

ITEM 5. DEVELOPMENT APPLICATION: 116 BATHURST STREET SYDNEY**FILE NO: D/2014/797****DEVELOPMENT APPLICATION NO: D/2014/797****SUMMARY**

Date of Submission: 5 June 2014

Amended 26 September 2014, 10 October 2014, 24 October 2014 and 29 January 2015

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: \$91,223,935

Proposal Summary: The subject application seeks consent for a 36-storey mixed use development, and encompasses the following:

- demolition of existing structures (excluding Porter House);
- retention, restoration works and re-use of the heritage listed Porter House;
- excavation for basement levels;
- vehicular access off Bathurst Street;
- 131 residential apartments;
- 2,055sqm of retail/commercial floor space;
- in-principle approval for use of podium levels and ground floor of Porter House as a hotel (approximately 102 hotel rooms);
- 64 car parking spaces; and
- landscaping, public art and public domain works.

The application as originally lodged was notified for 28-days in June/July 2014. The notification of the application resulted in 2 submissions being received, raising the following matters:

- construction noise and vibration impacts;
- construction hours; and
- stormwater and drainage.

**Proposal Summary:
(continued)**

The proposal has been significantly amended during the assessment period to address preliminary concerns relating to height, tower setbacks, residential amenity, unit mix and land uses, heritage and waste collection. Amended plans and supplementary information were submitted in October 2014 and January 2015 to address these matters.

The amended scheme was re-notified for a further 28 day period in October/November 2014. One submission was received to the re-notified scheme regarding the height of the proposal and loss of light/overshadowing.

In order to ensure that the residential component of the development receives satisfactory amenity, as well as achieving a reasonable level of compliance with the relevant residential amenity planning controls, it has been necessary to vary the building envelope approved at the Stage 1 development application. A concurrent Section 96(2) application has been lodged to vary the Stage 1 building envelope (being Development Application D/2012/1023) to ensure consistency between these staged applications, as is required pursuant to Section 83D of the Environmental Planning and Assessment Act, 1979.

As amended, the proposal is considered to be generally consistent with the relevant planning controls and existing consents in place for the site (as amended), and responds appropriately to the constraints of the site. The proposal is considered to be a satisfactory design outcome and contextually appropriate for its siting in the Sydney CBD.

It is recommended that Development Application D/2014/797 be granted a deferred commencement consent to enable the applicant to address a number of matters relating to heritage, communal open space, and respond to geotechnical matters raised by the Roads and Maritime Services as required by SEPP (Infrastructure) 2007.

Summary Recommendation:

The application is recommended for deferred commencement consent.

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 Drawings
- B - Photomontages

RECOMMENDATION

It is resolved that:

- (A) the requirement of Section 51N of the City of Sydney Act 1988 to consult with the Central Sydney Traffic and Transport Committee not apply in this instance as the proposal does not require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD;
- (B) pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2014/797, subject to the following:

PART A – DEFERRED COMMENCEMENT CONDITIONS**(CONDITIONS TO BE SATISFIED PRIOR TO CONSENT OPERATING)****(1) ROADS AND MARITIME SERVICES – GEOTECHNICAL INVESTIGATION**

The following reports and processes should be submitted and endorsed by Roads and Maritime prior to the activation:

- (a) FEM model and report to include the effects of horizontal rock stresses on the tunnel lining. Specifically, the model should use a range of rock parameter values to assess the sensitivity of the effects of these parameters. Based on available geotechnical information, carry out preliminary analysis of ground movement due to excavation and an assessment of the impact of the excavation on the tunnel.
- (b) Carry out geotechnical site investigation, at least one cored borehole be drilled below the tunnel invert level.
- (c) The FEM tunnel model should be prepared following the initial borehole investigation to include values of rock parameters and details of rock features such as jointing, clay seams and dykes. Based on the results of geotechnical investigation including rock features, carry out detailed analysis of the effects of the excavation on the tunnel system including rock bolts and tunnel lining (e.g. stress and strain changes) if possible and risk assessment.
- (d) A monitoring plan and risk management plan for the tunnel.
- (e) The design and construction of the excavation is to be carried out in accordance with the Roads and Maritime Technical Direction for Deep Excavations (GETD 201110001).

(2) COMMUNAL OPEN SPACE

Amended plans shall be submitted to include the provision of communal open space and communal facilities on Level 9. In order to accommodate communal facilities it is recommended that the area of green roof be reduced to provide useable and functional open space for all residents.

(3) HERITAGE DESIGN MODIFICATIONS

Amended plans shall be submitted for approval of the Director City Planning, Development and Transport to illustrate the following design modifications to the Porter House component of the development:

- (a) Deletion of the ground floor level toilets and the stair leading to Level 1 terrace located to the rear of Porter House. This includes all structures adjacent to the northern boundary extending westwards as far as the MRV lift and extending southwards to a minimum of three metres from the shared boundary with St Georges Church. Amended plans shall be submitted to show these elements deleted and/or located elsewhere within the development;
- (b) The shaft of the existing lift overrun shall be reduced in height to match the height of the proposed lift shaft at RL 45.12;
- (c) Further physical investigation on the sandstone facade 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 facade;
- (d) The architectural plans currently locate the existing original window joinery in a different location to its existing location that is original. The location of all window joinery of the front facade is to be realigned so that it aligns the original locations of joinery; and
- (e) The ground floor eastern elevation facade and openings of Porter House shall be amended as follows:
 - (i) relocation of the ground floor joinery to remain as original and so as to align with the joinery on levels above;
 - (ii) The design of the joinery and the arched openings is to closely interpret the original design. Openings that were originally windows are to be amended to be reconstructed as windows; and
 - (iii) the reconstruction of the ground floor facade shall incorporate all sound original sandstone and remove all later sandstone patching and cladding. All new sandstone utilised for the reconstruction of the ground floor facade is to be of stone units of the depth of the original external skin of the building that is defined by the alignment of the original joinery. No veneer of sandstone is permitted. All stone steps are to be of monolithic units. Details of the reconstruction are to be submitted that indicate the construction of the wall relative to existing fabric, and the set out of all sandstone units and their sizes. Plans and sections shall be submitted at a scale of 1:50 and 1:20.

(4) STRUCTURAL DESIGN FOR PORTER HOUSE

The proposed structural design for Porter House shall be submitted to, and endorsed by, Council's Manager of Urban Design and Heritage prior to the commencement of this consent. The following should be noted in the preparation of the structural design:

- (a) Alternate solutions to meet the performance requirements in accordance with the BCA are to be used where necessary to mitigate adverse heritage impacts, to enhance the Victorian character of the interiors, and maximise the exposure of timber structure, original fabric and finishes.
- (b) A Statement of Heritage Impact is to be submitted in conjunction with the design, and is to discuss the options considered, assess the level of heritage impact, and propose appropriate mitigation of adverse impacts.
- (c) The design should include the resolution of all issues outlined in the structural report, prepared by Mott McDonald, dated 23 May 2014, including:
 - (i) lateral bracing in the floor plane;
 - (ii) enhanced wall to floor connections;
 - (iii) stiffening in the wall plane by lining external walls;
 - (iv) increase of the original brick piers between the windows.

(5) MECHANICAL AND OTHER BUILDING SERVICES DESIGN FOR PORTER HOUSE

The mechanical services design for Porter House shall be updated for the amended land uses and shall be submitted, and endorsed by, Council's Manager of Urban Design and Heritage prior to the commencement of this consent. The following should be noted in the preparation of the mechanical and building services design:

- (a) The proposed solutions to all building services are to enhance the Victorian character of the interiors, and maximise the exposure of timber structure, original fabric and finishes.
- (b) Service installations, such as air conditioning plant, hydrant pump room, booster valves and electrical switch room are to be located outside of Porter House.
- (c) A Statement of Heritage Impact is to be submitted in conjunction with the design, and is to discuss the options considered, assess the level of heritage impact, and propose appropriate mitigation of adverse impacts.
- (d) The design should include the resolution of all issues including:
 - (i) the proposed type of air conditioning system;
 - (ii) the proposed reticulation of air conditioning ductwork throughout the building and the kitchen exhaust; and
 - (iii) the location and size of all plant and equipment, and enclosures.

(6) WIND IMPACT ASSESSMENT

An updated Wind Impact Assessment report shall be submitted to the Director City Planning, Development and Transport to reflect the amended scheme for approval. Where necessary, any recommendations of the wind impact assessment with regard to balcony treatments should be incorporated on amended plans and submitted concurrently for approval.

- (C) evidence that will sufficiently enable Council to be satisfied as to those matters identified in deferred commencement conditions, as indicated above, must be submitted to Council within 2 years of the date of determination.
- (D) the consent will not operate until such time that the Council notifies the Applicant in writing that deferred commencement consent conditions as indicated above, have been satisfied; and
- (E) upon Council giving written notification to the Applicant that the deferred commencement conditions 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.

PART B – CONDITIONS OF CONSENT**(ONCE THE CONSENT IS IN OPERATION)****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/2014/797, dated 5 June 2014, and the following drawings:

Drawing Number	Architect	Date
DA-1101 Issue D	Candalepas Associates	29 January 2015
DA-1102 Issue D	Candalepas Associates	29 January 2015
DA-1103 Issue D	Candalepas Associates	29 January 2015
DA-1104 Issue D	Candalepas Associates	29 January 2015
DA-1105 Issue D	Candalepas Associates	29 January 2015
DA-1106 Issue D	Candalepas Associates	29 January 2015

Drawing Number	Architect	Date
DA-1107 Issue D	Candalepas Associates	29 January 2015
DA-1108 Issue D	Candalepas Associates	29 January 2015
DA-1109 Issue D	Candalepas Associates	29 January 2015
DA-1110 Issue D	Candalepas Associates	29 January 2015
DA-1111 Issue D	Candalepas Associates	29 January 2015
DA-1112 Issue D	Candalepas Associates	29 January 2015
DA-1113 Issue D	Candalepas Associates	29 January 2015
DA-1114 Issue D	Candalepas Associates	29 January 2015
DA-1115 Issue D	Candalepas Associates	29 January 2015
DA-1151 Issue B	Candalepas Associates	29 January 2015
DA-1152 Issue A	Candalepas Associates	29 January 2015
DA-1153 Issue A	Candalepas Associates	29 January 2015
DA-1201 Issue B	Candalepas Associates	29 January 2015
DA-1202 Issue B	Candalepas Associates	29 January 2015
DA-1203 Issue D	Candalepas Associates	29 January 2015
DA-1301 Issue D	Candalepas Associates	29 January 2015
DA-1302 Issue D	Candalepas Associates	29 January 2015
DA-1303 Issue D	Candalepas Associates	29 January 2015
DA-1304 Issue D	Candalepas Associates	29 January 2015
DA-1401 Issue B	Candalepas Associates	23 October 2014
DA-1402 Issue B	Candalepas Associates	23 October 2014
DA-1403 Issue B	Candalepas Associates	23 October 2014
DA-1404 Issue B	Candalepas Associates	23 October 2014
DA-1405 Issue B	Candalepas Associates	23 October 2014
DA-1406 Issue A	Candalepas Associates	23 October 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) DESIGN QUALITY EXCELLENCE

- (a) In order to ensure the design quality excellence of the development is retained:
 - (i) The design architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - (ii) The design architect is to have full access to the site and is to be authorised by the Applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - (iii) Evidence of the design architect's commission is to be provided to the Council prior to release of the Construction Certificate.
- (b) The design architect of the project is not to be changed without prior notice and approval of the Council's Director City Planning, Development and Transport.

(3) FLOOR SPACE RATIO - CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed 14.35:1 calculated in accordance with the *Sydney Local Environmental Plan 2012*. For the purpose of the calculation of FSR, the Floor Space Area of the approved development is 18,616sqm.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the total and component Floor Space Areas (by use) in the development, utilising the definition under *Sydney Local Environmental Plan 2012* applicable at the time of development consent, to the satisfaction of the Principal Certifying Authority.
- (c) Prior to a Construction Certificate being issued, Council's written verification must be obtained, confirming that 2,060sqm of heritage floor space was allocated (purchased and transferred) to the development, being that floor space in excess of 8:1 as specified in the *Sydney Local Environmental Plan 2012*. Note: The allocation of heritage floor space has been reduced in accordance with the provisions of Clause 6.11(2)(a) of *Sydney Local Environmental Plan 2012*.

(4) BUILDING HEIGHT

- (a) The height of the buildings must not exceed the following RLs (AHD):

	Maximum RL
Top of parapet of building podium	56.30
Top of parapet at Level 30	118.40
Top of the Building	143.60

- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the building accords with (a) above, to the satisfaction of the Principal Certifying Authority.

(5) COMPLIANCE WITH SUBMITTED MATERIALS AND SAMPLES BOARD

The design details of the proposed building facade including all external finishes, colours and glazing must be in accordance with the materials schedule and sample board, and specifications prepared by Candalepas Associates, and submitted to Council with Development Application D/2014/797 on 5 June 2014.

(6) COMPLIANCE WITH SIGNAGE STRATEGY

All future signage on the site shall be in accordance with the nominated locations in the signage strategy entitled '112-118 Bathurst Street, 203 Castlereagh Street - Exterior Signage Development Application', prepared by Frost Design, dated May 2014.

A separate development application for any proposed signs (other than exempt or complying signs under Council's exempt and complying DCPs) must be submitted to and approved by Council prior to the erection or display of any such signs.

(7) COMMERCIAL AND HOTEL USES - SEPARATE DA REQUIRED

Separate development applications are to be submitted for the fit-out and use of the commercial tenancies and hotel use. This includes:

- (a) ground floor corner tenancy in podium and Levels 1 to 4 (inclusive) of Porter House for commercial/retail use; and
- (b) basement level 1 and ground floor of Porter House and Levels 1 to 8 (inclusive) of the podium for hotel use. No consent is given or implied for the basement level 1 kitchen use or its fit-out as part of the subject application, and this must form part of the further development applications.

All development applications must be submitted to and approved by Council prior to that fit-out or use commencing.

(8) SECTION 61 CONTRIBUTIONS PAYABLE - REGISTERED QUANTITY SURVEYOR'S DETAILED COST REPORT - SUBMITTED AND VERIFIED PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

A cash contribution comprising 1% of the total cost of the development is payable to the City of Sydney pursuant to section 61 of the *City of Sydney Act 1988* and the *Central Sydney Contribution (Amendment) Plan 2002/ Central Sydney Development Contributions Plan 2013* in accordance with the following:

- (a) Prior to a Construction Certificate being issued, evidence must be provided of Council's written verification of the amount of the contribution as required in (b) below, and then that the levy has been paid to the Council in accordance with this condition. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Direct debit, personal or company cheques will not be accepted.
- (b) The contribution must not be paid to the City of Sydney until it is accompanied by separate written verification by the City of Sydney of the specific amount payable. In order to obtain such verification, the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" indicating the itemised cost of the development must be completed and submitted to Council by the Certifying Authority (CA), together with copies of the plans the subject of the application for the Construction Certificate. A copy of the required format for the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" may be obtained from the City of Sydney One Stop Shop, any of the Neighbourhood Service Centres and the City of Sydney's website (www.cityofsydney.nsw.gov.au).
- (c) The Council will consider the documentation submitted under subclause (b) and determine the cost of the proposed development having regard to the information submitted and to such other matters as it considers appropriate and will notify the CA accordingly.
- (d) The items to be included in the calculation of the cost of development are demolition works, site remediation including decontamination, excavation and site preparation, construction costs, fit out, professional fees as part of the design (including design competitions) documentation and implementation process, fixed building machinery, equipment and appliances, kitchens and bar areas, car parking, air conditioning plant and equipment, services (fire, mechanical ventilation, electrical, hydraulic), ceilings, fire protection devices, installation of services (power, water, sewer, telephone), lifts and other essential machinery, floor coverings, *Building Code of Australia* compliance works, replacement of existing materials, fixtures and fittings, construction related insurance, assessment and construction related fees, charges and GST and any other matter not expressly excluded in (e) below.

- (e) The items to be excluded in the calculation of the cost of development are the cost of land, marketing expenses (excluding display suites etc), finance and interest, building insurance after practical completion, drapery, commercial stock inventory, loose furniture, loose equipment, loose electrical appliances, minor maintenance of existing retained fixtures (patching, repainting) and stamp duty.

(9) APPROVED DESIGN ROOF - TOP PLANT

All roof-top plant and associated equipment must be located within the approved building envelope. Should the plant exceed the approved building envelope, then further approval is required from Council.

(10) ALLOCATION OF PARKING

The number of car parking spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Car Parking Type	Number
Residential spaces	42
Hotel parking spaces	19
Accessible space (hotel/residential)	1
Commercial/Retail parking space	1
Car Share parking space	1
Subtotal	64
Motorcycle parking	4
Medium Rigid Vehicle loading dock(s)	1

(11) ASSOCIATED ROADWAY COSTS

All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with the City's "Sydney Streets Technical Specification" including amendments and "Sydney Streets Design Code".

(12) BICYCLE PARKING AND END OF TRIP FACILITIES

- (a) The minimum number of bicycle parking spaces and end of trip facilities to be provided for the development must comply with the table below.

Bicycle Parking Type	Number	Requirements
Residential	131	Spaces must be a class 1 bicycle locker or Class 2 bicycle facilities
Residential visitor	14	Spaces must be Class 3 bicycle rails
Non-residential	10	Spaces must be Class 2 bicycle facilities
Non-residential visitor	7	Spaces must be Class 3 bicycle rails
End of Trip Facility Type	Number	
Showers with change area	1	
Personal lockers	10	

Notes:

- (i) If a basement storage area on title that is large enough to store a bike and is no smaller than a class 1 bike locker this can be counted as a space.
- (b) The layout, design and security of bicycle facilities must comply with the minimum requirements of Australian Standard AS 2890.3 Parking Facilities Part 3: Bicycle Parking Facilities. The details must be submitted to and approved by the Principle Certifying Authority confirming prior to the Construction Certificate being issued.

(13) CHANGES TO KERB SIDE PARKING RESTRICTIONS

A separate submission must be made to the Local Pedestrian, Cycling and Traffic Calming Committee via the City Infrastructure and Traffic Operations Unit seeking the City's approval for any changes to kerb side parking arrangements. There is no guarantee kerb side parking will be changed, or that any change will remain in place for the duration of the development use.

The submission must include two plans. One showing the existing kerb side parking restriction signs and stems, the second showing the proposed kerb side parking restriction signs and stems. Both plans must include changes to all signs and stems from the kerb line of the nearest intersection.

All costs associated with the parking proposal will be borne by the developer.

Note: As parking in the LGA is at a premium, it is recommended that the Applicant should approach the Area Traffic Engineer to discuss the proposal before making a submission.

(14) COST OF SIGNPOSTING

All costs associated with signposting for any kerbside parking restrictions and traffic management measures associated with the development shall be borne by the developer.

(15) ON SITE LOADING AREAS AND OPERATION

All loading and unloading operations associated with servicing the site must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way.

At all times the service vehicle docks, car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.

(16) PARKING DESIGN

The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 Parking facilities Part 1: Off-street car parking, AS/NZS 2890.2 Parking facilities Part 2: Off-commercial vehicle facilities and AS/NZS 2890.6 Parking facilities Part 6: Off-street parking for people with disabilities. The details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

(17) PARKING ON COMMON PROPERTY AREAS

No part of the common property, apart from the visitor vehicle spaces which are to be used only by visitors to the building, and service vehicle spaces which are to be used only by service vehicles, is to be used for the parking or storage of vehicles or boats. The strata subdivision of the building is to include an appropriate documentary restriction pursuant to Section 88B of the Conveyancing Act 1919, so burdening common property, with the Council being the authority to release, vary or modify the restriction.

(18) SIGNS AT EGRESS

The following signs must be provided and maintained within the site at the point(s) of vehicle egress:

- (a) Compelling drivers to stop before proceeding onto the public way.
- (b) Compelling drivers to "Give Way to Pedestrians" before crossing the footway; or compelling drivers to "Give Way to Pedestrians and Bicycles" before crossing a footway on an existing or identified shared path route.

(19) TRAFFIC WORKS

Any proposals for alterations to the public road, involving traffic and parking arrangements, must be designed in accordance with RMS Technical Directives and must be referred to and agreed to by the Local Pedestrian, Cycling and Traffic Calming Committee prior to any work commencing on site.

