

**ITEM 5. DEVELOPMENT APPLICATION: 111-139 DARLINGHURST ROAD POTTS POINT****FILE NO: D/2013/1747****DEVELOPMENT APPLICATION NO: D/2013/1747****SUMMARY****Date of Submission:** 12 November 2013**Applicant:** IRIS Capitol**Architect:** SJB Architects**Cost of Works:** \$50,248,685**Proposal Summary:**

Stage 1 development application that seeks to establish a building envelope for a redevelopment of the site, formerly known as the Crest Hotel. It is envisioned that the site will accommodate a mixed use development comprising residential units within a 14 storey tower over a 5 storey podium containing a mix of residential and commercial uses, with basement parking.

The proposal seeks a maximum height of 55 metres. A maximum FSR of 8:1 applies to the site. The proposal does not seek any quantum of floor space; however, it is noted that there is potential to award up to a bonus 10% in height or floor space under a future design competition and Stage 2 development application, if design excellence is achieved.

Twenty-seven (27) submissions were received regarding view loss, density, height, overshadowing, parking, plant location, privacy, public safety and general inadequate details. A number of residents of the 'Zenith' also stated that they were not notified of the proposal. RailCorp was notified of the proposal and has raised no objections, subject to the inclusion of standard conditions of consent.

The proposal generally complies with the height control with the exception of a small portion of the envelope which exceeds the maximum permissible height of 55m by 200mm. It is recommended as a condition of consent that the envelope be amended so that no part of the building envelope exceeds 55m.

**Proposal Summary:**  
(continued)

As the proposal seeks to retain the existing structure it does not comply with the minimum floor to ceiling heights required for residential apartments under Sydney Development Control Plan (DCP) 2012 or the Residential Flat Design Code (RFDC). The proposal is only capable of complying with the requirements of State Environmental Planning Policy 65 (SEPP 65) and Sydney DCP 2012 subject to significant intervention in the existing building in order to provide double height spaces and mezzanine style apartments, and corner apartments.

Separate view impact analyses were prepared by the applicant and by Council. The proposed building envelope has the potential to result in moderate view impacts on surrounding residential development. Any future design competition and Stage 2 development application will need to address view impacts, residential amenity, provide fine grain articulation and improve the appearance of the building.

**Summary Recommendation:**

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012 (Gazetted December 2012, as amended)
- (ii) Sydney Development Control Plan 2012 (in force on December 2012, as amended)

**Attachments:**

- A - Proposed Envelope Diagrams
- B - Selected Drawings
- C - View Impact Assessment
- D - View Analysis prepared by SJB
- E - View Analysis prepared by Council officers
- F - Policy on the use of Photomontages in the NSW Land and Environment Court
- G - Shadow Diagrams

**RECOMMENDATION**

It is resolved that consent be granted to Development Application No. D/2013/1747, subject to the following conditions:

**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 an Occupation Certificate, where indicated.

**(1) APPROVED DEVELOPMENT**

- (a) Development must be in accordance with Development Application No. D/2013/1747 dated 12 November 2013, and the following drawings:

Drawing Number	Architect	Date
A-2911 Rev 03	SJB Architects	24/06/14
A-2921 Rev 03	SJB Architects	24/06/14
A-2913 Rev 03	SJB Architects	24/06/14
A-501 Rev 03	SJB Architects	24/06/14
A-502 Rev 03	SJB Architects	24/06/14
A-503 Rev 03	SJB Architects	24/06/14

and as amended by the conditions of this consent.

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

**(2) NOT APPROVED**

Consent is not granted for the following:

- (a) Any physical works demolition, refurbishment and / or excavation.
- (b) The layout and number of residential units, commercial spaces and car parking spaces.
- (c) The design of the building exteriors including facades and roofs.
- (d) Public domain and landscape design.
- (e) An additional 10% bonus height or floor space.

- (f) Any wind breaks or signage at roof level.
- (g) Any proposed works on Council's land at the southern tip of the site.

**(3) BUILDING HEIGHT**

The height of the building must not at any point exceed 55 metres as defined by *Sydney Local Environmental Plan 2012*, including any roof top plant or wind breaks.

**(4) FLOOR SPACE RATIO**

No approval is granted by this consent for a quantum of floor space. The final floor space must comply with the provisions of *Sydney Local Environmental Plan 2012*.

**(5) AMENDMENT TO BUILDING ENVELOPE**

Prior to the endorsement of any competition brief relating to the site, the building envelope must be amended so that no part of the envelope exceeds the 55m height limit, and provided to competition participants.

**(6) STAGE 2 DEVELOPMENT**

- (a) Any Stage 2 development application must be contained wholly within the approved building envelope.
- (b) Any Stage 2 development application must include measures for the ongoing protection of the memorial planting located adjacent to the southern corner of the site.

**(7) SEPP 65 AND RESIDENTIAL FLAT DESIGN CODE**

Any Stage 2 development application must comply with all aspects of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) and the Residential Flat Design Code (RFDC). A detailed table of compliance is to be submitted with any Stage 2 Development Application.

**(8) STAGE 2 DESIGN MODIFICATIONS**

Any Stage 2 development application must incorporate the following design modifications:

- (a) The wrap-around awning extending across the southern elevation is not supported. Any future competition brief or Stage 2 development application must not include any awning to the southern elevation.
- (b) The continuous awning to Victoria Street is not supported. Any future competition brief or Stage 2 development application should include entry awnings to the western elevation at an appropriate height and scale.
- (c) The garden bed on Council land at the southern tip of the site is to be excluded.

**(9) COMPETITIVE PROCESS**

- (a) A competitive process must be held in accordance with Clause 6.21 of *Sydney Local Environmental Plan 2012* and Clause 3.3 of *Sydney DCP 2012*. The competition must be held before the lodgement of any Stage 2 development application for the site.
- (b) The Stage 2 development application and competition brief must address the following:
  - (i) Modulation to break up the apparent building length and appropriate articulation of all facades.
  - (ii) The scale and rhythm of the podium facade should relate to the vertical proportions and grain established along Darlinghurst Road.
  - (iii) Design and location of appropriate passive shading devices to exposed facades.
  - (iv) A significant proportion of residential units with double height spaces and dual aspects should be provided in order to provide adequate cross ventilation and compensate for low floor to ceiling heights.
  - (v) Residential uses on the first floor of the podium is not supported. Consideration must be given to appropriate types and distribution of commercial and residential uses within the lower levels of the building, particularly with regard to residential amenity.
  - (vi) The distribution of height and bulk should minimise potential view impacts on surrounding development. In particular, careful consideration must be given in determining the appropriate location of any bonus floor space or height that may be awarded.
  - (vii) The provision of quality private and communal landscaped open space, having regard to site conditions. It should be noted that winter gardens may be appropriate in this location, however these would be included in floor space calculations.
  - (viii) An appropriate mix of residential units must be provided in accordance with *Sydney Development Control Plan 2012*.
  - (ix) Opportunities for increased activation on Victoria Street.
  - (x) Opportunities to incorporate public art, in accordance with the *City of Sydney Public Art Policy*.
  - (xi) Opportunities to incorporate high quality communal green roof and communal landscaping within the site.
  - (xii) Requirements of RailCorp contained in condition 9.

- (xiii) The ability of the proposed development to comply with the relevant provisions of Council's *Policy for Waste Minimisation in New Developments 2005* which requires facilities to minimise and manage waste and recycling generated by the proposal.
- (c) The competition brief must include as an attachment the planning assessment report prepared for the Stage 1 development application, including attachments, but excluding attachment B.
- (d) The competition brief must not include indicative floor plans prepared by SJB Architects as part of the submission for the Stage 1 development application.

#### **(10) CONTAMINATION INVESTIGATION**

Any Stage 2 development application must be accompanied by a detailed contamination investigation prepared by a suitably qualified consultant.

#### **(11) RAILCORP REQUIREMENTS**

Any future Stage 2 development application must satisfy the following requirements of RailCorp:

- (a) An accurate survey locating the development with respect to the rail boundary and rail infrastructure must be provided. The survey is to be prepared by a registered surveyor to the satisfaction of RailCorp.
- (b) A services search is to be conducted to establish the existence and location of any rail services. The services search is to be conducted using equipment that will not have any impact on rail services and signalling. Should rail services be identified, the applicant must contact RailCorp to determine whether these services should be relocated or incorporated within the development site.
- (c) A Geotechnical Engineering Report is to be submitted to RailCorp for review and must demonstrate that the development of the site will not impact on the rail corridor or on the structural integrity of rail infrastructure through loading and ground deformation. The report must include structural design details/ analysis and is required to address the potential impact of any demolition or excavation and vibration in rail facilities, and loadings imposed on RailCorp Facilities by the development.

#### **(12) ACOUSTIC REPORT**

The building must provide high levels of acoustic attenuation for occupants when windows are closed. Any future Stage 2 development application must be accompanied by the following:

- (a) An acoustic report prepared by a suitably qualified acoustic consultant \* must be submitted as part of any Stage 2 development application. The acoustic report must include noise control measures to ensure that habitable rooms will not be affected by offensive noise from the occurrence of any structure and/or airborne noise resulting from operational activities conducted within neighbouring licensed premises, including operation of premises located within the site.
- (b) The internal noise criteria adopted for residential premises shall be in accordance with the City of Sydney noise criteria used for licensed premises below rather than Australian Standards:
- (i) The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use must not exceed the background noise level ( $L_{A90, 15 \text{ minute}}$ ) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
  - (ii) The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use must not exceed the background noise level ( $L_{A90, 15 \text{ minute}}$ ) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
  - (iii) Notwithstanding compliance with (a) and (b) above, the  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use must not exceed the background noise level ( $L_{A90, 15 \text{ minute}}$ ) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential property between the hours of 7am and 12pm.
  - (iv) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential property between the hours of 12.00 midnight and 7.00am.
  - (v) The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use must not exceed the background noise level ( $L_{A90, 15 \text{ minute}}$ ) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.

