

ITEM 7. DEVELOPMENT APPLICATION: 331-337 KENT STREET SYDNEY**FILE NO: D/2013/1851****DEVELOPMENT APPLICATION NO: D/2013/1851****SUMMARY****Date of Submission:** 29 November 2013**Applicant:** Maville Bay Pty Ltd**Architect:** Cox Richardson**Owner:** Maville Bay Pty Ltd**Cost of Works:** \$100,892,454

Proposal Summary: Stage 1 DA for a proposed hotel/residential development with ground floor retail. The application seeks concept plan (stage 1) approval for the retention of the existing warehouse facade fronting Kent Street and a new building envelope with a maximum height of 80m and a maximum floor space ratio up to 11:1 (16,698m²). The proposal includes an upgrade of the existing Kent Street vehicle access and the provision of four basement parking levels.

The site was comprehensively developed in 1985 and contains a historic building facade with a colonnade behind fronting Kent Street which dates from 1889. The building is not a heritage item and it is not located in a Special Character Area.

The proposal is able to comply with the core Sydney Local Environmental Plan 2012 FSR and height controls of 11:1 (base plus bonus FSR available to certain land uses) and 80m respectively.

The application includes indicative plans demonstrating that an acceptable level of residential amenity is achievable within the specified residential floors of the proposed envelope.

One (1) submission was received during the initial notification period. Concerns raised relate to the building setbacks and lack of amenity within the proposed new building.

The proposal was amended during the assessment period and renotified. No submissions were received as a result of the renotification.

**Proposal Summary:
(continued)**

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

Summary Recommendation:

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

Development Controls:

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

Attachments:

- A - Envelope Drawings
- B - Indicative Floor Plans

RECOMMENDATION

It is resolved that consent be granted to Development Application No. D/2013/1851, 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 Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2013/1851 dated 29 November 2013 and the following drawings:

Drawing Number	Architect	Date
DA-FP-01 Rev 01	Cox Richardson	8 September 2014
DA-FP-02 Rev 01	Cox Richardson	8 September 2014
DA-FP-03 Rev 01	Cox Richardson	8 September 2014
DA-FP-04 Rev 01	Cox Richardson	8 September 2014
DA-FP-05 Rev 01	Cox Richardson	8 September 2014
DA-FP-06 Rev 01	Cox Richardson	8 September 2014
DA-FP-07 Rev 01	Cox Richardson	8 September 2014
DA-EL-01 Rev 01	Cox Richardson	8 September 2014
DA-EL-02 Rev 01	Cox Richardson	8 September 2014
DA-SEC-01 Rev 01	Cox Richardson	8 September 2014
DA-SEC-02 Rev 01	Cox Richardson	8 September 2014
DA-SEC-03 Rev 01	Cox Richardson	8 September 2014

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) APPROVED USES

In principle approval is given for hotel use up to a height of approximately RL68 with in principle approval for residential flats above this height.

(3) BUILDING HEIGHT

The maximum height of the building as defined in the Sydney Local Environmental Plan 2012 must not exceed 80 metres.

(4) MATTERS NOT APPROVED

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

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

(5) STAGE 2 TO BE CONTAINED WITHIN APPROVED ENVELOPE

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

(6) STAGE 2 DA/COMPETITIVE DESIGN PROCESS

- (a) The detailed design of the whole development shall be the subject of a Stage 2 development application.
- (b) The detailed design of the whole development shall be the subject of a competitive design process in accordance with the provisions of Clause 6.21 of the Sydney Local Environmental Plan 2012, Part 3.3 of the Sydney Development Control Plan 2012 and the City of Sydney Competitive Design Policy.
- (c) The competitive design process must be held prior to the lodgement of the Stage 2 development application for the development.
- (d) The Stage 2 proposal should be generally consistent with the Stage 1 approval.

(7) FLOOR SPACE RATIO - CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed the maximum permissible and shall be calculated in accordance with Clauses 4.4, 4.5, 6.3 - 6.9 and 6.21 of the *Sydney Local Environmental Plan 2012*.

- (b) The floor space in excess of a FSR of 8:1 shall be subject to a requirement to purchase heritage floor space (HFS) in accordance with the requirements of Clauses 6.11 and 6.12 of the *Sydney Local Environmental Plan 2012*.
- (c) The amount of HFS to be purchased may be reduced in accordance with Clause 6.11 of the *Sydney Local Environmental Plan 2012* only if the consent authority is satisfied that the resulting Stage 2 development exhibits design excellence and is the result of a design competition which satisfies the requirements of design competitions in any relevant development control plan.

(8) EXPOSED ELEVATIONS

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

(9) ECOLOGICALLY SUSTAINABLE DEVELOPMENT

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

(10) BASIX

Any Stage 2 approval is to include the submission of a BASIX certificate.

(11) WIND

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

(12) SUBSTATIONS

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

(13) 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.

(14) ACID SULFATE SOILS MANAGEMENT PLAN

The Stage 2 application must include an Acid Sulfate Soils Management Plan.

(15) BICYCLE PARKING

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

- (a) all bicycle parking for occupants of residential buildings must be Class 1 bicycle lockers;
- (b) all bicycle parking for staff / employees of any land uses must be Class 2 bicycle facilities; and
- (c) all bicycle parking for visitors of any land uses must be Class 3 bicycle rails.

(16) CAR PARKING SPACES AND DIMENSIONS

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

(17) SUBDIVISION

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

(18) LOCATION OF ACCESSIBLE CAR PARKING SPACES

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

(19) SECURITY GATES

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

(20) SERVICE VEHICLES

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

(21) VEHICLES ACCESS

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

(22) SERVICE VEHICLE SIZE LIMIT

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

(23) ACCESSIBLE PARKING SPACE

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

(24) FLOOR TO CEILING HEIGHT

The Stage 2 application must accommodate a floor to ceiling height of at least 3.6m for the first basement level and the ground floor areas.

(25) PRINCIPAL WINDOWS

The Stage 2 application must not include principle windows for either residential apartments or tourist and visitor accommodation within 6m of either the eastern, northern or southern boundary.

