

ITEM 4. SECTION 96(2) APPLICATION: 130-134 ELIZABETH STREET SYDNEY**FILE NO: D/2014/58/A****DEVELOPMENT APPLICATION NO: D/2014/58/A****SUMMARY****Date of Submission:** 24 December 2014**Amended:** 3 July 2015**Applicant:** CBUS Property 130 Elizabeth Street Pty Ltd**Architect:** Bates Smart**Developer:** Hyde Development Nominees Pty Ltd**Owner:** 130 Elizabeth Street Pty Ltd**Cost of Works:** \$115,555,000

Proposal Summary: The subject Section 96(2) application seeks consent to modify the approved Stage 1 building envelope for a residential apartment building with ground floor retail uses at 130-134 Elizabeth Street, Sydney. The application seeks to vary the maximum overall height of the tower to RL 147.40 (to a maximum of 122.7 metres) from the approved 110 metres. Minor variations to the approved tower footprints on Levels 26 to 38 are also proposed.

The following conditions imposed on the Stage 1 consent (DA D/2014/58) by the Central Sydney Planning Committee on 21 August 2014, relate to the overall height of the envelope, in the following manner:

- modify Condition 1 (Approved Development) to reflect the amended envelope and massing of floor plates;
- modify Condition 2 (Matters Not Approved) to delete part (e) capping the maximum height at 110 metres; and
- modify Condition 5 (Building Height) to permit the envelope to a height of RL 147.40 (or a maximum on this site of 122.7 metres).

**Proposal Summary:
(continued)**

The necessity to modify the approved building envelope will ensure consistency between staged development applications on the site, as is required under Section 83D of the Environmental Planning and Assessment Act, 1979. The Stage 2 Development Application D/2014/2013 for the subject site is being assessed concurrently with this application.

The application was notified for a 14 day period between 6 January 2015 and 21 January 2015. Two (2) submissions were received as a result of the notification of this application. These submissions raised concerns that the modified envelope would adversely impact on views and result in additional overshadowing.

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

As modified, the proposed envelope is considered to be contextually appropriate and has sited the additional height in such a location so as to minimise amenity and environmental impacts on neighbouring properties. In this instance, the modifications to the Stage 1 building envelope are supported.

Summary Recommendation:

The Section 96 application is recommended for approval, subject to the modification of Condition 1 (Approved Development), Condition 2 (Matters Not Approved) and Condition 5 (Building Height) to reflect the revised scheme.

- Development Controls:**
- (i) Environmental Planning and Assessment Act, 1979
 - (ii) Sydney Local Environmental Plan 2012
 - (iii) Draft SLEP 2012 Amendment – Minor Policy and Housekeeping Amendment (as exhibited 10 March 2015 to 7 April 2015)
 - (iv) Sydney Development Control Plan 2012
 - (v) State Environmental Planning Policy No. 32 - Urban Consolidation
 - (vi) State Environment Planning Policy No. 55 - Remediation of Land
 - (vii) State Environmental Planning Policy No. 65 – Design Quality of Residential Development
 - (viii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
 - (ix) State Environmental Planning Policy (Infrastructure) 2007
 - (x) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

- Attachments:**
- A - Envelope massing plans
 - B - Stage 1 Development Application planning assessment report

RECOMMENDATION

It is resolved that consent be granted to Section 96(2) Application No. D/2014/58/A, subject to Condition (1) (Approved Development), Condition (2) (Matters Not Approved) and Condition (5) (Building Height) being modified, (with modifications shown in ***bold italics*** (additions) and ~~***bold italics strikethrough***~~ (deletions)), as follows:

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 consent is limited to a Stage 1 Concept Plan building envelope and indicative land uses within this envelope, in accordance with Development Application No. D/2014/58, dated 17 January 2014, and the following drawings:

Drawing Number	Architect	Date
DA03 Rev A <i>Basements 02-06 Massing Envelope</i>	Kann Finch	January 2014
DA04 Rev A <i>Basement 01 Massing Envelope</i>	Kann Finch	January 2014
DA05 Rev A <i>DA02.200(A) Revision A Ground Level - Level 1 Massing Envelope</i>	Kann Finch <i>Bates Smart</i>	January 2014 <i>3 July 2015</i>
<i>DA02.202(A) Revision A Level 2</i>	<i>Bates Smart</i>	<i>3 July 2015</i>
<i>DA02.203(A) Revision A Level 3</i>	<i>Bates Smart</i>	<i>3 July 2015</i>
DA06 Rev A <i>Levels Mezzanine, 01 & 02 Tower Base Massing Envelope</i>	Kann Finch	January 2014
<i>DA02.207(A) Revision A Level 4-15</i>	<i>Bates Smart</i>	<i>3 July 2015</i>

Drawing Number	Architect	Date
DA07 Rev A Levels 03-13 Tower Massing Envelope	Kann Finch	January 2014
DA02.217(A) Revision A Level 16-25	Bates Smart	3 July 2015
DA08 Rev B Levels 14-24 Tower Massing Envelope	Kann Finch	April 2014
DA09 Rev B DA02.227(A) Revision A Levels 25 26 -36 Tower Massing Envelope	Kann Finch Bates Smart	April 2014 3 July 2015
DA02.238(A) Revision A Level 37-38	Bates Smart	3 July 2015
ID06 Rev A Titled '2.4 Street Elevation' Liverpool Street Elevation	Kann Finch	April 2014
ID07 Rev A Titled '2.4 Street Elevation' Elizabeth Street Elevation	Kann Finch	April 2014
ID08 Rev A Titled '2.4 Street Elevation' Clarke Street Elevation	Kann Finch	April 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.