**Note:** *The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use is as per the definition in the Australian Standard AS1055-1997 Acoustics – Description and measurement of environmental noise. The background noise level  $L_{A90, 15 \text{ minute}}$  is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver. It is to be determined from the assessment  $L_{A90}$  / rating  $L_{90}$  methodology to be in complete accordance with the process listed in Appendix B of the NSW EPA Industrial Noise Policy and relevant requirements of AS1055.1997.*

*\*Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics.*

**(13) FLOODING AND OVERLAND FLOW**

Any Stage 2 development application must include a flooding and overland flow report prepared by a suitably qualified engineer. The report must include, but not be limited to, the following information:

- (a) A review of the impact of overland flow and flooding in the area,
- (b) Set flood planning levels using the 100 year flood level for all entry points and lifts; and PMF flood level for all driveway accesses for the sites relevant frontages.

**(14) PUBLIC DOMAIN PLAN**

Three copies of a detailed Public Domain Plan must be prepared by an architect, urban designer or landscape architect and must be lodged with any Stage 2 Development Application.

The Public Domain Plan must be prepared in accordance with the City of Sydney's Public Domain Manual.

**(15) LANDSCAPING OF THE SITE**

- (a) A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted as part of any Stage 2 development application. The plan must include:
  - (i) Location of existing and proposed structures on the site including existing trees (if applicable);
  - (ii) Details of earthworks including mounding and retaining walls and planter boxes (if applicable);
  - (iii) Location, numbers and type of plant species;
  - (iv) Details of planting procedure and maintenance; and
  - (v) Details of drainage and watering systems; and
  - (vi) Details of green walls and green roof treatments.



## BACKGROUND

### The Site and Surrounding Development

1. Site visits were carried out on 10 January, 21 February and 19 June 2014.
2. The site is irregular in shape and occupies an area of approximately 1,629m<sup>2</sup>. It is located at the intersection of Darlinghurst Road, Victoria Street and Bayswater Road (refer to Figure 1).
3. The Eastern Suburbs railway line extends beneath the southern portion of the site. Entrances to the Kings Cross railway station are located directly adjacent to the site on Darlinghurst Road and Victoria Street.
4. There is a fall across the site from north to south of 0.8m along Darlinghurst Road and 2.5m along Victoria Street.
5. The site contains a mixed use development known as the Crest Hotel, comprising a 14 storey tower above a 2 to 3 storey podium with three basement levels.
6. A 227 room hotel is contained within the tower, accessed from Victoria Street.
7. The podium currently contains a small hotel foyer and retail uses comprising a nightclub, a sports bar, TAB and bottle shop at the ground floor. The first floor of the podium is currently vacant and the second floor contains the hotel reception area, function rooms and kitchen.
8. Vehicle access to the site is from Victoria Street. Parking for 54 vehicles is located on basement levels 2 and 3. A substation, loading bay, hotel laundry and back of house service areas are located on basement level 1.
9. A lift overrun, plant room, windbreak structures and various mechanical and communication services are located at roof level.



**Figure 1:** Aerial photo of the subject site, highlighted.

10. The existing development has a maximum height of 54m to the top of the lift overrun from Victoria Street, and approximately 50 to 52 metres to the roof of the building.
11. Views are available from most floors of the development of the CBD and Sydney Harbour to the north-west, and views of Rushcutters Bay and Bradleys Head to the north east.
12. The existing development has a gross floor of area of 11,704m<sup>2</sup>, resulting in a floor space ratio of 7.1:1.
13. Located on the southern edge of the site is a landscaped garden bed on Council owned land, set behind an iron fence and low masonry wall containing a memorial planting known as 'Jacaranda for Jasper' (refer to Figures 7 and 8). This is excluded from the application.
14. Surrounding land uses are characterised by mixed commercial and residential uses, including retail, licensed food and drink premises and tourist and visitor accommodation.
15. Surrounding development along Darlinghurst Road is predominantly between 3 and 5 storeys. On the western side of Victoria Street development in the immediate vicinity of the site ranges between 4 and 9 storeys, while on the eastern side of Victoria Street are a number of taller buildings up to 14 storeys. Directly adjacent to the southern corner of the site is a 19 storey mixed use development.



16. Photos of the site and surrounds are provided below:



**Figure 2:** View of the site looking north-east from Victoria Street



**Figure 3:** View of the site from adjacent residential tower located to the south, showing the plant room, wind breaks and associated services located on the roof





**Figure 4:** View of the site, looking west from Bayswater Road



**Figure 5:** View of the site looking south west along Darlinghurst Road



**Figure 6:** View of the western facade of the site addressing Victoria Street, with a 3 storey podium containing entries to the car park and hotel foyer and a substation.



**Figure 7:** View of the southern corner of the site, from the intersection of Victoria Street and Darlinghurst Road





**Figure 8:** A garden bed containing a memorial planting known as 'Jacaranda for Jasper' is located adjacent to the southern corner of the site

## PROPOSAL

17. The proposal is a Stage 1 development application to establish a building envelope and design parameters for the future development of the site. In accordance with Clause 6.21 (5)(a)(ii) of the *Sydney Local Environmental Plan 2012* (Sydney LEP 2012), a Stage 1 development application is required as the proposed envelope exceeds 25m in height (up to 55m is proposed).
18. The proposed Stage 1 building envelope anticipates the following:
  - (a) retention of existing building floor slabs and columns;
  - (b) an enlarged building footprint including an additional 2-3 storeys to the podium resulting in a 5 storey podium, and an additional storey to the tower, up to 55 metres;
  - (c) conversion of the existing 227 room hotel to an indicative 174 residential units, commencing at the first floor of the podium (note: the number of units may reduce in order to comply with unit mix and size requirements);
  - (d) retention of the existing commercial uses on the ground floor;
  - (e) replacement of existing awnings with a continuous awning extending from Darlinghurst Road at the first floor, around the southern corner of the site and along Victoria Street at the second floor;

- (f) retention of existing car park and loading dock accessed from Victoria Street (note: current non-compliances with parking standards to be addressed); and
  - (g) basement parking for up to 52 vehicles (50 resident parking spaces and two commercial tenant spaces).
19. Indicative plans submitted show that the proposed building envelope is capable of achieving a FSR of 9:1, and do not include any communal open space.
  20. The applicant proposes to hold a competitive design process to resolve the detailed design of the development prior to proceeding with a Stage 2 development application.
  21. In accordance with Clause 6.21(7) of Sydney LEP 2012, the Applicant intends to seek a bonus of up to 10% in height or floor space as part of a Stage 2 development application.
  22. Photomontages, indicative plans and the proposed building envelope are provided below and in Attachments A and B.



**Figure 9:** Photomontage of the proposed building envelope, viewed from Victoria Street



**Figure 10:** Photomontage showing the proposed building envelope, viewed from Bayswater Road





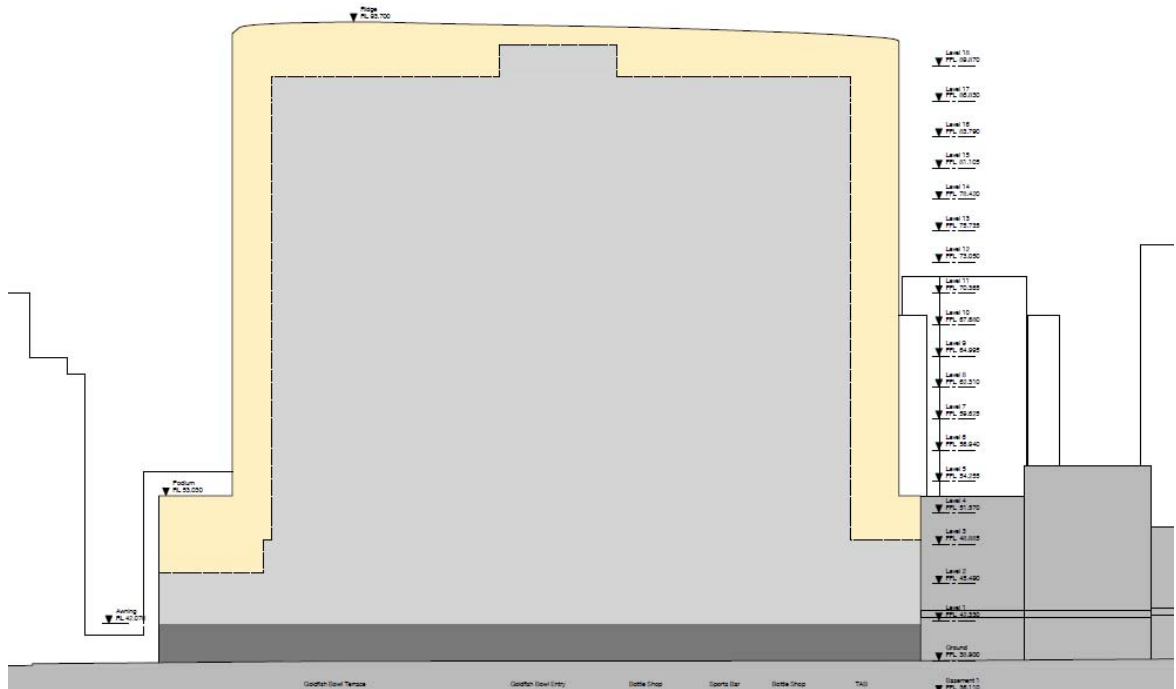
**Figure 11:** Photomontage showing the eastern elevation of the proposed building envelope, viewed from Darlinghurst Road