(26) RESIDENTIAL AMENITY

Any residential apartments within the Stage 2 application are to comply with the relevant provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development, the Residential Flat Design Code and Section 4.2 of the Sydney Development Control Plan 2012.

(27) HOTEL ACCOMODATION

Any hotel accommodation within the Stage 2 application is to comply with the relevant provisions of Section 4.4.8 of the Sydney Development Control Plan 2012.

No hotel accommodation layout is approved as part of this application. Any serviced apartments proposed for the site are to have the level of residential amenity as residential apartments.

(28) STAGE TWO DESIGN

To enhance the setting and appreciation of the heritage facade and the adjacent Special Character Area, the competitive design process and Stage 2 DA should have regard to the following matters:

A: TOWER:

- (a) The design of the proposed building is to provide a high degree of architectural modelling and articulation. The northern and southern facades of the proposed building are to be modelled so as to appear of slender proportions and to provide visual interest.
- (b) Part of the section of the tower envelope where it extends to the southern boundary up to RL 57.595 should be recessed so that the tower respects the symmetry of the historic facade.
- (c) The tower design should respect the symmetry of the heritage facade and its tripartite division. The tower structural supports should respect the structural grid of the existing heritage facade.
- (d) Balconies should be recessed within the line of the facade.
- (e) High quality materials that provide a compatible response to surrounding development should be incorporated into the design.

B: PODIUM:

- (f) The proposed floor levels of the podium building are to match the original floor levels, so as to retain the functional relationship of the interiors with the window openings. No ground floor mezzanine level should be constructed within eight metres of the front facade.
- (g) The majority of the existing colonnade space is to be retrieved as interior space, activated through the original facade openings. The majority of original ground floor openings in the facade are to be fitted with contemporary door and window assemblies enclosing the colonnade, using an interpretive language based on evidence of the original door and windows including the drawings and photographs of the original building within the City of Sydney Archives, files D/1983/0255 and D/1983/0918. The assemblies should reinforce the original pattern of entrances and windows and should be fitted to the inner edge of the facade, in a traditional manner.

- (h) Exceptions to such enclosure may include the vehicular entrance. Fire exits and building services installations such as hydrant booster valves are to be set back in shallow recesses rather than the full depth of the existing colonnade and finished in high quality materials.
- (i) Any subdivision of the existing colonnade space should coincide with the east/west structural grid of the façade's engaged piers, reflecting the original interior compartments.
- (j) The existing vehicular access opening should not be enlarged. Further, no new openings in the facade, or alterations to original openings of the façade, should be permitted.
- (k) Glazing (at all levels of the building) should maintain a high level of clarity and be neutral in colour.
- (l) Glazing is not to be removed from existing window openings of the facade to facilitate balconies behind.
- (m) No awnings are to be applied to the facade.
- (n) An outline schedule of facade conservation works to be submitted as part of any stage 2 DA. Further historic research should be undertaken to inform conservation works. The estimated cost of conservation works is to be included in the Cost Plan submitted as part of Stage 2 DA.
- (o) The external colour scheme is to be submitted as part of the Stage 2 DA. The colour scheme and the paint systems are to be sympathetic to the architectural style and period of the building. The textured paint is to be removed from the ground floor façade as a minimum, and from any elements that were original sandstone.
- (p) External lighting and signage is to be sympathetic to the architectural style and period of the building

(29) ARCHAEOLOGICAL ASSESSMENTS - NON STANDARD

Both a Non-indigenous Archaeological Assessment and an Aboriginal Cultural Heritage Assessment should be prepared in accordance with the NSW Office of Environment and Heritage guidelines, and must be submitted as part of the Stage 2 DA.

The reports must assess whether the proposed works have the potential to disturb any archaeological remains of significance and the need for any archaeological investigation prior to commencement of any works on site. The reports should also recommend any spatial requirements for display of artefacts, and measures and documentation to be undertaken during the process of demolition and excavation work.

(30) OUTLINE HERITAGE INTERPRETATION STRATEGY - NON STANDARD

An outline interpretation strategy for the site must be submitted as part of the Stage 2 DA. The outline strategy must detail information on the history and significance of the site based on further research, and outline how this information may be provided for the public, including the spatial requirements for display.

(31) HERITAGE FACADE - GEOTECHNICAL AND STRUCTURAL ENGINEERING ASSESSMENT REPORTS

The Stage 2 DA is to be accompanied by geotechnical engineering and structural engineering reports verifying the adequacy of the setback of proposed excavation from the base of the retained historic façade and outlining any mitigation measures necessary for its stability (including during construction) to achieve compliance with the NCC and Australian Standards.

(32) PUBLIC ART

A public art strategy that nominates artists and potential locations for public art shall be submitted as part of the Stage 2 DA

SCHEDULE 2

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

BACKGROUND

The Site and Surrounding Development

1. The site is roughly rectangular in shape and has an area of approximately 1518m². It is located on the western side of Kent Street between Erskine and King Streets and has a street frontage of approximately 39 metres. The site slopes slightly from east to west. A site visit was carried out on 16 June 2014.
2. The site contains an existing 10 storey building containing offices and educational uses. It was redeveloped in 1985 and was subsequently renovated in 1997 which included the provision of an additional storey. The building includes an original warehouse facade dating from approximately 1889 with a ground floor colonnade. The Kent Street facade includes a retail unit, commercial lobby and a vehicular access.
3. The rear of the building backs on to a privately owned 'dead end' laneway accessed via Sussex Street and currently used for parking. There is no vehicular access from the laneway and no formal right of way. Despite the age of the historic facade to Kent Street, the site is not a heritage item and it is not located in a Special Character Area.
4. A plan showing the site location is provided below.