(As modified by D/2014/58/A, dated 6 August 2015)

(2) MATTERS NOT APPROVED

The following items are not approved and do not form part of this Stage 1 development consent:

- (a) any demolition, excavation and/or construction;
- (b) the layout and number of residential apartments, car parking spaces, and number of basement levels;
- (c) the precise quantum of floor space;

- (d) a 10% design excellence uplift in floor space ratio; **and**
- (e) ~~any building height above 110 metres.~~

(As modified by D/2014/58/A, dated 6 August 2015)

(3) BUILDING ENVELOPES

Subject to the other conditions of this consent, the building envelope is only approved on the basis that the ultimate building design, including services, balconies, shading devices and the like will be entirely within the approved envelopes and provide an appropriate relationship with neighbouring buildings.

(4) DESIGN EXCELLENCE AND COMPETITIVE DESIGN PROCESS

- (a) A competitive design process in accordance with the provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 (as amended) shall be conducted prior to the lodgement of a Stage 2 Development Application (DA).
- (b) The detailed design of the development must exhibit design excellence.

(5) BUILDING HEIGHT

- (a) The maximum height of the building height, as defined in the Sydney Local Environmental Plan 2012 (as may be amended), must not exceed ~~110 metres RL 147.40. No consent is granted or implied for a building envelope to a height of 120.5 metres.~~
- (b) ~~Notwithstanding clause (a) above, the proposal may be eligible for a 10% design excellence uplift in building height pursuant to the provisions of Clause 6.21 (7) of Sydney Local Environmental Plan 2012.~~

(As modified by D/2014/58/A, dated 6 August 2015)

(6) FLOOR SPACE RATIO – CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed the maximum permissible, and shall be calculated in accordance with the provisions of Clauses 4.4 and 6.4 of the Sydney Local Environmental Plan 2012 (as amended).
- (b) Notwithstanding clause (a) above, the proposal may be eligible for a 10% design excellence uplift in floor space ratio pursuant to the provisions of Clause 6.21(7) of Sydney Local Environmental Plan 2012.
- (c) Precise details of the distribution of floor space shall be provided with the future Stage 2 development applications.

- (d) Any floor space ratio in excess of 8:1 shall be subject to a requirement to purchase heritage floor space (HFS) in accordance with the requirements of Clause 6.11 of the Sydney Local Environmental Plan 2012.

(7) RESIDENTIAL LAND USE

- (a) The residential component of the development must be designed to comply with the principles of 'State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development', the guidelines of the Residential Flat Design Code (RFDC) and the provisions of the Sydney Development Control Plan 2012.
- (b) The residential component of the development shall be designed to be compliant with the dwelling mix requirements of Section 4.2.3.12 of the Sydney Development Control Plan 2012 (SDCP 2012).
- (c) The residential component of the development shall be provided with an area/s of communal open space in accordance with the requirements of both the RFDC and SDCP 2012.
- (d) A BASIX certificate in accordance with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 must be submitted with the Stage 2 Development Application.

(8) DETAILED DESIGN OF BUILDING

- (a) The design brief for the competitive design process shall incorporate the following requirements:
- (b) The future design and modelling of the building must reference and respond to the scale and articulation of the State heritage item at 143-147 Liverpool Street (the former Mark Foy Emporium).
- (c) The colour scheme and materiality of the future detailed design must give consideration to the heritage context of the site. Consideration must be given to potential impacts of reflections on the Anzac Memorial/Pool of Reflection, and views from this significant State heritage items.
- (d) Consideration must be given to incorporating a revised pedestrian entry to the Museum Station entry and Liverpool Street underpass as part of the detailed design. Consultation must be undertaken with RailCorp/Transport for NSW as part of this process prior to the lodgement of the Stage 2 Development Application.
- (e) The future design of the building shall include the provision of an awning along both the Elizabeth and Liverpool Street frontages of the site.

(9) WASTE COLLECTION

The future Stage 2 Development Application shall demonstrate compliance with Council's requirements for waste collection for residential development and Policy for Waste Minimisation in New Development 2005 (as may be amended). In particular the following design requirements should be included in any Stage 2 Development Application:

- (a) Clearance height for access by collection vehicle must be no less than 3.8m at any point if vehicle is required to enter site to service bins.
- (b) Waste vehicles must be capable of entering and exiting in a forward direction.
- (c) The applicant must submit a swept path analysis as part of the detailed design stage showing all the roads can be serviced by a standard Council Garbage vehicle. These plans must be submitted with the Stage 2 development application.

(10) HERITAGE IMPACT STATEMENT

A Heritage Impact Statement must be prepared and submitted with the Stage 2 development application.

(11) WIND

Prior to the lodgement of a Stage 2 Development Application, the detailed design shall be subject to wind tunnel testing to ascertain the impacts of the development on the wind environment and conditions within the publicly accessible pedestrian space, the surrounding streets and neighbouring buildings, communal external areas within the subject development and private open space. Any recommendations of this wind tunnel testing and wind assessment report shall be incorporated into the final detailed design lodged as a Stage 2 Development Application.

(12) ACCESSIBILITY

The recommendations of the Access Review, prepared by Morris-Goding Accessibility Consulting, dated 14 January 2014, shall be incorporated into the detailed design lodged as a Stage 2 Development Application.

(13) AUSGRID

- (a) Consultation is required with Ausgrid to ensure that technical and statutory requirements in regards to the safe and reliable operation and maintenance of Ausgrid's network are maintained.
- (b) Details of the consultation undertaken are to be provided with the Stage 2 development application.