**Figure 12:** Photomontage showing the western elevation of the proposed building envelope, viewed from Victoria Street



Figure 13: Proposed building envelope (west elevation)



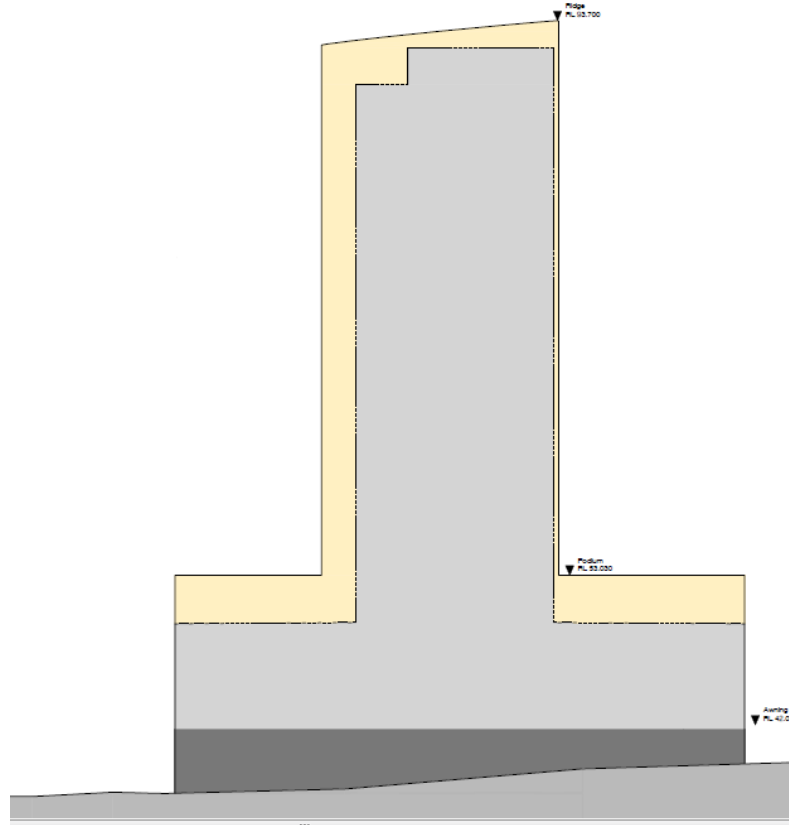


Figure 15: Proposed building envelope (south elevation)

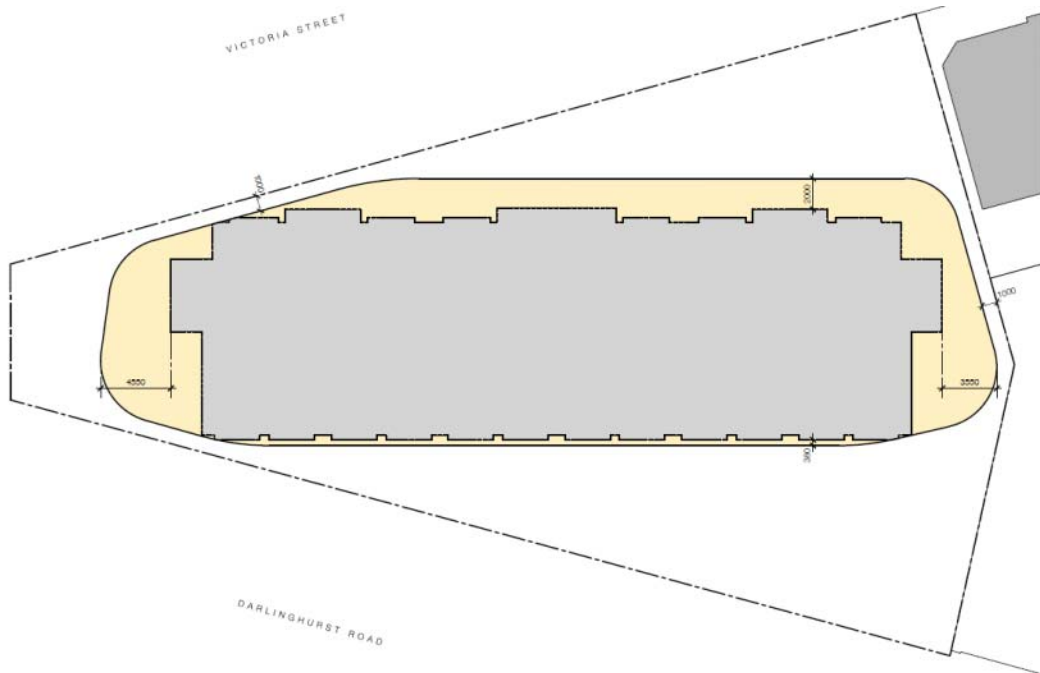


Figure 16: Proposed tower envelope

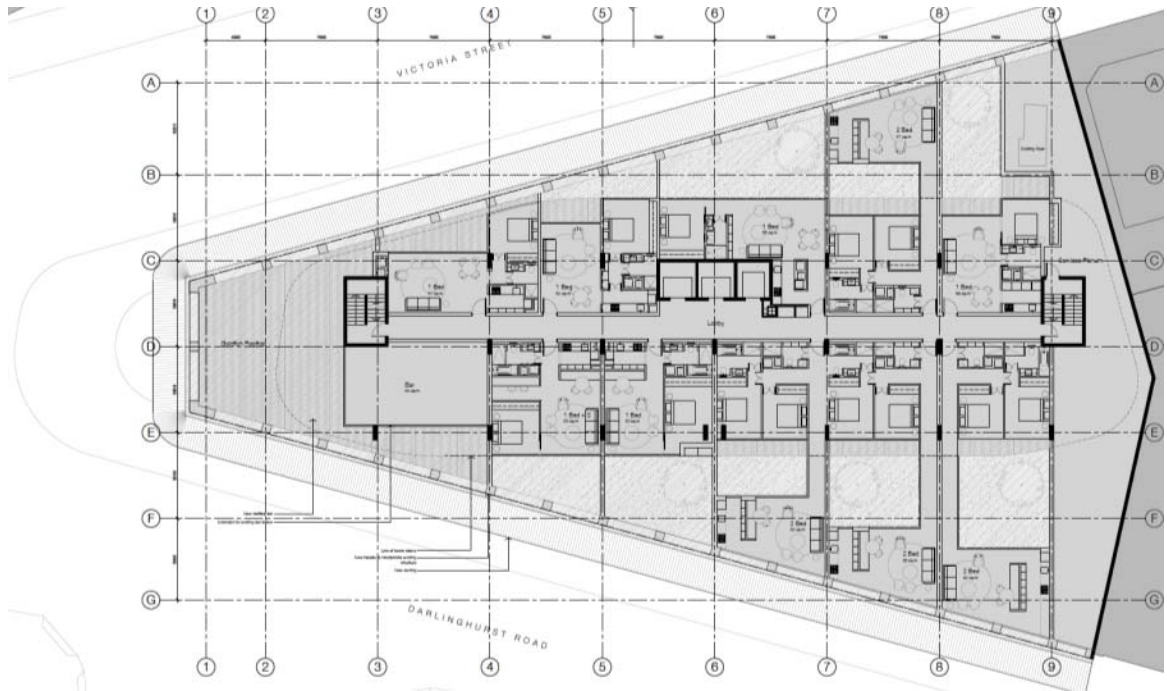


Figure 17: Indicative residential/commercial floor plan Level 1 (podium)