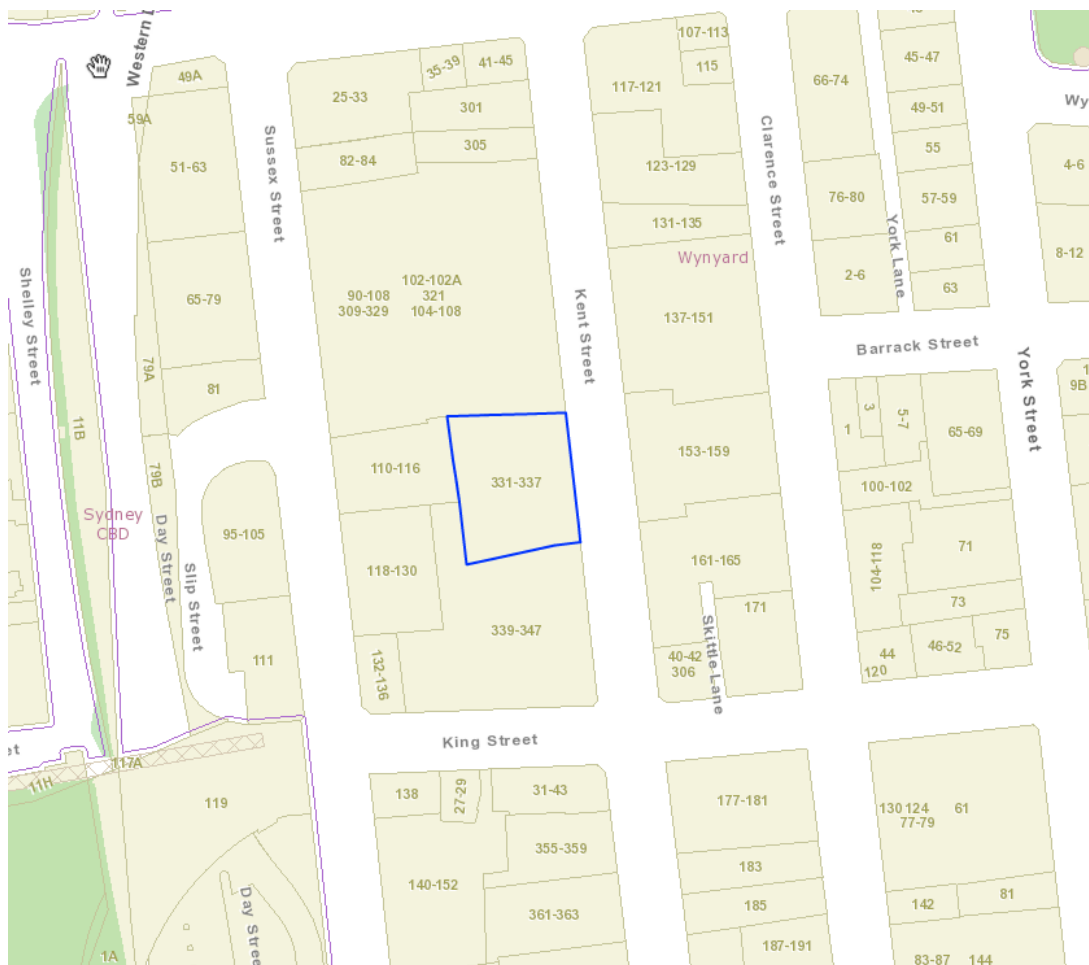


Figure 1: Location Plan

5. Surrounding development is of a similar form and scale to the building on the subject site with podium heights ranging in height from 4-6 storeys with taller building elements beyond. Photographs of the site and its surrounds are provided below:



Figure 2: The subject site viewed from across Kent Street looking south

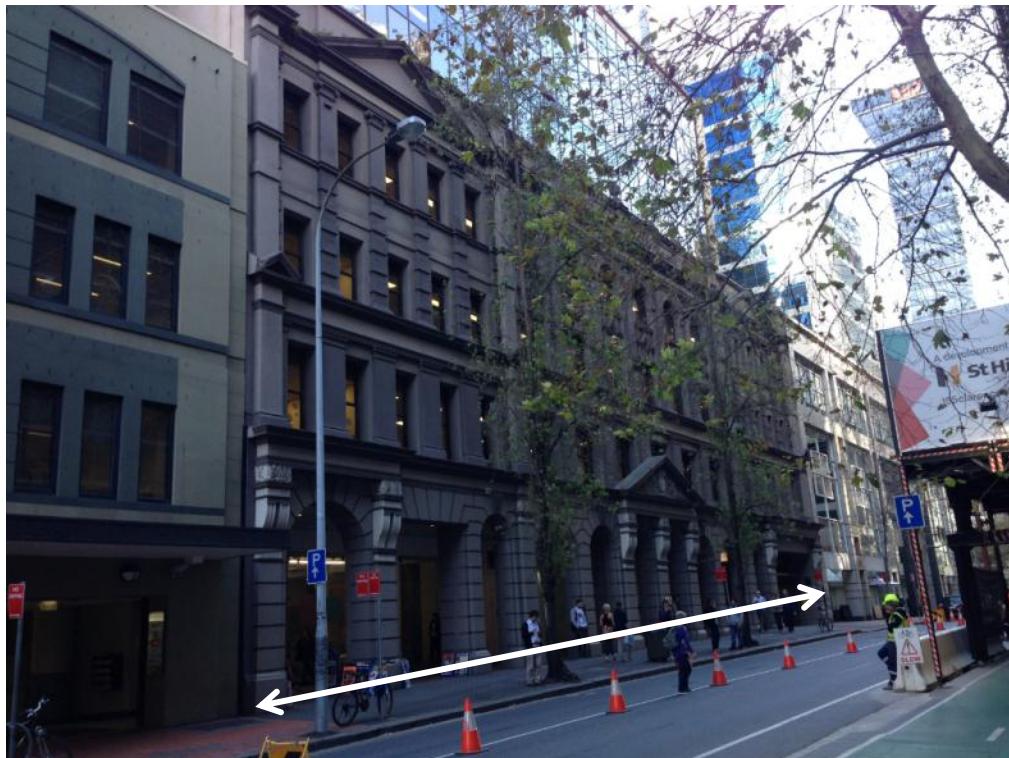


Figure 3: The subject site viewed from across Kent Street looking north



Figure 4: The rear of the site accessed via a private lane from Sussex Street



Figure 5: The upper levels of the rear of the existing building.



Figure 6: Development to the south along Kent Street



Figure 7: Development to the north along Kent Street



Figure 8: Development across the road from the subject site.