(20) RESTRICTION ON RESIDENTIAL DEVELOPMENT

The following restriction applies to buildings approved for residential use:

- (a) The accommodation portion of the building (levels 9 to 34) must be used as permanent residential accommodation only and not for the purpose of a hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like, other than in accordance with the *Sydney Local Environmental Plan 2012*.
- (b) A restrictive covenant is to be registered on the title of the development site in the above terms and restricting any change of use of those levels from "residential accommodation" as defined in *Sydney Local Environmental Plan 2012*. The covenant is to be registered on title prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, to the satisfaction of the Council. All costs of the preparation and registration of all associated documentation are to be borne by the applicant.
- (c) If a unit contains tenants, it must be subject to a residential tenancy agreement for a term of at least three months.
- (d) An owner, tenant or Owners Corporation shall not permit a Building Manager or agent to advertise or organise for short term accommodation or share accommodation in the building.

(21) RESTRICTION ON USE OF CAR SPACES - RESIDENTIAL

The following conditions apply to car parking:

- (a) The on-site car parking spaces are not to be used other than by residents of the subject building for parking of vehicles related to residence in the unit with which the space is associated. No storage should take place for commercial businesses in car parking spaces.
- (b) The strata subdivision of the site is to include a restriction on user pursuant to Section 39 of the *Strata Schemes (Freehold Development) Act, 1973* as amended, so burdening all utility car parking allotments in the strata plan and/or an appropriate documentary restriction pursuant to Section 88B of the *Conveyancing Act 1919*, burdening all car parking part lots in the strata plan.

(22) RESTRICTION ON USE OF CAR SPACES - HOTEL

The following conditions apply to car parking:

- (a) The on site car parking spaces are not to be used other than by hotel guests, function patrons and staff of the subject building.
- (b) Car parking spaces used in connection with hotel function areas are to be available only to patrons while using the function facilities and must not be used for public car parking.
- (c) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, a documentary restrictive covenant is to be registered on the Title of the development site pursuant to Section 88E of the *Conveyancing Act 1919*, to the effect of (a), above. The covenant is to be created appurtenant to Council, at no cost to Council.

(23) BOUNDARY WINDOWS COVENANT

All windows on Levels 9 to 34 (inclusive) adjacent to the western boundary of the site must be sealed, bricked up or otherwise enclosed, prior to the construction of any building abutting, adjoining or adjacent to such windows. Prior to a Construction Certificate being issued, a documentary restrictive covenant is to be registered on the Title of all units/tenancies facing the affected boundary. The covenant is to be created appurtenant to Council and at no cost to Council.

(24) POSITIVE COVENANT

Prior to the issue of an Occupation Certificate, a positive covenant is to be registered on title that burdens the development site land and is enforceable by Council (Council to be the prescribed authority imposing the covenant) in accordance with section 88E of the *Conveyancing Act 1919* (NSW), on terms satisfactory to Council, that requires the registered proprietor of the development site land to comply with the obligations and requirements of the Costed Heritage Asset Maintenance Plan (as required by Condition 35) for the heritage item known as 'Porter House' which is located within the development site land.

(25) RESTRICTION ON USE OF LAND

Prior to the issue of an Occupation Certificate, a restriction on the use of land is to be registered on title that burdens the development site land and is enforceable by Council (Council to be the prescribed authority imposing the restriction) in accordance with section 88E of the *Conveyancing Act 1919* (NSW), on terms satisfactory to Council, limiting the gross floor area for that part of the development site occupied by the heritage item known as 'Porter House' to the existing gross floor area being 1,819m² (as defined by the *Sydney Local Environmental Plan 2012*).

(26) PARKING ON COMMON PROPERTY AREAS

No part of the common areas within the car park, apart from the visitor vehicle spaces which are to be used only by visitors to the building, and service vehicle spaces which are to be used only by service vehicles, is to be used for the parking or storage of vehicles, boats or the like. Any strata subdivision of all or part of the building is to include an appropriate documentary restriction pursuant to Section 88B of the *Conveyancing Act 1919*, so burdening common property, with the Council being the authority to release, vary or modify the restriction.

(27) EXTERNAL LIGHTING

A separate development application is required to be lodged and approved prior to any external floodlighting or illumination of the building or site landscaping.

(28) REFLECTIVITY

The Certifying Authority must ensure that the visible light reflectivity from building materials used on the facade of the building does not exceed 20% prior to issue of the Construction Certificate.

(29) SUBMISSION OF REVISED ACOUSTIC REPORT

Prior to the issue of any Construction Certificate, a revised acoustic report shall be prepared to supplement the content in the report entitled 'Stage 2 DA Noise Assessment' (Report No. 12072-2 Version A), prepared by Wilkinson Murray, dated 29 May 2014.

The acoustic report must be revised to reflect the land use and design modifications to the proposed development since the preparation of the original report, and must include detail specific engineering systems to ensure compliance with SDCP 2012 in relation to internal noise transfer.

The acoustic report shall be submitted to, and approved by, the City's Area Planning Manager, prior to the issue of any Construction Certificate.

(30) NOISE - GENERAL

- (a) The emission of noise associated with the use of the premises including the cumulative operation of any mechanical plant and equipment, and air conditioning shall comply with the following:
- (i) The $L_{Aeq, 15 \text{ minute}}$ noise level emitted from the use must not exceed the project specific noise level for that receiver as determined in accordance with the *NSW EPA Industrial Noise Policy*. Noise must be measured in accordance with the Industrial Noise Policy and relevant requirements of Australian Standard AS 1055-1997 Acoustics – Description and measurement of environmental noise.
 - (ii) Project specific noise levels shall be determined by establishing the existing environmental noise levels, in complete accordance with the assessment $L_{A90, 15 \text{ minute}}$ / rating $L_{A90, 15 \text{ minute}}$ process to be in accordance with the requirements for noise monitoring listed in the *NSW EPA Industrial Noise Policy* and relevant requirements of Australian Standard AS1055-1997 Standard AS 1055-1997 Acoustics – Description and measurement of environmental noise.
 - (iii) Modifying factors in Table 4.1 of the *NSW EPA Industrial Noise Policy* are applicable.
- (b) An $L_{Aeq, 15 \text{ minute}}$ noise level emitted from the use must not exceed the $L_{A90, 15 \text{ minute}}$ noise level by more than 3dB in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed inside any habitable room of any affected residence or noise sensitive commercial premises provided that;
- (i) Where the $L_{A90, 15 \text{ minute}}$ noise level is below the threshold of hearing, T_f at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of T_f corresponding to that Octave Band Centre Frequency shall be used instead.

- (ii) The $L_{Aeq,15 \text{ minute}}$ noise level and the $L_{A90,15 \text{ minute}}$ noise level shall both be measured with all external doors and windows of the affected residence closed;
- (iii) The relevant background noise level ($L_{A90, 15 \text{ minute}}$) is taken to mean the day, evening or night rating background noise level determined in complete accordance with the methodology outlined in the *NSW EPA Industrial Noise Policy* and Australian Standard AS1055.1997 Acoustics – Description and measurement of environmental noise.
- (iv) Background noise shall be established in the absence of all noise emitted from the use but with the ventilation equipment normally servicing the affected residence operating. Background noise measurements are to be representative of the environmental noise levels at the affected location.
- (v) Modifying factors in Table 4.1 of the *NSW EPA Industrial Noise Policy* are applicable. Internal Noise measurements are not to be corrected for duration.

(31) DEMOLITION, EXCAVATION AND CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN

A site specific noise management plan shall be submitted to the Council for comment and approval prior to issue of any Construction Certificate.

The Plan must be prepared by a suitably qualified person who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Australian Association of Acoustic Consultants.

The plan must include but not be limited to the following:

- (a) Identification of noise sensitive receivers near to the site.
- (b) A prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the *City of Sydney Construction Hours /Noise Code of Practice 1992* for the typical construction hours of 07.00am to 7.00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of neighbouring property.
- (c) A representative background noise measurement ($L_{A90, 15 \text{ minute}}$) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997.

- (d) Confirmation of the level of community consultation that has/is and will be undertaken with Building Managers/ occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (e) Confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise Code.
- (f) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (g) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.
- (h) What plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available.

(32) COMPLIANCE WITH DEMOLITION, EXCAVATION & CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN

- (a) All works conducted on site which form part of this development must be carried out in accordance with the Demolition, Excavation and Construction Management Plan to be submitted and approved at a later date.
- (b) Where all such control measures have been implemented and the resultant noise and/ or vibration levels at any sensitive receiver still exceed the council's applicable criteria stated in the Construction Hours/Noise Code 1992 and are giving rise to sustained complaints then the contractor must provide regular, appropriate and sustained periods of respite in consultation with Council's Health and Building unit. Approval to vary the authorised noise and vibration levels must be received in writing by the proponent from Council prior to activities being undertaken that exceed sanctioned emission levels. (Use where respite periods not specified under the approved DEC NMP).

Such periods must be set and agreed to by Council's Health and Building Unit.

(33) USE OF INTRUSIVE APPLIANCES – NOT APPROVED

This development consent does not extend to the use of appliances which emit noise of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the City of Sydney Code of Practice for Construction Hours/Noise 1992”.

A separate Section 96 application must be submitted to the Council for the use of any equipment of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the *City of Sydney Code of Practice for Construction Hours/Noise 1992*.

SCHEDULE 1B**Prior to Construction Certification/Commencement of Work/Health and Building**

Note: Prior to the issue of the Construction Certificate, sufficient information must be forwarded to the certifying authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the Building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate.

(34) CONSERVATION AND ADAPTIVE RE USE OF PORTER HOUSE AT 203 CASLHEREAGH STREET SYDNEY

Details of the conservation of the building to be completed as part of the works shall be submitted and endorsed by Council’s Manager of Urban Design and Heritage prior to the issue of a Construction Certificate. These shall include:

- (a) The approved outline Schedule of Conservation Works, contained within the Conservation Management Plan by Godden Mackay Logan, approved as part of the Stage One consent, is to be developed further and supported by larger scale floor plans, reflected ceiling plans and sections, details at 1:20 and 1:5 scale as appropriate, and by repair methodologies and specifications outlining the intended conservation and adaptive approach to the interiors components (preservation, restoration, reconstruction, adaptation, interpretation etc).
- (b) The structural design, fire, acoustic and services design is to be coordinated with the design of the conservation works.
- (c) EXTERNAL CONSERVATION WORKS are to include but are not limited to the following:
 - (i) The investigation of all stone and brick facades and basement walling and foundations, external joinery, roof framing, roofing and roof plumbing is to be undertaken and is to inform a detailed scope of conservation work supported by larger scale plans, elevations, sections with indicative details and specifications.
 - (ii) All external joinery is to be of timber of a durable nature. Details at 1:5 and specifications are to be submitted.

- (iii) The reconstruction of the ground floor façade is to be of sandstone of a similar colour, mineral content, bulk density, porosity, modulus of rupture and the wet and dry compressive strengths characteristics as the sandstone utilised in the original construction. The details of the reconstruction are to include elevations and sections at 1:50 and 1:20 scale that indicate the construction of the wall, the incorporation of original sandstone blocks, and elevations that show the set out of all sandstone units and their sizes, and specifications including details of the sandstone source and characteristics, tooling, bedding mortar, pointing mortar, poultice and the like, are to be submitted.
- (d) INTERNAL CONSERVATION WORKS are to include the retention and conservation of all the timber structural members, pavement light shafts, original and early internal walls, pressed metal ceiling systems, timber flooring and early terrazzo stairs, wall plaster, door and window reveal linings and architraves, timber skirtings, glazing and hardware.
- (e) All diagnostic work should be undertaken by specialist conservers and engineers.
- (f) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building.
- (g) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 1999.
- (h) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works within the heritage building.
- (i) The above works are to be implemented to the satisfaction of Council's Manager of Urban Design and Heritage prior to the issue of the Occupation Certificate. Ongoing consultation with Council should be maintained throughout the works.

(35) COSTED HERITAGE ASSET MAINTENANCE PLAN

- (a) To ensure the continued protection of heritage significance of the heritage item and to guide the future maintenance on heritage fabric, a costed Heritage Asset Maintenance Plan is to be developed. The following is to apply:
 - (i) The Plan is to be based the NSW Heritage Division of the Department of Environment and Heritage publication: 'Preparing a maintenance plan', and is to be a guide for the effective, continuous, protective maintenance of all significant heritage fabric for a minimum period of 20 years.

- (ii) The Plan is to include all fabric identified as being of heritage significance, specification notes and methodologies based on the Articles of the Australian ICOMOS Burra Charter 1999 and best conservation practise, and a list of appropriate consultants and suppliers together with the projected costing for each item of work.
- (iii) The Plan is to be prepared by the Conservation Architect and is to be submitted to Council for approval prior to the issue of an Occupation Certificate.

(36) GENERAL HERITAGE

- (a) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- (b) New services are to be surface mounted rather than chased-in to existing walls to minimise impact on heritage fabric.
- (c) The new windows and doors on the existing building must match the original material, which is timber joinery.
- (d) The face brickwork/stone/tiles must not be rendered, painted or coated.
- (e) Where internal partitions meet external walls they must abut window mullions, columns or other such building elements and not glazing.

(37) HERITAGE INTERPRETATION PLAN

- (a) An interpretation plan for the site and its archaeological resource must be submitted to and approved by Council's Urban Design and Heritage Manager prior to a Construction Certificate being issued. The plan is to be prepared by a suitably qualified and experienced heritage practitioner or historian.
- (b) The interpretation plan must detail how information on the history and significance of the site and its archaeological resource will be provided for the public and make recommendations regarding public accessibility, signage and lighting. Public art, details of the heritage design, the display of selected artefacts are some of the means that can be used.
- (c) The plan must specify the location, type, making materials and contents of the interpretation device being proposed. The plan is also to include a plaque of high-quality material (e.g. bronze or brass) describing the history of the site and building must be installed on the facade of the building prior to an Occupation Certificate being issued. The design, location and wording must be submitted for the approval of Council's Urban Design and Heritage Manager prior to manufacture and installation.

- (d) Prior to Occupation Certificate being issued the approved interpretation plan must be implemented to the satisfaction of Council's Urban Design and Heritage Manager.

(38) MATERIALS FOR MAKING GOOD

New materials for making good and repairs, are to match the existing in terms of colours, finishes, sizes, profile and properties.

(39) PHOTOGRAPHIC ARCHIVAL DOCUMENTATION (MAJOR WORKS)

Prior to a Construction Certificate being issued, an archival photographic recording of the buildings that currently occupy the site is to be prepared to Council's satisfaction. The recording may be in either digital or film-based form, or a combination of both, prepared in accordance with the NSW Heritage Division of the Department of Environment and Heritage guidelines titled "Photographic Recording of Heritage Items using Film or Digital Capture". One copy of the record is to be submitted to Council to be lodged with Council's Archives.

Procedure

For buildings or structures with heritage significance, the archival documentation, and the number and type of selected enlarged photographs required will be determined by the significance and quality of the building or structure. For a scope of work, refer to Council's Heritage Specialist to determine the particular architectural/design features of the building/site that may need to be recorded.

For buildings or structures with no heritage significance the archival documentation requirements are less comprehensive, and may just be limited to contextual and exterior photographs only. However, this will depend upon the type, complexity and significance of the building, and should be confirmed with the Area Planning Manager, and if necessary Council's Heritage Specialist.

Because significant fabric may remain concealed and only be exposed during construction works, the archival recording is to be undertaken in stages, prior to the removal of any significant building fabric or furnishings from the site, during the removal of fabric on site that exposes significant building fabric or furnishings, and after work has been completed on site, as considered appropriate by the conservation architect commissioned for the project, and submitted as two parts as follows.

- (a) The first submission of the archival recording of significant building fabric or furnishings is to be prior to the removal of any significant building fabric or furnishings from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.
- (b) The second submission of the archival recording is of significant building fabric or furnishings that is exposed during demolition or construction and after work has been completed on site, and must be submitted to Council prior to an Occupation Certificate being issued.

The form of recording is to be a photographic documentation of the site and its context, and the exteriors and interiors of the existing building(s) photographed, where appropriate, using a camera/lens capable of 'perspective correction'. The photographic recording may be in either digital or film-based form, or a combination of both, prepared in accordance with the NSW Heritage Division of the Department of Environment and Heritage guidelines titled 'Photographic Recording of Heritage Items using Film or Digital Capture'. One copy of the record is to be submitted to Council to be lodged with Council's Archives.

- (c) For each of the two submissions listed above in (a) and (b), the form of the recording is to be as follows:
 - (i) In A4 format, placed in archival plastic sleeves in an appropriate archival folder.
 - (ii) The Development Application number and the Condition of Consent number must be noted on the front of the folder and in the report.
 - (iii) Include a summary report detailing the project description, date and authorship of the photographic record, method of documentation and limitations of the photographic record.
 - (iv) Each negative, slide or digital image is to be cross referenced to a photographic catalogue and photographic base plans.
 - (v) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.
- (d) A digital based recording is to include:
 - (i) CD or DVD containing the report in PDF format and the electronic images saved as JPEG TIFF or PDF files and cross referenced to the digital catalogue sheets and base plans
- (e) A film based recording is to include:
 - (i) 35mm film images submitted as contact sheets with equivalent negatives, a selection of black and white prints 200 x 250mm, and 35mm colour transparencies, all labelled and cross-referenced to the catalogue sheets and base plans.

(40) REDUCTION OF RISING DAMP AND SALT ATTACK IN BUILDINGS CONSTRUCTED PRIOR TO 1920

- (a) To avoid potential damage caused by rising damp and migrating salts the following is to apply to the ground floor.

- (i) No concrete slab is to be laid directly on the ground either within the building or external to the building directly adjacent to the exterior walls.

(41) SALVAGE, REUSE AND RECYCLING OF TRADITIONAL BUILDING MATERIALS

Stone, bricks, roof tiles, joinery and decorative architectural elements to be demolished, which include stairs, windows and doors, chimney pieces and ceiling roses must be salvaged and where possible reused on the project.

Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.

(42) SITES IN THE VICINITY OF A HERITAGE ITEM – MAJOR DEVELOPMENT

- (a) A protection strategy for sites in the vicinity, for the duration of the construction works, is to be submitted to and approved by Council's Urban Design and Heritage Manager prior to the issue of the Construction Certificate. The Strategy is to detail how the proposed works will ensure that the St Georges Free Presbyterian Church at 201A Castlereagh Street and the Lincoln Building at 108 Bathurst Street are to be suitably protected and stabilized during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance or damage.
- (b) Additionally, the protection strategy is to include:
 - (i) Details of temporary hydraulic drainage works to ensure that all water both in ground and above ground is channelled to the street and that no such water is channelled onto the adjacent property fabric or interiors.
 - (ii) Construction debris on neighbouring properties, in drainage lines or in cavities between the boundary walls of the adjacent buildings, is to be removed progressively as the works progress.
 - (iii) A geotechnical report detailing the investigation of the location and depth of footings of the adjacent buildings. This report should address details of lateral ground movement, advice of any additional boundary offsets that may be required as a result of the location of footings and on the suitability of structural engineer's proposals for underpinning or other support to adjacent footings.
 - (iv) Details of the proposed protection of party walls from damp and water ingress during the works.

(43) USE OF HERITAGE CONSULTANT - MAJOR DEVELOPMENT

- (a) An experienced heritage consultant is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The conservation architect is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The heritage consultant is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of heritage issues throughout the project.
- (b) Evidence and details of the above commission on the above terms are to be provided to Council prior to the issue of the Construction Certificate or commencement of work on site whichever is the earlier.
- (c) Throughout the documentation and construction stages of the approved works the experienced heritage consultant is to:
 - (i) Undertake site inspections of not less than fortnightly intervals.
 - (ii) Maintain a diary of site inspections that includes photographs of the works, details of heritage advice and decisions arising out of each inspection and any further physical evidence uncovered during the works.
 - (iii) Compile a final report, including the diary, verifying how the heritage conditions have been satisfied, and the works completed in accordance with the Conservation Management Plan.
- (d) Upon completion of the works, the final report is to be submitted for approval by Council's own Heritage Specialist prior to the issue of an Occupation Certificate or the commencement of the use, whichever is the earlier.

(44) PROTECTION METHODOLOGY

A strategy that details how significant heritage fabric will be adequately protected during the building works is to be submitted for approval by Council's Manager of Urban Design and Heritage prior to the issue of the Construction Certificate.

(45) COLOUR SCHEME

A schedule of all proposed interior and exterior colours and finishes which are to be typical of the period, style and historic use of Porter House. Paint types are to be specified and are sympathetic to the nature of the substrate. The external colour scheme is to be sympathetic to the architectural style and period of the building. A schedule of colours, finishes and specifications are to be submitted to and approved by Council's Urban Design and Heritage Manager prior to the issue of the Construction Certificate.

(46) COMPLIANCE WITH BUILDING CODE OF AUSTRALIA

The proposed work must comply with the *Building Code of Australia* (BCA).