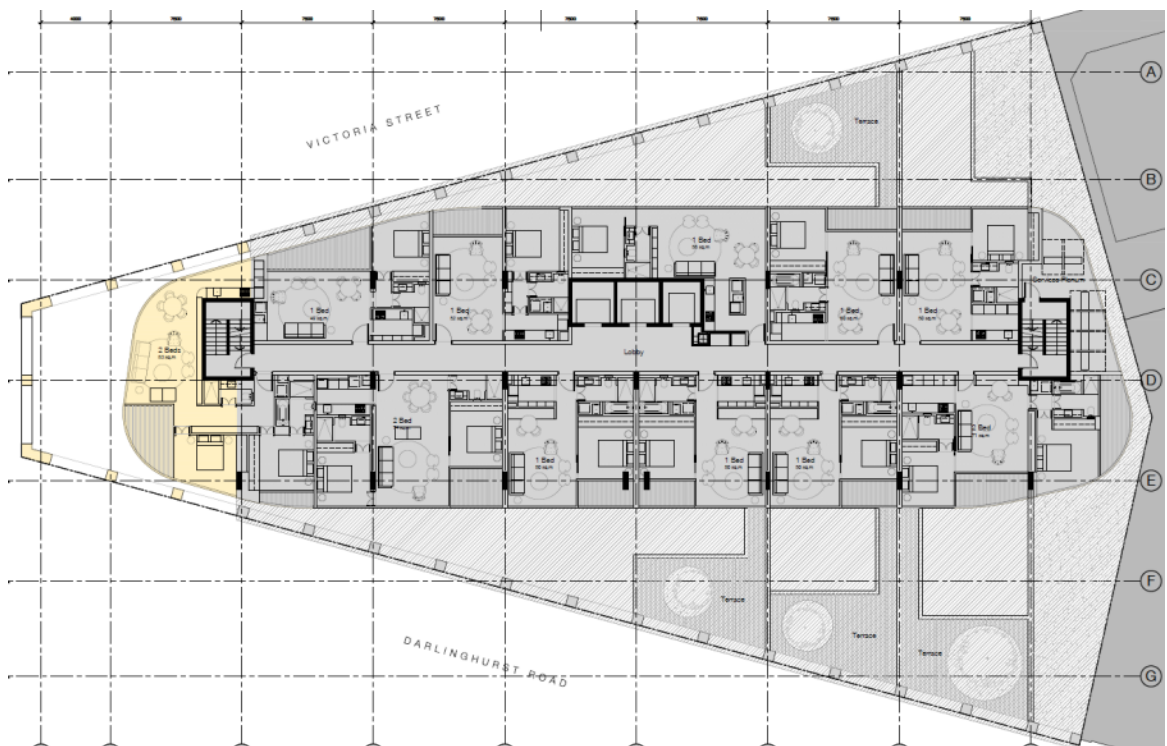
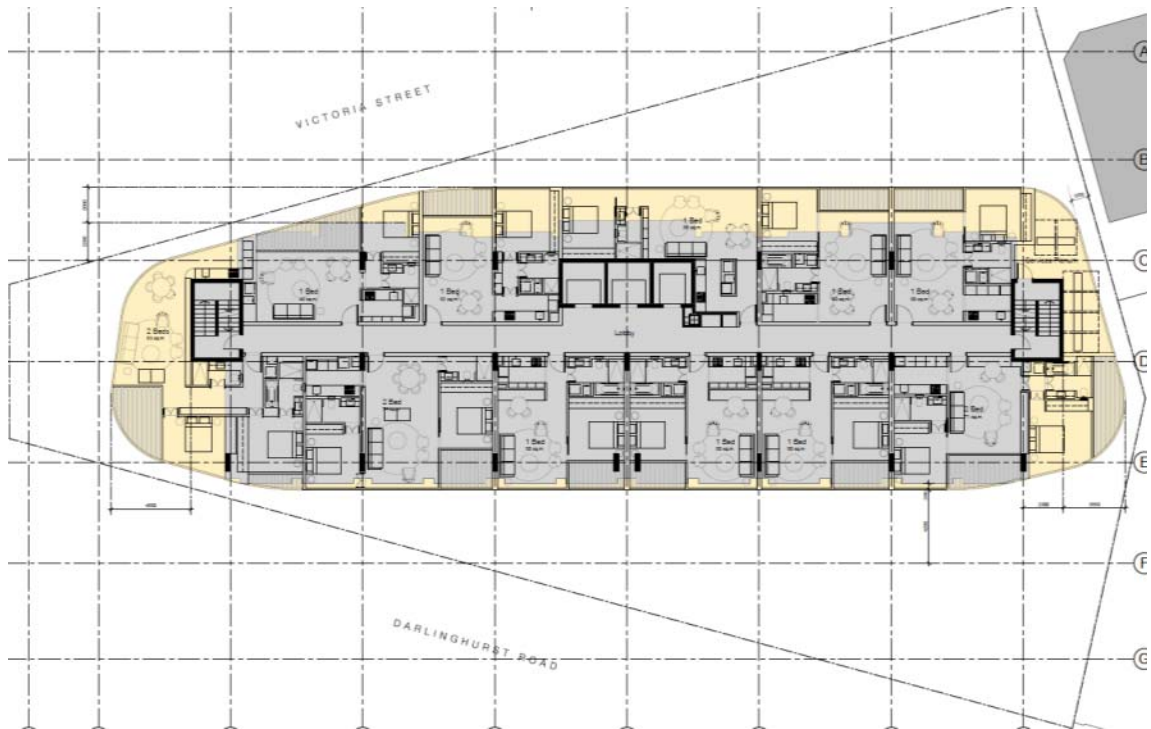


Figure 18: Indicative residential floor plan Level 2 (podium)





**Figure 19:** Indicative residential floor plan Levels 3-10

### HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

23. The Applicant attended a pre-DA meeting with Council staff in September 2012 to discuss the potential development of the site, with a view to converting the existing hotel accommodation to residential units.
24. The following issues were raised at the meeting:
  - (a) any proposed development must comply with height and FSR controls;
  - (b) any proposed development should take a holistic approach to the entire site;
  - (c) the existing structure will be required to achieve adequately sized units with good amenity and an acceptable dwelling mix;
  - (d) noise and safety will need to be addressed;
  - (e) solutions to ambient noise levels in naturally ventilated apartments will require careful consideration;
  - (f) reconsideration of retaining licensed uses in the podium levels is encouraged;
  - (g) car parking, waste, circulation and loading issues to be resolved in accordance with Australian Standards;
  - (h) service upgrades should be considered in order to achieve high levels of ESD performance;

- (i) the 'Jacaranda for Jasper' located on Council land at southern corner of the site will need to be retained; and
  - (j) opportunities to incorporate public art in any future development should be explored.
25. On 12 July 2013, the Applicant submitted a draft competitive design brief for endorsement by Council. The brief anticipated the refurbishment of the existing building, additional floor space and conversion from a hotel to residential apartments.
26. On 30 August 2013, the Applicant was advised that the draft competitive design brief lacked sufficient detail regarding the location of additional floor space and design outcomes. The Applicant was advised that as the existing building exceeds 25m in height, a site specific development control plan (DCP) or a Stage 1 development application would be required, in accordance with Clause 7.20 of Sydney LEP 2012.

#### **CITY OF SYDNEY ACT 1988 (as amended)**

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

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

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

28. The Director, City Planning, Development and Transport has determined in this instance, the proposal is not considered to have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary.

### **ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS**

29. The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

- (a) Environmental Planning Instruments and DCPs.

### **State Environmental Planning Policy No 55—Remediation of Land**

30. 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.
31. Based on a desktop survey of historic land uses, the site is not considered likely to be contaminated.
32. The proposal involves the retention of the existing base structure, with no further excavation of the site required. As such, it is considered that the site is suitable for the proposed residential use.
33. A condition of consent has been recommended to ensure that as part of any future Stage 2 development, a detailed contamination investigation is submitted to Council.

### **State Environmental Planning Policy (2007) Infrastructure**

34. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.
35. While a rail easement extends below part of the site, Clauses 85 and 86 do not apply as this application relates to a Stage 1 development, and no works are proposed which have the potential to impact on adjacent rail infrastructure.
36. Any future Stage 2 development will be required to satisfy the provisions of the SEPP.

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

37. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 10 design quality principles, being:

- (a) **Principle 1: Context**

The site is located in the Kings Cross entertainment precinct, amongst licensed late night trading venues, retail, tourist accommodation, and high density residential development. The existing building is visually prominent within the local context due to the height of the tower and its location at a busy intersection on the Darlinghurst ridge line.



The proposed building envelope provides adequate separation from adjacent tower development and a narrow floor plate that is capable of achieving adequate internal amenity, subject to detailed design.

The height and horizontal proportions of the existing podium do not respond to surrounding development, and the proposal provides an opportunity to improve the relationship of the site with the surrounding streetscapes. The proposal seeks to increase the length of the tower resulting in the need for greater articulation. Appropriate conditions of consent have been recommended to ensure that any competitive process relating to the site addresses these issues.

(b) **Principle 2: Scale**

The surrounding built form varies in height and scale. Development on Darlinghurst Road in the immediate vicinity of the site is generally between 3 and 5 storeys, while the western side of Victoria Street contains development of between 4 and 9 storeys, while the eastern side contains a 14 and a 13 storey tower. Diagonally adjacent to the site is the 6 storey Kings Cross Hotel, and the 28 storey zenith tower which includes a 5 to 6 storey podium.

The proposed building envelope generally complies with the 55m height limit; however, the 5 storey podium exceeds the street frontage height controls. The increase in the height of the podium is considered to be appropriate within the context of the site and will reinforce the street edge. Refer to further discussion under the heading Issues.

(c) **Principle 3: Built Form**

The detailed building design will be subject to a design competition and Stage 2 development application. The proposed envelope is generally consistent with the applicable planning controls; however, the location and massing of any additional bonus floor space will require careful consideration with regard to streetscape and view impacts. An appropriate condition of consent has been recommended.

(d) **Principle 4: Density**

The density of the site will require assessment as part of any future Stage 2 development application.

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

Compliance with BASIX requirements will form part of any Stage 2 development application in addition to any sustainability initiatives.

(f) **Principle 6: Landscape**

Landscaping will form part of any future Stage 2 development application; however, indicative plans submitted do not include any landscaped areas. It is recommended that as part of any future design competition opportunities to provide landscaping are investigated.

(g) **Principle 7: Amenity**

It is noted that the proposal anticipates retention of the existing licensed venues located within the building at the ground floor. Indicative floor plans submitted show residential units within the podium starting at the first floor. This is not considered appropriate on Darlinghurst Road due to potential amenity impacts arising from the proximity of late night entertainment venues, and an appropriate condition of consent has been recommended. Acoustic treatments will be required to ensure adequate internal noise levels can be achieved. These matters can be resolved during a Stage 2 development application. Refer to discussion under the heading Issues.