Figure 9: View from roof of existing building towards residential apartment building fronting Sussex Street

PROPOSAL

6. The Stage 1 DA seeks consent for the following:
 - (a) retention of the original warehouse facade fronting Kent Street;
 - (b) a building envelope with a maximum FSR of up to 11:1 (being 16,698m² of floor space comprising 6,440m² of residential apartments, 10,115m² of hotel space and 90m² of ground floor retail and 430m² of ground floor lobby space);
 - (c) erection of an 80m (RL 98.61) tower being approximately 24 levels including an 18m (RL 36.72) podium being approximately 4 levels;
 - (d) indicative plans submitted with the proposal demonstrate that the proposed envelope is capable of accommodating up to 179 hotel rooms on the lower levels (Levels 1 to 14, RL18.395 to RL61.795) and up to 69 residential apartments on the upper levels (Levels 15 to 24, RL64.895 to RL92.795);
 - (e) formation of four basement parking levels; and
 - (f) a setback above the Kent Street facade of 8m.
7. Selected photomontages and plans are shown below. More details are provided at Attachments A and B.

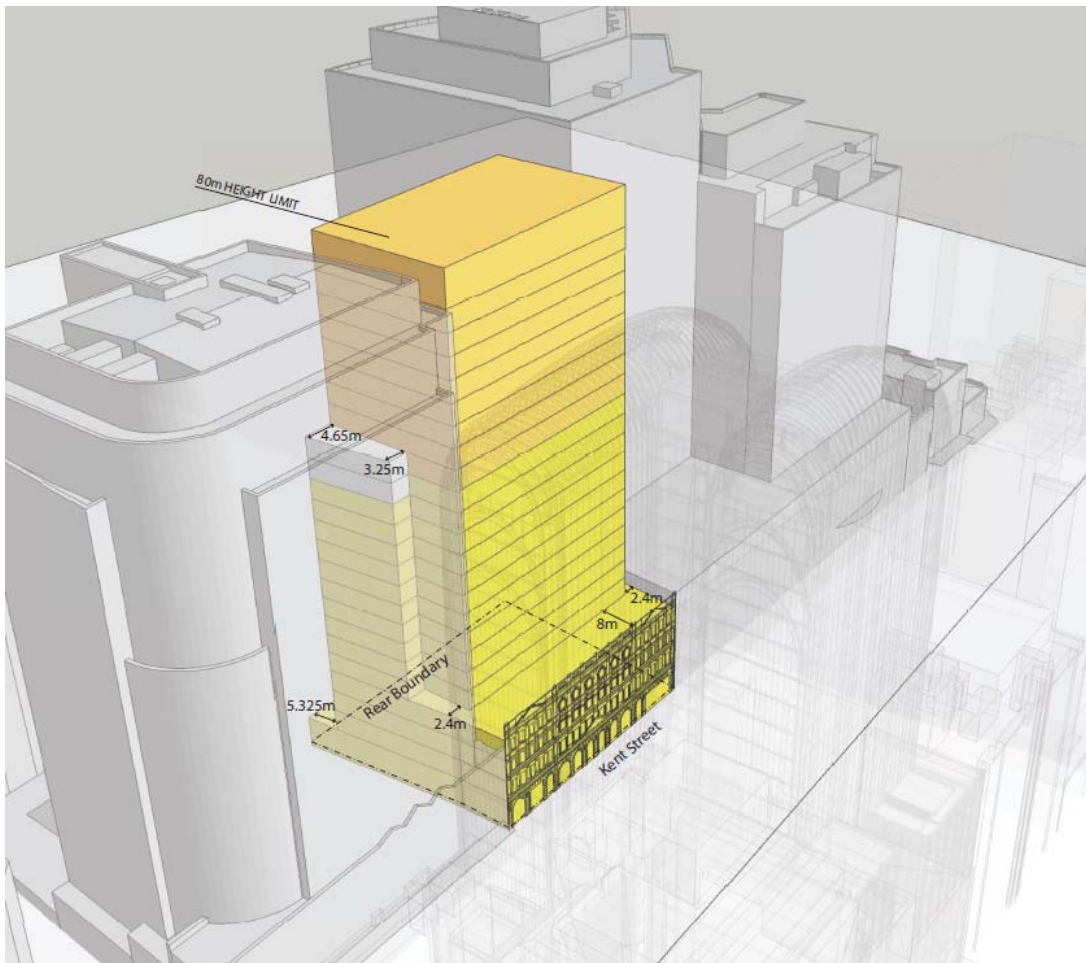


Figure 10: Proposed building envelope looking north



Figure 11: Proposed building envelope looking south



Figure 12: Indicative ground floor layout

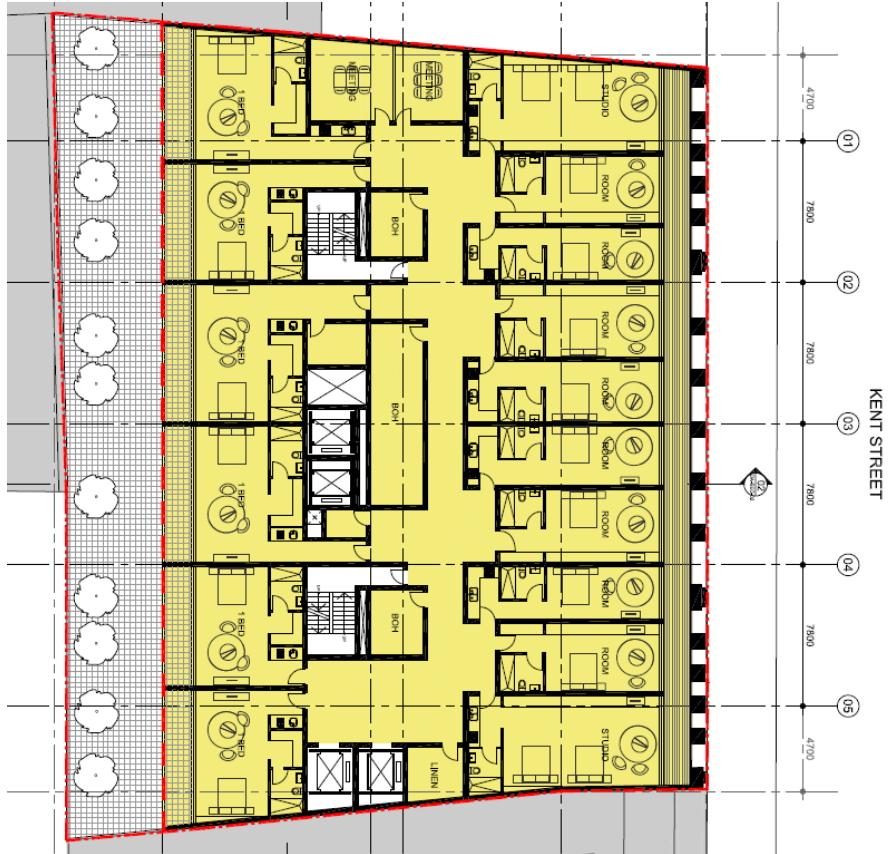


Figure 13: Indicative Level 2 hotel layout



Figure 14: Indicative hotel level layout (Levels 6 to 14)



Figure 15: Indicative residential level layout (Level 18 to 22)

8. The proposal was amended on 11 September 2014 to increase the rear setback of the proposed tower envelope, from 3.4m to 6m, and reduce the side (north and south boundaries) setbacks, from a minimum of 3.875m and 6.89m to 2.4m. The proposal was also amended to alter the intended land uses within the envelope with hotel rooms replacing the previously proposed serviced apartment and the lowest floor of residential apartments moving higher up the building. The proposal now includes hotel rooms on level 1 to 14 and residential flats from levels 15 to 24.

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

9. A number of applications for minor works or for changes of use of various levels within the existing building have been lodged and approved for the building in the past.
10. As noted above, the site was comprehensively redeveloped in 1985 which included the retention of the historic facade and the erection of the current office building behind.

CITY OF SYDNEY ACT 1988

11. 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.*
 - (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."*
12. Having liaised with the City's Access Unit, in this instance, the proposal is not considered to have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

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

State Environmental Planning Policy No 55—Remediation of Land

14. 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.
15. A Preliminary Site Investigation report was submitted with the development application. City's Health Unit is satisfied that the report demonstrates that the site can be made suitable for the proposed use.

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

16. 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) **Principles 1, 2 and 3: Context, Scale and Built Form**

The site is located in a CBD context with other large buildings of a similar height and scale within close proximity of it. The proposed building envelope is consistent with the maximum height and FSR controls in the Sydney LEP 2012. Additionally the proposal also generally complies with the required street frontage height and front and rear setback controls of Sydney DCP 2012. While the proposal has small side setbacks these are considered acceptable in the CBD context but will require further design resolution through the Stage 2 process. See further discussion in the Issues section of this report.

(b) **Principle 4: Density**