(14) PUBLIC DOMAIN PLAN

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

(15) PUBLIC ART

- (a) A Public Art Strategy is to be developed for the site/development in accordance with the *Sydney DCP 2012* and the *Public Art Policy*. This Strategy shall be form part of the documentation lodged as part of a further Stage 2 Development Application.
- (b) The requirement to accommodate public art as part of the redevelopment of the site must form part of the competitive design process brief and the nominated location should be included as part of any further Stage 2 Development Application.

(16) CONTAMINATION

- (a) The exportation of waste (including fill or soil) from the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the Department of Environment Climate Change and Water (DECC) *Environmental Guidelines Assessment, Classification and Management of Non-Liquid Wastes*
- (b) Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Principal Certifying Authority.

(17) BICYCLE PARKING AND FACILITIES

Details of the location, number and class of bicycle parking must be included in the Stage 2 Development Application.

All visitor bicycle parking should be provided at ground floor level in an easily accessible and visible location. Staff bicycle parking is to be provided at ground floor level or basement level 1 and is to be in close proximity to end-of-trip facilities.

Note: Council supports the provision of innovative bicycle parking solutions in new development. Should the applicant wish to discuss bicycle parking options, please contact the City Access and Transport Unit.

(18) CAR PARKING SPACES AND DIMENSIONS

- (a) The permissible number of car parking spaces is to be established as part of the Stage 2 development application.
- (b) 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 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan.

(19) CAR SHARE SPACES

A minimum of 1 car share space per 50 car spaces for the exclusive use of car share scheme vehicles are to be provided. Details are to be submitted with the Stage 2 development application.

(20) LOCATION OF DRIVEWAYS

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

- (a) 10 metres from the kerb line of the nearest cross street/lane.
- (b) 20 metres from the kerb line of the nearest signalised cross street/lane.
- (c) 1 metre from the property boundary of the adjacent site.
- (d) 2 metres from any other driveway.
- (e) Details must be submitted with the Stage 2 Development Application.

(21) SERVICE VEHICLES

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

(22) VEHICLES ACCESS

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

(23) LIFT ACCESS AND QUEUING ANALYSIS

Where vehicular access to the basement levels is via a vehicle lift, an analysis of vehicle lift capacity and queuing is to be provided with the Stage 2 application.

SCHEDULE 2

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

SCHEDULE 3**(24) RAILCORP CONCURRENCE CONDITIONS**

- (a) Prior to the lodgement of the Stage 2 application, the Applicant shall obtain written endorsement from Transport for NSW and RailCorp regarding any change to the current access point to Museum Station.
- (b) The Applicant shall submit with the Stage 2 application and obtain RailCorp endorsement of the following documents:
 - (i) Final Geotechnical and Structural report/drawings that meet RailCorp's requirements. The Geotechnical Report must be based on actual borehole testing conducting on the site closest to the rail corridor;

- (ii) Final construction methodology with construction details pertaining to structural support during excavation;
- (iii) Final cross sectional drawings showing ground surface, rail tracks, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor. All measurements are to be verified by a Registered Surveyor.
- (iv) Detailed Survey Plan showing the relationship of the proposed development with respect to RailCorp's land and infrastructure.
- (v) An acoustic assessment that complies with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads – Interim Guidelines."
- (vi) An Electrolysis Report prepared by an Electrolysis Expert.
- (vii) Note: RailCorp may require the submittal of additional documentation following the review of the above documents.

BACKGROUND

The Site and Surrounding Development

1. The site has a legal description of Lot 100 DP 825635, and is commonly known as 130-134 Elizabeth Street, Sydney. The site has three street frontages, Liverpool Street to the north, Elizabeth Street to the west and Clarke Street to the south.
2. The site is generally rectangular in shape, with a frontage to Liverpool Street of 22 metres, a 41 metre frontage to Elizabeth Street and a 24 metre frontage to Clarke Street. The site has an area of 977.1sq.m.
3. Existing on site is a 16-storey commercial building, containing ground floor retail premises and commercial office premises on levels above. Vehicular access to the site is via a driveway from Clarke Street.
4. Located within the boundaries of the site, within the setback from Liverpool Street, is an entry to Museum Railway Station (refer to **Figure 8**, below). This station entry was constructed as part of the development of the existing building on site (circa 1989) and provides an escalator and pedestrian tunnel to the station, which is located on the northern side of Liverpool Street.
5. **Figures 1 to 4**, below, illustrates the context of the site and the existing built form.