The existing building has a floor to floor height of 2.68m which provides for floor to ceiling heights of 2.4m. This does not comply with the minimum 2.7m required by the RFDC for habitable rooms. As the proposal involves retaining an existing structure significant intervention in the base fabric will be necessary to address this as part of a future Stage 2 development application in order to provide mezzanine style apartments with double height spaces and generously sized apartments.

Indicative plans show a number of balconies which do not meet the minimum size required by the RFDC and no provision for communal open space. The design and location of private and communal open space will need to be addressed as part of a future Stage 2 development application. Consideration will also need to be given to wind and acoustic conditions, as well as the provision of solar shading devices to ensure adequate amenity. Appropriate conditions of consent have been recommended.

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

The proposal seeks to retain active uses along Darlinghurst Road, and to provide a separate residential entry on Victoria Street. The proposal provides opportunities for further activation of Victoria Street and for increased passive surveillance.

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

This issue will need to be addressed as part of a future Stage 2 development application.

(j) **Principle 10: Aesthetics**

The design of the building will be the subject of a future design competition and Stage 2 development application approval. A condition of consent has been recommended to ensure that opportunities to incorporate public art form part of any future Stage 2 development application.

38. The Stage 1 building envelope is considered generally acceptable when assessed against the above stated principles and the SEPP 65 generally, which are replicated in large part within Council's planning controls.

39. Any future Stage 2 development application will be required to comply with the provisions of the SEPP 65, and must be accompanied by a Design Verification Statement.

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

40. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
41. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
- (a) protect and improve hydrological, ecological and geomorphologic processes;
  - (b) consider cumulative impacts of development within the catchment;
  - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
  - (d) protect and rehabilitate riparian corridors and remnant vegetation.
42. 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.
43. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. The site is also located within in the Foreshores Waterways Area.
44. The development is consistent with the controls contained with the deemed SEPP.

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

45. A BASIX Certificate has not been submitted with the development application.
46. Any future Stage 2 development application would be required to include a BASIX certificate detailing measures to satisfy BASIX requirements.

**State Environmental Planning Policy No 32—Urban Consolidation (Redevelopment of Urban Land)**

47. SEPP 32 provides for the increased availability of housing within existing urban areas and to assist in meeting the demand for housing close to employment, leisure and retail opportunities.
48. The proposed development of the site is consistent with the aims and objectives of SEPP 32.

**Sydney Local Environmental Plan 2012**

49. The site is located within the B2 Local Centre zone. The proposal relates to a mixed commercial/ residential use and is permissible.
50. The relevant matters to be considered under Sydney LEP 2012 for the proposed development are outlined below.

<b>Compliance Table</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	No	A maximum height of 55m is permitted.  A total height of 55m is proposed, however the building envelope exceeds the height control in part of the southern corner by approximately 200mm. It is recommended that the building envelope be amended to be entirely within the height limit and that any future Stage 2 development application be required to comply with the maximum height control.
4.4 Floor Space Ratio	Capable	A maximum FSR of 8:1 is permitted.  No FSR is being sought as part of this application. Indicative plans submitted indicate a maximum FSR of 9:1 can be achieved within the proposed building envelope. This is a matter that can be resolved as part of a future Stage 2 development application. Refer to discussion under the heading Issues.
5.9 Preservation of trees or vegetation	No	The proposal includes a continuous awning which extends over a garden bed located on the corner of Darlinghurst Road and Victoria Street, and is considered likely to adversely impact on a memorial planting known as 'Jacaranda for Jasper'. Conditions have been recommended to ensure that the awning design is amended so that it does not extend over the garden bed, and that any future development application includes measures for the ongoing protection of the memorial planting. Refer to the discussion under the heading Issues.

<b>Compliance Table</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
5.10 Heritage conservation	Yes	The subject site is located within a heritage conservation area. It is identified as detracting. See discussion under the heading Issues.
<b>Part 6 Local provisions - height and floor space</b>		
Division 4 Design excellence	Yes	It is proposed to undertake a design competition as part of a future Stage 2 development application. Conditions of consent have been recommended to ensure that design parameters established for a future design competition satisfy the requirements of this provision.
<b>Part 7 Local provisions—general</b>		
Division 1 Car parking ancillary to other development	Capable	A maximum of 157 car parking spaces are permitted.  Indicative plans include 52 car parking spaces and 4 loading bays.
7.16 Acid Sulphate Soils	Capable	The site is identified as containing class 5 Acid Sulphate Soil, and is located within 500m of land containing class 2 Acid Sulphate Soil. The requirements of this provision are capable of being met through any future Stage 2 development application. An appropriate condition of consent has been recommended.
7.17 Flood planning	Capable	The site is identified by Council as being flood prone. Any future development of the site should incorporate on-site detention, treatment and re-use. The requirements of this provision are capable of being met through any future Stage 2 development application.
7.22 Development requiring preparation of a development control plan	Yes	A DCP is required under this clause as the height of the proposal is greater than 25 metres above ground level. As per Section 83C of the Environmental Planning and Assessment Act 1979, this requirement may be satisfied by a staged development application.

**Sydney Development Control Plan 2012**

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

**2. Locality Statements – Kings Cross**

The subject site is located in the Kings Cross locality. The proposed building envelope is considered to be in keeping with the unique character of the area and design principles subject to detailed design that provides articulation to break up the length of the tower and fine grain design of the podium. The proposal respects the existing street wall height on the western side of Darlinghurst Road by increasing the podium height and reinforces the prominence of the Darlinghurst ridge line and the intersection between Victoria Street, Darlinghurst Road and Bayswater Road.

**3. General Provisions**

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.1 Public Domain Elements	Capable	The application does not include any proposed public domain improvements. There is an opportunity for a future Stage 2 development application to incorporate public art. An appropriate condition of consent has been recommended.
3.2 Defining the Public Domain	Capable  No	The proposal has the potential to enhance the public domain by introducing fine grain articulation at street level and providing greater activation to Victoria Street. Refer to discussion under the heading Issues.  The continuous wrap-around awning is not supported as it would result in detrimental impacts on plantings adjacent to the southern corner of the site. The proposed awning to the Victoria Street elevation is not supported as it is not compatible with surrounding development. Appropriate conditions of consent have been recommended. Refer to discussion under the heading Issues.

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.3 Design Excellence and Competitive Design Processes	Capable	The applicant proposes to conduct a design competition prior to lodgement of a Stage 2 development application. Conditions of consent have been recommended to ensure that guidelines for any design competition held reflect the measures of design excellence and the design issues raised in this report.
3.5 Urban Ecology	No	The proposed awning would extend around the southern corner of the site and would adversely impact on plantings in the garden bed below. In particular, the memorial planting known as 'Jacaranda for Jasper' tree is likely to require removal as a result of the awning, which is not supported. A condition of consent has been recommended to require the redesign of the awning so that it does not extend around the southern corner of the site
3.6 Ecologically Sustainable Development	Capable	The requirements of this provision are capable of being met through any future Stage 2 development application.
3.9 Heritage	Yes	<p>The site is not a heritage item but is within a heritage conservation area and in proximity to heritage items. It is identified as a detracting item within the conservation area.</p> <p>The proposed awning to Victoria Street is not considered to be in keeping with the character of the streetscape. This will require further resolution as part of a future Stage 2 development application. An appropriate condition of consent has been recommended.</p>

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.11 Transport and Parking	Capable	Indicative plans submitted include the minimum amount of resident and visitor bicycle parking required for the residential component of the proposal. No bicycle parking is proposed for the commercial component, however a minimum of 12 employee bicycle parking spaces would be required. This is a matter that requires resolution as part of a future Stage 2 development application. Refer to the discussion under the heading Issues.
3.12 Accessible Design	Capable	The requirements of this provision are capable of being met through any future Stage 2 development application.
3.13 Social and Environmental Responsibilities	Capable	The requirements of this provision are capable of being met through any future Stage 2 development application.

<b>4. Development Types</b>		
<b>4.2 Residential Flat, Commercial and Mixed Use Developments</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.2.1 Building height	Yes/ No	The site is identified as being suitable for buildings of greater than 15 storeys, with a maximum street frontage height to Victoria Street of 4 storeys, and 3 storeys to Darlinghurst Road. The proposed building envelope increases the podium height to 5 storeys on both Victoria Street and Darlinghurst Road, which exceeds the maximum street frontage height requirements. This is acceptable as the 5 storey podium height is consistent with the existing built form in the immediate vicinity of the site and reinforces the street edge.
4.2.2 Building setbacks	Yes	No setbacks for this site are required under Sydney DCP 2012.



4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.3 Amenity	No	Indicative plans submitted show a floor to floor height of 2.68m, which is not capable of providing the minimum 2.7m floor to ceiling height required without significant intervention in the existing structure. Refer to discussion under the heading Issues.
	No	A minimum 10% of the site area is required as deep soil. No deep soil is proposed as the existing structure which provides 100% site coverage and includes basement levels will be retained.
	Capable	A minimum 25% of the site area is required as communal open space. Indicative floor plans do not include any communal open space, however there may be opportunity to provide communal open space at roof level or on top of the podium. This is a matter that can be resolved as part of a future Stage 2 development application.
	Capable	Due to the orientation and floor plate of the existing building, units are capable of achieving the requirements for solar access and natural ventilation. This is a matter that can be resolved as part of a future Stage 2 development application.
	Capable	The proposed development is considered to be capable of achieving adequate acoustic amenity subject to further investigation and design resolution. An appropriate condition of consent has been recommended regarding acoustic requirements.