The proposed building envelope complies with the height and FSR controls for the site.

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

Principles relating to energy efficiency will be assessed during the detailed stage 2 DA which will also be subject to BASIX targets.

(d) **Principle 6: Landscape**

The proposed building footprint is constructed to the site boundaries. Accordingly, there is no at grade landscaped area. This is considered acceptable in this CBD context. Opportunities for landscaping and open space may be considered during the Stage 2 process.

(e) **Principle 7: Amenity**

Indicative drawings have been provided with the application showing between 7 and 8 apartments per floor on level 15 to 24 of the tower with orientations to the north, east and south. The indicative drawings demonstrate that an acceptable level of residential amenity is potentially achievable. Details will need to be fully considered as part of the competitive design process and future Stage 2 DA. Cross ventilation will be required to more fully comply through condition.

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

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

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

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

(h) **Principle 10: Aesthetics**

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

17. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, although many of these details will only be able to be assessed at Stage 2.
18. In addition, modifications to SEPP 65 and a new Apartment Design Guide are currently on exhibition until 31 October 2014 and are therefore a matter for consideration under Section 79C(1)(a)(ii). The application has been assessed against the draft modifications to SEPP 65 and is considered to be generally consistent with the proposed modifications subject to conditions.

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

19. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
20. 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.
21. 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.

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

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

Sydney LEP 2012

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

Compliance Table		
Development Control	Compliance	Comment
4.3 Height of Buildings (80m maximum for site)	Yes	A maximum height of 80m is proposed with a potential 10% 'uplift' at Stage 2 which could be supported if the applicant satisfies certain provisions.
4.4 Floor Space Ratio (8:1 as a 'base' plus additional floor space for certain purposes and uses in Central Sydney)	Yes	A maximum FSR of 11:1 is proposed. Refer to discussion under 'Floor space' below.
Part 6 Local provisions - height and floor space		
Division 1 Additional floor space in Central Sydney	Yes	Additional floor space is being sought as part of the development. Again, refer to discussion under 'Floor space' below.
Division 4 Design excellence	Yes	Design excellence will be required to be demonstrated when the Stage 2 application is lodged. A competitive design process will be required prior to lodgement of the Stage 2 application.
Part 7 Local provisions—general		
Division 1 Car parking ancillary to other development	Yes	Based on the indicative number of apartments and retail floor space proposed, a maximum of 76 car parking spaces are permitted. 69 car parking spaces are proposed. However, the final number of spaces allowed will depend on the number and mix of apartments and arrangement of commercial uses. It is therefore not approved as part of this DA. See recommended conditions.
7.14 Acid Sulphate Soils	Yes	The site is identified as containing Class 5 Acid Sulphate Soil. It is proposed to excavate the site to provide four levels of basement parking. Acid Sulphate Soils will need to be addressed at Stage 2.
7.20 Development requiring preparation of a development control plan	Yes	The proposal is for a Stage 1 DA.