(47) BCA COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF THE WHOLE PORTER HOUSE BUILDING IS REQUIRED

Pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000, an assessment of the development proposal has been undertaken, and:

- (a) as more than 50 percent of the volume of the Porter House building is proposed to be altered or has been altered over the previous 3 year period; and/or
- (b) the measures contained in the building are inadequate to protect persons using the building and to facilitate their egress from the building in the event of fire, or to restrict the spread of fire from the building to other buildings nearby,

it has been determined that the whole Porter House building must be brought into total conformity with the *Building Code of Australia*. Prior to a Construction Certificate being issued the Certifying Authority must ensure that the whole building is brought into conformity with the *Building Code of Australia* by complying with Clause A0.4 of the BCA.

(48) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES

The building must be designed and constructed to provide access and facilities for people with a disability in accordance with the *Building Code of Australia*.

If, in complying with this condition, amendments to the development are required, the design changes must be submitted to and approved by Council prior to a Construction Certificate being issued.

(49) ADAPTABLE HOUSING

Prior to a Construction Certificate being issued, information from an appropriately qualified access consultant:

- (a) Confirming that the required number of residential units are able to be adapted for people with a disability in accordance with the *Building Code of Australia*; and
- (b) Demonstrating (in a checklist) compliance with Australian Standard AS4299

is to be submitted to the Certifying Authority.

(50) FLOOR TO CEILING HEIGHT

Prior to a Construction Certificate being issued, the Certifying Authority must ensure that all living rooms and bedrooms in sole occupancy units must have a minimum finished floor to ceiling height of not less than 2.7 metres.

(51) LANDSCAPED (GREEN) ROOFS

- (a) A detailed plan of the green roof, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. The plan must include:
- (i) A statement that includes details of proposed use of the green roof, general accessibility, as well as noise and privacy treatment.
 - (ii) Location of existing and proposed structures and hard landscaping on the rooftop, roof fixings and other structural elements that may interrupt waterproofing, including cross-sectional details of all components.
 - (iii) Details of earthworks including mounding and retaining walls and planter boxes (if applicable).
 - (iv) (iv) Details of the location, sizes and numbers of plants used, with reference to NATSPEC (if applicable) and with a preference for drought resistant local species.
 - (v) (v) Details of the soil media / substrate type and depth.
 - (vi) Details of installation methodology e.g. safety considerations for working at height, location of maintenance hooks (if applicable) transport of materials etc;
 - (vii) Details of the parts of the green roof which are accessible and inaccessible. Where proposed to be inaccessible, green roofs are required to remain such during occupation of the property.
 - (viii) Details of drainage and irrigation systems, including overflow provisions and water retention cells in the drainage layer (if applicable).
- (b) Prior to the issue of a Construction Certificate, the applicant must provide evidence that adequate provision and certification (such as, but not limited to wind, structure and waterproofing) has been undertaken to ensure the landscape proposals do not create any hazard to public safety. All relevant evidence is to be submitted and approved by the Principal Certifying Authority.
- (c) All landscaping in the approved plan is to be completed prior to an Occupation Certificate being issued.

- (d) Prior to the issue of an Occupation Certificate, a maintenance plan is to be submitted and approved by the Principal Certifying Authority. The maintenance plan is to be complied with during occupation of the property and a copy of the maintenance plan is to be kept on site at all times during construction and following completion and shall be produced to Council on request.
- (e) Inaccessible green roofs are required to remain inaccessible during occupation of the property.

(52) PUBLIC ART

Final details of the approved public art work must be submitted to and approved by Council's Director, Planning, Development and Transport prior to issue of a Construction Certificate. The public artwork must be in accordance with the *Sydney DCP 2012* and the *Public Art Policy*. Installation of the art work must be completed to Council's satisfaction prior to the issue of an Occupation Certificate.

(53) ALIGNMENT LEVELS – MAJOR DEVELOPMENT

- (a) Proposed building floor levels, basement levels, basement car park entry levels and ground levels shown on the approved Development Application plans are indicative only and have not been approved by this consent.
- (b) Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work, alignment levels for the building and site frontages must be submitted to and approved by Council. The submission must be prepared by a Registered Surveyor, must be in accordance with the City of Sydney's *Public Domain Manual* and must be submitted with a completed Alignment Levels checklist (available in the *Public Domain Manual*) and Footpath Levels and Gradients Approval Application form (available on the City's website).
- (c) These alignment levels, as approved by Council, are to be incorporated into the plans submitted with the application for a Construction Certificate for any civil, drainage and public domain work as applicable under this consent. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.

(54) PHOTOGRAPHIC RECORD / DILAPIDATION REPORT - PUBLIC DOMAIN

Prior to an approval for demolition being granted or a Construction Certificate being issued, whichever is earlier, a photographic recording of the public domain site frontages is to be prepared and submitted to Council's satisfaction.

The recording must include clear images of the building facade adjoining the footpath, the footpath, nature strip, kerb and gutter, driveway crossovers and laybacks, kerb ramps, road carriageway, street trees and plantings, parking restriction and traffic signs, and all other existing infrastructure along the street.

The form of the recording is to be as follows:

- (a) A PDF format report containing all images at a scale that clearly demonstrates the existing site conditions;
- (b) Each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage;
- (c) Each image is to be numbered and cross referenced to a site location plan;
- (d) A summary report, prepared by a suitable qualified professional, must be submitted in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record;
- (e) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive license to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.

Any damage to the public way including trees, footpaths, kerbs, gutters, road carriageway and the like must immediately be made safe and functional by the applicant. Damage must be fully rectified by the applicant in accordance with the City's standards prior to a Certificate of Completion being issued for Public Domain Works or before an Occupation Certificate is issued for the development, whichever is earlier.

(55) PRESERVATION OF SURVEY MARKS

All works in City streets must ensure the preservation of existing permanent survey marks (a brass bolt, or a lead plug holding a brass tack, covered by a cast iron box). At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City's Project Manager Survey / Design Services to arrange for the recovery of the mark.

Prior to the issue of a Construction Certificate, a survey plan, clearly showing the location of all permanent survey marks fronting the site and within 5 metres on each side of the frontages must be submitted to Council.

At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City's Senior Surveyor to arrange for the recovery of the mark.

A fee must be paid to the Council for the replacement of any permanent survey mark removed or damaged in accordance with the City's Schedule of Fees and Charges (Reinstatement of Survey Box).

(56) PROTECTION OF SURVEY INFRASTRUCTURE

Prior to the commencement of any work on site, a statement prepared by a Surveyor registered under the *Surveying Act 2002* must be submitted to Council verifying that a survey has been carried out in accordance with the Surveyor General's Direction No. 11 – Reservation of Survey Infrastructure. Any Permanent Marks proposed to be or have been destroyed must be replaced, and a "Plan of Survey Information" must be lodged at the Land and Property Management Authority.

Reason: To ensure that the survey control infrastructure and cadastral framework are preserved for the public benefit and in accordance with the *Surveying Act 2002*.

(57) PUBLIC DOMAIN PLAN - MODIFICATIONS

The Public Domain Plan accompanying this Development Application has not been approved by this consent.

- (a) An amended, detailed Public Domain Plan must be prepared by an architect, urban designer, landscape architect or engineer to document all works required to ensure that the public domain complies with the City of Sydney's *Public Domain Manual*, *Sydney Streets Design Code* and *Sydney Streets Technical Specification*, including road pavement, traffic measures, footway pavement, kerb and gutter, drainage, vehicle crossovers, pedestrian ramps, lighting, street trees and landscaping, signage and other public domain elements. The plan must be submitted with a completed Public Domain Plan checklist (available in the City of Sydney's *Public Domain Manual*) and must show the following information as a minimum:

- (i) All existing and proposed elements within the public way along all site frontages including but not limited to footpath paving, kerbs and gutter, pedestrian ramps, vehicle crossings, utility pit lids, stormwater kerb outlet pipes, permanent survey marks, light poles, traffic control signage and traffic signals, street name signs, carriageways, and street furniture;

Note: any proposed vehicle crossover, including the crossover wings, must be a minimum of 1m from the adjacent property boundary.

- (ii) Existing public domain elements adjacent to and opposite the development site including but not limited to pedestrian ramps, median islands, vehicle crossovers, traffic control lines and signage, and light poles.

- (b) The Public Domain Plan must be lodged with Council's Public Domain Section and be approved by Council prior to a Construction Certificate being issued for public domain work or above ground building work, whichever is later.
- (c) The Public Domain Plan must be prepared in accordance with the City of Sydney's *Public Domain Manual* and *Sydney Streets Technical Specification*. If an Alignment Levels condition applies to the development, the Public Domain Plan submission must incorporate the approved Alignment Levels. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.
- (d) The works to the public domain are to be completed in accordance with the approved Public Domain Plan and Alignment Levels plans and the *Public Domain Manual* before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.
- (e) A Public Domain Works Deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges and the *Public Domain Manual*. The Public Domain Works Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for completion of the obligations under this consent.

Council's Public Domain section must be contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to a Road Opening Permit for works on the public way being issued.

The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.

(58) PUBLIC DOMAIN WORKS - HOLD POINTS AND HANDOVER

- (a) Prior to a Construction Certificate being issued for public domain work, including civil, drainage and subsurface works, a set of hold points for approved public domain, civil and drainage work is to be determined with and approved by the City's Public Domain section in accordance with the City of Sydney's *Public Domain Manual* and *Sydney Streets Technical Specification*.

- (b) Prior to a Certificate of Completion being issued for public domain works and before the issue of any Occupation Certificate for the development or before the use commences, whichever is earlier, electronic works-as-executed (as-built) plans and documentation, certified by a suitably qualified, independent professional must be submitted to and accepted by Council for all public domain works. Completion and handover of the constructed public domain works must be undertaken in accordance with the City of Sydney's *Public Domain Manual* and *Sydney Streets Technical Specification*, including requirements for as-built documentation, certification, warranties and the defects liability period.

(59) STORMWATER AND DRAINAGE - MAJOR DEVELOPMENT

- (a) Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work, details of the proposed stormwater disposal and drainage from the development including a system of on-site stormwater detention in accordance with Council's standard requirements and details of the provision and maintenance of overland flow paths must be submitted to and approved by Council. All approved details for the disposal of stormwater and drainage are to be implemented in the development.
- (b) The requirements of Sydney Water with regard to the on site detention of stormwater must be ascertained and complied with. Evidence of the approval of Sydney Water to the on-site detention must be submitted prior to a Construction Certificate being issued excluding any approved preparatory, demolition or excavation works.
- (c) Prior to the issue of any Occupation Certificate, a Positive Covenant must be registered on the title for all drainage systems involving On-Site Detention (OSD) to ensure maintenance of the approved OSD system regardless of the method of connection.
- (d) Any proposed connection to the Council's underground drainage system will require the owner to enter into a Deed of Agreement with the Council and obtain registration on Title of a Positive Covenant prior to Construction Certificate being issued for public domain works or above ground building works, whichever is earlier, and prior to the commencement of any work within the public way.
- (e) An "Application for Approval of Stormwater Drainage Connections" must be submitted to the Council with the appropriate fee at the time of lodgement of the proposal for connection of stormwater to the Council's drainage system.
- (f) Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), but excluding approved preparatory or demolition work, a stormwater quality assessment must be undertaken and must be approved by Council.

The stormwater quality assessment must:

- (i) be prepared by a suitably qualified drainage engineer with experience in Water Sensitive Urban Design;
- (ii) use modelling from an industry-standard water quality model; and
- (iii) demonstrate what water sensitive urban design and other drainage measures will be used to ensure that the development will achieve the following post-development pollutant loads:
 - a. reduce the baseline annual pollutant load for litter and vegetation larger than 5mm by 90%;
 - b. reduce the baseline annual pollutant load for total suspended solids by 85%;
 - c. reduce the baseline annual pollutant load for total phosphorous by 65%;
 - d. reduce the baseline annual pollutant load for total nitrogen by 45%.

Prior to the issue of any Occupation Certificate, maintenance schedules of the proposed water sensitive urban design and drainage measures must be submitted to and approved by the Certifying Authority and a copy provided to Council.

(60) DEFECTS LIABILITY PERIOD – PUBLIC DOMAIN WORKS

All works to the City's public domain, including rectification of identified defects, are subject to a 12 month defects liability period from the date of final completion. The date of final completion will be nominated by Council on the Certificate of Completion for public domain works.

(61) DRAINAGE AND SERVICE PIT LIDS

Drainage and service pit lids throughout the public domain shall be heelguard and bicycle safe, finish flush with the adjacent pavement to avoid trip hazards and be clear of obstructions for easy opening and cleaning. Pit lids shall be in accordance with the *City of Sydney's Sydney Streets Design Code* and *Sydney Streets Technical Specification*. Details of drainage and service pit lids shall be submitted and approved by Council prior to a Construction Certificate being issued for the relevant stage of work.

(62) PROTECTION OF STONE KERBS

- (a) The existing stone kerbs on the Bathurst Street and Castlereagh Street frontages of the site are to be retained and properly protected during excavation and construction works.

- (b) To avoid damage to stone kerbs during excavation and construction works for the development, temporary removal and storage of the stone kerbs may be approved by Council. Removed, serviceable stone kerbs (i.e. those that are in good condition as agreed by Council officers) must be re-installed in accordance with the City of Sydney's standard details and specifications after the construction works have been completed. Note: A temporary concrete kerb will need to be constructed to retain the footpath until the stone kerbs can be reinstalled. The removed stone kerbs are to be reinstalled prior to the issue of an Occupation Certificate. Note: all costs associated with the works are to be at no cost to the Council.
- (c) Damaged kerbs are to be replaced to match existing to Council's satisfaction or as otherwise advised by Council officers.
- (d) Where new crossings or temporary crossings are to be constructed to access the property, the affected kerb stones should be salvaged and reused wherever possible.
- (e) All new driveway laybacks and kerbs are to be constructed with stone kerbs to match existing stones or as specified by City officers. All unused stone kerbs are to be salvaged and returned to the City's store.
- (f) Council approval is required before kerbs are removed.
- (g) Council approval is required prior to the cutting of existing stone kerbs for stormwater kerb outlets.

(63) PUBLIC DOMAIN LIGHTING

- (a) (a) Prior to a Construction Certificate for public domain works or above ground building works being issued, whichever is later, a detailed Public Domain Lighting Plan for pedestrian and street lighting in the public domain must be prepared by a suitably qualified, practicing lighting engineer or lighting designer and must be submitted to and approved by Council. The Lighting Plan must be prepared in accordance with the City of Sydney's Interim Draft Sydney Lights Design Code, Sydney Streets Design Code, *Sydney Streets Technical Specification* and *Public Domain Manual* and must include the following:
 - (i) Vertical and horizontal illuminance plots for the public domain lighting design to demonstrate compliance with all relevant Australian Standards and to meet the lighting categories and requirements specified by the City;
 - (ii) The location, type and category of existing and proposed lights, including details of luminaire specifications, required to ensure compliance with City policies and Australian Standards;
 - (iii) Footing locations and structural details;
 - (iv) Location and details of underground electrical reticulation, connections and conduits;

- (v) Certification by a suitably qualified, practicing lighting engineer or lighting designer to certify that the design complies with City policies and all relevant Australian Standards including AS 1158, AS 3000 and AS4282;
 - (vi) Structural certification for footing designs by a suitably qualified, practicing engineer to certify that the design complies with City of Sydney policies and Australian Standards.
- (b) The public domain lighting works are to be completed in accordance with the approved plans and the City of Sydney's *Public Domain Manual* before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.

(64) PUBLIC DOMAIN DAMAGE DEPOSIT

A Public Domain Damage Deposit calculated on the basis of 75 lineal metres of asphalt site frontage must be lodged with Council in accordance with the City of Sydney's adopted Schedule of Fees and Charges. The Public Domain Damage Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for repairing any damage to the public domain in the vicinity of the site.

The guarantee must be lodged with Council prior to an approval for demolition being granted or a Construction Certificate being issued, whichever is earlier.

The Bank Guarantee will be retained in full until the final Occupation Certificate has been issued and any rectification works to the footway and Public Domain are completed to Council's satisfaction. On satisfying the above requirements 90% of the total securities will be released, with the remaining 10% to be retained for the duration of the 12 months Defect Liability Period.

(65) TACTILE GROUND SURFACE INDICATORS AND HANDRAILS

All tactile ground surface indicators, handrails and other elements required to provide access into the building / property must be located entirely within the private property boundary.

(66) PHYSICAL MODELS

- (a) Prior to a final Occupation Certificate being issued, an accurate 1:500 scale model of the development as constructed must be submitted to Council for the City Model in Town Hall House.

Note:

- (i) The models must be constructed in accordance with the Model Specifications available online at <http://www.cityofsydney.nsw.gov.au/development/application-guide/application-process/model-requirements> Council's modelers must be consulted prior to construction of the model.

- (ii) The models are to comply with all of the conditions of the Development Consent.
- (iii) The models must be amended to reflect any further modifications to the approval (under section 96 of the *Environmental Planning and Assessment Act*) that affect the external appearance of the building.

(67) SUBMISSION OF ELECTRONIC CAD MODELS PRIOR TO OCCUPATION CERTIFICATE

- (a) Prior to an Occupation Certificate being issued, an accurate 1:1 electronic CAD model of the completed development must be submitted to Council for the electronic Visualisation City Model.
- (b) The data required to be submitted within the surveyed location must include and identify:
 - (i) building design above and below ground in accordance with the development consent;
 - (ii) all underground services and utilities, underground structures and basements, known archaeological structures and artefacts;
 - (iii) a current two points on the site boundary clearly marked to show their Northing and Easting MGA (Map Grid of Australia) coordinates, which must be based on Established Marks registered in the Department of Lands and Property Information's SCIMS Database with a Horizontal Position Equal to or better than Class C.

The data is to be submitted as a DGN or DWG file on a Compact Disc. All modelling is to be referenced to the Map Grid of Australia (MGA) spatially located in the Initial Data Extraction file.

- (c) The electronic model must be constructed in accordance with the City's 3D CAD electronic model specification. The specification is available online at <http://www.cityofsydney.nsw.gov.au/development/application-guide/application-process/model-requirements> Council's Modelling staff should be consulted prior to creation of the model. The data is to comply with all of the conditions of the Development Consent.

(68) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

A Construction Traffic Management Plan must be submitted to and approved by Council prior to a Construction Certificate being issued.

(69) DEMOLITION, EXCAVATION AND CONSTRUCTION MANAGEMENT

- (a) Prior to the commencement of demolition and/or excavation work the following details must be submitted to and be approved by the Principal Certifying Authority:

- (i) Plans and elevations showing distances of the subject building from the location of adjoining and common/party walls, and (where applicable) the proposed method of facade retention.
 - (ii) A Demolition Work Method Statement prepared by a licensed demolisher who is registered with the WorkCover Authority. (The demolition by induced collapse, the use of explosives or on-site burning is not permitted.)
 - (iii) An Excavation Work Method Statement prepared by an appropriately qualified person.
 - (iv) A Waste Management Plan for the demolition and or excavation of the proposed development.
- (b) Such statements must, where applicable, be in compliance with AS2601-2001 Demolition of Structures, the Work, Health and Safety Act 2011 and Regulation; Council's Policy for Waste Minimisation in New Developments 2005, the Waste Avoidance and Resource Recovery Act 2001, and all other relevant acts and regulations and must include provisions for:
- (i) A Materials Handling Statement for the removal of refuse from the site in accordance with the *Waste Avoidance and Resource Recovery Act 2001*.
 - (ii) The name and address of the company/contractor undertaking demolition/excavation works.
 - (iii) The name and address of the company/contractor undertaking off site remediation/disposal of excavated materials.
 - (iv) The name and address of the transport contractor.
 - (v) The type and quantity of material to be removed from site.
 - (vi) Location and method of waste disposal and recycling.
 - (vii) Proposed truck routes, in accordance with this development consent.
 - (viii) Procedures to be adopted for the prevention of loose or contaminated material, spoil, dust and litter from being deposited onto the public way from trucks and associated equipment and the proposed method of cleaning surrounding roadways from such deposits. (Note: With regard to demolition of buildings, dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site).
 - (ix) Measures to control noise emissions from the site.