<b>4. Development Types</b>		
<b>4.2 Residential Flat, Commercial and Mixed Use Developments</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.2.3 Amenity (continued)	Capable	Indicative floor plans submitted show 52% 1 bedroom units, 45% 2 bedroom units and 3% 3 bedroom units. This does not comply with the recommended dwelling mix to ensure flexible housing opportunities, however this is a matter that can be resolved as part of a future Stage 2 development application. An appropriate condition of consent has been recommended.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The site has a 62m street frontage to Victoria Street and 63m frontage to Darlinghurst Road. Both of these streets have a width greater than 18 metres, and as such this is acceptable.
4.2.5 Types of development	Capable	The floor plate of the existing tower is approximately 684m <sup>2</sup> . If filled to maximum capacity, the proposed building envelope could reach a floor plate of up to 922m <sup>2</sup> which exceeds the maximum floor plate size for tall buildings of 750m <sup>2</sup> . However, due to the need for significant intervention in the existing base structure in order to provide double height spaces within apartments to address the issue of low floor to ceiling heights, the final floor plate is not expected to reach the maximum capacity. Refer to discussion under the heading Issues.
4.2.6 Waste minimisation	Capable	Requires resolution as part of a future Stage 2 development application. However, indicative plans submitted indicate that the site is capable of complying with waste minimisation requirements. An appropriate condition of consent has been recommended.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.7 Heating and Cooling Infrastructure	Capable	Requires resolution as part of a future Stage 2 development application. However, indicative plans submitted indicate heating and cooling infrastructure can be centrally located within basement level 1 and at roof level.
4.2.8 Letterboxes	Capable	Requires further resolution as part of Stage 2 development application, however indicative plans submitted indicate that the site is capable of complying with this requirement.

## ISSUES

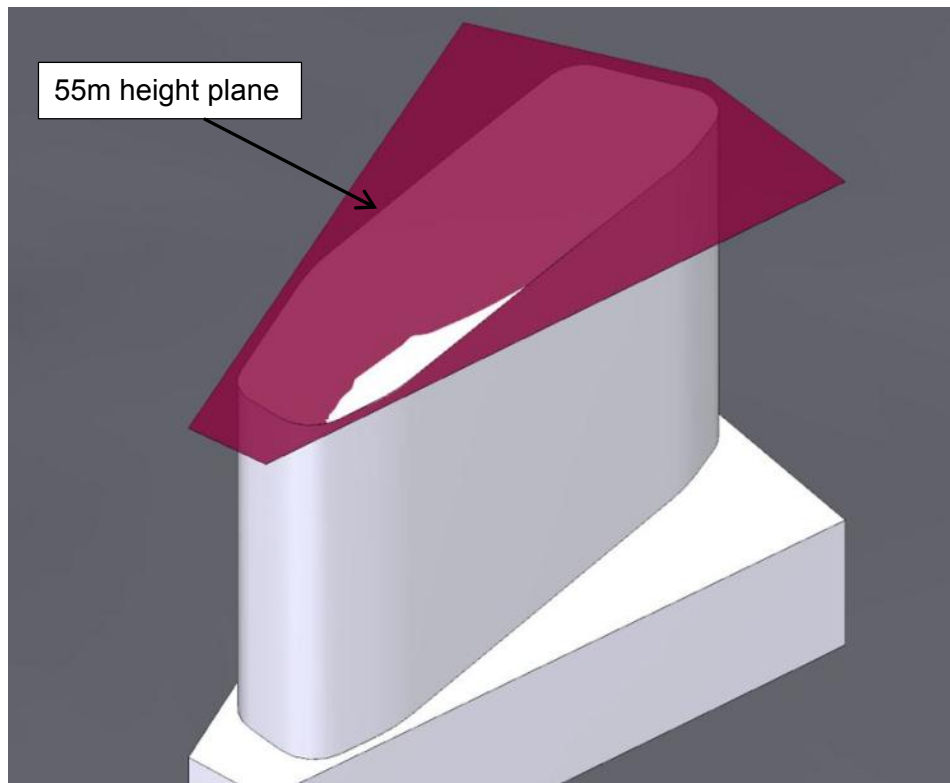
### Height, Scale and Bulk

#### *Tower Footprint*

52. The existing tower is approximately 50m long and 14m deep. The proposed building envelope would increase the length of the tower to 59m and the depth to 18m approximately.
53. The proposed building envelope is capable of achieving adequate building separation.
54. If the proposed envelope were to be completely filled, it has the potential to reach a floor plate of 922m<sup>2</sup> which exceeds the maximum floor plate size of 750m<sup>2</sup> permitted under the DCP for tall buildings. However, due to the need for significant intervention in the existing structure to provide mezzanine style apartments with double height spaces, the floor plate is expected to comply.
55. The additional bulk that is proposed to be added to the tower is distributed predominantly around the western, northern and southern edges, as well as to the top of the tower.
56. The narrow form of the tower is capable of achieving good solar access for residential units and minimises overshadowing of surrounding development and the public domain.
57. The existing tower is visually dominant within its setting. The eastern and western facades are poorly articulated with repetitive features that emphasise the length and bulk of the tower. Articulation is required in order to minimise its bulk and provide visual interest. An appropriate condition of consent has been recommended to ensure that this is addressed as part of any future Stage 2 development application.

### Height

58. The proposed building envelope generally complies with the maximum building height of 55m contained in Sydney LEP 2012, however there is a small area at the southern end of the tower which exceeds the height limit by approximately 200mm (refer to Figure 20).
59. Any exceedance of the maximum height limit is not supported and a condition of consent has been recommended to require the building envelope to be amended so that it does not exceed 55m at any point.



**Figure 20:** A minor exceedance of the 55m height plane exists at the southern end of the proposed building envelope. Any exceedance of the 55m height limit is not supported

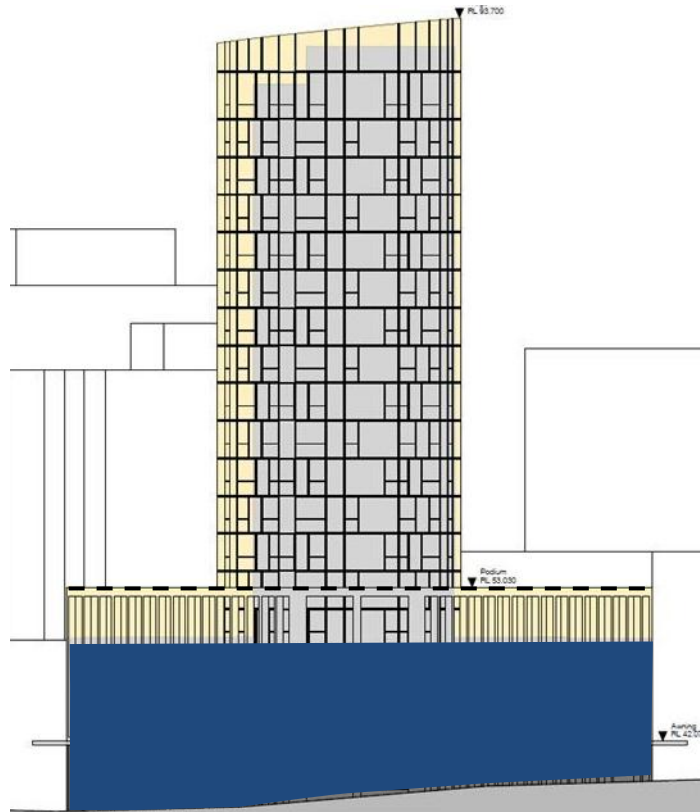
### Floor Space

60. The existing development has 11,704m<sup>2</sup> of floor space, resulting in a FSR of 7.1:1.
61. The maximum permissible FSR on the site is 8:1. Based on the site area of 1,629m<sup>2</sup> this equates to 13,032m<sup>2</sup> of floor space.
62. A potential bonus 10% in gross floor area may be awarded under a Stage 2 development application following the completion of a Design Competition in accordance with Clause 6.21(7) of Sydney LEP 2012. The amount and distribution of any additional floor space would be determined based on an assessment of the potential impacts.

63. Indicative floor plans submitted show approximately 14,695m<sup>2</sup> of gross floor area, which is 1,663m<sup>2</sup> or 13% over the maximum FSR control. However, this application relates to the building envelope and not to any quantum of floor space, which is a matter for consideration as part of a Stage 2 development application.
64. Given the low to floor ceiling heights of the existing building, mezzanine apartments with double height spaces will be required in order to comply with SEPP 65, which is expected to reduce the amount of floor space.
65. The distribution of uses and detailed design of the building requires further resolution under a future Stage 2 development application. Appropriate conditions of consent have been recommended to ensure that any competitive design process relating to the proposal addresses these requirements.

#### *Podium*

66. The proposed building envelope seeks to increase the height of the podium. At the southern end of the site an increase of approximately 6.3m is proposed. At the northern end of the site, an increase of 3.73m is proposed to Victoria Street (west elevation) and 4.2m to Darlinghurst Road (east elevation). Refer to Figures 21 to 23.
67. Concern has been raised by Council's Heritage Specialist regarding the impact of the proposed increase in podium height on the surrounding streetscapes in Darlinghurst Road and Victoria Street.
68. Council's Urban Designer advised that subject to providing fine grain, vertically proportioned articulation the proposed increase in the height of the podium is appropriate given the scale of the tower and of adjacent development to the south of the site.
69. The proposed podium height would match the building height of the adjoining development at 107-109 Darlinghurst Road, and the podium height of a nearby development at 204 Victoria Street. Given the variation in the scale of surrounding development, the proposed podium height is not considered to result in adverse impacts on the streetscape, and is supported.