Sydney DCP 2012

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

3. General Provisions		
Development Control	Compliance	Comment
3.1 Public Domain Elements	Yes	Conditions will be imposed at Stage 2 requiring a Public Domain Plan and Public Art to be provided.
3.2 Defining the Public Domain	Yes	<p>It is acknowledged that the extent that the ground floor is able to be activated will be determined to a large degree by the existing historic facade. However, the indicative ground floor plans show that an acceptable level of activation could be achieved. This will be further refined during the stage 2 DA process.</p> <p>A wind report has been submitted with the application. The report concludes that adequate wind conditions can be achieved. However, a more detailed report will be required to be lodged with the Stage 2 application.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	The Stage 2 application will be subject to a competitive design process. A condition to this effect is recommended.
3.6 Ecologically Sustainable Development	Yes	A BASIX report will be required to be provided with the Stage 2 application.
3.9 Heritage	Able to comply at Stage 2	<p>The proposal will retain the original warehouse facade. Whilst it is not listed on any statutory heritage register, it is identified on two non-statutory lists being the National Trust Register and the Register of the National Estate.</p> <p>Although the plans are indicative only, these show that the podium level hotel rooms will have access to balconies located behind the retained facade. It is unlikely that the removal of the glazing within the existing windows would be supported. This is a matter to be addressed during the Stage 2 DA process.</p>

3. General Provisions		
Development Control	Compliance	Comment
3.11 Transport and Parking	Yes	As noted above, the number of car parking spaces proposed will not exceed the prescribed maximum in the LEP. A Traffic Impact Study has been provided with the application and the proposal has been considered by Council's Traffic Unit. No objections have been received on traffic generation grounds and appropriate conditions are recommended.
3.12 Accessible Design	Yes	Access and facilities for persons with disabilities in accordance with the DCP and the BCA should be incorporated in the Stage 2 application.
3.13 Social and Environmental Responsibilities	Yes	The Stage 2 development will need to satisfy the applicable provisions in respect of passive surveillance and CPTED principles.
3.14 Waste	Yes	The Stage 2 application will need to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.1 Building height	Yes	Although detailed cross-sections have not been provided with the Stage 1 application, a condition is recommended requiring a minimum floor to ceiling height of 3.6m for the first basement and ground floors.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.3 Amenity	Able to comply at Stage 2	The indicative drawings demonstrate that an acceptable level of residential amenity is achievable. Refer to discussion under 'Amenity' below.
4.2.4 Fine grain, architectural diversity and articulation	Yes	These principles will be required to be taken into consideration in the assessment of the Stage 2 development.

4. Development Types		
4.4 Other Development Types and Uses		
Development Control	Compliance	Comment
4.4.8 Visitor accommodation	Yes	The indicative plans lodged with the Stage 1 application show separate entries for the permanent residential and hotel elements of the development. They will also be located on different levels of the building. Concern is raised that, due to their size and configuration, the hotel rooms illustrated in the indicative plans are in fact serviced apartments. Refer to discussion under 'Hotel Use' below.

5. Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.1 Street frontage heights	Yes	With a street frontage height of 36.7m (the retained facade), the proposal will comply with the required frontage height of between 20-45m.

5. Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.2 Building setbacks	Yes	The proposed setbacks are considered acceptable. Refer to discussion under 'Setbacks' below.
5.1.4 Building bulk	Yes	Above a height of 45m, the control restricts floor plates to a maximum of 1000m ² with a maximum horizontal dimension of 40m. At 700m ² and 31m the floor plate will be compliant.

ISSUES

Floor space

26. As with all sites in Central Sydney, the site is the subject of a 'base' FSR control of 8:1. In this location, the developer is also eligible for additional floor space of 3:1 pro-rata for the residential and hotel components of the development and 2:1 pro-rata for the retail part of the development.
27. Taking account of the mix of uses proposed, the permissible FSR is 10.99:1. Under Clause 6.21 of the Sydney LEP, an applicant is eligible for an additional 10% where an application has been the subject of a competitive design process. As this could change the resultant FSR permissible on the site (and the components of residential, hotel and retail uses could change), it is recommended that the condition relating to FSR requires compliance with the relevant LEP clauses as opposed to nominating a maximum quantum of floor space.

Setbacks

Front Setback

28. For front setbacks, Sydney DCP 2012 requires an average of 8m with a minimum of 6m. The proposed tower will be set back 8m from the front boundary and accordingly will comply.

Rear Setback

29. Sydney DCP 2012 requires a rear setback of 6m from rear boundaries for principle windows and balconies. The proposed rear setback varies between 5.325m and 6m. This results in a separation of approximately 20m between the proposed envelope and 'The Sussex' residential tower fronting Sussex Street at the rear.
30. The minor non-compliance is considered acceptable due to its negligible impact in comparison with a complaint scheme and the adequate separation achieved between the proposed envelope and the neighbouring development fronting onto Sussex Street.

Side Setback

31. The Residential Flat Design Code (RFDC) recommends that side setbacks relate to existing streetscape patterns. The neighbouring development to the south is built up to the boundary with the subject site. To the north, the neighbouring development is setback from Kent Street to provide a substantial courtyard area while the commercial tower is built to its southern boundary.
32. Sydney DCP 2012 requires a setback of 6m from side and rear boundaries for principle windows and balconies.
33. A setback of 2.4m – 4.29m is proposed for the northern boundary and zero setback to a maximum of 4.645m is proposed for the southern boundary.
34. In this instance, the proposed building envelope is considered to be acceptable in that it is able to accommodate a residential apartment layout (on levels 15 to 24) where the principal windows and balconies will have an orientation away from the side boundaries. This arrangement is to be required by a condition of consent to be imposed prohibiting principle windows along the northern and southern boundaries.
35. The reduced side setbacks are not expected to result in any unacceptable amenity impacts on the surrounding properties subject to further design resolution at Stage 2.
36. Notwithstanding this, it is recommended that as part of the Stage 2 DA process, that attention be given to these exposed elevations to ensure that a visually interesting treatment is applied, this will reduce the potential visual impact on the neighbouring properties. A condition to this effect has been included in the recommended conditions of consent.

Apartment Mix

37. An indicative unit mix for the permanent residential apartments has been provided with the application. This indicative mix is outlined below:

Apartment Type	Number	Percentage	Required Mix	Compliance
Studio	0	0%	5-10%	Yes
1 Bed	26	38%	10-30%	Yes*
2 Bed	34	49%	40-75%	Yes
3 Bed	9	13%	10-100%	No

(* Sydney DCP 2012 allows for up to 40% Studio and 1 Bedroom apartments)

38. Based on the indicative plans, the proposed envelope is capable of accommodating a compliant unit mix.

Residential Amenity

39. Although the proposal is a Stage 1 DA, indicative plans have been provided illustrating the potential layout of residential apartments on levels 15 to 24 within the proposed envelope. An assessment of the amenity provided by these indicative plans has been undertaken.