- (x) Measures to suppress odours.
 - (xi) Enclosing and making the site safe.
 - (xii) Induction training for on-site personnel.
 - (xiii) Written confirmation that an appropriately qualified Occupational Hygiene Consultant has inspected the building/site for asbestos, contamination and other hazardous materials, in accordance with the procedures acceptable to WorkCover Authority.
 - (xiv) An Asbestos and Hazardous Materials Clearance Certificate by a person approved by the WorkCover Authority.
 - (xv) Disconnection of utilities.
 - (xvi) Fire Fighting. (Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed).
 - (xvii) Access and egress. (Demolition and excavation activity must not cause damage to or adversely affect the safe access and egress of the subject building or any adjacent buildings).
 - (xviii) Waterproofing of any exposed surfaces of adjoining buildings.
 - (xix) Control of water pollution and leachate and cleaning of vehicles tyres (proposals must be in accordance with the *Protection of the Environmental Operations Act 1997*).
 - (xx) Working hours, in accordance with this development consent.
 - (xxi) Any WorkCover Authority requirements.
- (c) The approved work method statements and a waste management plan as required by this condition must be implemented in full during the period of construction.

(70) DILAPIDATION REPORT – MAJOR EXCAVATION/DEMOLITION

- (a) Subject to the receipt of permission of the affected landowner, dilapidation report/s, including a photographic survey are to be prepared by an appropriately qualified structural engineer prior to commencement of demolition/excavation works for the following properties:
- (i) 201 and 201A Castlereagh Street;
 - (ii) 131-135, 137-139 and 141-149 Pitt Street;
 - (iii) 266-274, 276-278, 280-282 and 284-292 Pitt Street; and
 - (iv) 219-227 Elizabeth Street.

- (b) A copy of the dilapidation report/s together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Certifying Authority and the Council prior to the issue of a Construction Certificate.

UPON COMPLETION OF EXCAVATION/DEMOLITION

- (c) A second Dilapidation Report/s, including a photographic survey must then be submitted at least one month after the completion of demolition/excavation works. A copy of the second dilapidation report/s, together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Principal Certifying Authority and the Council prior to the issue of an Occupation Certificate.

Any damage to buildings, structures, lawns, trees, sheds, gardens and the like must be fully rectified by the applicant or owner, at no cost to the affected property owner.

Note: Prior to the commencement of the building surveys, the applicant/owner must advise (in writing) all property owners of buildings to be surveyed of what the survey will entail and of the process for making a claim regarding property damage. A copy of this information must be submitted to Council.

(71) DEMOLITION/SITE RECTIFICATION

The following conditions apply to the development:

- (a) Demolition or excavation must not commence until a Construction Certificate has been issued for construction of the substantive building.
- (b) Prior to the Construction Certificate being issued, documentary evidence must be provided to Council that the owner of the site has entered into a Deed with Council, the cost of preparation and execution of such Deed (including stamp duty and registration fees) to be borne by the applicant, which contains such conditions as the Council reasonably requires to ensure the matters set out in this condition are adequately provided for.
- (c) Without limiting the generality of paragraph (b), the Deed must provide for:
 - (i) A bank guarantee to be provided in the sum of \$324,250 as security for the costs of such works provided that:
 - a. the maximum liability under the Deed must not exceed \$324,250; and
 - b. the Council may accept a lesser amount as security if substantiated by detailed design and Quantity Surveyor costing for works which meet the objectives of the condition.

- (ii) Council to be given sufficient contractual rights to be able to ensure that in any of the following events namely:
 - a. demolition of the existing building has commenced but not been completed;
 - b. the existing building has been demolished; or
 - c. the site has been excavated; or
 - d. the erection of the structure has commenced;
- (iii) that it, or any person authorised by it, may enter the site and carry out such works at the cost of the applicant (or such other person as the Consent Authority may approve) as may be then appropriate in the circumstances in each of the abovementioned events, to:
 - a. make the building safe and of an appearance acceptable to Council at ground level;
 - b. allow the ground level to be landscaped and of an appearance acceptable to Council from any public vantage point; or
 - c. for the hole to be covered to allow it to be landscaped and of an appearance acceptable to Council from any public vantage point; or
 - d. in the event that the new building is constructed beyond the ground floor, to allow any hoardings to be removed and the ground floor development to be completed to a tenantable stage;

AND to call on such bank guarantee to cover the cost thereof.

- (d) If the site is commenced to be developed and there is suspension in activity for 6 months (or suspensions of activity which in the aggregate exceed 6 months), resulting in a building site which has an appearance not acceptable to Council, then the Council will have the readily enforceable rights to:
 - (i) require certain works including but not limited to those works necessary to achieve the results referred to in sub-clause (c) (iii) to take place on the site; and
 - (ii) in the event of default, have the right to enter and carry out these works and to call upon security in the nature of a bank guarantee to cover the cost of the works.
- (e) The Deed may, if the Director City Planning, Development and Transport is satisfied, provide for an adjustment of the guarantee amount during the course of construction to reflect that, as the development progresses, the likelihood and nature of the appropriate site rectification works may change. The stages of reduction will be:

- (i) Stage 1 – Completion of the site excavation and all construction works necessary to complete all parts of the Development to street level, including sealing of the slab at that level;
 - (ii) Stage 2 – Completion of all construction works necessary to complete the structure of the Development to the roof level; and
 - (iii) Stage 3 – Issue of the Final Occupation Certificate.
- (f) If a claim for an adjustment is made, the Deed must also provide that any such claim is to be supported by the following:
- (i) Certification (from an accredited certifier) that the relevant stage is complete; and
 - (ii) Detailed schedule of completed works carried out in the relevant stage;
- (g) Quantity Surveyors costing of the likely site rectification works required at each remaining stage.

(72) EROSION AND SEDIMENT CONTROL - BETWEEN 250 AND 2,500SQM

Prior to the commencement of demolition/excavation/construction work, an Erosion and Sediment Control Plan (ESCP) must be submitted to and be approved by the Principal Certifying Authority. The ESCP must:

- (a) Conform to the specifications and standards contained in *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004); the *Guidelines for Erosion and Sediment Control on Building Sites* (City of Sydney, 2004); and the *NSW Protection of the Environment Operations Act 1997*.
- (b) Include a drawing(s) that clearly shows:
 - (i) location of site boundaries and adjoining roads;
 - (ii) approximate grades and indications of direction(s) of fall;
 - (iii) approximate location of trees and other vegetation, showing items for removal or retention;
 - (iv) location of site access, proposed roads and other impervious areas;
 - (v) existing and proposed drainage patterns with stormwater discharge points; and
 - (vi) north point and scale;
- (c) Specify how soil conservation measures will be conducted on site including:
 - (i) timing of works;

- (ii) locations of lands where a protective ground cover will, as far as is practicable, be maintained;
- (iii) access protection measures;
- (iv) nature and extent of earthworks, including the amount of any cut and fill;
- (v) where applicable, the diversion of runoff from upslope lands around the disturbed areas;
- (vi) location of all soil and other material stockpiles including topsoil storage, protection and reuse methodology;
- (vii) procedures by which stormwater is to be collected and treated prior to discharge including details of any proposed pollution control device(s);
- (viii) frequency and nature of any maintenance program; and
- (ix) other site-specific soil or water conservation structures.

(73) ROAD OPENING PERMIT

A separate Road Opening Permit under Section 138 of the *Roads Act 1993* must be obtained from Council prior to the commencement of any:

- (a) Excavation in or disturbance of a public way, or
- (b) Excavation on land that, if shoring were not provided, may disturb the surface of a public road (including footpath).

(74) TEMPORARY GROUND ANCHORS, TEMPORARY SHORING AND PERMANENT BASEMENT/RETAINING WALLS AFFECTING THE ROAD RESERVE

For temporary shoring including ground anchors affecting the road reserve, a separate application under Section 138 of the *Roads Act 1993* must be lodged with Council.

(75) ASBESTOS REMOVAL WORKS

- (a) All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with WorkCover NSW, holding either a Friable (Class A) or a Non-Friable (Class B) Asbestos Removal Licence which ever applies.
- (b) Five days prior to the commencement of licensed asbestos removal, WorkCover must be formally notified of the works. All adjoining properties and those opposite the development must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone number and email address.

- (c) All works must be carried out in accordance with the *Work Health and Safety Regulation 2011* and the NSW Government and WorkCover document entitled *How to manage and control asbestos in the work place: Code of Practice (NSW WorkCover)* and the *City of Sydney Managing Asbestos Policy*.
- (d) The asbestos removalist must use signs and barricades to clearly indicate the area where the asbestos removal work is being performed. Signs must be placed in positions so that people are aware of where the asbestos removal work area is and should remain in place until removal is completed and clearance to reoccupy has been granted. Responsibilities for the security and safety of the asbestos removal site and removal work area should be specified in the asbestos removal control plan (where required). This includes inaccessible areas that are likely to contain asbestos.
- (e) Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs should be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs should be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs should be in accordance with AS 1319-1994 Safety signs for the occupational environment for size, illumination, location and maintenance.
- (f) Asbestos to be disposed of must only be transported to waste facilities licensed to accept asbestos. The names and location of these facilities are listed in Appendix F of the City of Sydney's Managing Asbestos Guidelines.
- (g) No asbestos products are to be reused on the site (i.e. packing pieces, spacers, formwork or fill etc).
- (h) No asbestos laden skips or bins are to be left in any public place without the approval of Council.
- (i) A site notice board must be located at the main entrance to the site in a prominent position and must have minimum dimensions of 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size.

The site notice board must include the following:

- (i) contact person for the site;
- (ii) telephone and facsimile numbers and email address; and
- (iii) site activities and time frames.

(76) CLASSIFICATION OF WASTE

Prior to the exportation of waste (including fill or soil) from the site, the waste materials must be classified in accordance with the provisions of the Protection of the *Environment Operations Act 1997* and the *NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (July 2009)*. The classification of the material is essential to determine where the waste may be legally taken. The *Protection of the Environment Operations Act 1997* provides for the commission of an offence for both the waste owner and the transporters if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or Group A liquid waste advice should be sought from the EPA.

(77) NOTIFICATION – NEW CONTAMINATION EVIDENCE

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination shall be notified to the City's Area Planning Manager and the Principal Certifying Authority immediately.

(78) MECHANICAL VENTILATION

- (a) The premises must be ventilated in accordance with the *Building Code of Australia* and AS1668.1 and AS1668.2.
- (b) Details of any mechanical ventilation and/or air conditioning system complying with AS1668.1 and AS1668.2, the *Building Code of Australia* and relevant Australian Standards must be prepared by a suitably qualified person certified and certified in accordance with Clause A2.2(a)(iii) of the *Building Code of Australia*, to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.
- (c) Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the *Building Code of Australia*, must be submitted to the Principal Certifying Authority.

(79) FUTURE FOOD USE - MECHANICAL VENTILATION PROVISION

The approved mechanical exhaust systems are to be designed to be capable of accommodating exhaust requirements for all ground floor retail tenancies in accordance with relevant Australia Standards, in order to allow for the event that any of the tenancies are approved for future use by food premises or other uses which require mechanical exhaust. Any exhaust system servicing an area where food is being cooked must discharge exhaust air at roof level.

(80) CAR PARK VENTILATION

The car park must be ventilated in accordance with the *Building Code of Australia* and, where necessary, Australian Standard AS1668, Parts 1 and 2. Ventilation must be controlled by carbon monoxide monitoring sensors to ensure compliance with occupant health requirements.

(81) LAND SUBDIVISION

Any proposal to subdivide the site, including any stratum subdivision of the building(s), will require a separate application to Council to obtain development consent for the proposal and subsequent issue of the Subdivision Certificate under Section 109J of the *Environmental Planning and Assessment Act 1979*.

(82) STRATA SUBDIVISION – DEVELOPMENT CONSENT

Any proposal for strata subdivision for all or part of the site will require development consent and therefore the lodgment of a separate development application or complying development application, and subsequent approval from Council, or an accredited certifier, of the Strata Plan and issue of a Strata Certificate under the *Strata Schemes (Freehold Development) Act 1973*.

(83) ELECTRICITY SUBSTATION

If required by the applicable energy supplier, the owner must dedicate to the applicable energy supplier, free of cost, an area of land within the development site, but not in any landscaped area or in any area visible from the public domain, to enable an electricity substation to be installed. The size and location of the substation is to be submitted for approval of Council and Energy Australia, prior to a Construction Certificate being issued or the commencement of the use, whichever is earlier.

(84) TELECOMMUNICATIONS PROVISIONS

- (a) Appropriate space and access for ducting and cabling is to be provided within the plant area and to each apartment within the building within for a minimum of three telecommunication carriers or other providers of broad-band access by ground or satellite delivery. The details must be submitted for the approval of the Certifying Authority prior to a Construction Certificate being issued.
- (b) A separate DA must be submitted prior to the installation of any external telecommunication apparatus, or the like.

(85) UTILITY SERVICES

To ensure that utility authorities are advised of the development:

- (a) Prior to the issue of a Construction Certificate a survey is to be carried out of all utility services within and adjacent to the site including relevant information from utility authorities and excavation if necessary, to determine the position and level of services.
- (b) Prior to the commencement of work the applicant is to obtain written approval from the utility authorities (e.g. Energy Australia, Sydney Water, and Telecommunications Carriers) in connection with the relocation and/or adjustment of the services affected by the construction of the underground structure. Any costs in the relocation, adjustment or support of services are to be the responsibility of the developer.

(86) WASTE MANAGEMENT FACILITIES

Prior to the issue of a Construction Certificate for the development, the waste management facilities within the building are to be consistent with Council's "Policy for Waste Minimisation in New Developments 2005" and designed to provide for:

- (a) the residential garbage room to be designed in accordance with Council's "Policy for Waste Minimisation in New Developments 2005" to allow for cleaning, draining and management of the room,
- (b) the residential garbage room servicing the proposed building to include adequate space for the separation of putrescible waste from waste suitable for recycling,
- (c) a minimum vertical clearance of 3.8 metres (taking pipes, ducts etc. into account) and sufficient manoeuvring space to provide for a 9.24m long vehicle, for all areas accessed by Council's waste collection vehicles.

(87) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL

- (a) A Waste Management Plan is to be approved by the Certifying Authority prior to a Construction Certificate being issued. The plan must comply with the Council's Policy for Waste Minimisation in New Developments 2005. All requirements of the approved Building Waste Management Plan must be implemented during construction of the development.

UPON COMPLETION OF THE DEVELOPMENT

- (b) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must ensure that waste handling works have been completed in accordance with: the Waste Management Plan; other relevant development consent conditions; and Council's *Policy for Waste Minimisation in New Developments 2005*.

(88) WASTE AND RECYCLING MANAGEMENT - RESIDENTIAL

- (a) A Waste Management Plan is to be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued. The plan must comply with the Council's *Policy for Waste Minimisation in New Developments 2005*. All requirements of the approved Waste Management Plan must be implemented during construction of the development.
- (b) The building must incorporate designated areas or separate garbage rooms constructed in accordance with Council's *Policy for Waste Minimisation in New Developments 2005*, to facilitate the separation of commercial waste and recycling from residential waste and recycling.

UPON COMPLETION OF THE DEVELOPMENT

- (c) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must obtain Council's approval of the waste and recycling management facilities provided in the development and ensure arrangements are in place for domestic waste collection by Council.

SCHEDULE 1C**During Construction/Prior to Occupation/Completion****(89) OCCUPATION CERTIFICATE TO BE SUBMITTED**

An Occupation Certificate must be obtained from the Principal Certifying Authority and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

(90) HOURS OF WORK AND NOISE – CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including demolition, excavation and building work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.00am and 7.00pm on Mondays to Fridays, inclusive, and 7.00am and 5.00pm on Saturdays, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the *City of Sydney Code of Practice for Construction Hours/Noise 1992* and Australian Standard 2436-1981 *Guide to Noise Control on Construction, Maintenance and Demolition Sites*.

Note: The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 96 of the *Environmental Planning and Assessment Act 1979*.

(91) LIGHTING OF SITE OUTSIDE OF STANDARD CONSTRUCTION HOURS

Lighting of the site while any work is undertaken outside of Council's standard hours of construction must ensure that at no time must the intensity, hours of illumination or location of the lighting cause objectionable glare or injury to the amenity of the neighbourhood or Obtrusive Light in accordance with the definition in Australian Standard AS4282-1997 *Control of the obtrusive effects of outdoor lighting*. If in the opinion of Council, injury is likely to be caused, the intensity, hours of illumination and location of the lighting must be varied so that it does not cause injury to nearby residents.

(92) SITE NOTICE OF PROJECTS DETAILS AND APPROVALS

A site notice is to be prominently displayed at the boundary to each frontage of the site for the purposes of informing the public of appropriate project details and relevant approvals. The notice(s) is to satisfy all of the following requirements:

- (a) Minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size;
- (b) The notice is to be durable and weatherproof and is to be displayed throughout the construction period;
- (c) A copy of the first page of the development approval, building approval (including any modifications to those approvals) and any civic works approvals is to be posted alongside the notice in weatherproof casing;
- (d) The approved hours of work, the Principal Certifying Authority including contact address and certification details, the name of the site manager, the responsible managing company, its address and 24 hour contact phone number for any enquiries, including construction/noise complaint, are to be displayed on the site notice;
- (e) The notice(s) is to be mounted at eye level on the perimeter hoardings and is also to state that unauthorised entry to the site is not permitted.

(93) NOTIFICATION OF EXCAVATION WORKS OR USE OF HIGH NOISE EMISSION APPLIANCES/PLANT

The immediately adjoining neighbours must be given a minimum of 48 hours notice that excavation, shoring or underpinning works or use of high noise emission appliances / plant are about to commence.

(94) BASIX

All commitments listed in each relevant BASIX Certificate for the development must be fulfilled prior to an Occupation Certificate being issued.

(95) ENCROACHMENTS – NEIGHBOURING PROPERTIES

No portion of the proposed structure shall encroach onto the adjoining properties.

(96) ENCROACHMENTS – PUBLIC WAY

No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach upon Council's footpath area.

(97) SURVEY

All footings and walls adjacent to a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be submitted to the Principal Certifying Authority indicating the position of external walls in relation to the boundaries of the allotment.

(98) SURVEY CERTIFICATE AT COMPLETION

A Survey Certificate prepared by a Registered Surveyor must be submitted at the completion of the building work certifying the location of the building in relation to the boundaries of the allotment.

(99) COVERING OF LOADS

All vehicles involved in the excavation and/or demolition process and departing the property with demolition materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

(100) EROSION AND SEDIMENT CONTROL

The Soil and Water Management Plan (SWMP) or Erosion and Sediment Control Plan (ESCP) which has been approved by the Principal Certifying Authority must be implemented in full during the construction period.

During the construction period:

- (a) erosion and sediment controls must be regularly inspected, repaired and maintained in working order sufficient for a 10 year Average Recurrence Interval (ARI) rainfall event;
- (b) erosion and sediment control signage available from Council must be completed and attached to the most prominent structure visible at all times when entering the site for the duration of construction; and
- (c) building operations and stockpiles must not be located on the public footway or any other locations which could lead to the discharge of materials into the stormwater system.

(101) HAZARDOUS AND INDUSTRIAL WASTE

Hazardous and/or industrial waste arising from the demolition/operational activities must be removed and/or transported in accordance with the requirements of the NSW WorkCover Authority pursuant to the provisions of the following:

- (a) *Protection of the Environment Operations Act 1997*
- (b) *Protection of the Environment Operations (Waste) Regulation 2005*
- (c) *Waste Avoidance and Resource Recovery Act 2001*
- (d) *Work Health and Safety Act 2011*
- (e) *Work Health and Safety Regulation 2011.*

(102) VEHICLE CLEANSING

Prior to the commencement of work, suitable measures are to be implemented to ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site. It is an offence to allow, permit or cause materials to pollute or be placed in a position from which they may pollute waters.

(103) SYDNEY WATER CERTIFICATE

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section on the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to Council or the Principal Certifying Authority prior to an Occupation Certificate or subdivision/strata certificate being issued.

(104) ACCESS DRIVEWAYS TO BE CONSTRUCTED

Approved driveways are to be constructed for all vehicular access to the construction site in accordance with the requirements of Council's "Driveway Specifications" to the satisfaction of Council.

(105) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site.
- (b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- (d) In addition to any approved construction zone, provision must be made for loading and unloading to be accommodated on site once the development has reached ground level.
- (e) The structural design of the building must allow the basement and/or the ground floor to be used as a loading and unloading area for the construction of the remainder of the development.

- (f) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval under Section 68 of the Local Government Act 1993 must be obtained.

(106) NO OBSTRUCTION OF PUBLIC WAY

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

(107) USE OF MOBILE CRANES

The following requirements apply:

- (a) Mobile cranes operating from the road must not be used as a method of demolishing or constructing a building.
- (b) For special operations including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on-street use of mobile cranes, permits must be obtained from Council for the use of a mobile crane. The permits must be obtained 48 hours beforehand for partial road closures which, in the opinion of Council will create minimal traffic disruptions and 4 weeks beforehand in the case of full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (c) Special operations and the use of mobile cranes must comply with the approved hours of construction. Mobile cranes must not be delivered to the site prior to 7.30am without the prior approval of Council.

