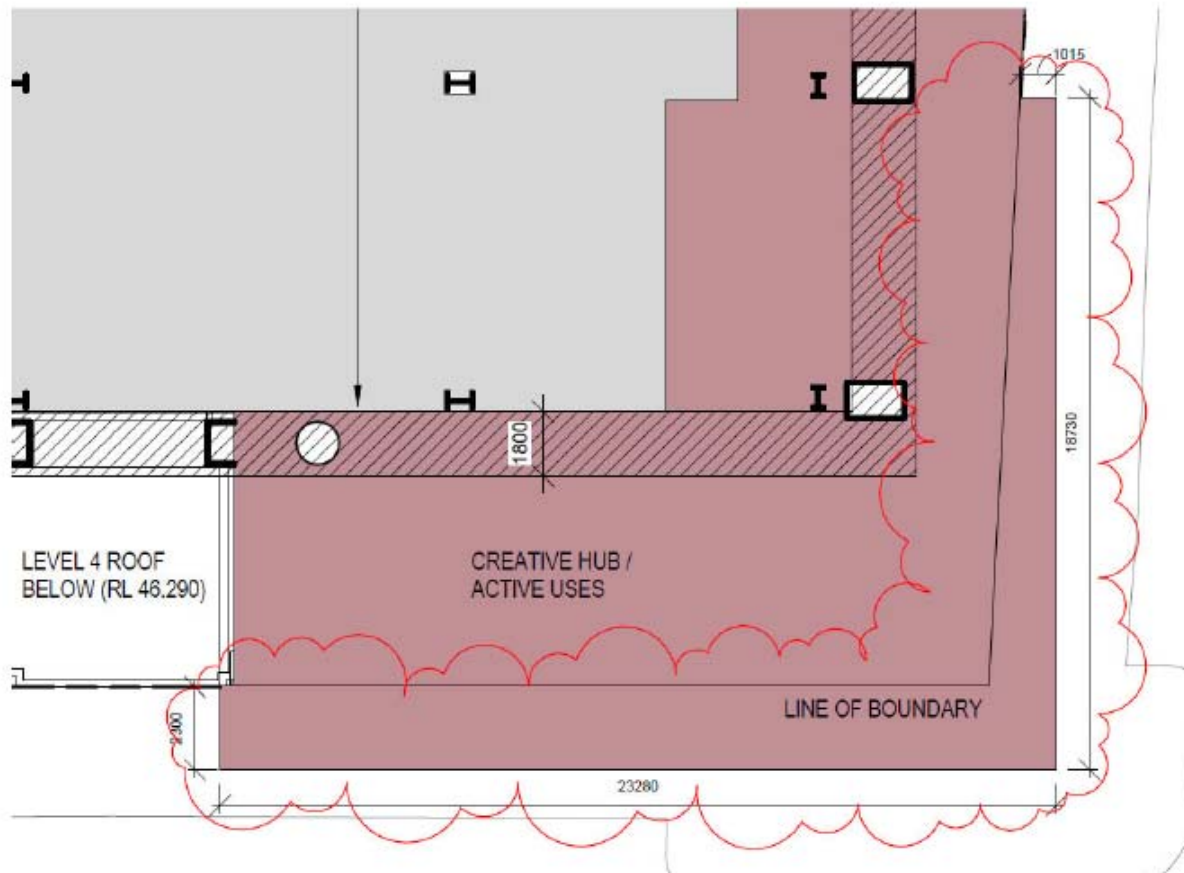


Figure 16: Plan showing extent of overhang to Pitt and Bathurst Streets (shown clouded) on levels 2-4