**Figure 21:** Building envelope viewed from the south showing the existing podium (shaded) and the proposed increase to 5 create a storey podium (indicated by the dotted line)



**Figure 22:** Photomontage of the proposed building envelope viewed from Victoria Street, looking north



**Figure 23:** Photomontage of the proposed building envelope viewed from Victoria Street looking south

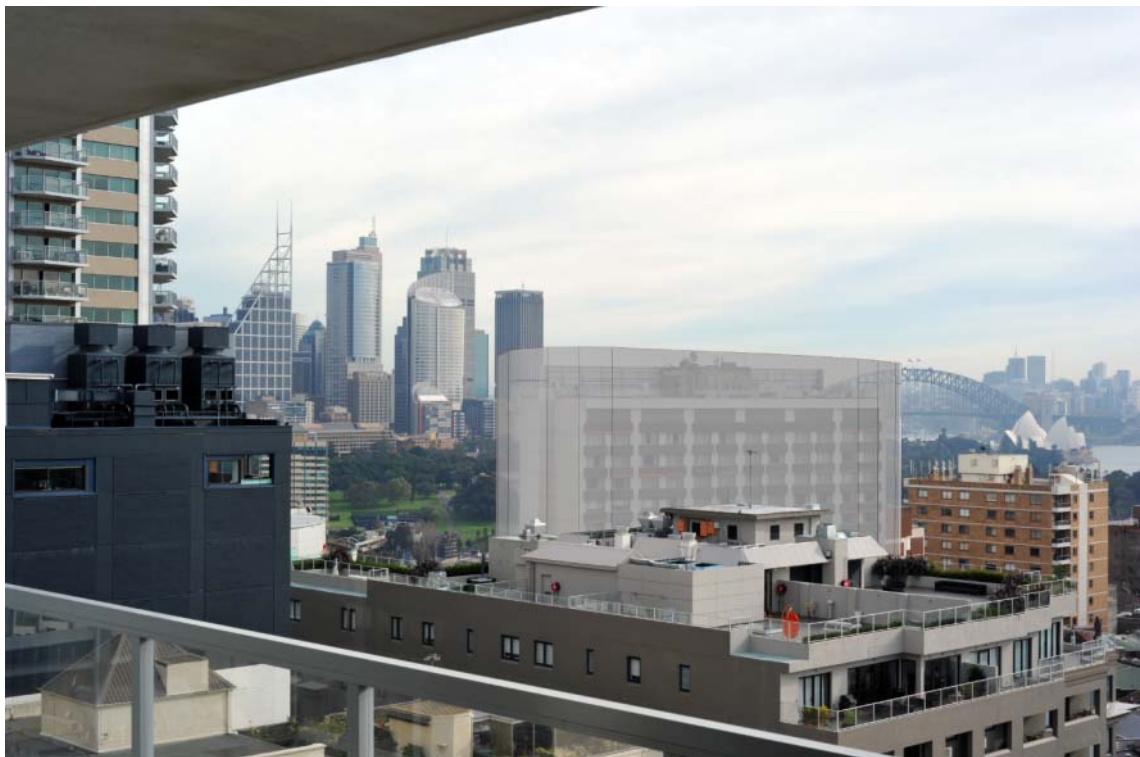
### *Awning*

70. The proposal includes a continuous awning extending the full length of the Darlinghurst Road and Victoria Street frontages of the site, and including the southern elevation addressing the corner. Due to the change in levels across the site, the height of the proposed awning would be one storey above street level to Darlinghurst Road and two storeys to Victoria Street.
71. Part of the proposed awning would extend over a significant portion of the garden bed adjacent to the southern boundary of the site, at a height of approximately 3.6m above ground level. This would require the removal of the memorial planting known as Jacaranda for Jasper (refer to Figures 7 and 8).
72. As this garden bed is on Council land, this is excluded from the application, and approval. The design should be amended to remove any awning over the garden bed.
73. Council's Heritage Specialist advised that the proposed awning extending the length of the Victoria Street frontage is not considered to be in keeping with the character of the streetscape and surrounding development.
74. Continuous awnings are not characteristic along Victoria Street and are not shown on the Awnings and Colonnades map of Sydney DCP 2012. Rather than a continuous awning, entry awnings at a lower height that relate more appropriately to the streetscape should be considered along this elevation. This is a matter that can be resolved as part of a future Stage 2 development application.



### View Loss

75. In response to a number of submissions raising concern about view loss as a result of the proposed building envelope, an assessment of impacts on views from surrounding residential development has been undertaken (refer to Attachment C).
76. While the relevant planning controls make no provision for the protection of private views, in order to assess the impact of the proposal on existing views an assessment has been made against the planning principles established by Senior Commissioner Roseth in the Land and Environment Court decision of *Tenacity Consulting v Warringah [2004] NSWLEC140*.
77. On 19 March 2014, Council officers observed photographs being taken from 15 units using a wide angle 25mm lens by consultants engaged by the Applicant. All photographs were taken from a standing position and the location recorded by a surveyor. Photomontages were subsequently prepared in accordance with guidelines prepared by the NSW Land and Environment Court (refer to Attachments D and F).
78. In order to avoid any distortion of views arising from the use of a wide angle lens, Council officers returned to four of the most impacted apartments to prepare an independent view impact analysis using photographs taken with a 50mm lens. Photomontages were subsequently prepared in accordance with guidelines prepared by the NSW Land and Environment Court (refer to Attachment F and Figures 24 and 25 below).



**Figure 24:** Photomontage prepared by Council officers showing the proposed building envelope imposed onto the existing view from an apartment at level 17 of 3 Kings Cross Road (the Altair)





**Figure 25:** Photomontage prepared by Council officers showing the proposed building envelope imposed onto the existing view from an apartment at level 18 of 1 Kings Cross Road (the Elan)

#### *View Loss Conclusions*

79. The proposed building envelope is likely to result in moderate view impacts on views from some surrounding residential development.
80. There may be opportunity to minimise potential view impacts through the detailed design of the building. A condition of consent has been recommended to ensure that should approval be granted, consideration must be given to potential view impacts as part of any design competition or Stage 2 development application, particularly in terms of the location and distribution of any bonus floor space.

#### **Amenity**

##### *Ceiling Heights*

81. A minimum floor to ceiling height of 2.7m in habitable rooms of multi-unit residential development is required under Clause 4.2.1.2 of Sydney DCP 2012 and Part 3 of the RFDC. This requires a floor to floor height of 3.1m.
82. The existing building has a floor to floor height of 2.68m, which is significantly less than the 3.1m required to ensure acceptable residential amenity. However, the existing building could be made suitable for residential use subject to substantial intervention in the base structure to provide maisonette/ double height spaces within apartments.

83. The provision of acceptable floor to ceiling heights within residential units must be addressed as part of a future Stage 2 development application. An appropriate condition of consent has been recommended.

#### *Noise Impact*

84. An acoustic report has been submitted to assess the potential impact of external noise sources on future residents of the site, including noise generated from traffic.
85. Attended and unattended noise monitoring conducted indicates that ambient background noise after midnight exceeds 58dBA. As such, the report concludes that any future residential development will rely on mechanical ventilation in order to achieve acceptable internal noise levels.
86. The acoustic report fails to address the potential impact of noise from late night entertainment venues located within close proximity of the site, particularly structure and/or airborne noise resulting from bass music.
87. Given that the site is situated in the Kings Cross entertainment precinct and includes late night licensed venues at the ground floor, the suitability of residential uses within the podium levels of the development will require careful consideration.
88. Any future residential development will be required to provide noise control measures to ensure that habitable rooms are not affected by offensive noise from structure and/or airborne noise. An appropriate condition of consent has been recommended.

#### *Solar Access*

89. Shadow diagrams have been provided in elevation and plan for 21 June and 21 March, in accordance with the requirements of Sydney DCP 2012 (refer to Attachment G).
90. The proposal would result in some additional overshadowing of the public domain at 12 midday on 21 June, on Bayswater Road and on Darlinghurst Road as a result of the additional height to the podium. The extent of additional overshadowing is considered to be minor and not likely to result in detrimental impacts on the public domain.
91. The proposal would not result in any additional overshadowing of residential units or of communal open space within the development at 82-94 Darlinghurst Road (the Zenith), which is located to the south of the subject site.
92. With respect to solar access for residential units, the rule of thumb contained in the Residential Flat Design Code is that 70% of units should receive a minimum of 2 hours of sunlight between 9am and 3pm in mid-winter. A Solar Access Assessment of the indicative floor plans submitted has been prepared by WPS Built Ecology indicating that the proposal is capable of achieving this.
93. Due to the orientation of the existing building, shading devices will be an important consideration as part of the detailed design for any Stage 2 development application, particularly to the western elevation.