(108) STREET NUMBERING – MAJOR DEVELOPMENT

Prior to an Occupation Certificate being issued, street numbers and the building name must be clearly displayed at either end of the ground level frontage in accordance with the *Policy on Numbering of Premises within the City of Sydney*. If new street numbers or a change to street numbers is required, a separate application must be made to Council.

SCHEDULE 2

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

SCHEDULE 3

(109) TRANSPORT FOR NSW CONDITION

The developer shall consult with Transport for NSW prior to the issue of a Construction Certificate to afford Transport for NSW the opportunity to review the detailed construction plans and provide comments on the use of any rock anchors.

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 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.

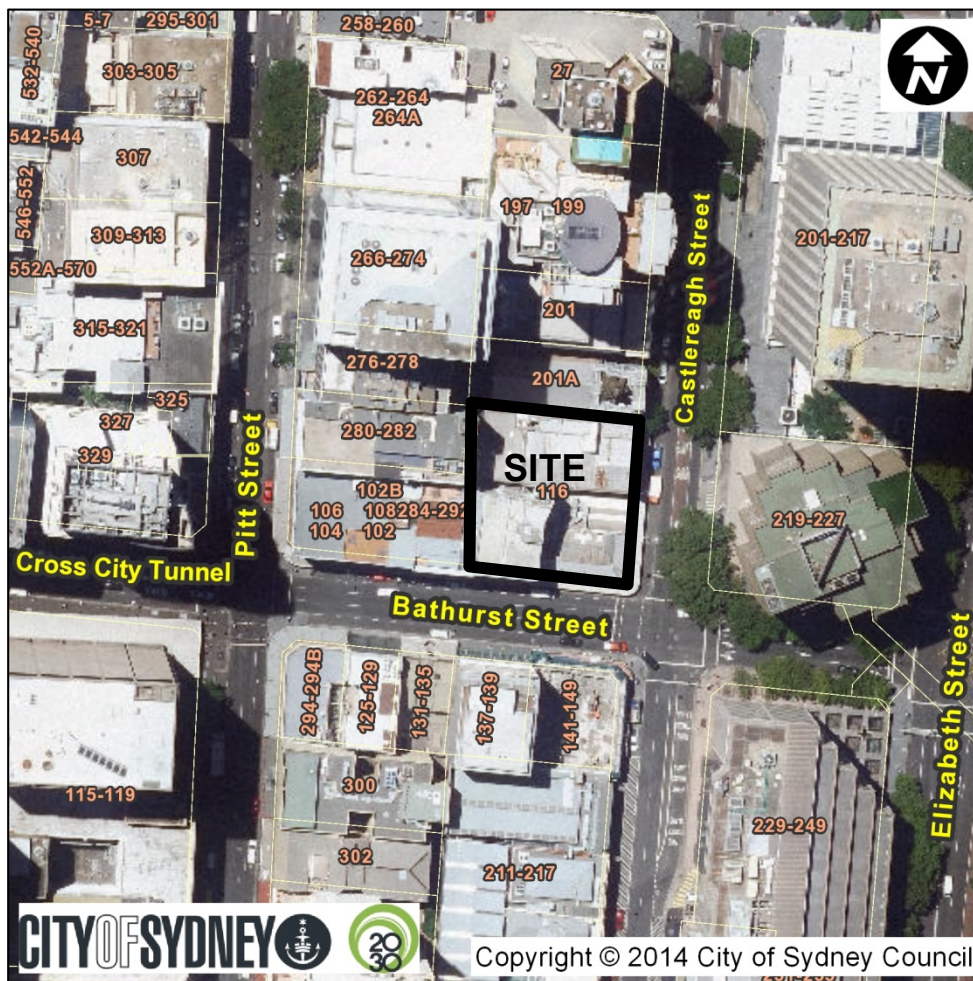


Figure 1: Location plan



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 RELEVANT TO THE DEVELOPMENT 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;



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, noted a number of matters that required further resolution prior to lodgement. These matters were:
 - (a) greater resolution of the facade treatment, with further design work in relation to the scale, proportion and integrity of the arches, the integration of the glazing, glazing colour and the passive systems;
 - (b) demolition works and use of the cartway (of Porter House) as an entry/concierge for the hotel use is not considered appropriate. Heritage fabric should be retained and alternative access arrangements to the hotel should be made;
 - (c) building separation and privacy issues need to be considered regarding window placement, particularly on the western facade;
 - (d) further analysis on views/outlook from apartments should be undertaken to optimise amenity; and
 - (e) the appropriateness of the extent of cantilever of the tower over Porter House.
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 above matters 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, in conjunction with a concurrent Section 96 (2) application to modify the Stage 1 building envelope.

PROPOSAL

14. The subject application seeks consent for the following works:
 - (a) demolition of all existing structures on site, excluding Porter House;
 - (b) retention, restoration works and re-use of heritage listed Porter House for hotel (ground floor only) and commercial offices (Levels 1 to 4, inclusive);
 - (c) excavation and construction of basement car parking, accommodating 64 car parking spaces in a car stacker, loading area, building services and residential storage/bicycle parking;

- (d) vehicular access off Bathurst Street;
 - (e) construction of a 36-storey mixed-use development, with a gross floor area of 18,616sqm, that accommodates:
 - (i) 2,055sqm of commercial /retail floor space at ground level and at basement level 1 and Levels 1 to 4 of Porter House;
 - (ii) “in principle” use of ground floor of Porter House and Levels 1 to 8 of the podium as a hotel (indicatively accommodating 102 hotel rooms). The fit-out and detailed operational use is to be subject to a further development application; and
 - (iii) 131 residential apartments on Levels 9 to 34;
 - (f) landscaping, public art and public domain works; and
 - (g) a signage strategy for the development.
15. **Figures 8 to 12**, below, illustrate photomontages of the proposed development. Architectural plans and elevations of the proposed development are provided at **Attachments A and B**.



Figure 8: Photomontage of the proposed development as viewed from Castlereagh Street



Figure 9: Photomontage of the proposed podium of the development as viewed from Castlereagh Street



Figure 10: Photomontage of the southern elevation of the proposed podium as viewed from Bathurst Street

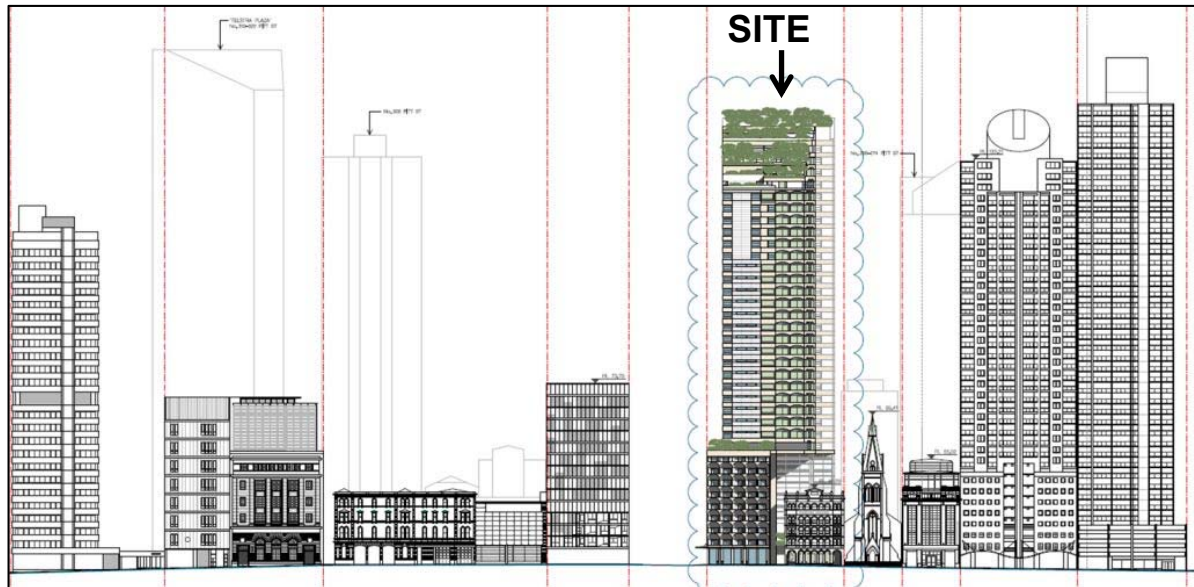


Figure 11: The proposed development as viewed in its Castlereagh Street context (western elevation)

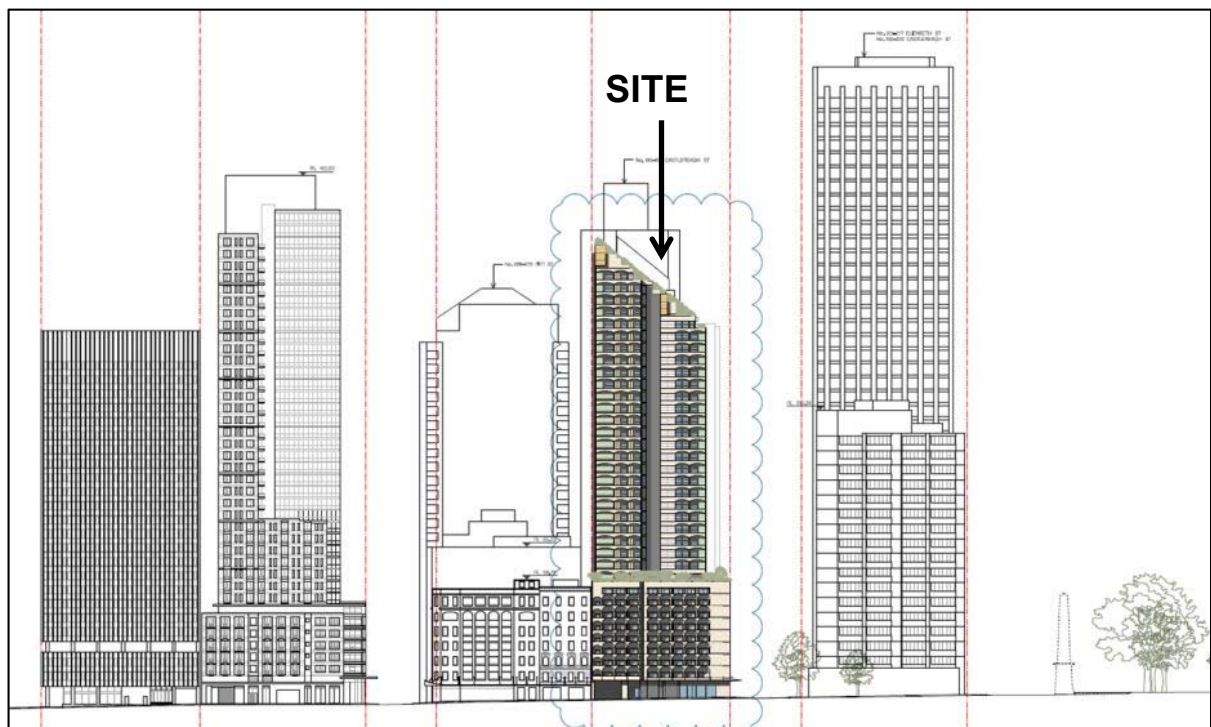


Figure 12: The proposed development as viewed in its Bathurst Street context (southern elevation)

APPLICATION HISTORY AND AMENDMENTS

16. The Applicant was advised in correspondence, dated 18 August 2014, that the application was not supported in its current form and required the submission of amended plans and additional information to address the following matters:

- (a) building height and envelope is non-compliance with the sun access plane;
 - (b) the reduction of tower setbacks on both Bathurst and Castlereagh Streets is not supported (as lodged the application sought the tower to have a nil setback on its Bathurst Street frontage and 6 metres from Castlereagh Street);
 - (c) gross floor area has been incorrectly calculated and areas of the development have been erroneously omitted from the calculation;
 - (d) extent of non-compliances with Sydney DCP 2012 and SEPP 65/Residential Flat Design Code for solar access, cross ventilation and provision of private open space. Redesign was requested to ensure greater residential amenity could be achieved to residential apartments in accordance with relevant legislation;
 - (e) unit mix is significantly non-compliant with the provisions of SDCP 2012, and is too heavily loaded with studio and 1 bedroom apartments;
 - (f) the use of all levels of Porter House for a hotel is not supported on heritage grounds due to the level of intervention that would be required and loss of original fabric/character that would result;
 - (g) the extent of cantilever of the tower over Porter House is not supported;
 - (h) the extent of works to the cart-way, courtyard and facade of Porter House are not supported on heritage grounds;
 - (i) reconfiguration of the proposal to ensure that the City's standard sized waste collection vehicle can service the site;
 - (j) additional information to address the following:
 - (i) provide greater detail on green roofs, including planting structures, soil depths and on-going maintenance plans;
 - (ii) provision of a loading dock management plan, relocation of hotel drop-off location and further detail on any hotel valet parking system;
 - (iii) documentation on land contamination and a construction noise management plan; and
 - (iv) additional information for Transport for NSW as the proposal includes excavation in close proximity to a future rail corridor.
17. The Applicant submitted amended plans and supporting supplementary information on 26 September 2014, 10 and 24 October 2014 and 29 January 2015, which significantly amended the proposal from that which was lodged in June 2014. The key amendments made to the proposal from that originally lodged were:
- (a) **Front setbacks** – The proposal was amended to comply with the approved Stage 1 DA tower setback from Bathurst Street of 4 metres;
 - (b) **Height/roof plane** – The height and form of the development has been modified to comply with the Hyde Park West sun access plane;

- (c) **Use of Porter House** – Porter House is no longer proposed to be used as a hotel, with the hotel use relocated to the podium of the new tower component of the development. Instead, the amended scheme has reverted to the commercial land use on Levels 1 to 4 of Porter House as was approved in the Stage 1 consent;
- (d) **Residential component of the development** – The amended scheme has seen a reduction in the residential yield of the development by 56 apartments. This is as a result of amendments to redesign the proposal to comply with the unit mix requirements and achieve greater compliance with key residential amenity planning controls (i.e. solar access, cross ventilation and provisions of private open space); and
- (e) **Variation to the Stage 1 building envelope** – In order to respond to a number of issues raised by Council in the preliminary assessment, particularly those relating to obtaining solar access to residential apartments, variation is proposed to Stage 1 building envelope. This variation forms part of a concurrent assessment of a Section 96(2) application to the Stage 1 DA, to ensure that the subject application is not inconsistent with the staged consent as required under the provisions of Section 83D of the Environmental Planning and Assessment Act, 1979.

18. This amended scheme is the subject of assessment within this report.

CITY OF SYDNEY ACT 1988

19. 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."*

20. Having liaised with the City's Access Unit, in this instance, the proposal is not considered by the CSTTC delegate, the Director City Planning, Development and Transport, to have a significant impact on traffic and transport in the CBD, and formal consideration by the CSTTC is not necessary.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

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

- (a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 45 – Electricity transmission

23. As the development site is within the vicinity of existing power lines and an electricity substation, the application was referred to Ausgrid under the provisions of Clause 45 of SEPP (Infrastructure) 2007 on 11 June 2014.
24. In correspondence, dated 27 June 2014, Ausgrid advised that due to the size of the development and the anticipated electrical load requirements that an electricity substation will be required to be accommodated.
25. The proposal has incorporated a new substation within basement level 2, and a condition is recommended for imposition to require consultation and approval with Ausgrid prior to a Construction Certificate being issued.

Clause 88A – Major development within the Interim Metro Corridor

26. The site is within an identified future rail corridor for the CBD rail link, as such, under the provisions of Clause 88A of SEPP (Infrastructure) 2007, the subject application was referred to Transport for NSW on 11 June 2014.
27. Clause 88A of the SEPP requires Transport for NSW to take into consideration and certify whether the proposed development would have any adverse effect on the CBD Metro rail corridor.
28. In correspondence, dated 27 November 2014, Transport for NSW advised that they had reviewed the relevant documentation submitted with the amended application and certified that they had no concerns with the proposed development. It was requested that a condition be imposed to require the developer to consult with Transport for NSW prior to a Construction Certificate regarding detailed construction plans and the use of any rock anchors. A condition to this effect is recommended for imposition.

Clause 103 – Excavation in or immediately adjacent to corridors

29. The application was referred to the Roads and Maritime Services (RMS) pursuant to Clause 103 of SEPP (Infrastructure) 2007 on 11 June 2014 due to the proposed excavation above, and in proximity to, the Cross City Tunnel.

30. In correspondence, dated 2 July 2014, the RMS has advised that consultation had been occurring between the RMS and the developer, with the developer providing the RMS with a written undertaking to carry out geotechnical investigation/analysis to their specifications. The RMS has requested that conditions be imposed requiring this documentation be submitted prior to the activation of any Stage 2 consent.
31. The amended plans were referred to the RMS on 30 October 2014. Further correspondence, dated 24 November 2014, was provided to Council to advise that the previous correspondence, dated 2 July 2014, and the conditions provided at that time were still applicable to the amended scheme.
32. As such a deferred commencement condition is recommended to allow the geotechnical information to be submitted to, and approved by the RMS, prior to activation of this Stage 2 consent.

State Environmental Planning Policy No 55—Remediation of Land

33. SEPP 55 requires the consent authority to consider whether the land is contaminated prior to consenting to the carrying out of development. If the land is contaminated, the consent authority must be satisfied that the land is suitable for its intended use in its present state, or that it will be suitable after remediation.
34. A Phase 1 Environmental Site Assessment, dated 5 July 2012, prepared by AECOM was submitted with the Stage 1 development application and remains valid in the assessment of the subject application.
35. Council's Health Compliance Unit are satisfied that sufficient information has been submitted to conclude that the site can be made suitable for the proposed uses and satisfy the requirements of SEPP 55, subject to the imposition of appropriate conditions.

State Environmental Planning Policy No 64—Advertising and Signage

36. SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
37. The application does not seek consent for any specific signage, rather proposes a cohesive signage strategy for all future signage on the site. All signage locations sought are limited to ground and first floor levels and includes the restoration and retention of the existing heritage signage on the Porter House facade.
38. The signage types covered by the strategy include:
 - (a) future business identification signs for ground floor retail/commercial tenants in Porter House and the future hotel;
 - (b) building identification signage to the residential apartments, including identifying entry locations to the lobby;
 - (c) directional/way-finding signage and accessibility signage throughout the site;

- (d) heritage and cultural signage on Porter House, restoring historic signage on the southern and eastern facades of the building, as recommended by the Conservation Plan for the site; and
 - (e) operational signage (i.e. fire escapes, access to loading dock etc).
39. Whilst the final detail on signage size, content and materiality will form part of further application, most likely in association with applications for the use of retail, commercial and hotel land uses, the number and general location of signs have been assessed as being in accordance with the objectives and criteria of SEPP 64.

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

40. SEPP 65 requires 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 the following 10 design quality principles:

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

Generally complies: The building envelope and analysis undertaken as part of the Stage 1 assessment concluded that the proposed building envelope and its siting was consistent with Council's strategic vision and appropriately responded to future development on adjacent sites.

Generally, the massing and heights of the building reflects the desired built form of the Stage 1 consent. Elements of the building do vary from the approved envelope following greater analysis of the site as part of the subject application, in particular, the need to redistribute the built form to maximise sunlight to residential apartments. Refer to further discussion in the issues section of this report.

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

Complies: The development will contribute to the increase in the residential population on the site as envisaged by the planning controls. The proposed density is considered to be appropriate given the CBD context of the site, particularly given its proximity to established infrastructure, public transport, community and recreational facilities.

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

Complies: The residential component of the proposal is compliant with the requirements of BASIX, and an appropriate condition is recommended to ensure that the development complies with the commitments contained on its BASIX certificate.

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

Generally complies: Due to the CBD context of this site, the basement car parking and the setback requirements, there is no opportunity for deep soil planting. This is considered to be consistent with the objectives of SEPP 65 given the context of the site.

Significant landscaping is proposed to the site, with a combined landscape and public art concept developed in association with the architecture to create an 'urban forest'. The proposal incorporates the following landscape elements:

- (i) Level 1 to the rear of Porter House – provision of a terrace (approximately 100sqm) associated with the adjacent commercial tenancy space. The perimeter of this terrace incorporates a series of deep planter beds, and a vine green screen along its western wall (refer to **Figure 13**, below);
- (ii) Level 9 – podium rooftop planting along the southern and eastern boundary tower setbacks from both Bathurst and Castlereagh Streets (refer to **Figure 14**, below);
- (iii) Roof top terraces on Levels 30 to 37 – a series of stepped terraces on the eastern elevation of the building planted with a range of plant species, including cascading plants on the perimeter, mounded shrubs and a number of larger scale trees (refer to **Figure 15**, below); and
- (iv) Tower green facade (northern elevation) – planter beds are proposed on the northern elevation from Levels 9 to 35, with cascading plants and climber plant species encouraged to grow up a cable system (refer to **Figure 16**, below).