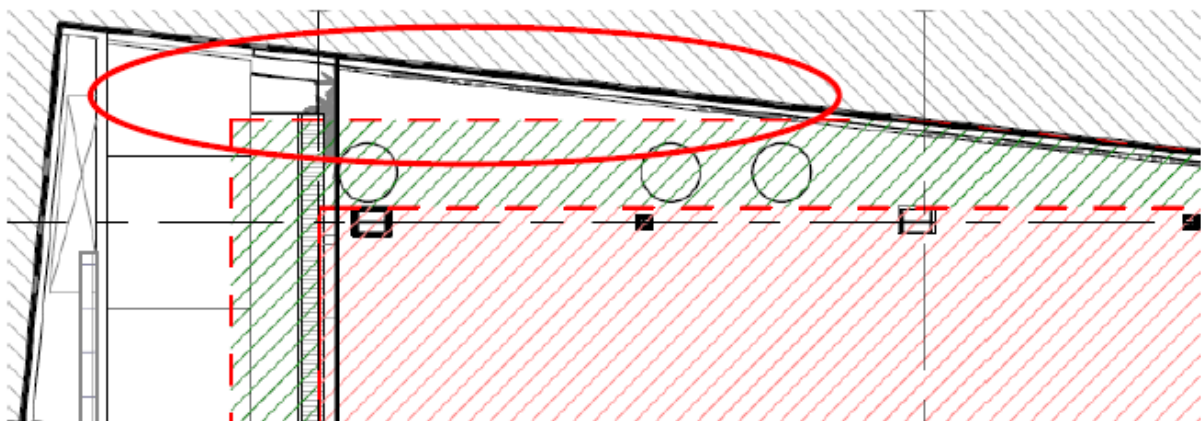


Figure 17: Plan showing changes to podium

31. The proposed modification to the building envelope has merit and is supported. In particular, the following matters are noted:

- (a) Following 'design development' and the conclusion of the competitive design process that occurred after approval of the Stage 1 consent, the position of the tower above levels 25-66 has altered. The result of this is that the building now 'intrudes' into the previously proposed eastern setback (6m) by up to 3.1m. At the same time, the western setback (proposed at between 0.3-3m) will increase to 5m in places. However, some of the balconies proposed on the western façade will intrude beyond the zone of the approved building envelope by approximately 450mm. These balconies are located on the south western corner of the development facing westwards.
- (b) 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, to a large extent, been established by the existing building.
- (c) Whilst the proposed change does not comply with the required DCP setbacks, the applicant has provided both shadow diagrams and perspectives of the tower which demonstrate that the impacts to Pitt Street will be minimal. It is noted that the shift in the position of the tower will only be to levels 25 and above and as such, the change will not be discernible in respect of shadowing impacts or when viewed from the street.
- (d) As the design development of the tower has progressed, the western setbacks have increased. At the time of approval, the proposed setbacks ranged from between 0.3-3m (taking account of the 'angled' boundary profile). The setback of the proposed tower will now range from between 0.1-5m, generally improving the setbacks to that side of the site.
- (e) Whilst again, this does not comply with the required setbacks, these have generally increased from the original proposal. Furthermore, the 0.1m setback will be to the edge of the structural elements associated with the balconies and the 'trafficable' parts of the balconies will be located 1.4m from the boundary. These setbacks are considered acceptable.
- (f) The proposed overhang to Pitt and Bathurst Streets will project a maximum of 2.3m from the property boundary. As it is proposed to erect awnings around both the Pitt and Bathurst Street frontages above ground floor level, the appearance of a projection will be reduced. The proposal is considered to comply with the provisions contained within Schedule 4 of the *Sydney DCP 2012*.
- (g) The proposal includes the inclusion of a hotel roof terrace to the 1939 building. Council's Heritage Specialist has advised that this has no bearing on the heritage outcome. Further assessment of the redevelopment of this building is considered as part of the Stage 2 application and appropriate conditions are recommended.

Changes to conditions

32. The proposed changes to the conditions have merit and are supported. In particular, the following matters are noted:
- (a) The changes to Condition 1 to reflect the amended plans are supported for the reasons discussed above.

- (b) The changes to Condition 8 to remove the requirement for the proposed courtyard space between the 1939 building and the 1965 building to remain open to the sky are also supported. The applicant has requested this change to alleviate wind impacts that would otherwise have occurred should this have remained open. This has been supported by a Pedestrian Wind Environment Study lodged with the application. Furthermore, the design impacts of this change have been considered as part of the Stage 2 application, have been accepted by Council's Heritage Specialist and are considered to be acceptable.
- (c) The change to Condition 10(a) to allow the width of the creative hub/commercial space on levels 2-8 of the building are also considered acceptable. At its narrowest, part of the space will measure approximately 4m. However, the 'usability' of the space has been demonstrated as part of the Stage 2 application and as such, the change to the condition is supported.
- (d) The deletion of Condition 14 which required the applicant to lodge a public art strategy with the Stage 2 application is also supported. It is considered reasonable and appropriate that this be lodged as a condition of the Stage 2 approval which is included as one of the recommended conditions.
- (e) The change to Condition 15 to include reference to Clause 4.6 is also considered reasonable. It is noted that the floorspace proposed as part of the Stage 2 application is in excess of the FSR permitted for the site and that the applicant has utilised the provisions of Clause 4.6 which are able to be utilised at Stage 2 when appropriate.
- (f) The proposal to delete Conditions 19, 21 and 27 relating to Contamination, a Signage Strategy and a Coach Parking Management Plan are also supported. Conditions relating to the latter two matters are considered appropriate to impose as conditions of the Stage 2 consent. The deletion of the requirement to lodge a Remedial Action Plan has been discussed with Council's Health Unit and is considered acceptable.