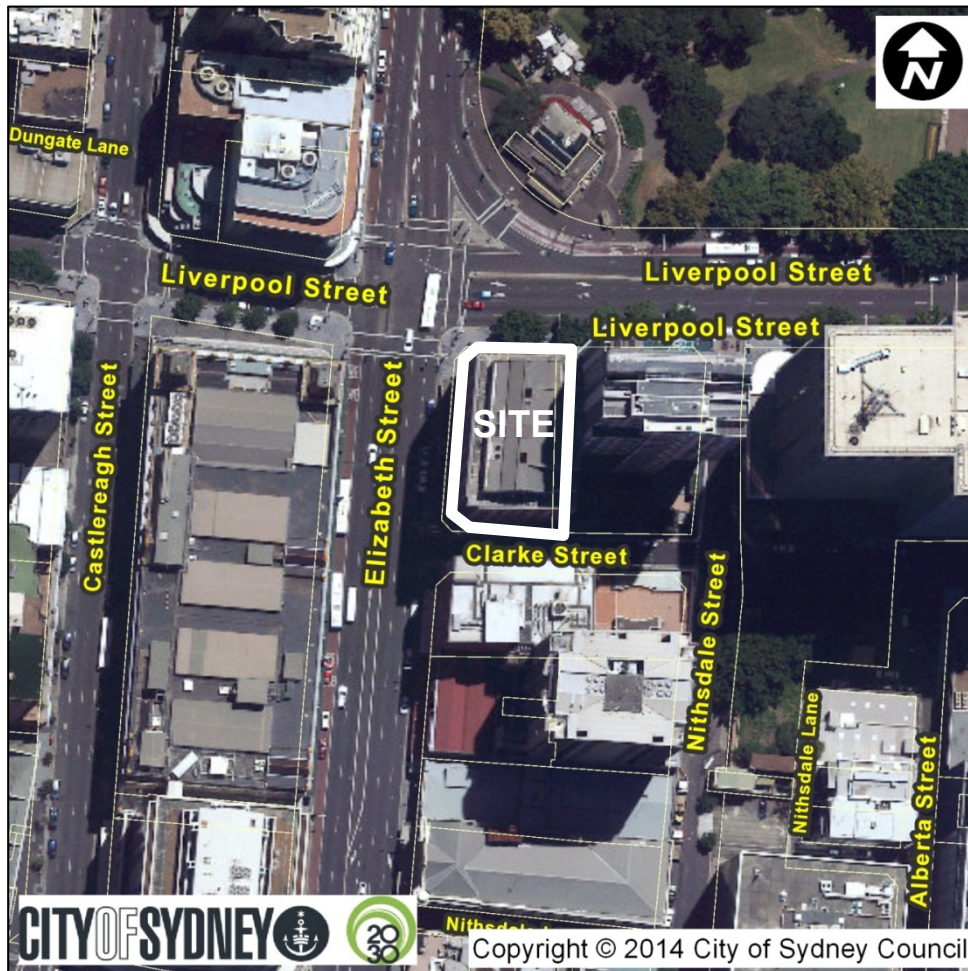


Figure 1: Aerial image of subject site and surrounding area



Figure 2: The existing 16-storey commercial building on site, as viewed from Liverpool Street.