Despite the substantial landscaping detailed above, the proposal does not incorporate any areas of communal open space or communal facilities. This matter was raised with the applicant following a preliminary assessment of the application. Further discussion is provided on this matter at the issues section of this report.



Figure 13: Proposed terrace and associated planting to Level 1 terrace of Porter House (adjacent to western boundary)



Figure 14: Roof-top podium planting at Level 9 of tower building

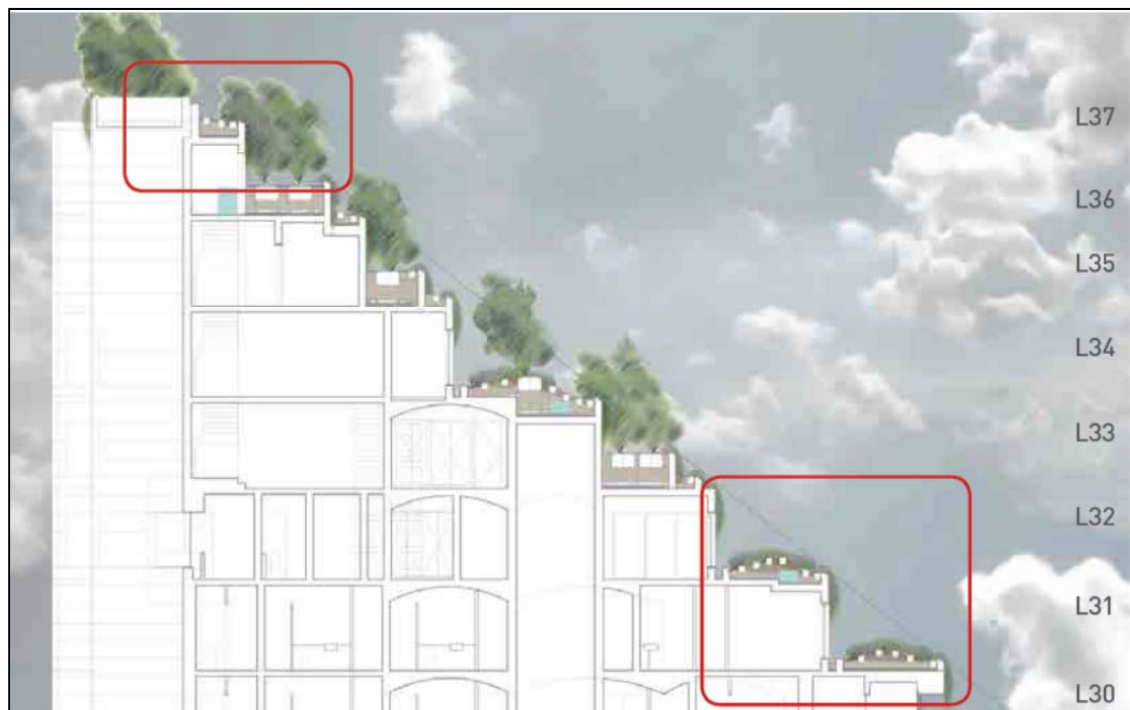


Figure 15: A sectional drawing illustrating the stepped roof-top terraces from Levels 30 to 37, inclusive, of the tower

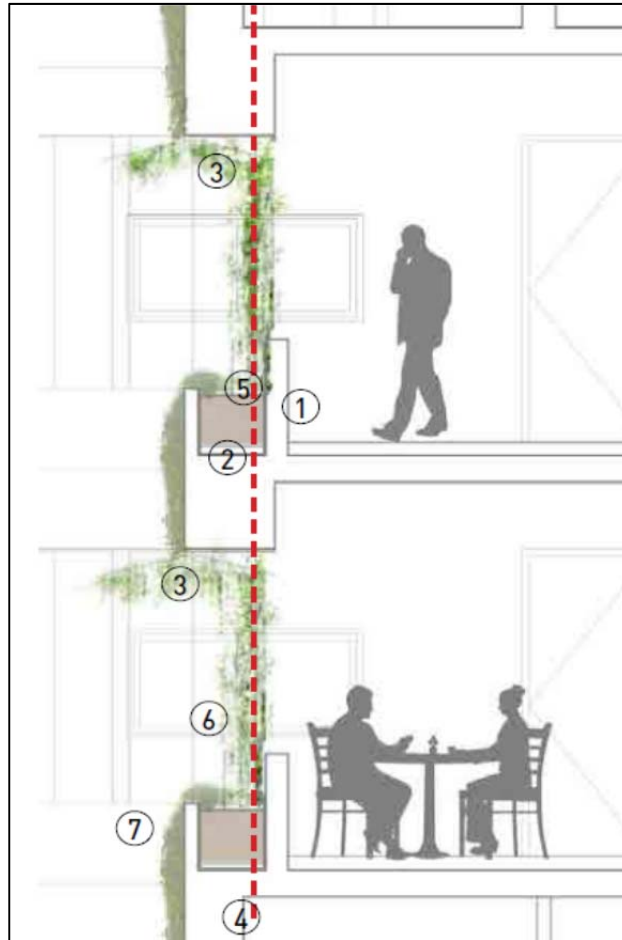


Figure 16: Section drawing of the northern 'green' facade treatment

(e) **Principle 7: Amenity**

Generally complies: The proposal provides for an adequate level of amenity as follows:

- (i) all units have a 2.7 metre floor to ceiling height.
- (ii) 59% of apartments will receive two or more hours of solar access between 9.00am and 3.00pm on the winter solstice. This results in a departure from the 70% requirement of the RFDC guidelines. The following is noted with regard to the extent of variation sought:
 - a. the CBD context of the site, with direct sunlight access midwinter constrained by the existing built form and density of surrounding development;
 - b. the retention of the heritage item on the site restricts the siting of the new built form to the southern portion of the site;
 - c. the orientation of the site, with one of its two street frontage (Bathurst Street) being south facing. This results in a number of apartments on each floor having a southerly aspect in order to address the street; and

- d. the test of consistency under the Environmental Planning and Assessment Act 1979 for staged development, noting that at the time of determination of the Stage 1 application that the Central Sydney DCP 1996 assessed acceptable solar access provisions on the March/September equinox and not midwinter.
 - (iii) 66% of the units are naturally cross ventilated, which exceeds the 60% requirement of the RFDC guidelines.
 - (iv) the development proposes each apartment typology with an internal area range as detailed below:
 - a. Studio: 39.7sqm – 54.2sqm (RFDC guideline: 38.5sqm);
 - b. 1 bedroom: 49.7sqm - 64qm (RFDC guideline: 50sqm);
 - c. 2 bedroom: 70sqm -167.5sqm (RFDC guideline: 70sqm); and
 - d. 3 bedroom: 103.2sqm -181.6sqm (RFDC guideline: 95sqm).
 - (v) 75% (being 98 units) of all apartments are provided with private outdoor open space in the form of balconies. Whilst this is a departure from the RFDC guidelines, which recommend all apartments be provided with private open space, the Sydney DCP 2012 does allow up to 25% of all apartments within a development to not have individual private open space.
- (f) **Principle 8: Safety and Security**

Complies: The proposed development has been assessed against the Crime Prevention Through Environmental Design Principles outlined in 'Crime prevention and the assessment of development applications – Guidelines under Section 79C of the Environmental Planning and Assessment Act 1979' prepared by the Department of Urban Affairs and Planning (now Department of Planning and Environment).

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

Complies: The proposed residential component of the development has the following unit mix:

- (i) 51 x Studio and 1 bedroom - 39% (DCP control is maximum of 40%);
- (ii) 55 x 2 bedroom - 42%; (DCP range is 40-75%); and
- (iii) 25 x 3 bedroom - 19% (DCP range is 10-100%).

The proposal achieves compliance with the DCP requirements, and is considered to be acceptable in providing a range of housing options.

- (h) **Principle 10: Aesthetics**

Complies: The proposal has utilised a series of architectural elements and materials to modulate the bulk of the facades, as well as providing visual interest. The architecture and the materiality of the podium responds to, and complements, the heritage setting and takes cues from Porter House.

41. Considering the constraints of the site, the development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

Draft State Environmental Planning Policy No 65 – Design of Residential Flat Development (Draft SEPP)

42. On 23 September 2014, the Department of Planning and Environment exhibited the proposed changes to SEPP 65, which includes the replacement of the Residential Flat Design Code (RFDC) with an Apartment Design Code.
43. Those amendments have been considered in the assessment of the application. The proposal could be considered to be generally consistent with the draft SEPP 65 and the draft Apartment Design Guidelines, which is mostly reflected in the current RFDC.

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

44. The site is located within the designated catchment for Sydney Harbour, and is subject to the provisions of the SREP (Sydney Harbour Catchment) 2005.
45. Whilst the site is within the Sydney Harbour Catchment and eventually drains into the Harbour, it is not located in the Foreshores Waterways Area or adjacent to a waterway. The proposed development is considered to be in keeping with the provisions and principles of SREP (Sydney Harbour Catchment) 2005.

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

46. A BASIX Certificate has been submitted with the amended development application.
47. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

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

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

Sydney LEP 2012

50. The site is zoned B8 – Metropolitan Centre under the Sydney Local Environmental Plan 2012 (SLEP 2012).
51. The proposal is defined as a '*residential flat building*', '*tourist and visitor accommodation*' and '*commercial premises*', all of which are permissible uses within the B8 – Metropolitan Centre zone pursuant to Clause 2.3 of SLEP 2012.

52. 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	N/A	No numeric height control exists for the site, instead the maximum permissible height is determined by the sun access plane for Hyde Park West.
4.4 Floor Space Ratio 6.4 Accommodation Floor Space	Yes	<p>Clause 4.4 of SLEP 2012 stipulates a base floor space ratio of 8:1 for the site, with Clause 6.4 providing an opportunity for a further 5.84:1 of floor space where accommodation floor space uses are provided. This equates to a maximum FSR of 13.84:1.</p> <p>The proposed development also seeks to utilise the design excellence provisions pursuant to Clause 6.21, where a further 10% of FSR is possible where the scheme lodged has won a competitive design process and is considered by the consent authority to exhibit design excellence.</p> <p>As amended, the proposal is eligible for the 10% design excellence FSR on the combined total of base and accommodation floor space (i.e. an additional 1.384:1).</p> <p>Considering all applicable floor space provisions allowable under the SLEP 2012, the maximum permissible FSR for this development would be 15.224:1. The maximum permissible FSR does not take into consideration the constraints on the site of the sun access plane or heritage.</p> <p>The proposed development has a maximum FSR of 14.35:1, and thus is compliant with the floor space provisions of SLEP 2012.</p>
5.10 Heritage conservation	Able to comply	Refer to discussion in the Issues section of this report.

Compliance Table		
Development Control	Compliance	Comment
6.4 Accommodation floor space	Yes	The site is located in 'Area 2', and as such, is eligible for additional accommodation floor space of up to 5.84:1 of the site area, based on the land use mix proposed within the development. This accommodation floor space has been included in the collective permissible FSR for the development, as discussed elsewhere within this report.
6.11 Allocation of heritage floor space (HFS)	Yes	<p>A total of 4,121sqm of HFS is applicable to the development, based on the HFS requirements under Clause 6.11(1)(a) and (d) of SLEP 2012, and has been calculated on the following basis:</p> <ul style="list-style-type: none"> • 50% of accommodation floor space = 3,784sqm; and • 50% of design excellence floor space = 337sqm. <p>Clause 6.11(2)(a) of SLEP 2012 permits a further reduction of HFS by 50% where the scheme has undergone a design competition process. With this further reduction, the HFS allocation is 2,060sqm.</p>
6.16 Erection of tall buildings in Central Sydney	Yes	<p>As the proposed development has a height that exceeds 55 metres, the provisions of this clause are applicable.</p> <p>The proposal has been assessed as meeting the objectives for tower developments within Central Sydney as it:</p> <ul style="list-style-type: none"> • is contextually appropriate; • creates residential apartments with good amenity; • does not adversely impact on the amenity of adjacent buildings; and • encourages active uses at ground level.

Compliance Table		
Development Control	Compliance	Comment
6.17 Sun access planes	Yes	<p>The permissible height of development on the subject site is governed by the sun access plane for Hyde Park West. The scheme has been amended during the assessment to comply with the co-ordinates for the Hyde Park West sun access plane.</p> <p>The amended scheme has been reviewed by the City's Modellers, who have confirmed that the proposal is now wholly contained within the sun access plane, and as such, complies with Clause 6.17 of SLEP 2012.</p>
6.21 Design excellence	Yes	<p>As a result of the site area and height sought for this development, the applicant was required to undertake a competitive design process prior to lodging a Stage 2 development application.</p> <p>As detailed in the relevant history section of this report, this process was held between September to December 2013. Candalepas Associates were named the winning scheme on 13 December 2013, however, the Design Jury were of the opinion that further design refinement was required. Amended plans were submitted to the design jury in March 2014.</p> <p>Pursuant to the provisions of Clause 6.21(7) of SLEP 2012, where a proposal has been the winning entry of a competitive design process and is considered to exhibit design excellence, a further 10% FSR may be awarded.</p> <p>The proposed development satisfies the requirements of this provision. It is noted that the Design Jury for the competitive design process, in a supplementary report dated 26 March 2014, concluded that they were of the view that the scheme demonstrated design excellence and was worthy of being awarded the additional FSR.</p>

Compliance Table		
Development Control	Compliance	Comment
6.21 Design excellence (continued)		<p>Whilst the Jury were of the opinion that the proposal exhibited design excellence in its lodged form, it was concluded during the assessment that the proposal did require substantive amendment to improve amenity and address heritage matters, and ultimately, to achieve design excellence. As such, the scheme has further evolved, but is still considered to retain the design intent of the winning scheme.</p> <p>It is however noted that due to the constraints of the site that the development is unable to accommodate an additional 10% FSR. Instead, the applicant is seeking a further 673sqm (or 3.7%) of GFA under the design excellence provisions</p>
7.5, 7.6 and 7.9 Car parking ancillary to other development	Yes	<p>Pursuant to Clauses 7.5, 7.6 and 7.9 of SLEP 2012, a maximum of 101 car parking spaces are permitted based on the proposed land uses.</p> <p>A total of 64 car parking spaces are proposed within the basement which is consistent with the car parking provisions of SLEP 2012.</p>
7.14 Acid Sulphate Soils	Yes	<p>The detailed site assessment undertaken for the site has concluded that the proposed development would not disturb, expose or drain Acid Sulphate Soils, nor is it likely to cause environmental damage. As such, there is no requirement for any investigation or management plan to be prepared.</p>
7.15 Flood planning	Yes	<p>Appropriate engineering conditions have been recommended for imposition.</p>
7.16 Airspace operations	Yes	<p>The development is not proposed to be constructed to a height that penetrates the prescribed airspace for Sydney Airport.</p>

Compliance Table		
Development Control	Compliance	Comment
7.19 Demolition must not result in long term adverse visual impact	Yes	The subject application seeks consent for demolition and redevelopment of the site as part of the subject application, and is therefore, considered to adequately address the requirements of this clause.
7.20 Development requiring preparation of a development control plan	Yes	The site has a valid Stage 1 consent (being D/2012/1023). This Stage 1 consent is the equivalent of a development control plan and details allowable building envelopes, land uses and vehicular access points. It is considered that current Stage 1 consent for the site addresses the requirements of Clause 7.20 of SLEP 2012. Further discussion is provided at the issues section of this report with regard to consistency of the proposal with the Stage 1 development consent.
7.24 Development near Cross City Tunnel ventilation stack	Yes	The site is located outside of the area identified on the 'Locality and Site Identification Map' as being land affected by Cross City Tunnel Ventilation Stack. As such, no further investigation or conditions are required.

Sydney DCP 2012

53. 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
3.1.5 Public Art	Yes	A Public Art Strategy has been submitted with the application, and has identified both the building roof top as a 'green forest' and the laneway between Porter House and new building as being appropriate locations for the integration of public art in the development. Appropriate conditions have been recommended for imposition.

3. General Provisions		
Development Control	Compliance	Comment
3.2 Defining the Public Domain	Yes	<p>The proposal incorporates ground floor level retail uses and lobbies to the residential and hotel uses, which activates both street frontages.</p> <p>Footpath awnings are not required on either street frontage of this property under the provisions of Section 3.2.4 of SDCP 2012. As such, awnings have not been incorporated into the final design of this development.</p>
3.2.6 Wind effects	Yes	<p>A Pedestrian Wind Environment Study was submitted with the originally lodged application.</p> <p>The conclusions of this assessment are that the wind conditions along the pedestrian footpaths on both street frontages will be an improvement on the existing wind conditions, however, the wind levels do still exceed the wind condition criteria of the DCP. In this instance this is considered to be acceptable as the development will be an improvement on the existing situation.</p> <p>It is noted that the wind study made a number of recommendations with regard to balcony treatments. However, the scheme has subsequently been amended and balcony locations have been altered.</p> <p>As such, it is recommended that a deferred commencement condition be imposed requiring the submission of a revised wind study report, detailing any necessary amelioration measures required to balconies to ensure the safety criterion are met. Details of any screening, or the like, should also be submitted on amended architectural plans to ensure that the architectural integrity of the scheme is not compromised.</p>
3.2.7 Reflectivity	Yes	An appropriate condition is recommended for imposition.
3.2.8 External lighting	Yes	An appropriate condition is recommended for imposition.

3. General Provisions		
Development Control	Compliance	Comment
3.3 Design Excellence and Competitive Design Processes	Yes	<p>The proposed development has been the subject of a competitive design process.</p> <p>The proposed development seeks consent for an additional 3.7% of floor space as the proposed design is considered to achieve design excellence, and was the winning scheme of a design competition.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The development is able to comply with BASIX for the residential component.</p> <p>The non-residential areas have been designed to comply with Section J of the BCA.</p>
3.7 Water and Flood Management	Yes	Conditions relating to stormwater drainage have been recommended for imposition by Council's Engineer.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Appropriate conditions of consent have been recommended for imposition.
3.9 Heritage	Able to comply	Refer to Issues section of this report.
3.11 Transport and Parking	Yes	Appropriate conditions are recommended in relation to the provision of car parking spaces and bicycle storage within the basement car park.
3.11.13 Design and location of waste collection points	Yes	The proposed development has been amended to accommodate on-site garbage collection by a waste collection vehicle 9.24 metres in length in accordance with Council's Policy for Waste Minimisation.

3. General Provisions		
Development Control	Compliance	Comment
3.12 Accessible Design	Yes	<p>The proposal incorporates 20 adaptable apartments. This equates to 15.27% of all apartments within the development, which is compliant with Section 3.12.2 of SDCP 2012.</p> <p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
3.16 Signage and Advertising	Yes	Refer to discussion under SEPP 64 assessment.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.1.2 Floor to ceiling heights	Yes	<p>The proposed has a floor to floor height for the commercial/retail spaces of 4.6 metres, which exceeds the minimum requirements of 3.6 metres as specified by the DCP.</p> <p>The proposal provides residential floor to floor heights of 3.1 metres, in order to ensure adequate internal floor to ceiling heights can be delivered on completion of the development.</p>

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.3.1 Solar access	No (however, assessed as acceptable) Yes	A total of 59% of all apartments (being 77 units) receive a minimum of 2 hours direct sunlight to their living rooms and private open space in mid-winter between 9.00am and 3.00pm. Refer to further discussion at the SEPP 65 assessment section of this report. The Stage 1 application assessed the potential shadowing impacts of the envelope on surrounding properties and the public domain, and concluded that no unreasonable overshadowing would result. The concurrent Section 96 application (D/2012/1023/B) has assessed the varied shadowing impact of the modified building envelope. Again, the conclusions of this assessment are that the variations to the envelope would not result in any adverse overshadowing to the principal living areas or open space of nearby residential dwellings.
4.2.3.3 Internal common areas	Yes	Both the hotel and residential floors of the tower building have been designed to have natural light to common corridors and lift lobbies.
4.2.3.5 Landscaping 4.2.3.6 Deep Soil 4.2.3.7 Private open space 4.2.3.9 Ventilation	Yes.	Refer to discussion provided under SEPP 65 assessment.
4.2.3.8 Common open space	No	The proposed development does not contain any areas of communal open space. Refer to further discussion at the issues section of this report.
4.2.3.11 Acoustic privacy	Yes	An Acoustic Assessment was submitted with the application. Appropriate recommendations have been contained within this report to ensure compliance with the DCP and achieve satisfactory internal amenity.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.3.12 Flexible housing and dwelling mix	Yes	As detailed elsewhere within this report, the proposed development provides a unit mix that is consistent with the DCP provisions and ensures a range of housing typologies will be available.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The scheme utilises architectural language and materials to provide visual interest, as well as breaking up the perceived bulk and scale of the development.
4.2.6 Waste minimisation	Yes	The proposal has been amended to incorporate on-site garbage collection. Appropriate conditions have been recommended for imposition.
4.4.8 Visitor Accommodation		
Development Control	Compliance	Comment
4.4.8.1 General	Able to comply	Consent is sought for indicative/in-principle approval only for the hotel component of the development. A further detailed development application will be lodged once a hotel operator is involved in the project, this will include final internal fit-out/design and operational matters. A condition is recommended for imposition to advise that a further development application is required for the hotel.