*Wind*

94. As the proposal relates to a tower located on the upper portion of a ridge line extending through Darlinghurst, there is the potential for winds to impact on the amenity of future residents of the site.
95. A wind report prepared by Acoustic Logic has been submitted which assesses the likely impact of prevailing winds on various parts of the proposed building envelope. The report identifies the following mitigation measures contained in the indicative floor plans submitted with the application, namely:
  - (a) a podium which deflects down washed wind upward and away from the street;
  - (b) a weather awning covering the footpath which deflects down washed wind upward and away from the street;
  - (c) an articulated facade – balconies break up the surface of the facade into small pockets rather than a flat continuous facade. This has the effect of slowing down or decelerating wind movement; and
  - (d) double height spaces and openings within the podium which act as a porous screen decelerating wind passage.
96. The report concludes that wind conditions at street level would be unaffected and that on balconies and within the podium, wind conditions would be acceptable for short periods of exposure.

*Communal Open Space*

97. Indicative plans submitted do not make any provision for communal open space, which is required to be provided at a minimum 25% of the total site area under Clause 4.2.3.8 of Sydney DCP 2012.
98. There is opportunity to provide communal open space at the southern end of the podium roof, or at roof level. This would need to be addressed as part of any future Stage 2 development application.

**Transport and parking**

99. The site is located in an area that is serviced by frequent public transport services including trains and buses, and in close proximity of cycleways.
100. Vehicular access to the site is currently from Victoria Street. No change to the existing access arrangements is proposed.
101. A 3.7m wide loading /garbage storage area also fronts the Victoria Street frontage. This is proposed to be retained.
102. The maximum amount of parking permitted under Sydney LEP 2012 would be calculated according to the number and size of residential units. The proposal does not include the design, layout or allocation of parking; however, it is anticipated that 52 off street parking spaces could be provided, located within two basement levels. Based on indicative floor plans submitted, this complies with the maximum parking rates calculated under Sydney LEP 2012.

103. A total of 191 bicycle parking spaces (174 for residents and 17 for visitors) are shown on indicative plans. This would satisfy the requirements of Sydney DCP 2012.
104. No bicycle parking is indicated for the commercial component of the development. Under DCP 2012 a minimum of 12 employee bicycle spaces would be required for a development of this nature. This is a matter that can be resolved as part of a future Stage 2 development application.
105. Council's Transport Planning unit raise no objection to the proposal in principle, subject to further resolution of the design of parking spaces as part of a future Stage 2 development application.

### **Heritage**

106. The site is located within the Potts Point Heritage Conservation Area (C51). The existing building is identified as detracting.
107. The existing building is visually dominant within its immediate and wider setting. Potential exists to reduce the visual impact of the building through carefully considered massing and architectural articulation of facades.
108. In order to relate appropriately to the streetscape, the design of the podium should be sympathetic to the fine grained nature of surrounding contributory buildings and heritage items. Council's Heritage Specialist has recommended that as part of a future Stage 2 development application, the podium should have a masonry emphasis with vertically proportioned openings above ground floor level.

### **Access**

109. Access for disabled persons can be provided to the premises.
110. The provision of access for disabled persons will be subject to further assessment as part of any future Stage 2 development application.

### **Other Impacts of the Development**

111. The requirements of the BCA are capable of being met as part of a future Stage 2 development application.
112. 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**

113. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

### **INTERNAL REFERRALS**

114. The conditions of other sections of Council have been included in the proposed conditions.

115. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Surveyors; Transport and Access; Tree Management and Waste Services.

## EXTERNAL REFERRALS

### Design Advisory Panel

116. On 10 June 2014, the proposal was considered by the Design Advisory Panel.
117. The Panel recommended that the competition brief be developed to require design schemes to address the following issues.
- (a) The project presents an opportunity to break up the scale of the very long east-facing tower elevation. By articulating the massing (for example, splitting it into two forms by reducing the setback for part of the tower), the perceived length of the building would be reduced. This could also provide an opportunity to increase the GFA at lower levels, relieving pressure on the building height.
  - (b) The increased podium height is supported in principle, subject to the following:
    - (i) the scale and rhythm of the podium facade should relate to the vertical proportions and grain established along Darlinghurst Road; and
    - (ii) all podium levels should be active uses, not residential, to avoid the privacy and acoustic conflicts arising from incompatible adjacent uses and address the amenity concerns of locating residential apartments within the deep podium footprint.
  - (c) Adaptive reuse of the hotel structure for residential apartments needs to be adequately illustrated. The indicative plans do not demonstrate adequate amenity to compensate the low floor to ceiling heights resulting from the existing structure.
  - (d) The indicative design, as well as the future competition, need to demonstrate compliance with SEPP 65.
  - (e) The incorporation of the memorial garden and interface with the Darlinghurst Road/Victoria Street intersection needs better resolution. The opportunity to reconsider the whole of the intersection and increase public space for pedestrians should be explored in design proposals.
  - (f) The Panel noted that urban design outcomes should take precedence over view loss concerns in determining the preferred building envelope.
  - (g) The Panel noted that this brief may allow competition entries to vary from the Stage 1 building envelope to achieve a better urban design outcome:

**Notification, Advertising and Delegation (Submission(s) Received)**

118. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised for a period of 28 days. As the notification period occurred over the Christmas holiday period, the notification period was extended by a further seven days. As such, the application was notified and advertised for a period of 35 days in total between 10 December 2013 and 15 January 2014. As a result of this notification, 29 submissions were received.

119. Issues raised in submissions have been summarised below.

- (a) *The proposed building envelope would result in significant impacts on iconic harbour views from surrounding residential development, including the Altair, the Elan and Zenith developments. The view impact analysis has not considered views from these locations and is misrepresentative.*

**Response** – At the request of Council officers the Applicant undertook a detailed view impact analysis from 15 units in the Altair, the Elan and the Zenith buildings. This has been discussed in detail in the Issues section of this report.

- (b) *The proposed building envelope is excessive in height and bulk. The existing building already dominates the ridgeline along Darlinghurst Road at 55 metres in height, and as such the proposal seeks to exceed the height and floor space ratio controls.*

**Response** – The proposed building envelope generally complies with the maximum building height of 55 metres permitted under Sydney LEP 2012. Conditions of consent have been recommended to ensure that the 55m height limit is not exceeded by any part of the proposed development, and to require any future stage 2 development application to provide for greater articulation of the building facades in order to reduce its visual dominance. Refer to the Issues section of this report.

- (c) *The proposal does not provide an appropriate dwelling mix.*

**Response** –The current application seeks consent for a building envelope and design parameters. Any future Stage 2 development application for residential development would be required to provide an appropriate dwelling mix.

- (d) *The proposal to attract an additional 300 residents into such a densely populated area is inappropriate as it will create added pressure on local services.*

**Response** – The current application seeks consent for a building envelope and design parameters. The final number of residential units will be the subject of a design competition and Stage 2 approval.

- (e) *The continued use of the ground floor for late night licensed premises is inappropriate in a mixed use development. The proposal does not provide adequately for the safety of residents, or amenity in terms of noise.*

**Response** – The current application relates only to the building envelope and design parameters and does not seek consent for the fit out or use of the commercial components of the site. Residential amenity and safety will be considered as part of any future Stage 2 development for the site.

- (f) *The proposal does not provide sufficient parking, and will create added pressure on existing street parking.*

**Response** – The current application seeks consent for a building envelope and design parameters, and does not include parking. However the site is well serviced by public transport and contains existing basement parking for 54 vehicles. The amount of parking shown on indicative plans submitted complies with Council parking requirements, and is considered acceptable.

- (g) *The proposed awning to the southern facade impinges on public space and will impact on the Jacaranda for Jasper memorial.*

**Response** – Council does not support the removal of the memorial planting known as the ‘Jacaranda for Jasper’. As such, a condition of consent has been recommended to require that the awning be amended to ensure that it does not extend over the garden bed in this location. In addition, it is noted that this parcel of land is excluded from the proposal.

- (h) *The proposal will result in increased overshadowing of residential development and the public domain.*

**Response** – The Applicant has submitted shadow diagrams in elevation and plan which indicate that the proposed building envelope will not result in unacceptable overshadowing of surrounding development or the public domain.

- (i) *The proposal will extend the building envelope and add balconies resulting in visual and acoustic privacy impacts on residents in the Zenith.*

**Response** – Due to the separation distance between the subject site and residences in the Zenith located at 82-94 Darlinghurst Road, the proposal is not considered to result in adverse impacts on privacy.

- (j) *Residents of 82-94 Darlinghurst Road (Zenith) were not notified of this proposal.*

**Response** – Council records indicate that notification letters were sent to all owners/residents of 82-94 Darlinghurst Road in December 2013. In addition, the proposal was advertised in the Sydney Morning Herald, on Council’s website and on site notices, in accordance with the requirements of Sydney DCP 2012.

**PUBLIC INTEREST**

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

**FINANCIAL IMPLICATIONS/S94 CONTRIBUTION****Section 94 Contributions**

121. This application is not subject to a Section 94 Contribution.

**RELEVANT LEGISLATION**

122. The Environmental Planning and Assessment Act 1979.

**CONCLUSION**

123. The Applicant is seeking consent for a Stage 1 building envelope up to 55m in height, in accordance with Sydney LEP 2012 and Sydney DCP 2012.
124. The proposal envisions a 14 storey tower over a 5 storey podium with up to 174 apartments and 52 basement car parking spaces. The final quantity of car parking spaces and the design and number of apartments will be the subject of a design competition and Stage 2 approval.
125. The site is currently occupied by a 13 storey tower over a 2 to 3 storey podium containing tourist accommodation and retail uses, including licensed venues.
126. Any future design competition and Stage 2 development application will need to address residential amenity, visual impacts and provide a fine grain detailed design.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

(Rebecca Thompson, Senior Planner)