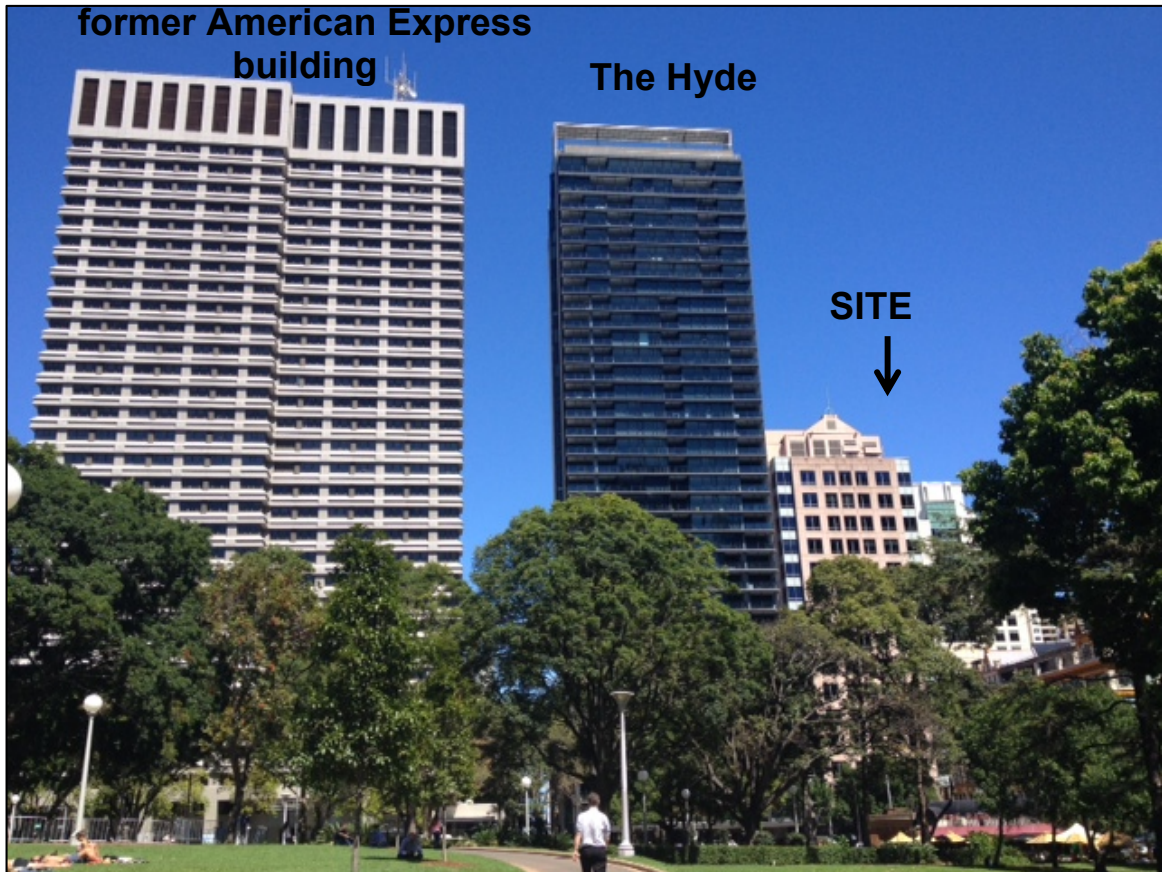


Figure 3: The site and its streetscape context, as viewed from Hyde Park

6. Located to the north of the site, on the opposite side of Liverpool Street, is Hyde Park. Located within Hyde Park is the State heritage item of the Anzac war memorial.
7. To the east of the site, are high-rise residential apartment buildings and commercial buildings that front Liverpool Street. This row of buildings is generally built higher than the 110 metre height control. Directly to the east of the site, is the 35-storey residential apartment building known as 'The Hyde' at 157 Liverpool Street. Located further to the east along Liverpool Street is the commercial office building at 169-183 Liverpool Street, formerly known as the 'American Express' building (refer to **Figures 3 and 5**).
8. To the south of the site, on the opposite side of Clarke Street, is an 11-storey commercial building at 136-140 Elizabeth Street, which is currently occupied by the Salvation Army. Further south, at 148 Elizabeth Street, is the residential apartment building known as 'Hyde Park Towers' (refer to **Figures 6 and 7**, below).
9. To the west of the site, on the opposite side of Elizabeth Street, is the Downing Centre law courts. This building was formerly 'Mark Foy's Emporium' and is listed as a heritage item by both the Sydney Local Environmental Plan 2012 (SLEP 2012) and the NSW State Heritage Register (refer to **Figure 9**, below).



Figure 4: The existing vehicular access to the site from Clarke Street



Figure 5: View looking eastwards along Liverpool Street from its intersection with Elizabeth Street



Figure 6: View looking southwards along Elizabeth Street from its intersection with Liverpool Street



Figure 7: Relationship of the site with adjacent residential apartment building to the south ('Hyde Park Towers') and to the east ('The Hyde')



Figure 8: The Liverpool Street frontage of the site and existing entry to Museum Station



Figure 9: The heritage listed former Mark Foy building (now known as The Downing Centre), located to the west of the site on the opposite side of Elizabeth Street

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

Stage 1 Development Application – D/2014/58

10. A Stage 1 Development Application (D/2014/58) for the subject site was granted consent by the Central Sydney Planning Committee (CSPC) on 21 August 2014.
11. This Stage 1 development had sought consent for the following:
 - (a) in-principle approval for demolition of the existing commercial building on site;
 - (b) an indicative 38-storey (120.5 metre) building envelope;
 - (c) indicative future land uses of ground floor retail floor space and residential floor space on the levels above;

- (d) basement levels (indicatively shown as 6 levels);
 - (e) vehicular access off Clarke Street; and
 - (f) retention of the access and pedestrian underpass to Museum Station, which sits on the Liverpool Street frontage of the site, noting that a redeveloped and integrated entry may form part of a future Stage 2 Development Application for the site.
12. The applicant sought consent as part of the Stage 1 building envelope for a building to a height of 120.5 metres. However, the assessment of this application concluded that whilst there may be contextual merits that allow the subject site to accommodate additional height, this should form part of the detailed design Stage 2 Development Application, following the completion of a competitive design process. This would provide greater certainty in the architectural form and distribution of massing.
13. As such, the following condition was imposed on the Stage 1 consent:

(5) BUILDING HEIGHT

- (a) *The maximum height of the building height, as defined in the Sydney Local Environmental Plan 2012 (as may be amended), must not exceed 110 metres. No consent is granted or implied for a building envelope to a height of 120.5 metres.*
- (b) *Notwithstanding clause (a) above, the proposal may be eligible for a 10% design excellence uplift in building height pursuant to the provisions of Clause 6.21 (7) of Sydney Local Environmental Plan 2012.*

PROPOSAL

14. The subject Section 96(2) application seeks consent to modify the approved Stage 1 building envelope to vary the maximum overall height of the tower to RL 147.40 (a maximum of 122.7 metres) from the approved 110 metres. The application also proposes minor variations to the approved tower footprints on Levels 26 to 38.
15. The following conditions imposed on the Stage 1 consent that relate to the overall height of the envelope are also proposed to be modified, in the following manner:
- (a) modify Condition 1 (Approved Development) to reflect the amended envelope and massing of floor plates;
 - (b) modify Condition 2 (Matters Not Approved) to delete part (e) capping the maximum height at 110 metres; and
 - (c) modify Condition 5 (Building Height) to permit the envelope to a height of RL 147.40 (or a maximum on this site of 122.7 metres).

CITY OF SYDNEY ACT 1988

16. Section 51N of the City of Sydney Act, 1988, requires the CSPC to consult with the Central Sydney Traffic and Transport Committee (CSTTC) before it determines a DA that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works likely to have a significant impact on traffic and transport in the Sydney CBD.
17. The proposed modification does not have any altered impact on traffic or transport in the Sydney CBD, beyond that assessed in the original Stage 1 Development Application. As part of the assessment of that application, it was determined in liaison with the City's Access Unit, that consultation with the CSTTC was not necessary at this stage.

THRESHOLD TEST

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

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

19. Besides the matters discussed in this report, the assessment against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979 (EP&A Act, 1979) contained in the report to the CSPC at its meeting on 21 August 2014 are still relevant.
20. A copy of the original planning assessment report for Development Application D/2014/58 is provided at **Attachment B**.

ISSUES**Variations to building envelope and footprint**

21. 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 EP&A Act, 1979, the subject application has been lodged to modify the Stage 1 building envelope.

Building Height

22. The Stage 1 building envelope was approved by the CSPC on 21 August 2014 with a maximum height of 110 metres.
23. Whilst the Stage 1 consent was capped with a maximum height of 110 metres, the applicant had sought consent for an envelope with a maximum height of RL 147.4 (or approximately 122 metres).