5.1 Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1 Street frontage heights	Yes	<p>The proposed development has a podium height of 29.8 metres. (RL 56.30)</p> <p>The proposal is compliant with the permissible street wall height control (of between 20-45 metres), is contextually appropriate and is generally consistent with the podium approved under the Stage 1 consent for the site (being RL 54.70 or 28 metres).</p>
5.1.2.1 Front setbacks	Yes	<p>The proposed development, above podium level, is setback 4 metres from the Bathurst Street boundary and has a variable setback of between 6 and 10.79 metres from Castlereagh Street.</p> <p>Whilst the 4 metre setback from Bathurst Street represents a numeric departure from the setback provisions of SDCP 2012, the proposal is consistent with the setback approved under the Stage 1 application.</p> <p>The Stage 1 consent approved a compliant 8 metre setback on the Castlereagh Street frontage of the site. The subject application and the concurrent Section 96(2) application to the Stage 1 consent seek to vary the tower form to maximum solar penetration into apartments. As a result, the tower is setback a variable distance between 6 and 10.79 metres along the Castlereagh Street frontage.</p> <p>Further discussion on the variation to the Stage 1 is addressed in the planning report for D/2012/1023/B. In the instance of the Stage 2 DA, 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.</p>

5.1 Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.2.2 Side and rear setbacks	Yes	Refer to discussion in the issues section of this report.
5.1.4 Building bulk	Yes	<p>The proposed floor plates of the tower element of the development are approximately 300sqm for the eastern portion of the site and 420sqm for the western portion of the site.</p> <p>The size of the floor plates and level of modulation is considered to satisfactorily break up the building bulk and allow the proposal to maximise internal amenity for the residential component of the development.</p>
5.1.5 Building exteriors	Yes	The design of the proposed development, particularly the podium element, is considered to have successfully considered and referenced its heritage context through the use of materials, vertical proportioning and scale.
5.1.8 Award and allocation of heritage floor space		Refer to discussion in the LEP compliance table.

ISSUES

Consistency with Stage 1 Consent

54. The provisions of Section 83D of the Environmental Planning and Assessment Act, 1979 state that where a Stage 1 development consent for a site remains in force, that the determination of any further development application in respect to that site cannot be inconsistent with the Stage 1 consent.
55. The table, below, provides an assessment of the proposed development against the key conditions imposed on the Stage 1 development consent, being D/2012/1023.

Stage 1 consent requirement	Comment
<p>Approved Development (Condition 1)</p> <p>Stage 2 to be contained within the Approved Envelope (Condition 3)</p>	<p>The proposal does seek variation to both the footprint and envelope of the Stage 1 consent. This variation has resulted from the design evolution at the competitive design process stage, inaccuracies in the plotting of sun access plane in the Stage 1 consent (which relates to building height) and the need to improve residential amenity (which has varied the footprint of the tower).</p> <p>In order to ensure consistency of the proposal with the Stage 1 consent, a concurrent Section 96(2) application has been lodged to the Stage 1 DA (D/2012/1023) to vary the footprint and envelope.</p> <p>Further discussion is provided on the extent of variation with the Stage 1 consent elsewhere within this report, as well as within the planning assessment report for the Section 96 application to the Stage 1 DA (D/2012/1023/B).</p>
<p>Stage 2 DA/ Competitive Design Process (Condition 4)</p>	<p>As detailed elsewhere within this report, following the determination of the Stage 1 application, the applicant undertook a competitive design process in September to December 2013.</p> <p>Candalepas Associates was named the winning scheme in December 2013, however, the Design Jury were of the opinion that further design refinement was required to ensure design excellence was achieved. Amended plans were submitted for consideration by the design jury in March 2014. In a supplementary report, dated 26 March 2014, the Design Jury concluded that they were of the view that the scheme demonstrated design excellence and was worthy of being awarded the additional FSR.</p> <p>It is considered that the competitive design process held for the proposal has satisfied the requirements of Condition 4 of the Stage 1 consent.</p> <p>Part (e) of this condition requires that the proposal must exhibit design excellence. Whilst the Jury were of the opinion that the proposal exhibited design excellence in its lodged form, it was concluded during the assessment that the proposal did require substantive amendment to improve amenity and address heritage matters, and ultimately, to achieve design excellence. As such, the scheme has further evolved, but is still considered to retain the design intent of the winning scheme.</p>

Stage 1 consent requirement	Comment
Exposed Elevations (Condition 5)	The proposal utilises white grain cararra marble, pre-cast patterned concrete panels, glazed elements and wire netting on the western elevation to provide visual interest. Further to the above, the feature landscaping at level 9 podium and roof top will be visible when the development is viewed from the west. Collectively, these elements are integral to the design of the tower element of the proposal.
Public Domain Plan (Condition 7)	A Public Domain Plan has been prepared and submitted with the proposal in accordance with the requirements of this condition.
Location of Driveway (Condition 8)	A new vehicular crossover is proposed on the Bathurst Street frontage of the site, and has been sited in accordance with the requirements of this condition.
Vehicle Access (Condition 9)	Due to the constraints of the site, there is limited space for basement levels and vehicle manoeuvring. The proposal has incorporated a series of vehicle lifts, car stackers and turntables for service vehicles to ensure that all vehicles can enter and exit the site in a forward direction.
Public Art (Condition 10)	A Public Art Strategy has been submitted with the proposal in accordance with this condition. The strategy nominates two locations for the incorporation of public art on site, these are the laneway between the tower and Porter House and the stepped roof top green roofs.
Floor Space Ratio (Condition 10)	Refer to discussion in the LEP compliance table.
Ecological Sustainable Development (Condition 12)	A report on ecologically sustainable development initiatives was submitted with the application in accordance with this condition.
Wind (Condition 13)	A wind assessment was submitted with the application in accordance with this condition. As noted elsewhere within this report, the wind report is required to be updated to reflect the amended scheme and a deferred commencement condition to this effect is recommended for imposition.
Signage Strategy (Condition 14)	A Signage Strategy has been submitted with the subject application. Further discussion is provided at the SEPP 64 assessment section of this report.
Substation (Condition 15)	An electricity substation has been accommodated within the development.

Stage 1 consent requirement	Comment
Acid Sulfate Soils (Condition 18)	<p>An Acid Sulfate Soils (ASS) Management Plan was not submitted with the application, however, additional information was submitted by Douglas Partners. This information is based on further investigation of the site, which confirms that the soils do not meet the necessary criteria to be conducive for ASS production.</p> <p>Based on this further advice, Council's Health Unit have concluded that no further investigation or preparation of management plans are required.</p>
Further Geotechnical and Structural Investigation and Assessment (Condition 20)	<p>Advice from a structural engineer has been submitted with the application to address excavation in close proximity to Porter House. Further to the findings/recommendations of this advice, more detail structural investigation information relating to Porter House is required as a deferred commencement condition.</p>
Conservation Management Plan and Adaptive Re-Use of Porter House (Condition 22)	<p>Documentation was submitted with the originally lodged application to address the majority of matters listed at Condition 22. It is noted that a number of the specialist reports (i.e. safety strategy and building services concept for Porter House) have not been updated to reflect the substantive changes to the use of Porter House from that originally lodged. As part of the deferred commencement conditions listed in the recommendation section of this report, it is recommended that amended specialist reports be submitted for approval to ensure the level of intervention in the heritage building is acceptable.</p> <p>The concurrent Section 96 application to the Stage 1 consent is seeking to defer the physical investigation of the sandstone facade of Porter House until Construction Certificate stage. Further discussion on this matter is contained in the planning assessment report for the Section 96 application to the Stage 1 DA (D/2012/1023/B).</p>
General Design Matters (Condition 23)	<p>The proposed development has generally been designed in accordance with the parameters (or the intent of the parameters) established by this condition.</p> <p>There are two matters where variation is sought from the design parameters established by this condition. These are the setback of the tower from its Castlereagh Street boundary, seeking a reduction from the approved 8 metres. Secondly, the development does propose excavation and new structures to the rear of Porter House in close proximity to the shared northern boundary with St Georges Church (at 201A Castlereagh Street).</p> <p>Further discussion of these matters is provided below.</p>

Stage 1 consent requirement	Comment
Outline Heritage Interpretation Strategy (Condition 24)	Appropriate conditions are imposed requiring the preparation of a comprehensive interpretation strategy prior to the issue of a Construction Certificate.
Use of Conservation Architect (Condition 25)	GML Heritage was engaged throughout the design competition and Stage 2 DA stages of the development.
Lot Consolidation (Condition 26)	Consolidation of the five previous lots occurred on 16 September 2014.

Variations to Stage 1 building envelope and footprint

56. 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 (refer to **Figures 17 and 18**, below);
 - (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 (refer to **Figure 18**, below);
 - (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 (refer to **Figure 19**, below).

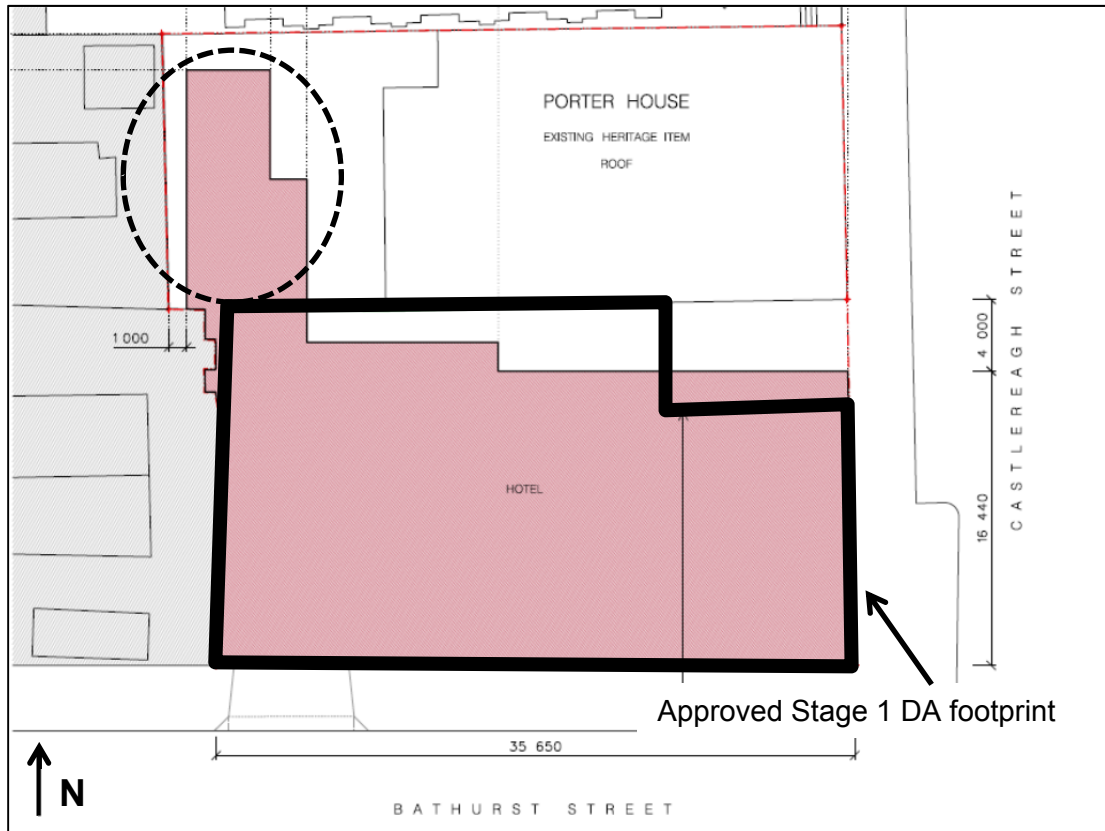


Figure 17: The variations proposed to the Stage 1 building footprint on a typical podium level

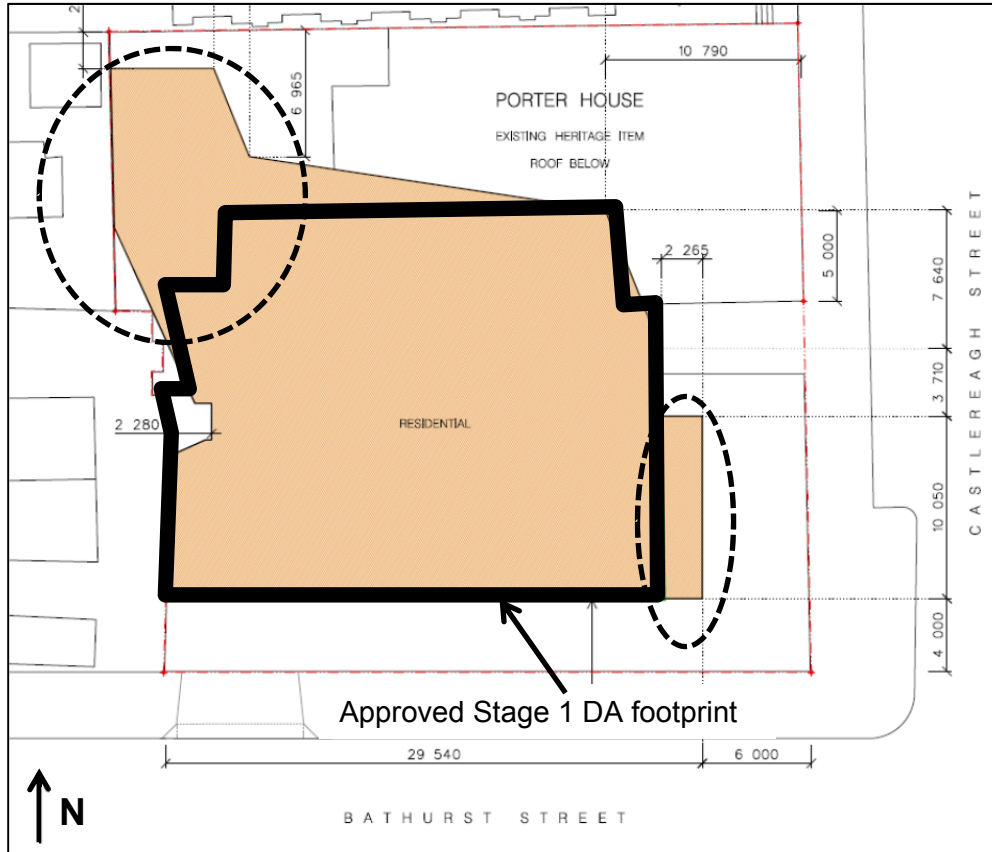


Figure 18: A typical tower floor plate illustrating the locations where variation is proposed to the Stage 1 building envelope

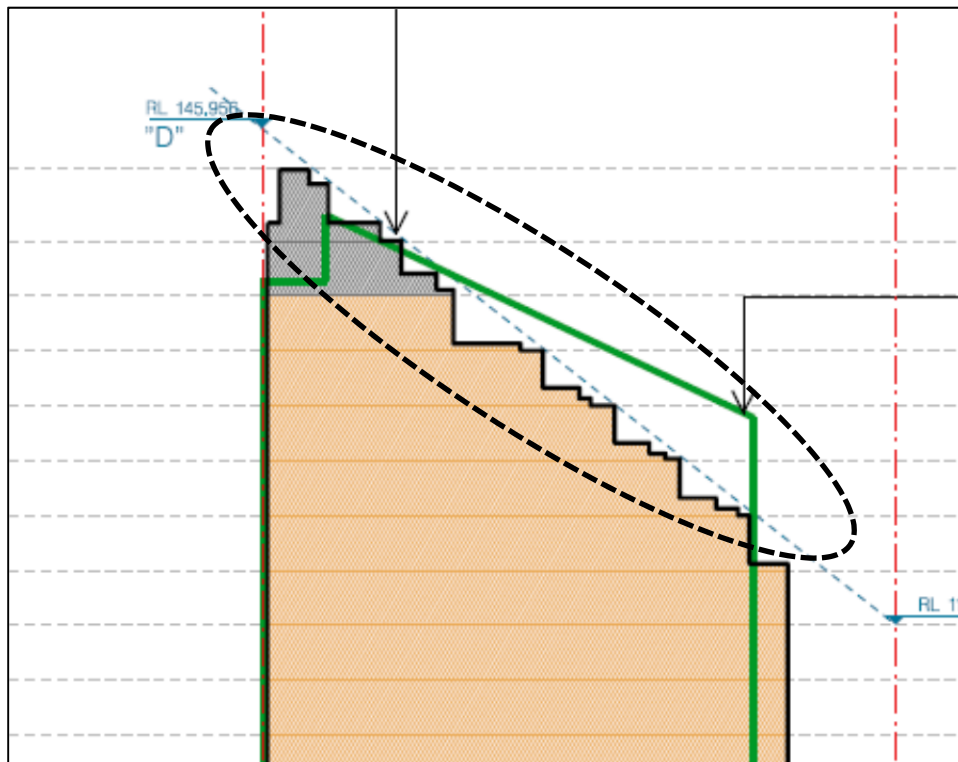


Figure 19: Variations to the maximum height and roof profile of the Stage 1 building envelope

57. 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, a concurrent Section 96 application has been lodged to the Stage 1 development application (being D/2010/1023/B).
58. The full assessment of the acceptability of each variation is addressed in detail in the planning assessment report for Section 96(2) application D/2012/1023/B, which is to be concurrently considered by the Central Sydney Planning Committee at its meeting.
59. In summary, the extent of variations proposed has been supported in this instance as:
 - (a) the modified footprint and envelope have predominately resulted as a response to concerns raised by City staff regarding the level of amenity for the residential component of the development. The modifications to envelope allow the scheme to achieve a significant improvement in compliance with the amenity provisions of the relevant planning legislation beyond that of a strictly compliant scheme;
 - (b) the modified envelope has been assessed as not resulting in any greater environmental or amenity impacts to surrounding development or the public domain, beyond that assessed as acceptable as part of the original Stage 1 development application; and
 - (c) the variation in the height of the envelope has resulted from an inaccuracy in the calculation of the sun access plane as part of the Stage 1 development application. The modified height and roof form is now wholly compliant with the sun access plane.

Side and Rear Setbacks

Northern side setback

60. Section 5.1.2.2 of SDCP 2012 requires the principal windows and balconies of residential buildings to be setback 12 metres from the side boundary, where those windows are located above a height of 45 metres.
61. Notwithstanding the above, the Stage 1 consent approved a tower envelope with a variable northern side boundary setback of between 6 to 10 metres to its shared boundary with St Georges Church (at 201A Castlereagh Street).
62. As detailed in **Figure 20**, below, the proposed development seeks to vary the Stage 1 approved side setbacks of the tower from the northern boundary of the site. The tower component of the subject development is proposed to be setback from its northern boundary by between 2 and 10 metres.