Solar Access

40. Approximately 60% of the residential apartments shown on the indicative plan will obtain at least two hours of direct sunlight on 21 June. The Sydney DCP 2012 sets a target of 70% of apartments within a development. It is likely that a more compliant outcome could be achieved during the detailed stage 2 DA process which may require a reduction in the number of apartments.
41. With regard to additional overshadowing of surrounding properties the impact of the proposed envelope is minimal. This is a result of the existing surrounding development, in particular the substantial commercial building neighbouring the site at 309-329 Kent Street.
42. The most significant overshadowing impact of the proposal will be on 161-165 Clarence Street. The proposal results in additional overshadowing between 2pm and 3pm on 21 June. The impact of this overshadowing is particularly relevant given the recent approval for the redevelopment of this site to residential apartments. The figure below illustrates the additional overshadowing on 161 Clarence Street at 2pm and 3pm.

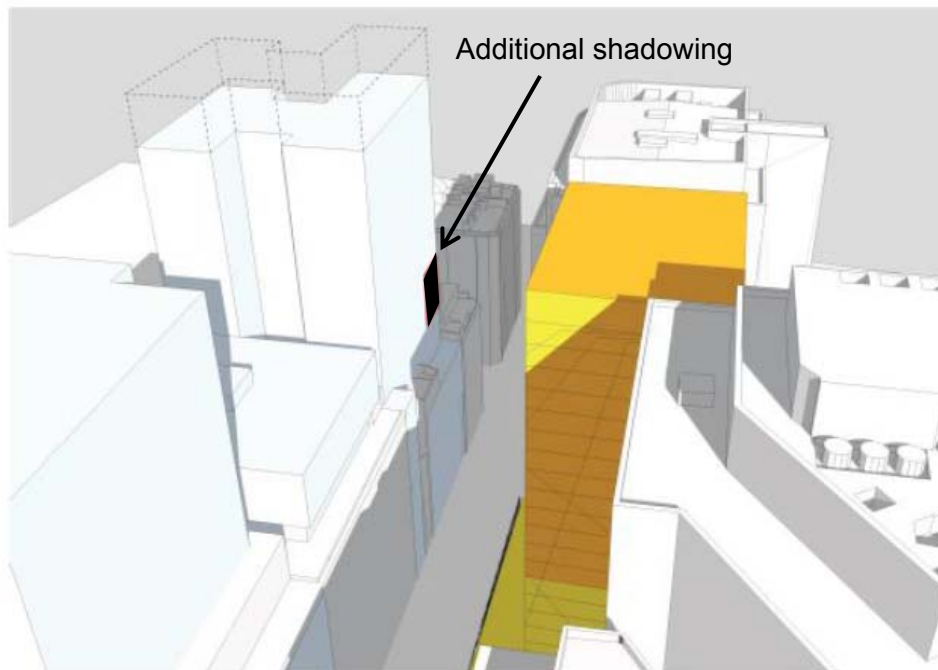


Figure 16: Additional over shadowing of 161 Clarence Street at 2pm

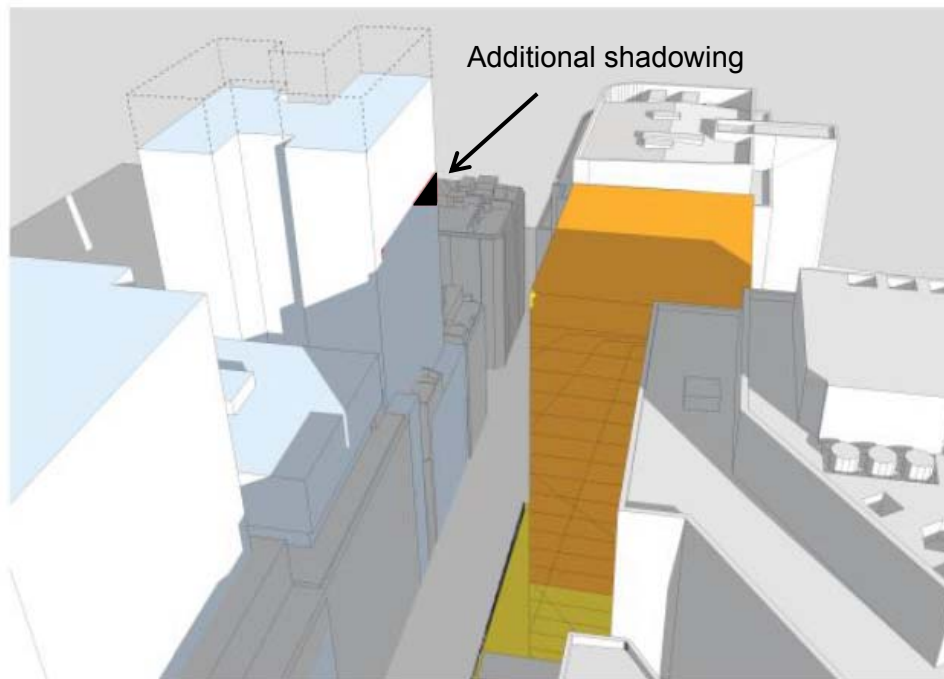


Figure 17: Additional over shadowing of 161 Clarence Street at 3pm

43. As demonstrated in the figure above, the additional overshadowing is minor and considered acceptable particularly given the CBD context of the site.

Apartment Size and Open Space

44. All of the apartments illustrated on the indicative plans meet the minimum apartment size requirements set by the RFDC 'Rules of Thumb' being 50m² for 1-bedroom apartments, 70m² for 2-bedroom apartments and 95m² for 3-bedroom apartments.
45. The majority of the apartments shown on the indicative plans do not however achieve the 10m² of private open space required by the Sydney DCP 2012. There appears to be sufficient space for increased areas of private open space within the proposed envelope, particularly if the number of apartments was reduced slightly to achieve a more compliant solar access outcome. This is addressed by conditions of consent.