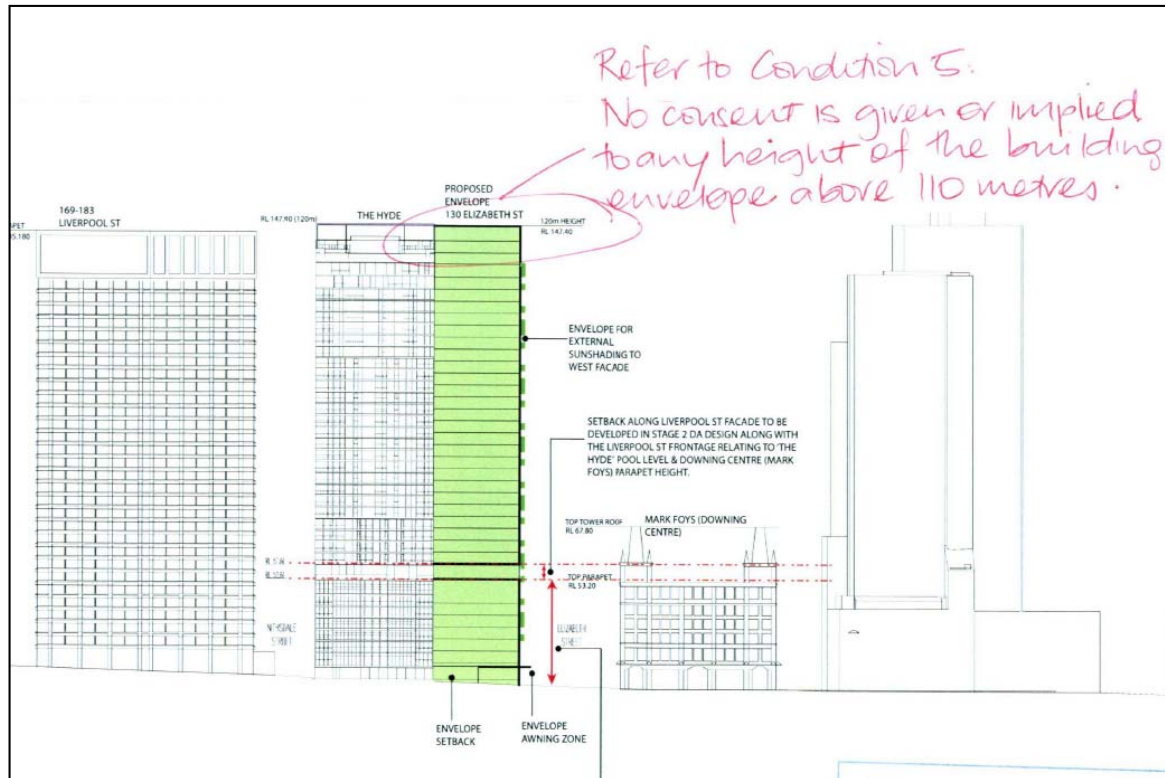


Figure 10: The Stage 1 building envelope for the site as viewed from Liverpool Street, illustrated at a height of RL 147.4 (or approximately 122 metres)

24. A key issue in the assessment of the Stage 1 development application was whether the subject site was capable of accommodating additional height above the 110 metre building height development standard. As this matter is now the subject of this Section 96 application, in conjunction with the Stage 2 detailed design development application, the following is considered of relevance:
- (a) as was originally lodged, in December 2013, the Stage 1 DA building envelope was generally compliant with the key planning controls (including height). However, this compliant envelope cast additional shadow across the northern elevation of the residential apartment building to the south of the site (known as 'Hyde Park Towers' at 148A Elizabeth Street);
 - (b) as part of the assessment of the suitability of the envelope and its impacts on the surrounding built form, the City's Design Advisory Panel (DAP) recommended that the applicant do further modelling of the envelope to investigate which elements of the envelope were the cause of this adverse overshadowing to Hyde Park Towers;
 - (c) modelling undertaken demonstrated that where the envelope was chamfered on the southwestern corner of the tower, then the affected apartments in Hyde Park Towers would retain approximately 1 hour 50 minutes of direct solar access between 9.00am and 3.00pm on the winter solstice (refer to **Figures 11 and 12**, below). This would be generally consistent with the provisions of Sydney Development Control Plan (SDCP 2012) and State Environmental Planning Policy No. 65 (SEPP 65);