Section 79C Assessment

- 33. Besides the matters discussed elsewhere in this report, the previous assessment under Section 79C of the Environmental Planning and Assessment Act 1979 is still relevant.

POLICY IMPLICATIONS

- 34. Not applicable to this report.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

- 35. There is no change to the cost of development so is not therefore subject to a levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003.

PUBLIC CONSULTATION**Section 79C(1)(d)****EXTERNAL REFERRALS****Notification, Advertising and Delegation (Submissions Received)**

36. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified. As such, the application was notified for a period of 14 days between 10 and 25 April 2014. As a result of this notification there were 5 submissions received. The issues that were raised and a response to these are detailed below:

Setbacks

(a) Inadequate setbacks to the western boundary of the site.

Response – This is discussed above. Although the structures associated with the balconies will intrude into the previously approved setback, the setbacks to the western boundary will generally increase, in some cases up to 5m from the previously approved maximum of 3m. Furthermore, the trafficable parts of the balconies will be at least 1.4m from the property boundary.

(b) The impact of the decreased setback to the eastern boundary of the site on views and sunlight.

Response – The intrusion into the previously approved setback will be confined to the upper levels of the tower only. At 3.1m this will appear minimal at this elevated level, particularly when the distance between the new building and other surrounding buildings is taken into consideration. Revised shadow diagrams have been provided by the applicant which show this will have a minimal impact.

Creative Hub

(c) The decrease in the width of the space surrounding the upper level car park will be inadequate.

Response – As discussed in the accompanying Stage 2 application, part of this floorspace will be used as a 'creative hub'. The functionality of this space is acceptable for this use.

(d) The overhang to Pitt Street will have an unacceptable visual impact and could create a precedent.

Response – The visual impact of the overhang is discussed above. Any future applications for similar building overhangs will be considered on their individual merit.

(e) The creative hub may only be used by residents of the building.

Response – As discussed in the accompanying Stage 2 report, the creative hub will be leased to Council for a 99 year term. A VPA is currently on exhibition to 'secure' the public benefit.

Opportunity Floor Space

- (f) The developer is seeking 'opportunity' floor space but the proposal does not satisfy one of the requirements for the granting of opportunity floor space.

Response – As noted in the accompanying Stage 2 report, the LEP requires one of a number of criteria to be met for opportunity floorspace to be awarded. The proposed development will involve the infilling of space between the site boundary and the street and the removal of an existing driveway to Bathurst Street, complying with the criteria for an award.

Bulk, Size and Design

- (g) The changes will lead to a building of an unacceptable bulk and size.

Response – For the reasons noted above, the change to the building envelope are considered acceptable.

Acoustic Impacts

- (h) It is unclear how the proposal demonstrates 'design excellence'.

Response – Design excellence has been demonstrated through consideration of the Stage 2 application.

Rooftop

- (i) Noise impacts arising from the use of the 1939 building rooftop.

Response – An acoustic report has been lodged with the accompanying Stage 2 development application. Relevant noise conditions have been attached to that consent. Management of the hotel and rooftop will be the subject of a Plan of Management that will require to be lodged as a condition of the Stage 2 consent.

- (j) The rooftop will be unsightly when viewed from higher buildings surrounding the site.

Response – The works proposed to the 1939 building as part of the Stage 2 application have been considered by Council's own Heritage Specialist and the Heritage Council and are deemed acceptable.

Coach Parking Management Plan

- (k) It is unacceptable for this condition to be deleted.

Response – Deletion of this condition is supported but a similar condition is recommended to be included as part of the Stage 2 consent.

Submission Period

- (l) The short timescale at which submissions were able to be made.

Response – The application was notified for 14 days in accordance with the relevant provisions of the *Sydney DCP 2012*.

Sale of Apartments

(m) The apartments are being sold prior to approval being in place.

Response – This is a matter for the applicant.

Heritage Council

37. The Heritage Council was consulted on the application and considered that the proposed modification is substantially the same development as the original application. No objections to the proposed modification were received.

INTERNAL REFERRALS

38. The application was referred to Council's Specialist Health Surveyor and Transport and Access Unit. No objections to the proposed development were raised.

RELEVANT LEGISLATION

39. The Environmental Planning and Assessment Act 1979. Heritage Act 1977.

CRITICAL DATES / TIME FRAMES

40. Nil.

CONCLUSION

41. The proposal is supported noting that:

- (a) The impacts of the setback changes will be negligible in terms of overshadowing and the visual impact of the tower bulk;
- (b) A number of the conditions proposed for deletion will be imposed on the Stage 2 approval. For others, their removal and/or amendment is considered acceptable for the reasons noted in the report.

42. It is recommended that the Section 96 application be approved. This will require modification of some existing conditions and the deletion of other conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport