

ITEM 4. SECTION 96(2) APPLICATION: 116 BATHURST STREET SYDNEY**FILE NO: D/2012/1023/B****DEVELOPMENT APPLICATION NO: D/2012/1023/B****SUMMARY****Date of Submission:** 5 June 2014**Amended:** 24 October 2014**Applicant:** Mars City Pty Limited**Architect:** Candalepas Associates**Developer:** Mars City Pty Limited**Owner:** Osiglen Pty Limited and Minka Holdings Pty Limited**Cost of Works:** \$0**Proposal Summary:** The subject Section 96(2) application seeks to modify an approved Stage 1 building envelope in the following manner:

- to reduce the tower setback on the Castlereagh Street frontage of the site from the approved 8 metres to a variable setback between 6 and 10.79 metres;
- to expand the building footprint towards the northwest corner of the site (to the rear of Porter House) in both the podium and tower to improve the solar access performance of the building;
- reduce the separation/width of the recess between the podium of the proposed building and Porter House; and
- variation to the maximum overall height of the building envelope to increase to 117.1 metres (from the approved 114.5 metres) and the realignment of the stepped/slope of the roof form to comply with the sun access plane.

Consent is sought to:

- modify Condition 1 (Approved Development) and Condition 23 (General Design Matters) to reflect the amended envelope; and
- modify the timing to satisfy the requirements of Condition 22(aa) (Conservation Management Plan and Adaptive Re-Use of Porter House).

**Proposed Summary:
(continued)**

The necessity to modify the approved building envelope has come from the need to ensure consistency between staged development applications on the site as required under Section 83D of the Environmental Planning and Assessment Act, 1979.

The originally lodged application was notified for a 14 day period between 13 June 2014 and 28 June 2014. No submissions were received as a result of the notification of this application.

Following concerns raised to the design of the concurrent assessment of the Stage 2 development application, further modifications were sought to the Stage 1 building envelope, with amended plans being submitted to Council on 24 October 2014. This amended scheme was re-notified for a 14-day period between 5 November 2014 and 20 November 2014. One submission was received as a result of this re-notification of the application. The content of this submission was objecting to loss of light and overshadowing from the modified envelope.

Following the completion of the competitive design process, the detailed design of the building and subsequent assessment of the Stage 2 development application, it has been considered to be a better design outcome to modify the Stage 1 building envelope.

As modified, the proposed envelope achieves the same design intent as the originally approved building envelope; however, allows the envelope (and the detailed design application) to better respond to residential amenity provisions of the relevant planning legislation and comply with the sun access plane provisions.

Summary Recommendation:

The Section 96(2) application is recommended for approval, subject to the modification of Condition 1 (Approved Development), Condition 22 (Conservation Management Plan and Adaptive Re-Use of Porter House) and Condition 23 (General Design Matters) to reflect the revised scheme.

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)

Attachments:

- A - Architectural Plans
- B - Stage 1 Development Application Report to the Central Sydney Planning Committee on 21 February 2013

RECOMMENDATION

It is resolved that consent be granted to Section 96(2) Application No. D/2012/1023/B, subject to Condition 1 (Approved Development), Condition 22 (Conservation Management Plan and Adaptive Re-Use of Porter House) and Condition 23 (General Design Matters), being modified (with modifications shown in ***bold italics*** (additions) and ***bold italics strikethrough*** (deletions)), as follows:

SCHEDULE A

~~(A) The following deferred commencement conditions must be satisfied prior to the consent becoming operative:~~

~~(1) APPROVAL OF ROADS AND MARITIME SERVICES~~

- ~~(a) As requested by Roads and Maritime Services (RMS), the owners of the subject site must obtain the written approval of RMS under clause 100 of State Environmental Planning Policy (Infrastructure) 2007 prior to the activation of the consent.~~
- ~~(b) It must be demonstrated that the approved development will not negatively impact on the Cross City Tunnel which is located beneath the site. An investigation of the impacts of the approved development on the Cross City Tunnel is to include the following information:
 - ~~(i) Rock features, joints, clay seams, bedding planes, dykes and other defects should be identified and their effect on the Cross City Tunnel should be considered in the investigation/analysis.~~
 - ~~(ii) Ground movements around the Cross City Tunnel, the stress and strain changes in the Cross City Tunnel structural elements (lining, water proof membrane, anchors and bolts etc.) due to excavation and footing loads impacting on the tunnel should be predicted and a risk assessment carried out.~~~~
- ~~(c) All requirements contained in the approval of RMS and the owners of the site must be included in any subsequent Stage 2 development application.~~
- ~~(d) Written approval from RMS must be submitted to Council prior to the activation of the consent;~~

~~(B) evidence that those matters identified in deferred commencement conditions listed above must be submitted to Council within 24 months or the consent will lapse;~~

~~(C) the consent will not operate until such time that the Council notifies the Applicant in writing that deferred commencement consent conditions as indicated in clause (A) above, have been satisfied; and~~

~~(D) upon Council giving written notification to the Applicant that the deferred commencement conditions in clause (A) above have been satisfied, the consent will become operative from the date of that written notification, subject to the following conditions of consent and any other additional conditions reasonably arising from consideration of the deferred commencement consent conditions:~~

(Condition satisfied 19 April 2013)

SCHEDULE 1

(1) APPROVED DEVELOPMENT

Stage 1 development consent is granted only for a building envelope and general arrangement of uses within the development, being basement car parking, a retail/hotel podium and residential tower and restoration and commercial use of heritage listed Porter House, in accordance with Development Application No. D/2012/1023 dated 6 July 2012 (*as amended*) and the following drawings:

Drawing Title	Architect	Date
<i>S96-1101 Issue B Envelope Plans Ground & Level 1</i>	<i>Candalepas Associates</i>	<i>23 October 2014</i>
<i>S96-1102 Issue B Envelope Plans Levels 2 & 3</i>	<i>Candalepas Associates</i>	<i>23 October 2014</i>
<i>S96-1132 Issue B Envelope Plans Levels 4 & 5</i>	<i>Candalepas Associates</i>	<i>23 October 2014</i>
<i>S96-1104 Issue B Envelope Plans Levels 6 & 7</i>	<i>Candalepas Associates</i>	<i>23 October 2014</i>
<i>S96-1105 Issue B Envelope Plans Levels 8 & 9</i>	<i>Candalepas Associates</i>	<i>23 October 2014</i>

Drawing Title	Architect	Date
S96-1106 Issue B Envelope Plans Levels 10-13 & 14-29	Candalepas Associates	23 October 2014
S96-1107 Issue B Envelope Plans Levels 30 & 31	Candalepas Associates	23 October 2014
S96-1108 Issue B Envelope Plans Levels 32 & 33	Candalepas Associates	23 October 2014
S96-1109 Issue B Envelope Plans Levels 34 & 35	Candalepas Associates	23 October 2014
S96-1110 Issue B Envelope Plans Level 36 & Roof	Candalepas Associates	23 October 2014
S96-1301 Issue B Elevations North & East	Candalepas Associates	23 October 2014
S96-1302 Issue B Elevations West & South	Candalepas Associates	23 October 2014
Proposed Envelope 3D Model (1 of 5)	Tony Owen Partners	January 2013
Proposed Envelope 3D Model (2 of 5)	Tony Owen Partners	January 2013
Proposed Envelope 3D Model (3 of 5)	Tony Owen Partners	January 2013
Proposed Envelope 3D Model (4 of 5)	Tony Owen Partners	January 2013

Drawing Title	Architect	Date
Proposed Envelope 3D Model (5 of 5)	Tony Owen Partners	January 2013
Heritage Item – East Facade	Tony Owen Partners	January 2013
Heritage Item – Plan	Tony Owen Partners	January 2013
Ground Floor Envelope	Tony Owen Partners	January 2013
Level 1 Envelope	Tony Owen Partners	January 2013
Level 2 Envelope	Tony Owen Partners	January 2013
Level 3 - 8 Envelope	Tony Owen Partners	January 2013
Level 9 Envelope	Tony Owen Partners	January 2013
Level 10 - 33 Envelope	Tony Owen Partners	January 2013
Level 34 Envelope	Tony Owen Partners	January 2013
Level 35 Envelope	Tony Owen Partners	January 2013
Level 36 Envelope	Tony Owen Partners	January 2013

and as amended by the conditions of this consent:

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

(As modified by D/2012/1023/B, dated 26 March 2015)

(2) MATTERS NOT APPROVED

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

- (a) The request for a 5.8% uplift in floor space ratio.
- (b) Any demolition, construction, or excavation.
- (c) The layout and number of residential units, car parking spaces, basement levels and building storeys.

(3) 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.

(4) 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 Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012; and
- (c) The competitive design process must be held prior to the lodgement of the Stage 2 development application for the development.
- (d) The competitive design process and Stage 2 development application must include the adjoining, heritage listed Porter House as part of the proposal.
- (e) The detailed design of the development must exhibit design excellence.

(5) EXPOSED ELEVATIONS

A visually interesting treatment is to be applied to the exposed side elevations along the northern and western 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.

(6) COMPLIANCE WITH ALL RELEVANT PLANNING PROVISIONS

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

(7) PUBLIC DOMAIN PLAN

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

(8) LOCATION OF DRIVEWAY

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

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

Details shall be submitted with the Stage 2 Development Application.

(9) VEHICLE ACCESS

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

(10) 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.

(11) FLOOR SPACE RATIO - CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The combined Floor Space Ratio of the proposal and the Floor Space Ratio of the retained Porter House, must comply with the requirements 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 Clause 6.11 of the *Sydney Local Environmental Plan 2012*.

(12) 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.

(13) WIND

The Stage 2 DA scheme 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 around Bathurst and Castlereagh Streets. Any future development must satisfy the requirements of the *Sydney Development Control Plan 2012* in this regard.

(14) SIGNAGE STRATEGY

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

(15) 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.

(16) WASTE MINIMISATION

The Stage 2 DA shall comply with Sydney Development Control Plan 2012.

(17) CONSTRUCTION MANAGEMENT

The Stage 2 DA for the whole development shall be supported by a detailed construction management plan for the development.

(18) ACID SULPHATE SOILS

An Acid Sulphate Soils Management Plan must be prepared by a suitably qualified person in accordance with the 'Acid Sulfate Soils Assessment Guidelines' (ASSMAC August 1998), and submitted with the Stage 2 DA.

(19) ALIGNMENT LEVELS

- (a) The footpath alignment levels for the building must be submitted to Council for approval at Stage 2 Development Application stage. The submission must be prepared by a Registered Surveyor and must be in accordance with the City of Sydney's Public Domain Manual.
- (b) These alignment levels, as approved by Council, are then to be incorporated into the plans submitted with the application for a Construction Certificate, excluding a Construction Certificate for approved preparatory, demolition or shoring work and be incorporated with the public domain plan which will be required as Construction certificate condition.

(20) FURTHER GEOTECHNICAL AND STRUCTURAL INVESTIGATION AND ASSESSMENT

The following report is to be submitted to and shall be endorsed by Council's Director City Planning, Development and Transport prior to ~~the commencement of any future design competition~~ submission of the Stage 2 Development Application:

- (a) The applicant is to engage a structural engineer with suitable experience in work on heritage buildings and heritage materials, to advise on the protection of, and mitigation of damage to, adjacent heritage buildings, arising out of the proposed excavation. The applicant's structural and geotechnical engineers shall direct investigations of subsurface conditions including sufficient boreholes and test pits to determine geotechnical parameters for excavation, excavation support and the protection of adjacent structures.

- (b) ~~A structural assessment of Porter House and concept structural design to verify the adequacy of the building for the proposed new use. The report is to be prepared by a structural engineer with suitable experience in work on heritage buildings and heritage materials. The report is to include an assessment of the critical structural issues relating to the facades of the building and the potential impact upon the existing timber structure of the building arising out of the need for fire resistant construction, fire separation, lateral stabilisation, and to detail structural works to Porter House that will be required to achieve compliance that comply with the Building Code of Australia and Australian Standards.~~

(Amended 25 July 2013)

(21) ~~ARCHAEOLOGICAL ASSESSMENT (NON STANDARD)~~

~~An archaeological assessment of all properties included in the development undertaken by a suitably qualified archaeologist must be submitted with the Stage 2 DA. The report must assess whether the proposed works have the potential to disturb any archaeological remains and the need for any archaeological investigation prior to commencement of any works on site. The report should also recommend measures and documentation to be undertaken during the process of demolition and excavation work. The report should also form part of the Design Competition brief, in order to inform potential interpretation.~~

(Delete 25 July 2013)

(22) CONSERVATION MANAGEMENT PLAN AND ADAPTIVE RE-USE OF PORTER HOUSE AT 203 CASTLEREAGH STREET SYDNEY

- (a) The Conservation Management Plan for Porter House at No 203 Castlereagh Street, Sydney is to be amended and the amended plan shall be endorsed by Council's Director City Planning, Development and Transport prior to the commencement of any future design competition. The adjustments to the CMP shall include the following: updated with new information revealed during the construction stage and submitted to the Director City Planning, Development and Transport for approval prior to the issue of an Occupation Certificate.
- (i) Further physical investigation of the rear structures including timber posts, and boundary walls, where earlier structures may have been incorporated into the building supported by further documentary analysis where required. This investigation should include the relationship of structures with the spaces directly beneath in the basement.
 - (ii) To include further physical investigation of the brick platforms in the basement level of the building, including investigation of the condition of the sandstone perimeter wall supported by further documentary analysis where required.
 - (iii) Physical analysis of the locked Storage room in the Basement Level.

- (iv) Inclusion of the existing pavement shafts and evidence of former shafts, on the Basement Plan.
- (aa)(v) ~~**Prior to the submission of a Stage 2 Development Application, further physical investigation on the sandstone façade fronting Castlereagh Street above door head height, including mapping the location of any inserted beams is to be undertaken and inform the reconstruction of the ground floor façade. The findings of these investigations are to form part of the Stage 2 Development Application.**~~
- (vi) ~~Review of the gradings of significance and policies in the light of further investigation above.~~
- (b) The following reports in (i) to (vii) below, pertaining to the refurbishment of Porter House, shall be ~~approved by Council's Director City Planning, Development and Transport prior to the commencement of any future design competition. The concept designs and advice within the approved reports are to inform the Design Competition, be incorporated into the Stage Two Development Application design.~~
 - (i) The approved outline Schedule of Conservation Works, contained within the Conservation Management Plan by Godden Mackay Logan, and the approved sketch design for the reconstruction of the eastern façade at Ground Floor level. ~~are to be included as part of the design competition brief.~~
 - (ii) The approved outline Schedule of Conservation Works is to be developed further and supported by larger scale plans and sections with indicative details and specifications outlining the intended conservation and adaptive approach to the interiors components (preservation, restoration, reconstruction, adaptation, interpretation etc) is to form part of any Stage 2 application.
 - (iii) The approved detailed design resolution for the reconstruction of the eastern façade at Ground Floor level supported by sections and detail plans at a minimum scale of 1:20 are to form part of any Stage 2 application.
 - (iv) A concept fire safety strategy report that outlines the proposed fire rating solution for the interiors, which is to utilise fire engineered solutions rather than physical barrier solutions to maximise the exposure of timber structure, original fabric and finishes and minimise compartmentalisation of spaces and levels.

- (v) Building services concept design report(s) that assess the current building services, address non compliances with the Building Code of Australia (BCA), and explain the intended design approach to new or additional building services. This should include the type of systems proposed, the means of reticulation of services and the location of all plant. The proposed solutions to building services are to enhance the Victorian character of the interiors, and maximise the exposure of timber structure, original fabric and finishes. Service installations such as air conditioning plant, hydrant pump room, booster valves and electrical switch room are to be located outside of Porter House. The lift overrun is to be reduced in height to the minimum that is feasible.
- (vi) An Acoustic report to explain how the interiors will achieve compliance with BCA.

(Amended 25 July 2013)

(As modified by D/2012/1023/B, dated 26 March 2015)

(23) GENERAL DESIGN MATTERS

The future design competition brief and Stage 2 development application must incorporate the following restrictions:

- (a) The extent of the cantilever of the proposed tower over Porter House is to be a maximum of five metres as measured in plan, in the north south direction.
- (b) The proposed lift core is to be setback from the south facade of Porter House by a minimum of four metres.
- (c) The proposed tower is to be setback a minimum of **eight six** metres from Castlereagh Street.
- (d) The proposed recess between Porter House at 203 Castlereagh Street and the proposed building at 110-118 Bathurst Street is to be designed as follows:
 - (i) Any roofing or facades to the north and east are to be fully glazed and achieve a high level of transparency so as to conserve views of the original southern facade and the form of Porter House.
 - (ii) To be a minimum width of ~~5,300mm~~ **3,800mm**.
- (e) The proposed building at 110-118 Bathurst Street is to be structurally independent of Porter House, the building at 203 Castlereagh Street, Sydney.
- (f) The proposed excavation is to be setback by minimum of two metres from the boundary with the property St George's Church, at 201A Castlereagh Street, at the rear of Porter House.

- (g) The podium design should be a finely designed masonry building with the facade composition responding in a positive way to the adjacent heritage items and the predominant historic development at 201A, 201 and 203 Castlereagh Street, 284 – 292 Pitt, and 108 Bathurst Street that is characterised by strong visual depth, a high degree of architectural modelling and articulation, a complex hierarchy of vertical and horizontal proportions and changes in architectural treatment with height and level. High quality materials that provide a compatible response to surrounding development should be incorporated into the design. Glazing (at all levels of the building) should maintain a high level of clarity and be neutral in colour. Balconies should be recessed within the line of the facade through punctured openings.
- (h) The soffit of the tower as viewed within the context of the heritage items at 201A, 201 and 203 Castlereagh Street is to be carefully considered so as to reduce its visual prominence.
- (i) The pavement level of the former cartway of Porter House at 203 Castlereagh Street is to be lowered to an approximation of its original level. The character of this space is to reflect its original use as cartway.
- (j) Any enclosed structure replacing the existing rear structures in Porter House is to be setback by a minimum of three metres from the boundary with the property at 201A Castlereagh Street, St George's Church, so as to retain the sense of the former rear courtyard.

(As modified by D/2012/1023/B, dated 26 March 2015)

(24) OUTLINE HERITAGE INTERPRETATION STRATEGY

The Stage Two Design is to incorporate an outline interpretation strategy that details how information on the history and significance of the entire site and its potential archaeology will be provided for the public. This outline should inform the Design Excellence brief.

(25) USE OF CONSERVATION ARCHITECT

An experienced conservation architect is to be commissioned to work with the consultant team throughout the Design Excellence and Stage 2 design processes.

(26) LOT CONSOLIDATION

All land titles within the site must be consolidated into one lot. A plan of consolidation must be registered with the Land and Property Information Division of the Department of Lands, prior to the Stage 2 development application.

BACKGROUND

The Site

1. The site has a legal description of Lot 1 DP1193135, and is commonly known as 116 Bathurst Street, Sydney. Prior to 16 September 2014, when there was a consolidation of five allotments, the site had previous addresses of 110-110A, 112-118 Bathurst Street and 203 Castlereagh Street.
2. The site is located on the northern side of Bathurst Street, and has street frontage to Castlereagh Street along the eastern boundary of the site. The site is generally square in shape, with a frontage to Bathurst Street of 35.63 metres and a 35.745 metre frontage to Castlereagh Street. The site has an area of 1,297sqm.
3. Existing on site is a number of low rise buildings that range in height from 2 to 8 storeys. On the northern portion of the site, fronting Castlereagh Street, is the 5-storey heritage listed building constructed in 1876, known as 'Porter House'. Located approximately 30 metres below existing ground level of the site is the subterranean road tunnel, known as the Cross City Tunnel.
4. There is not currently any vehicular access to the site on either street frontage.
5. **Figures 1 to 3**, below, illustrates the location of the site and the existing built form.

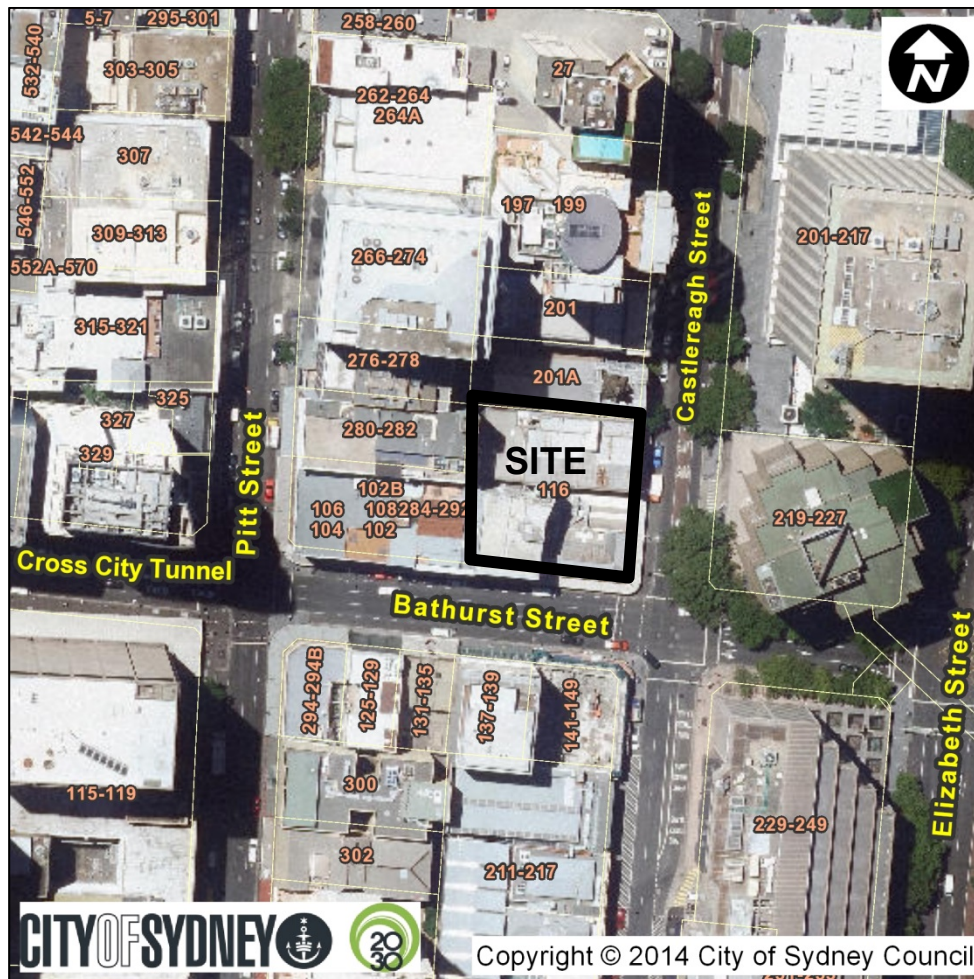


Figure 1: Location plan



Figure 2: View of the existing three buildings on the site as viewed from the corner of Bathurst and Castlereagh Streets, looking northwest



Figure 3: View of the existing 5-storey heritage building on the northern portion of the site, known as 'Porter House'

Surrounding Development

6. As detailed in **Figures 4** and **5**, below, the site is surrounded by a mixture of land uses that reflect the fact that the site is located within the Sydney CBD. In detail, the following properties surround the site:
 - (a) Directly to the north of the site, fronting Castlereagh Street, is the heritage listed St George's Church at 201A Castlereagh Street and the 5-storey heritage listed former 'CENEF House' at 201 Castlereagh Street. Further north is a 38-storey mixed use development known as Victoria Towers that accommodates approximately 250 residential apartments and a club facility known as the Castlereagh Club;

- (b) To the east of the site, on the opposite side of Castlereagh Street, is commercial office building known as 219-227 Elizabeth Street. Further east, on the opposite side of Elizabeth Street is Hyde Park.
- (c) To the south of the site, on the opposite side of Bathurst Street, is the site known as 141-149 Bathurst Street which is currently being redeveloped as a 16-storey mixed use development; and
- (d) To the west at 284-292 Pitt Street is a 7-8-storey commercial building. This building is heritage listed as an item of local significance and is known as the former 'Speedwell House'.



Figure 4: View of development to the north of the site along Castlereagh Street, including the 38-storey Victoria Towers residential development



Figure 5: View of development surrounding the site looking west along Bathurst Street, including construction site (at 141-149 Bathurst Street) to the south of the site

HISTORY OF SUBJECT APPLICATION

Stage 1 Development Application – D/2012/1023

7. A Stage 1 Development Application (D/2012/11023) for the subject site was granted deferred commencement consent by the Central Sydney Planning Committee on 21 February 2013, and comprised the following:
 - (a) an indicative building envelope for an 114.5 metre tower on site, including basement car parking;
 - (b) retention and restoration of Porter House;
 - (c) indicative land uses of retail/commercial, hotel and residential apartments; and
 - (d) indicative vehicular access from Bathurst Street.



Figure 7: The approved Stage 1 building envelope for the site as viewed from Castlereagh Street.

Design Competition Process

9. Following the Stage 1 development consent, the Applicant commissioned an architectural design competition process for the site. Six architectural firms were invited to submit a design proposal in September 2013. Five firms accepted the invitation to participate in the competition. These were:
 - (a) Tony Owen Partners;
 - (b) Fender Katsalidis Mirams Architects;
 - (c) Candalepas Associates;
 - (d) John Wardle Architects; and
 - (e) Tonkins, Zulaikiha & Greer.

10. Presentations were given to the Design Jury on 10 October 2013. From these presentations, the participants were shortlisted to three finalists that were invited to participate in the next stage of the competition. These firms were:
 - (a) Fender Katsalidis Mirams Architects;
 - (b) Candalepas Associates; and
 - (c) John Wardle Architects
11. Presentations were again given to the Design Jury on 12 December 2013. The Design Jury selected the Candalepas Associates scheme as the winning design on 13 December 2013; however, noting a number of matters that required further resolution prior to lodgement.
12. Candalepas Associates further developed the scheme and submitted refined plans to the Design Jury. In correspondence, dated 26 March 2014, the Design Jury advised Council that the series of improvements and refinements had been made to address the matters raised above, and that the Jury were now of the view that the scheme exhibited design excellence.
13. This Candalepas Associates scheme has been lodged as the subject Stage 2 Development Application for the site on 5 June 2014.

PROPOSAL

14. The subject Section 96(2) application seeks consent to modify the approved Stage 1 building envelope in the following manner:
 - (a) expansion of the building footprint to the northwest corner of the site (to the rear of Porter House) in both the podium and tower;
 - (b) reduction in the setback of the tower from the Castlereagh Street frontage of the site to a minimum setback of 6 metres from the approved 8 metres;
 - (c) variation to the maximum overall height of the tower to 117.1 metres (from the approved 114.5 metres) and a realignment to the stepping/slope form of the roof to generally reduce the height in the eastern portion of the site; and
 - (d) reduction in the separation of podium of the proposed building and Porter House.
15. The application also seeks to modify heritage conditions imposed on the Stage 1 consent, in the following manner:
 - (a) modify Condition 22 (Conservation Management Plan and Adaptive Re-Use of Porter House) to defer the requirement to undertake a physical investigation of the sandstone facade until the issue of a Construction Certificate of the Stage 2 Development Application; and
 - (b) modify Condition 23 (General Design Matters) to reflect the amended building envelope sought.

CITY OF SYDNEY ACT 1988

16. 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.
17. The proposed modification does not have any altered impact on traffic or transport in the Sydney CBD, beyond that assessed in the original Stage 1 Development Application. As part of the assessment of that application, it was determined in liaison with the City's Access Unit, that consultation with the CSTTC was not necessary at this stage.

THRESHOLD TEST

18. The development as proposed to be modified is considered to be substantially the same as that originally approved.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

19. Besides the matters discussed in this report, the assessment against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979 contained in the report to the Central Sydney Planning Committee at its meeting on 21 February 2013 are still relevant.
20. A copy of the original planning assessment report for Development Application D/2012/1023 is provided at **Attachment B**.

ISSUES**Variations to building envelope and footprint**

21. The proposal does result in a number of variations to the Stage 1 Development Application building envelope and footprint. These variations include:
 - (a) expansion of the building footprint to the northwest corner of the site (to the rear of Porter House) in both the podium and tower;
 - (b) reduction in the setback of the tower from the Castlereagh Street frontage of the site to a minimum setback of 6 metres from the approved 8 metres;
 - (c) variation to the maximum overall height of the tower to 117.1 metres (from the approved 114.5 metres) and a realignment to the stepping/slope form of the roof to generally reduce the height in the eastern portion of the site; and
 - (d) reduction in the separation of the podium of the proposed building and Porter House.
22. As the extent of these variations is not considered to be minor in nature, and in order to ensure consistency between staged applications as required pursuant to Section 83D of the Environmental Planning and Assessment Act, 1979, the subject application has been lodged to modify the Stage 1 building envelope.

Building Height

23. The Stage 1 building envelope was approved in February 2013 with a sloping roof form, and with a variable height between 103 metres (RL 129.61) and 114.5 metres (RL 141.05) (refer to **Figure 8**, below).



Figure 8: The approved Stage 1 building envelope, illustrating the approved roof form and slope

24. Pursuant to the provisions of Clause 4.3 of Sydney Local Environmental Plan 2012 (SLEP 2012), no numeric building height control exists for the site. Instead, the maximum permissible height is determined by the co-ordinates of the sun access plane for Hyde Park West as stipulated at Clause 6.17 of SLEP 2012.
25. Following the design competition and preparation of documentation of the Stage 2 development application, it became apparent that the building envelope approved in the Stage 1 development application had inaccurately cast and plotted the sun access plane. As such, the sloping maximum height of the envelope approved at the Stage 1 application had elements in the eastern portion of the site that projected above the sun access plane.
26. As development that projects higher than the sun access plane is contrary to the provisions of Clause 6.17(2) of SLEP 2012, the subject application seeks to modify the building envelope to bring the proposal into compliance with the co-ordinates of the sun access plane. The modifications have seen the variation to the slope and form of the roof plane, as well as the overall maximum height.
27. Consent is sought as part of the subject application to vary the height and roof plane of the building envelope in the following manner (refer to **Figure 9**, below):
- a reduction in height by up to 6 metres in the eastern portion of the site to delete the portions of the approved envelope that project above the sun access plane; and
 - an increase in the overall height of the envelope at the far western portion of the site by 2.55 metres to a maximum height of 117.1 metres (RL 143.60).

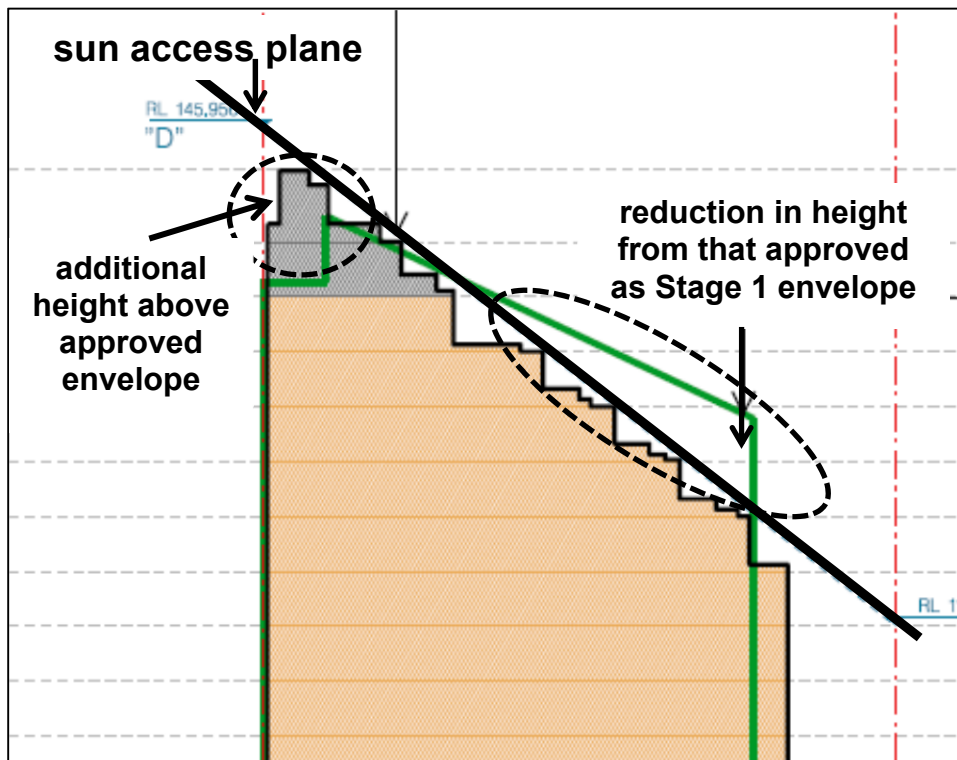


Figure 9: Variations to the maximum height and roof profile of the Stage 1 building envelope to comply with the sun access plane

28. The modified building envelope, as well as the concurrent Stage 2 detailed design development application, has been reviewed by the City's Modellers as part of the assessment of each application. The City Modellers have confirmed that the proposal is now compliant with the co-ordinates of the sun access plane and the modified envelope is wholly located below the sun access plane. As such, the proposal now complies with the provisions of Clause 6.17 of SLEP 2012.
29. The modified envelope is now also considered to be consistent with the objectives for building height, pursuant to Clause 4.3 of SLEP 2012, as:
- (a) the height is contextually appropriate for a central CBD site;
 - (b) the overall height transitions across the site (from the lowest point in the east to highest point in the west) in response to the restrictions of the sun access plane to ensure the protection of sunlight to Hyde Park;
 - (c) the variations to the height of the envelope are sited so as to not impact on the heritage item on the site, nor its neighbouring properties;
 - (d) the additional shadows cast by the additional height (as well as the variations to the setbacks and footprint of the envelope) primarily fall over the roofs of development to the south of the site (on the opposite side of Bathurst Street). Where new shadows are cast across existing residential buildings on the winter solstice; this is limited to a single building at 304-308 Pitt Street (the 'Princeton' building). An additional shadow is cast to the mid-rise levels of the northern facade of the Princeton building at 11.00am on the winter solstice. Floors plans of the affected apartments in the Princeton building have been reviewed, and no objection is raised to this additional shadowing, as it is limited to being cast across bedroom and service room windows to apartments only. No principal living room windows or open space is affected by the proposed modifications; and
 - (e) the variations to height will not materially impact on views from surrounding buildings beyond that assessed as acceptable in the original Stage 1 development application.
30. With consideration to the above matters, the proposed variations to the height and roof plane of the building envelope are acceptable.

Front Setback to Castlereagh Street

31. The Stage 1 Development Application approved a building envelope with a tower setback of 8 metres from the Castlereagh Street boundary of the site. The proposed modification seeks to modify the setback of the tower from Castlereagh Street to a variable setback of between 6 and 10.79 metres. **Figure 10**, below, illustrates the variation proposed to the setback of the tower from Castlereagh Street.

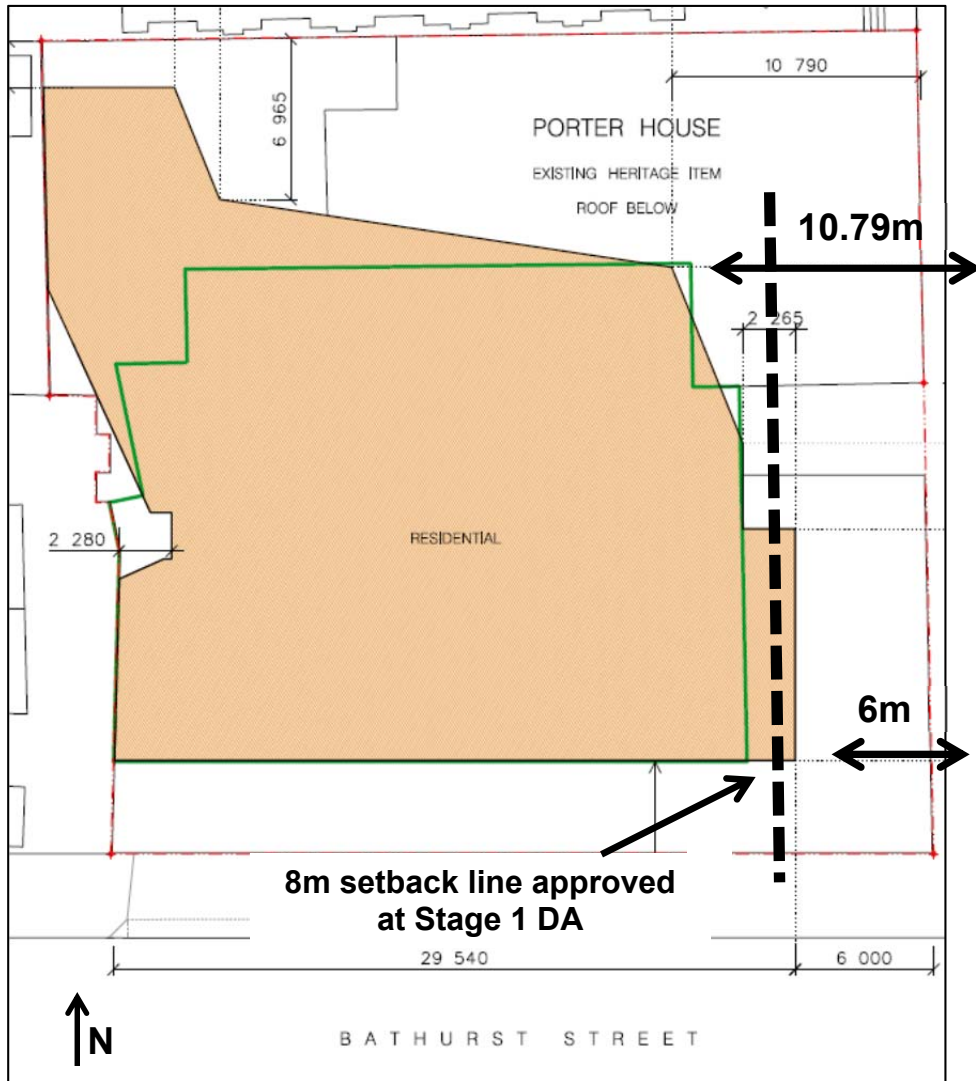


Figure 10: Variation proposed to the front setback of the tower from Castlereagh Street

32. Whilst this represents a numeric departure from the 8 metre front setback control of Section 5.1.2.1, it is considered that the variation can be supported in this particular instance as the proposal still achieves the objectives for setbacks as outlined at Section 5.1.2 of Sydney Development Control Plan 2012 (SDCP 2012), in the following manner:
- the variation is supported as based on a weighted setback argument, the proposal has a weighted average setback of 8.395 metres. As this weighted average exceeds 8 metres, the proposal is considered to be consistent with the provisions of Section 5.1.2.1 (1) and (2) of SDCP 2012;
 - the extent of the envelope that is proposed to be setback 6 metres from the Castlereagh Street frontage of the site has been reduced during the assessment. The northern portion of the footprint and envelope has been further setback and splayed to respect the curtilage of the heritage item, as well as to improve sightlines and the appreciation of the row of low-rise heritage items when viewed from along Castlereagh Street;

- (c) notwithstanding the reduced setback on Castlereagh Street, the proposed future residential apartments will retain a separation of approximately 30 metres to the existing commercial tower on the opposite side of Castlereagh Street, which is in excess of the DCP requirements and is considered acceptable;
 - (d) the variation to the building envelope is a direct result from the design progression that has occurred for the project through the completion of a competitive design process. Feedback was sought from the Design Jury on the modifications to the setbacks prior to the lodgement of the subject application. The Jury raised no objection to a reduction to a 6 metre setback on Castlereagh Street noting that, contextually, the nearest tower to the north within the same street block had a partial nil setback from Castlereagh Street;
 - (e) the proposal retains a podium that is of a height to reflect the predominant street wall height on both its frontages. **Figures 11 to 14**, below, provide modelling of the modification to the building envelope as viewed from street level (on Castlereagh Street). Review of this modelling illustrates that there is only a minor variation to the perceived bulk and scale of the building at pedestrian level resulting from the varied front setback. This would be further negated through articulation of the building envelope at the detailed design stage, as has been demonstrated in the concurrent Stage 2 development application;
 - (f) the reduced setback will still preserve reasonable levels of daylight to street level and retains views of the sky. When considered collectively with the existing built form, the modification proposed is not considered to have a material impact in this regard;
 - (g) the variation in front setback will result in negligible variations to the shadow cast by the approved Stage 1 building envelope. Refer to the assessment outlined in the building height discussion, above. Neither the approved or proposed modification will result in any unreasonable overshadowing to the public domain; and
 - (h) an updated wind assessment has been submitted with the subject application. The conclusions of this wind assessment are that as a result of the proposed massing changes, the wind conditions around the subject site will remain similar to the approved conditions and an improvement on the existing conditions.
33. On balance, with consideration to the above factors that may be impacted when varying the setbacks of a building envelope, the proposed variation to the front setback planning controls of the tower is supported in this instance. It is considered that the 6 metre setback to Castlereagh Street for the tower element of the building is contextually appropriate and does not result in greater environmental or amenity impacts.

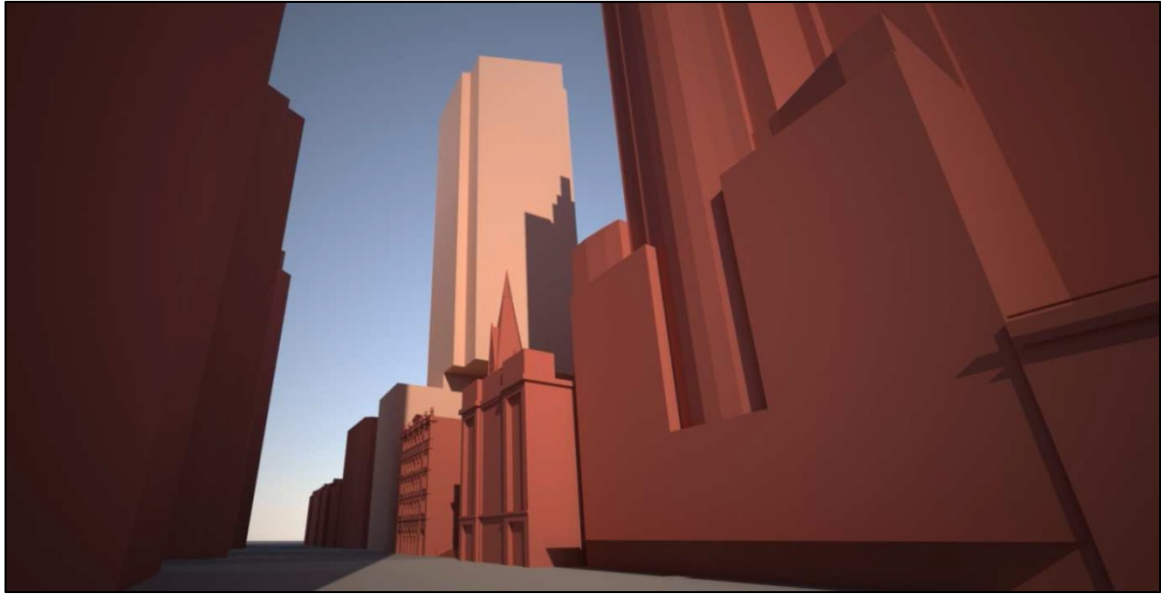


Figure 11: View analysis of approved building envelope (with an 8 metre tower setback), looking south along Castlereagh Street



Figure 12: View analysis of the proposed modified building envelope (with a variable tower setback between 6 and 10.79 metres), looking south along Castlereagh Street

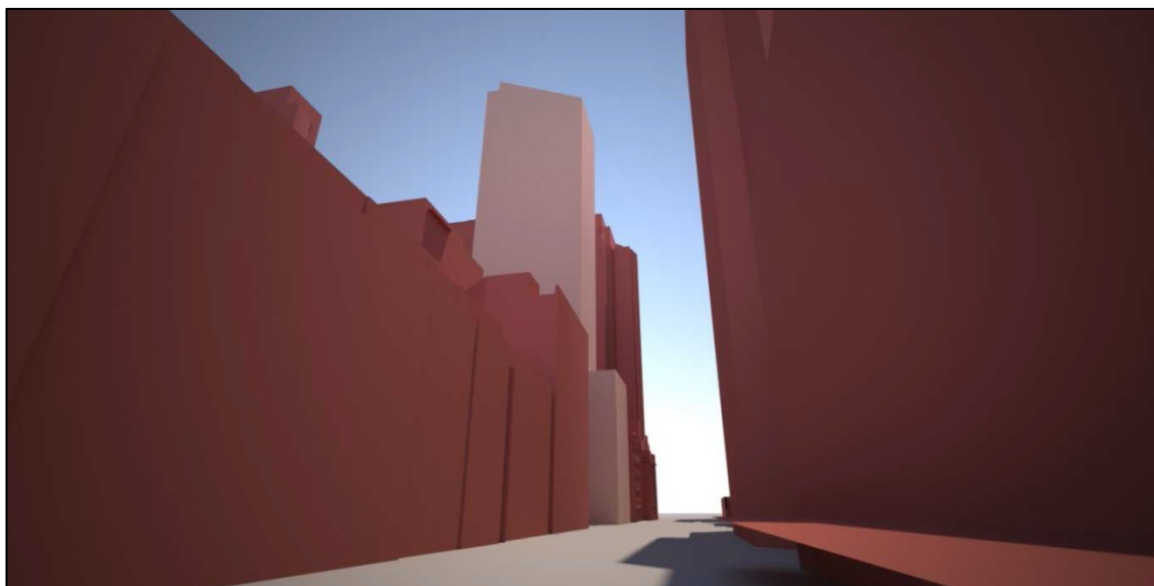


Figure 13: View analysis of approved building envelope (with an 8 metre tower setback), looking north along Castlereagh Street

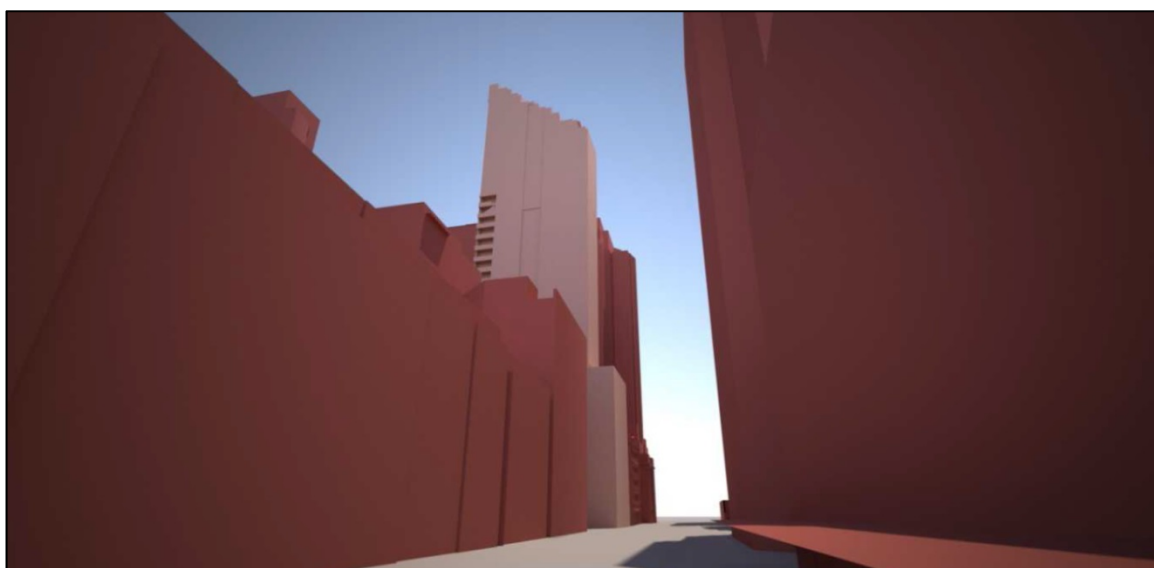


Figure 14: View analysis of the proposed modified building envelope (with a 6 metre tower setback), looking north along Castlereagh Street

Building footprint

34. The subject application seeks to vary the approved building footprint of the podium and tower to expand the building footprint towards the northwest corner of the site (to the rear of Porter House). **Figures 15** and **16**, below, illustrate the modified footprint sought on typical levels of the podium and the tower, and highlights the variation sought from the existing approved Stage 1 DA building envelope.

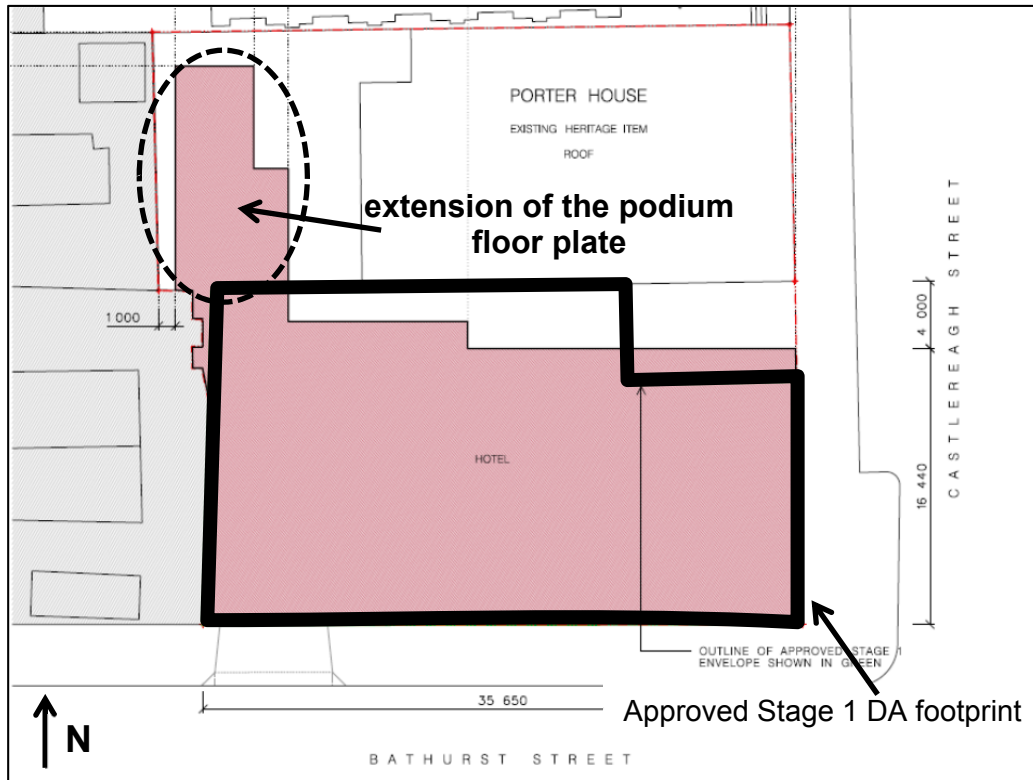


Figure 15: The variations proposed to the Stage 1 building footprint on a typical podium level

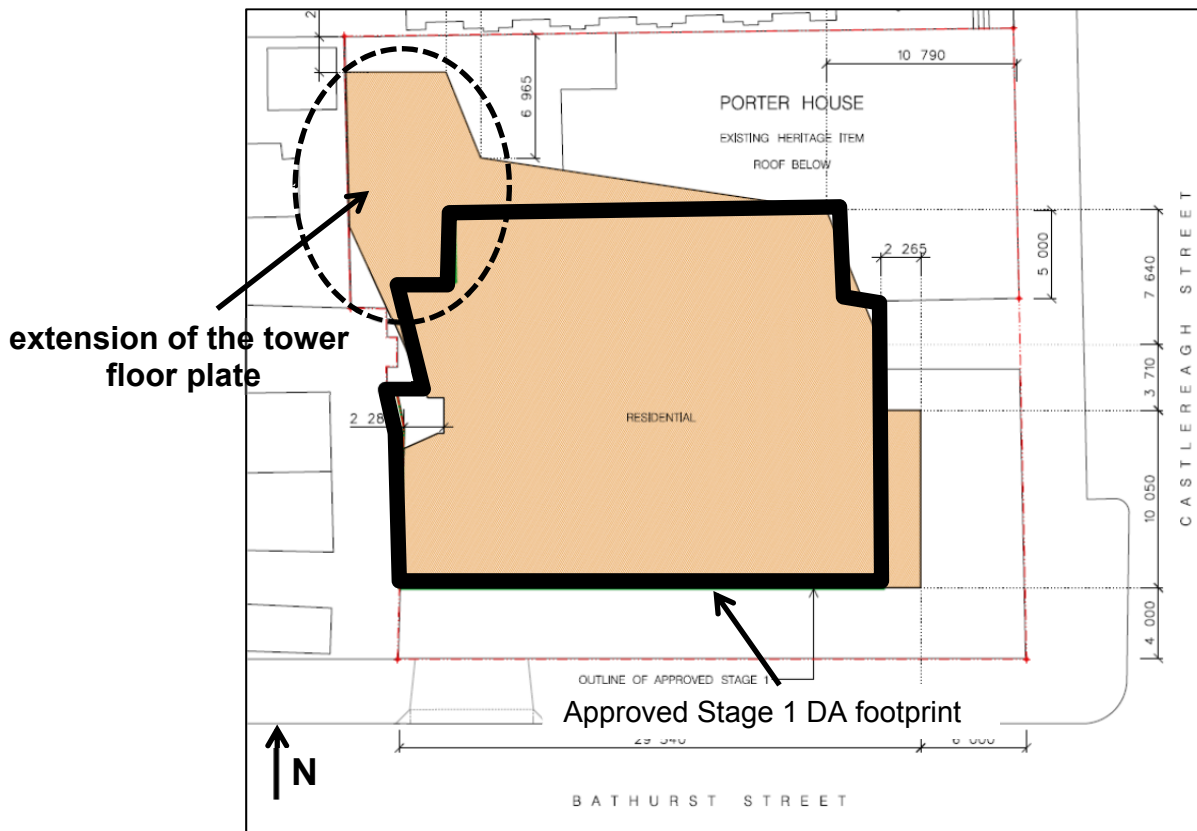


Figure 16: A typical tower floor plate illustrating the locations where variation is proposed to the Stage 1 building envelope

35. The proposed modification of the Stage 1 development application building footprint and envelope has predominately resulted as a response to concerns raised by City staff during the concurrent assessment of the Stage 2 detailed design application. Concern was raised in this concurrent assessment regarding the level of amenity for the residential component of the development.
36. At the time of lodgement of the subject application, the Stage 2 application did not propose to extend the footprint and envelope to the northwest. Instead the tower was generally sited within a compliant Stage 1 DA building envelope. However, due to the surrounding built form, the siting of the approved tower meant that the scheme did not receive adequate direct solar access on the winter solstice, and was significantly deficient with the solar access provisions of the Residential Flat Design Code and the SDCP 2012.
37. Solar modelling was undertaken by the Architect for the project, with it identified that the constraints of the site limited the penetration of solar access on the winter solstice to only the upper section of the tower. From the solar modelling it was identified that alternative massing on the site could significantly improve solar access performance for the development.
38. On balance of all issues, it was considered to be a preferable outcome to concurrently modify the existing Stage 1 DA envelope in order to significantly improve compliance with the residential amenity provisions of the relevant planning legislation, beyond that which would be possible with a strictly compliant scheme. As outlined elsewhere within this report, by concurrently modifying the Stage 1 envelope, the staged applications for the site remain consistent as is required pursuant to Section 83D of the Environmental Planning and Assessment Act, 1979.
39. It should be noted that whilst the footprint of the building does cover a greater percentage of the site, the overall modified envelope sought does not accommodate any increase in gross floor area or floor space ratio than the approved Stage 1 DA. Furthermore, as is detailed in the concurrent Stage 2 application for the detailed design, due to the constraints of the site, the envelope is unable to accommodate the maximum permissible floor space as permitted by SLEP 2012.
40. The appropriateness of the proposed siting of the envelope/building in the northwestern corner of the site with regard to separation and privacy with adjacent buildings and from a heritage perspective is addressed in detail in the Stage 2 development application planning assessment report.

Separation between podium and Porter House

41. The assessment of the Stage 1 development application included the imposition of a detailed heritage design condition (being Condition 23 of D/2012/1023), which was intended to guide the preparation of schemes for the design competition and detailed design.
42. Condition 23(d)(ii) required a minimum separation or recess between the proposed podium of the new building and Porter House of 5.3 metres. The subject application seeks to reduce this separation to between 3.8 and 4 metres (refer to **Figure 17**, below).

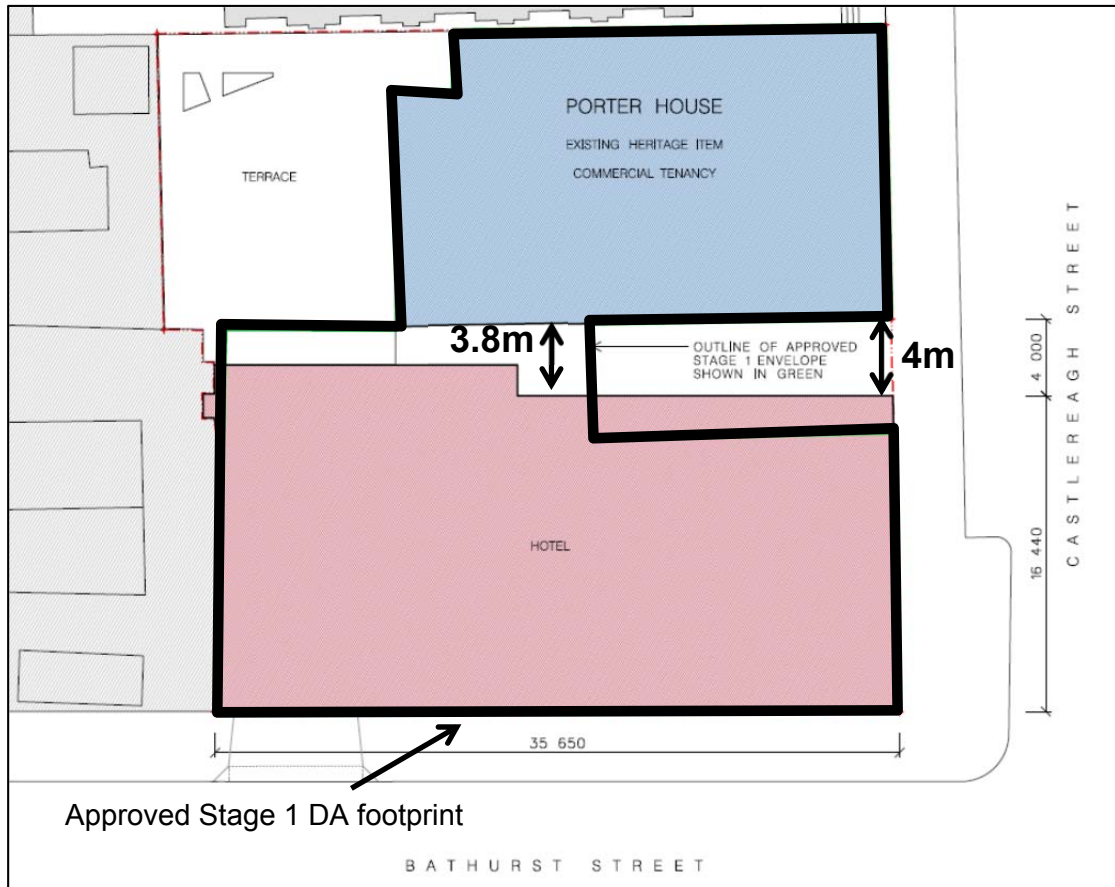


Figure 17: Variation proposed to the recess between podium and Porter House



Figure 18: The detailed design of the podium and Porter House (lodged as Stage 2 DA), illustrating the separation between buildings at 3.8 metres

43. Council's Heritage Specialist has reviewed the modifications sought to the envelope, as well as the detailed design of the scheme as part of the Stage 2 DA (refer to **Figure 18**, above). In this instance no objection has been raised to the extent of numeric variation sought to this condition as the design intent has been satisfied through an alternate design proposition of lengthening the recess between the buildings to give the distinction of space and separation.
44. As detailed in the recommendation section of this report, Condition 23(d)(ii) is recommended to be modified to reduce the minimum width of the recess to 3.8 metres to reflect the amended scheme.

Heritage Conditions

45. The Applicant is seeking to modify Condition 22(aa) (Conservation Management Plan and Adaptive Re-use of Porter House) to delay the physical investigation works to the sandstone facade of Porter House until the issue of a Construction Certificate for the Stage 2 detailed design development application.
46. Council's Heritage Specialist has advised that the physical investigation of the facade would be best dealt with as part of the other investigation works to Porter House required to be undertaken prior to the activation of the Stage 2 development application. As such, it is recommended that Condition 22(aa) be deleted from the Stage 1 consent and that this requirement be added as a part of the heritage deferred commencement conditions on the Stage 2 development application being concurrently considered by the Central Sydney Planning Committee.

Other Impacts of the Development

47. The proposed development is capable of complying with the BCA.
48. 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

49. 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

50. The subject Section 96(2) application was referred to Council's Urban Designer; Heritage Specialist; Building Services Unit; and Access and Transport Unit.

EXTERNAL REFERRALS

Notification, Advertising and Delegation

51. In accordance with Schedule 1 of Sydney DCP 2012, Section 96 modifications are required to be notified. As such, the application was notified for a period of 14 days between 13 June 2014 and 28 June 2014. No submissions were received in relation to the original notification of the modification application.

52. Following the receipt of the amended scheme, the proposal has re-notified for 14-days between 5 November 2014 and 20 November 2014. As a result of this re-notification, one submission was received. The content of this submission and the response of the City staff is provided below:

- (a) Loss of light/amenity to nearby residential apartment building (Euro Tower) from proposed height. Request that the building be reduced to 15 storeys.

Response: Euro Tower is located to the south of the site, on the opposite side of Bathurst Street. As part of the original Stage 1 development application, an assessment was undertaken on the overshadowing impacts of the envelope. This assessment concluded that shadowing impacts were acceptable and compliant with the applicable planning controls. As detailed elsewhere within this report and in the concurrent assessment report for the Stage 2 DA, the modifications to the envelope do result in new shadows being cast, however, these do not fall on to Euro Tower.

The proposed development is compliant with the relevant height control of the SLEP 2012, which is the sun access plane to Hyde Park West, and is generally consistent with the Stage 1 development consent.

PUBLIC INTEREST

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

FINANCIAL IMPLICATIONS/S61 CONTRIBUTION

Section 61 Contributions

54. Section 61 contributions will form part of the Stage 2 development application.

RELEVANT LEGISLATION

55. The Environmental Planning and Assessment Act 1979.

CONCLUSION

56. The necessity to modify the approved building envelope has come from the need to ensure consistency between staged development applications on the site, as is required under Section 83D of the Environmental Planning and Assessment Act, 1979.

57. Following the completion of the competitive design process, detailed design of the building and subsequently assessment of the Stage 2 development application, it has been considered to be a better design outcome to modify the Stage 1 building envelope. As modified, the proposed envelope achieves the same design intent as the original Stage 1 building envelope; however, allows the envelope to better respond to residential amenity provisions of the relevant planning legislation and comply with the sun access plane provisions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Nicola Reeve, Senior Planner)