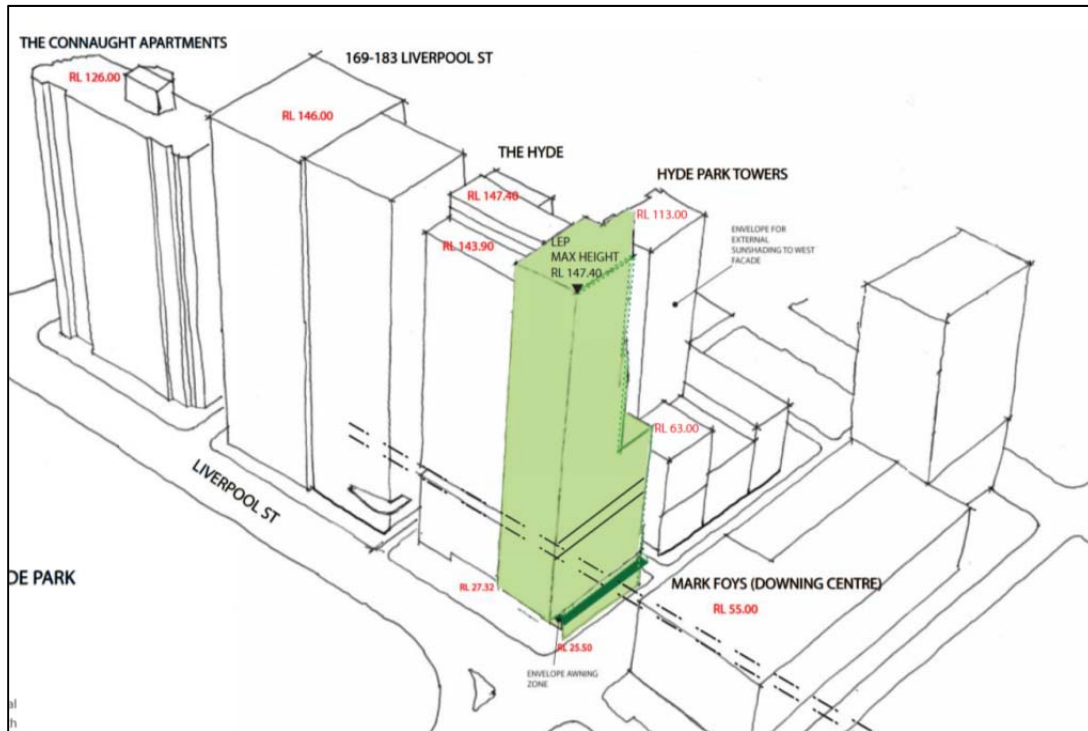


Figure 11: Aerial view of amended Stage 1 DA building envelope, which illustrates the chamfered edge on the southwestern corner

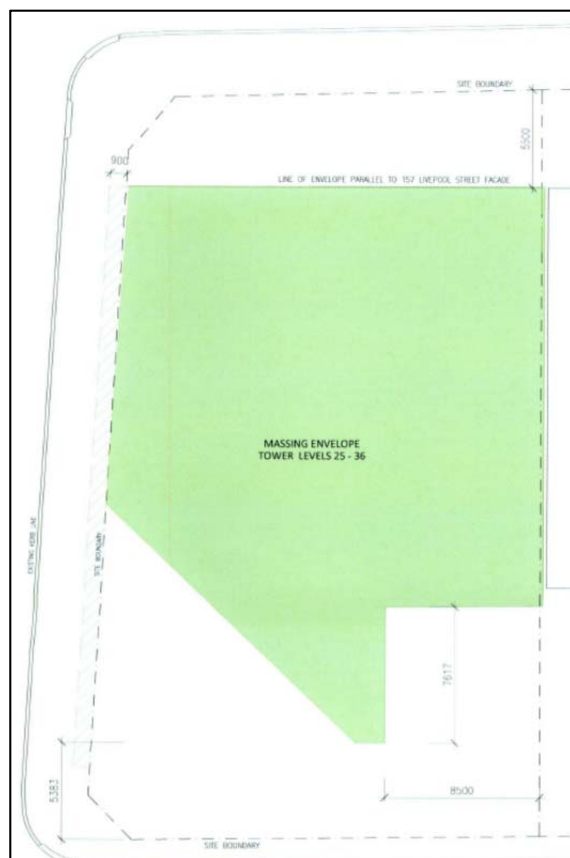


Figure 12: The approved Stage 1 DA tower floor plate, including the chamfered corner

- (d) the City's DAP were of the view that this site could accommodate additional height above the 110 metre development standard so as to align with the height of the architectural roof feature of 'The Hyde'. This view of the DAP was based on:
- (i) the established context of tall buildings to the south of Hyde Park along Liverpool Street, which present a strong street wall (refer to **Figures 13** and **14**, below); and
 - (ii) the fact that this is a corner site where continuing the additional height and terminating the corner would make an important visual statement.



Figure 13: The approved Stage 1 DA building envelope massing as viewed from Hyde Park South, illustrating an envelope to a height of 110 metres