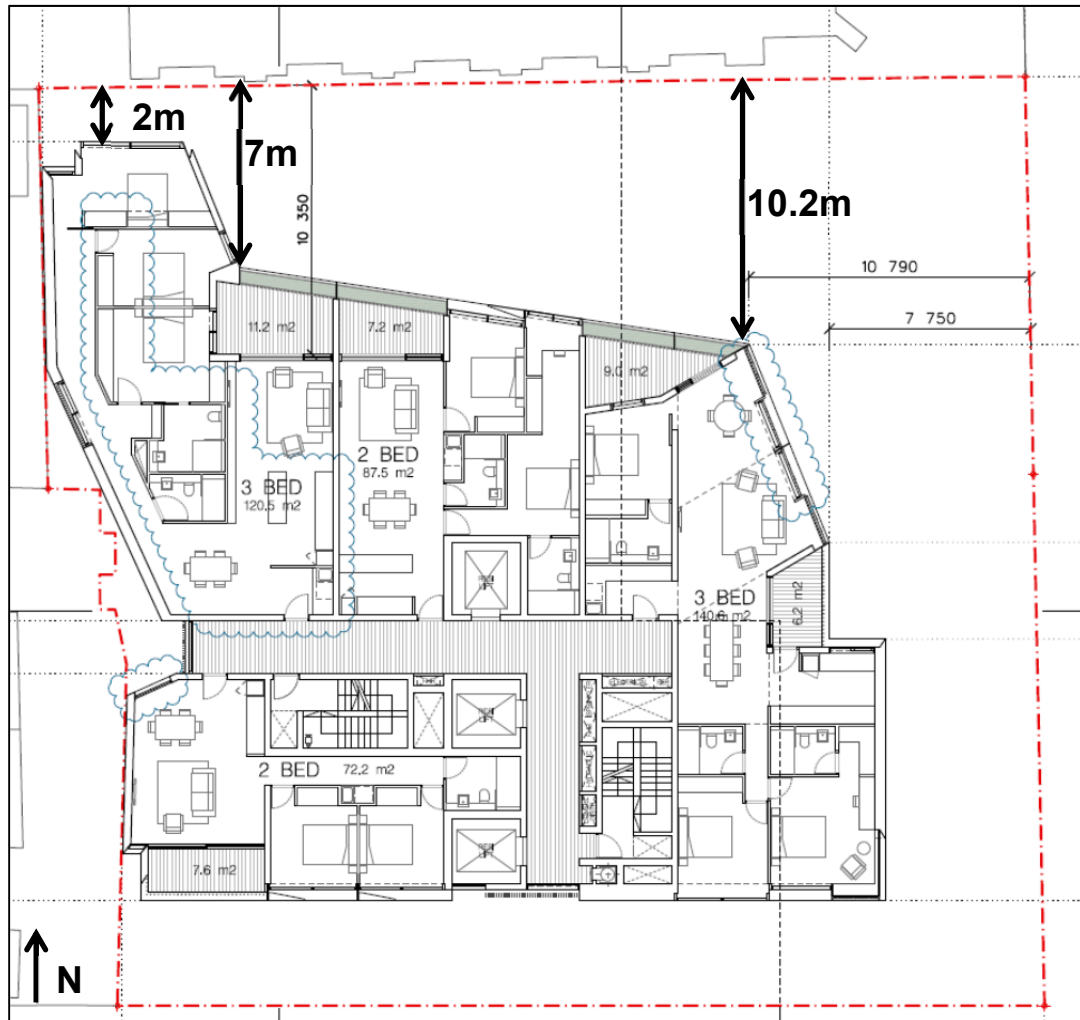


Figure 20: The proposed side setbacks of the tower from the northern boundary of the site (indicative mid floor tower floor plan shown)

63. In this instance, the proposed northern side setbacks have been assessed as satisfactory as:
- (a) all principal living rooms windows are setback at least 10 metres from the northern boundary, which is in accordance with the Stage 1 consent. Where a window is setback less than 10 metres, these are secondary bedroom windows only;
 - (b) the architectural treatment of the northern facade has incorporated a number of screening measures to both the northern elevation glazing and balconies. These measures include a brass mesh screen that partially covers bedroom windows and wire netting and vertical planting across balconies that are located closer than 10 metres to the boundary; and

- (c) the subject site benefits from the fact that the development directly to its north are low-scale heritage items (being St George's Church and the former CENEF House). As a result of land use, narrow/small lot subdivision pattern and heritage listing of these buildings, there is limited redevelopment potential for these sites. Consequently, privacy and overlooking is not considered to be a determinative factor as the proposal will be separated by over 30 metres from the residential apartment building to the north at 197 Castlereagh Street (Victoria Towers), which is well in excess of the 24 metre requirement of the Residential Flat Design Code;

Western rear setback

- 64. As outlined above, whilst the provisions of SDCP 2012 stipulate a 6 to 12 metre rear setback requirement for a residential development, the Stage 1 consent approved the envelope with a setback from the rear (western) boundary between a nil setback to 6 metres.
- 65. The proposed development has a variable setback from the rear western boundary of:
 - (a) podium (hotel) - between a nil setback to 1.4 metres; and
 - (b) tower (residential) – between a nil setback to 2.2 metres.
- 66. Whilst being numerically non-compliant with the DCP rear setback controls, the proposal does seek to incorporate windows on the western elevation of the tower in those areas where the development is setback from the boundary (refer to **Figure 21**, below).

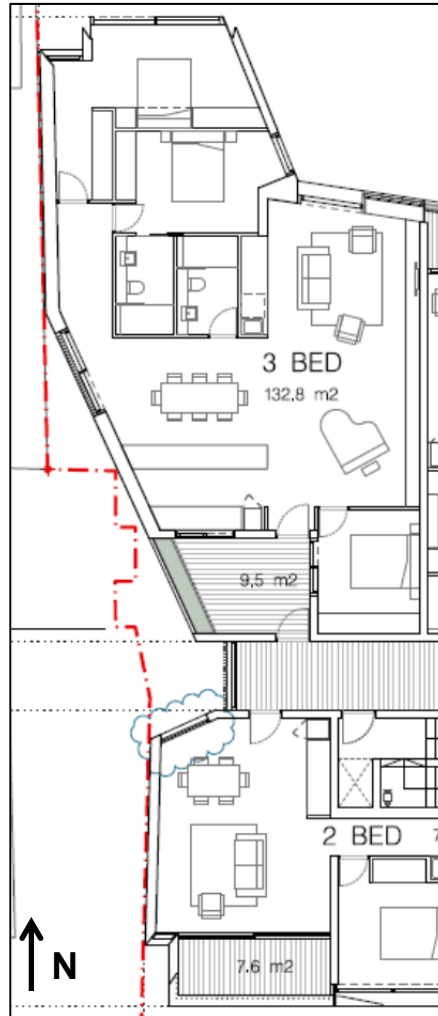


Figure 21: Location of windows proposed on the western elevation of the tower

67. As is evident in **Figure 21**, above, all proposed western elevation windows in the tower are secondary windows to a room or alternatively, service an internal corridor to an apartment. None of these windows are being relied upon as the only source of light and air to units. Whilst these windows could be deleted from the proposal, it is considered that they do improve the internal amenity of the residential units by allowing additional ambient light, and in some instances where setback a sufficient distance from the boundary, increased natural cross ventilation.
68. The numeric variation to the DCP can be supported in the particular circumstances of the subject site and application as:
- (a) The development directly to the west of the site (at 280-282 and 284-292 Pitt Street) are both low rise heritage items of local significance, including their interiors. Based on the heritage listing of these sites, it is unlikely that either site would be redeveloped to an extent that would accommodate a tower element;

- (b) Nevertheless, in the event that some form of redevelopment happens above these heritage items, it is noted that none of the windows proposed on the western elevation of the subject development are windows to principal rooms, and as such, their existence would not preclude any redevelopment of these adjacent sites. It is recommended that a condition be imposed requiring a boundary window covenant on the western elevation windows (on Levels 9 to 34). This covenant would allow these apartments to temporarily borrow amenity across the adjacent sites, however, would advise future owners that the windows may be required to be sealed up in the event of redevelopment of the aforementioned Pitt Street sites;
- (c) The subject application does not propose any west facing windows within its podium element. The podium generally aligns with the height of both adjacent heritage items. Therefore, there would be no overlooking between the proposed hotel use and the east facing windows of the commercial building at 280-282 Pitt Street. It is noted that the building at 284-292 Pitt Street does not contain any east facing windows; and
- (d) On Levels 9 to 34, where west facing windows are proposed, batten screening has been incorporated across the glazing. On Levels 23, 24 and 32, where a west facing balcony is proposed (and is setback from the boundary), the screening/architectural treatment used throughout the building is proposed. This is the wire netting screen with climber/cascading planting across.

Communal open space

- 69. The original scheme lodged with the City in June 2014 did not contain any form of communal open space. This is contrary to the provisions of both Section 4.2.3.8 of SDCP 2012 and rule of thumb of the NSW Residential Flat Design Code, both of which require the provision of an area of communal open space that should be equivalent to the 25% of site area.
- 70. Following the completion of the preliminary assessment of the application, this matter was raised in the correspondence sent to the applicant, dated 18 August 2014. It was requested that modifications be made to the scheme to provide communal open space and facilities in line with planning controls, and advised that the development should not be wholly reliant on the proximity of Hyde Park to fulfil its open space requirements.
- 71. The amended scheme has not resolved this issue, with the proposal still not containing any communal open space or facilities. It is considered that there is scope to introduce some communal open space and/or communal facilities on Level 9. As illustrated in **Figure 22**, below, the proposed floor plan on Level 9 includes a substantial amount of plant and a large green roof.
- 72. A deferred commencement condition is recommended for imposition to require the redesign of the level 9 plant and green roof to create some communal open space and facilities. Amended plans will be required to be submitted to the satisfaction of Council prior to the activation of the consent.

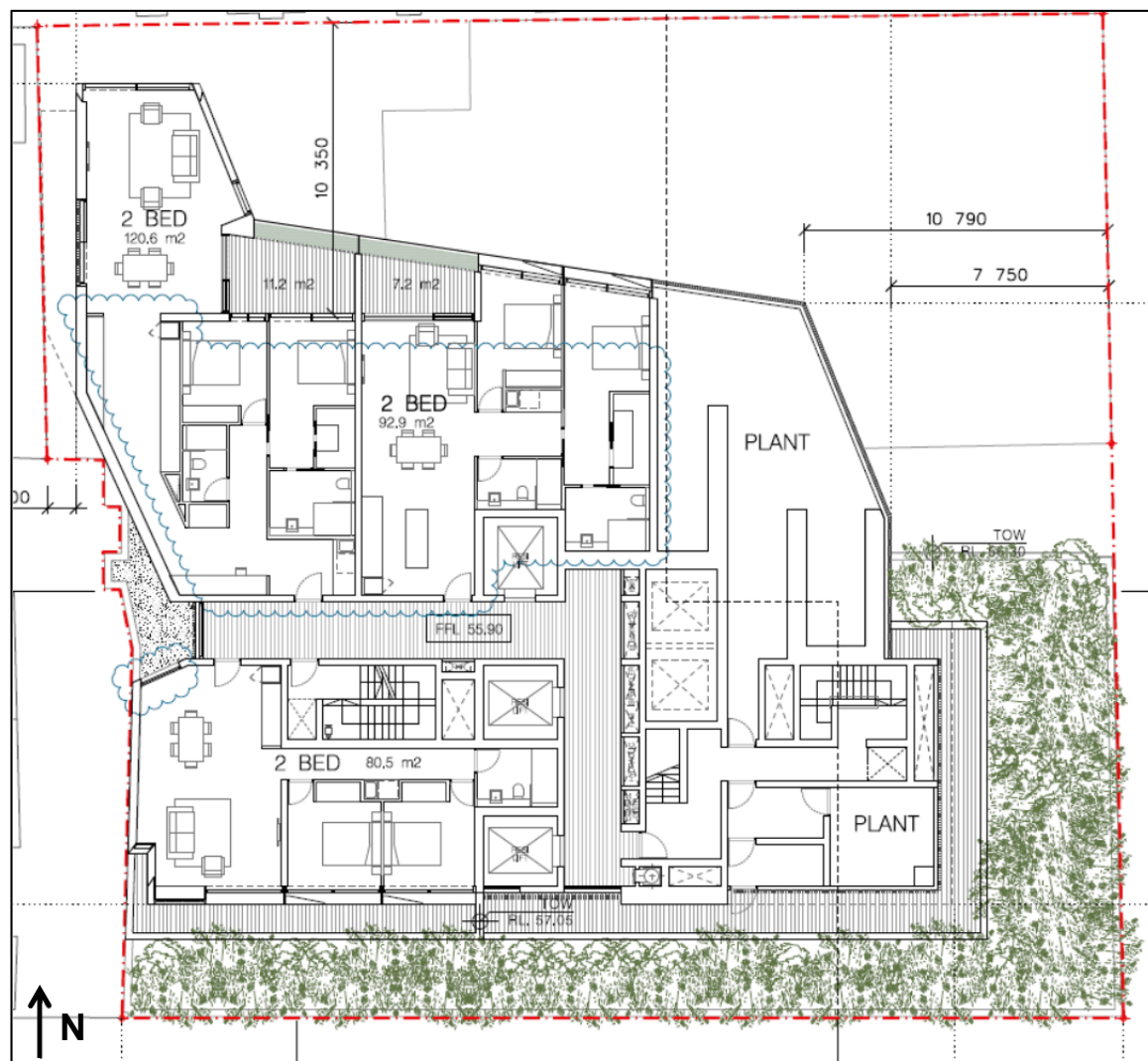


Figure 22: The existing Level 9 floor plan, illustrating the proposed plant and green roof.

Heritage

73. The site contains the 5-storey building known as Porter House, which is a heritage item of local significance pursuant to SLEP 2012 (refer to **Figure 3**). Porter House is located in the northern portion of the site, fronting Castlereagh Street. The original building dates from 1876.
74. The site is flanked to the north and west by a number of heritage items of local significance, namely:
 - (a) St George's Church – 201A Castlereagh Street;
 - (b) Former 'CENEF House' (currently Church of Scientology) – 201 Castlereagh Street;
 - (c) 'Lincoln Building' (Sydney Mechanics' School of Arts) – 280-282 Pitt Street; and
 - (d) Former 'Speedwell House' – 284-294 Pitt Street.

75. Due to the existence of Porter House on the application site, and fact that the site is surrounded on 2 sides by heritage items, heritage and conservation considerations played a significant part in the assessment of the Stage 1 building envelope. This included consideration of the application by a Heritage Committee, as was a requirement of the previous controls applicable at the time of assessment of the Stage 1 DA (which was the SLEP 2005). The building envelope was modified as part of the Stage 1 DA to respond to a number of critical heritage matters, including setbacks, extent of cantilever over Porter House and extent of works/excavation to the rear of Porter House.
76. As detailed in compliance table with Stage 1 conditions, detailed heritage conditions were also imposed on the Stage 1 consent to guide the design competition and detailed design phase of the proposal. The majority of those matters conditioned on the Stage 1 consent have been complied with in the subject design, or alternatively, it has been concluded that the intent of the condition has been met by the scheme. Overall, the form of the tower is able to be supported when considered against the principles of both Clause 5.10 of SLEP 2012 and Section 3.9.5 of SDCP 2012. The changes to the envelope are not considered to have a greater impact on the significance of adjacent heritage items in either Pitt or Castlereagh Street.
77. There are a number of matters that are considered to require further resolution to ensure the heritage integrity of Porter House is retained. As such, it is recommended that these matters be resolved by way of detailed deferred commencement conditions prior to any operational consent being granted. The outstanding matters relate primarily to works within the curtilage of Porter House and insufficient information:

Works to the rear of Porter House:

78. Specific conditions were imposed on the Stage 1 consent (being Conditions 23(f) and (j) of D/2012/1023) requiring:
- (a) any excavation works to be setback a minimum of 2 metres from the northern boundary of the site (shared with St George's Church); and
 - (b) any new structures to the rear of Porter House to be setback by a minimum of 3 metres from the northern boundary to retain the sense of the former courtyard.
79. The proposed development includes new structures to the rear of Porter House, with a nil setback from the northern boundary. No objection is raised to the inclusion of the car stacker and car lift due to the constraints of locating them elsewhere on the site, and as these structures are adequately setback from the northern boundary. Objection is however raised to the new toilets and stair to Level 1 terrace, and the inclusion of these elements at this location is not supported on heritage grounds.
80. A deferred commencement condition is recommended requiring the relocation or deletion of these elements to ensure a small courtyard can be retained at this location and to avoid excavation alongside the church for footings.

Insufficient information in documentation:

81. Detailed assessment of the amended scheme has noted a number of areas within the documentation for Porter House where additional detail and/or information is required prior to an operational consent being granted. This relates primarily to the facade reconstruction final design, the internal base building works and details on how building services will be incorporated without eroding heritage fabric.
82. Deferred commencement conditions have been recommended to address these heritage matters to ensure the level of detail is accurate and the significance of Porter House is not compromised.

Accessible/Adaptable Parking Spaces

83. In accordance with the provisions of Section 3.12.2 of SDCP 2012, the proposal is required to provide 15% of all apartments within the development as an adaptable housing typology, which are able to be easily modified for a person with a disability or to allow aging in place. In this instance, the development has provided a total of 20 adaptable apartments, which equates to 15.27% of the apartments within development.
84. Further to the above, Section 3.11.9 of SDCP 2012 requires that each adaptable parking space be provided with, and allocated on the strata plan, an accessible car parking space. The proposed development has not provided any accessible car parking spaces to be exclusively allocated to the adaptable parking spaces.
85. In this instance, variation from strict compliance has been justified by the applicant on the basis of the provisions of Section 3.11.9(2) and Schedule 7.8.5 of SDCP 2012 that allows a dispensation from providing adaptable/accessible parking spaces where a parking service is provided and direct access to the car parking space is not available to the public or occupants of the building. The proposed development meets these exemptions as all residential car parking spaces are accessed via both a car lift and car stacker system, and are not directly accessible by the public or residents of the building.
86. No objection has been raised by the City Access and Transport Unit in the circumstances of the development. It has, however, been noted that a single accessible parking space has been provided on basement level 3 for use by hotel guests or visitors to the site. Whilst valet parking is proposed to the hotel use, as the car parking spaces are in the car stacker, the accessible space will allow the parking of modified vehicles to be parked by their owner on an accessible upper level of the basement.

Other Impacts of the Development

87. The proposed development is capable of complying with the BCA.
88. 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

89. 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

90. The application was referred to Council's Urban Designer; Heritage Specialist, Landscape Officer, Public Domain Unit; Health; Building Services Unit; and Access and Transport Unit. All appropriate conditions recommended for imposition from the referrals have been included in the recommendation section of this report.

EXTERNAL REFERRALS**Notification, Advertising and Delegation**

91. 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 28 days between 13 June 2014 and 12 July 2014. As a result of this notification there were two (2) submission(s) received, the content of which is summarised below:

- (a) Construction noise/vibration impacts and construction hours

Response: Following a preliminary assessment of the application, it was concurred by the City's Health and Building Unit that a construction noise management plan should be submitted. This plan was submitted with the amended application and was included in the information that was re-notified in October 2014.

Following an assessment of this plan by the City's Health and Building Unit, it has been recommended that a further updated management plan be submitted prior to the issue of a Construction Certificate to detail the use of highly intrusive appliances and management practices, detail the respite periods and any community consultation to be undertaken.

The submitter made a suggestion on an appropriate construction hours condition, however, the condition recommended for imposition is the City's standard hours of work condition for CBD development.

- (b) Request improvements to the stormwater and drainage at the rear of Porter House

Response: Stormwater and drainage conditions have been recommended for imposition on any consent granted.

92. The amended plans and associated documentation were re-notified and advertised for a period of 28 days between 31 October 2014 and 29 November 2014. As a result of this re-notification there was one (1) submission received, the content of which is summarised 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 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, 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. It is an unreasonable expectation in a CBD context to assume the height of a development will be limited to 15 storeys.

PUBLIC INTEREST

93. 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

94. The development is subject to a Section 61 Contribution.

RELEVANT LEGISLATION

95. The Environmental Planning and Assessment Act 1979.

CONCLUSION

96. The proposal seeks consent for a 36-storey mixed-use development, accommodating 2,055sqm of commercial /retail floor space, the in principle use as a hotel (indicatively accommodating 102 hotel rooms) and 131 residential apartments, at 116 Bathurst Street, Sydney.
97. Significant amendments have been made to the scheme since it was originally lodged in June 2014 to respond to the preliminary issues raised by City staff, namely regarding the height, tower setbacks, residential amenity, unit mix and land uses, heritage and waste collection. Amended plans and supplementary information were submitted in October 2014 and January 2015 to address these matters.
98. In order to ensure that the residential component of the development receives satisfactory amenity, as well as achieving a reasonable level of compliance with the relevant residential amenity planning controls, it has been necessary to vary the building envelope approved at the Stage 1 development application. A concurrent Section 96(2) application has been lodged to vary the Stage 1 building envelope (being Development Application D/2012/1023) to ensure consistency between these staged applications, as is required pursuant to Section 83D of the Environmental Planning and Assessment Act, 1979.

99. As amended, the proposal is considered to be generally consistent with the relevant planning controls and existing consents in place for the site (as amended), and responds appropriately to the constraints of the site. The proposal is considered to be a satisfactory design outcome and contextually appropriate for its siting in the Sydney CBD.
100. It is recommended that Development Application D/2014/797 be granted a deferred commencement consent to enable the Applicant to address a number of matters relating to heritage, communal open space, and respond to geotechnical matters raised by the Roads and Maritime Services.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Nicola Reeve, Senior Planner)