Cross Ventilation

46. The RFDC requires 60% of apartments within a development to have the benefit of cross ventilation. None of the indicative apartments have the benefit of cross ventilation clearly demonstrated on the submitted plans.
47. Despite this it is considered that there is potential for the majority of apartments within the proposed envelope to be provided with cross ventilation through the addition of highlight windows to the to the northern and southern boundaries in addition to the vertical 'slots' illustrated on the indicative plans running up the northern and southern elevation of the building. This is a matter which will require further investigation and consideration as part of the detailed stage 2 design competition.

Hotel Use

48. In principle no objection is raised to a hotel use in levels 1 to 14 of the proposed envelope. The indicative floor plans for level 4 to 14 (Figure 12 above) illustrate rooms which are more akin to serviced apartments rather than hotel rooms (for example the provision for kitchens and separate bedrooms).
49. The City's planning controls identify that serviced apartments should have a level of amenity comparable to that of permanent residential apartments. Serviced apartments on the lower levels of the site would not be able to achieve a suitable level of amenity, in particular with regard to solar access. Hotel rooms do not have the same expectations with regard to the level of amenity provided.
50. Serviced apartments on the lower levels of a building would not be supported in the form illustrated in the indicative plans. It is highly unlikely that levels 4 to 14 could be reconfigured to provide an alternate serviced apartment layout which would provide an acceptable level of amenity. A recommended condition of consent identifies these levels as hotel rooms rather than serviced apartments.
51. The indicative plans illustrate a more acceptable configuration for the hotel rooms within the podium (level 1 to 4), see figure below. However, any removal of the glazing from the warehouse facade to provide open balconies to these rooms would not be supported due to the impact on the retained facade's significance.

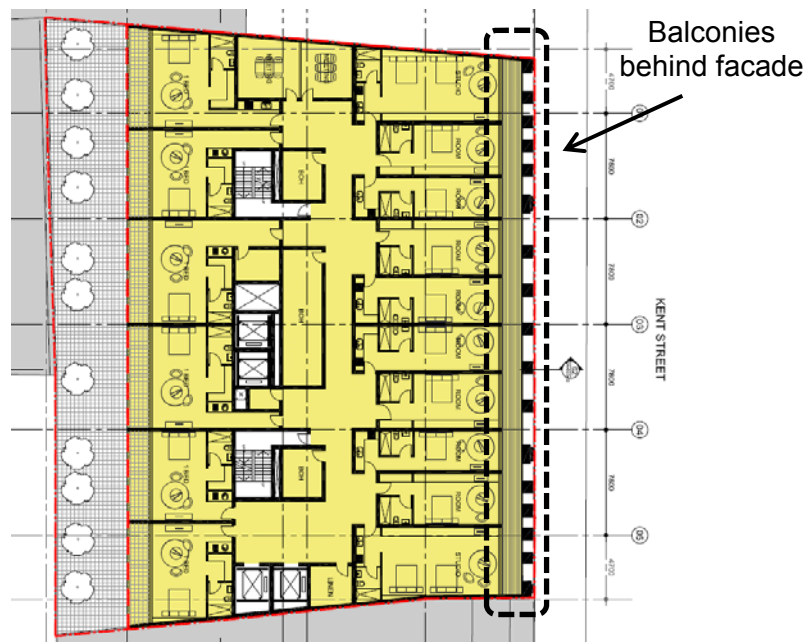


Figure 18: Indicative Level 2 hotel layout

Other Impacts of the Development

52. The proposed development is capable of complying with the BCA which can be addressed in detail when a Stage 2 application is lodged for the site.
53. 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

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

INTERNAL REFERRALS

55. The conditions of other sections of Council have been included in the proposed conditions.
56. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Surveyors; and, Transport and Access who advised that the proposal is acceptable subject to the recommended conditions.

EXTERNAL REFERRALS**Notification, Advertising and Delegation (Submissions Received)**

57. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 35 days (extended from the required 28 days due to the application being lodged over the Christmas holiday period). As a result of this notification, one submission was received.
58. Following the revision of the proposal in September 2014 the application was renotified for a period of 14 days. No submissions were received as a result of the renotification period.
59. A summary of the issues raised in the submission and a response to these is detailed below:
- (a) The setbacks proposed are inadequate which will have an adverse impact on the outlook from neighbouring buildings.

Response – Refer to discussion on setbacks above.

- (b) Because of the inadequate setbacks, the building does not exhibit design excellence as required in the LEP.

Response – The application seeks approval for a Stage 1 building envelope only. Clause 6.21 of the LEP which sets the design excellence provisions applies to development involving the erection of a new building or external alterations to an existing. Design excellence will be required to be addressed at Stage 2.

- (c) The building will not achieve an appropriate level of amenity for the future residential units in terms of windows, light, cross-ventilation and solar access.

Response – As noted above, indicative plans have been received showing the potential design and layout of the apartments within the proposed envelope. These layouts are considered to be capable of providing an acceptable level of amenity which can be further enhanced during the further detailed stage 2 DA process.

PUBLIC INTEREST

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

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

61. The cost of the development will be in excess of \$200,000 and will therefore subject to a s61 contribution at Stage 2.

RELEVANT LEGISLATION

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

CONCLUSION

63. The application seeks approval for a Stage 1 DA for a proposed hotel/residential development with ground floor retail.
64. The application seeks concept plan (Stage 1) approval for the retention of the existing warehouse facade fronting Kent Street and a new building envelope with a maximum height of 80m and a maximum floor space ratio up to 11:1 (16,698m²).
65. The proposed envelope provides a design which generally complies with the relevant planning controls and appears to be suitable for the intended uses. Levels 2 to 14 are suitable for the intended hotel use, not serviced apartments, and levels 15 to 24 are considered acceptable for residential flats.
66. The proposed envelope is not considered to significantly impact on the surrounding properties.
67. Issues raised with regard to internal layout and amenity are able to be resolved as part of the detailed Stage 2 development application.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Patrick Quinn, Specialist Planner)