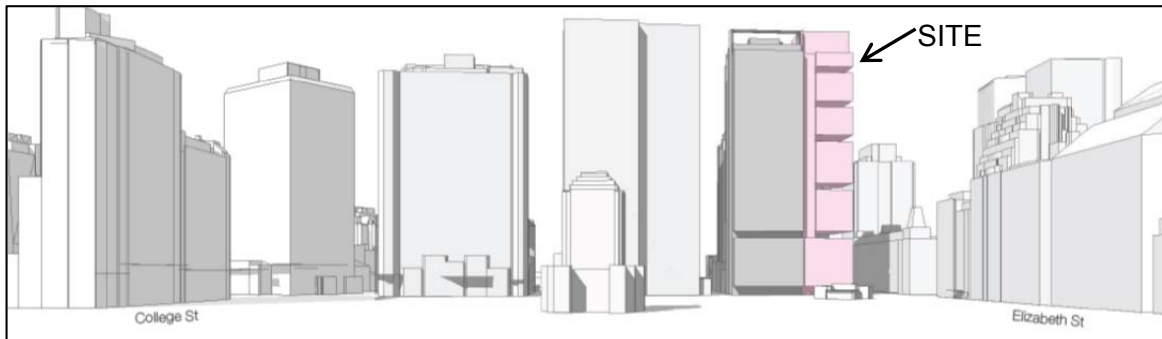
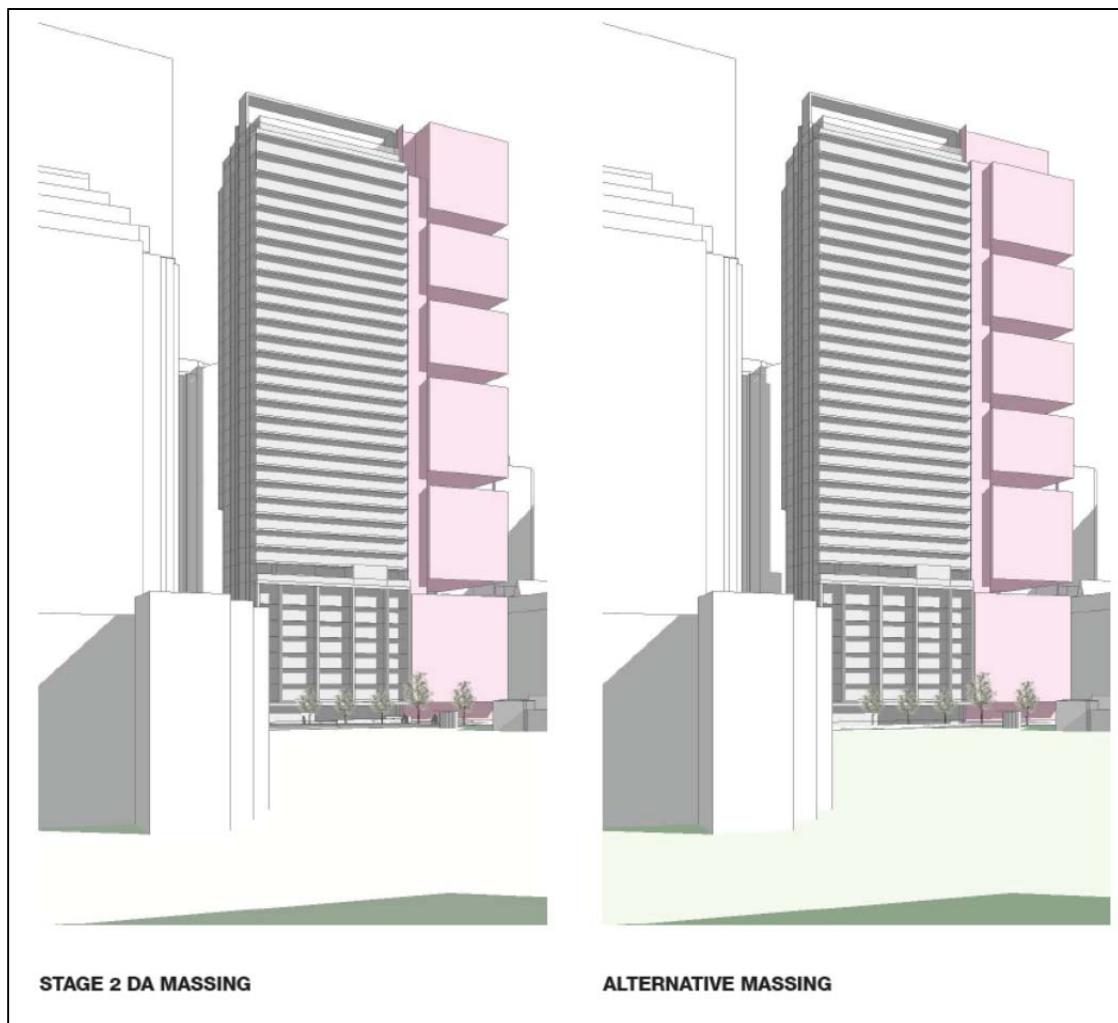


Figure 14: An indicative envelope with the upper 2 levels setback to align with the architectural roof feature of 'The Hyde', as viewed from Hyde Park South

25. The conclusions of the Stage 1 assessment by Council Officers and endorsed by the CSPC were that whilst there might be a contextual argument for accommodating additional height on this site, that it would be premature to support a non-complying building height at the conceptual envelope stage. This was based on the fact that the massing, architecture and treatment of the height would be key elements in the consent authority's decision in whether variation of the planning controls could be supported in this instance. It was decided that the most appropriate time for that decision should be as part of the Stage 2 development application, following the competitive design process. As such, Condition 5 was imposed on the Stage 1 consent advising that the envelope was only approved to a height of 110 metres.
26. Since the approval of the Stage 1 building envelope by the CSPC on August 2014, the project has evolved as a result of the following:

- (a) a competitive design process was held in September and October 2014, with Bates Smart being named the winning scheme. The design competition brief allowed competitors to utilise exploratory zones to design a building to a height of RL 147.4 (or 122.7 metres). The jury report noted that the jury members were comfortable that the subject site could accommodate additional height above 110 metres, however, noted that the upper levels needed further design resolution on how it related to the adjacent residential apartment building ('The Hyde');
- (b) formulation of a detailed design for the site was based on the Stage 1 consent and design competition. This scheme has been lodged as a Stage 2 development application (D/2014/2013) on 23 December 2014, and seeks consent for a development to a height of RL 147.4 (or 122.7 metres); and
- (c) further design refinement to the Stage 2 development application that has been requested by Council Officers to resolve the massing and scale of the upper 2 levels of the development and view/outlook obstructions resulting from the additional height (refer to **Figures 15** and **16**, below). Refer to further detailed discussion in the planning assessment report for the Stage 2 development application (D/2014/2013) to be concurrently presented for consideration by the CSPC.



Figures 15 and 16: The modified massing of the envelope as originally lodged at Stage 2 (left) and as modified during the assessment to set back to the upper levels (right)

27. The subject application seeks to increase the maximum height of the building envelope to 122.7 metres (or RL 147.40). This represents a numeric variation to the 110 metre building height development standard by 12.7 metres. This represents an 11.5% exceedance of the height control of Clause 4.3 of Sydney LEP 2012.
28. As the subject application is a Section 96 modification, the provisions of Clause 4.6 (Exceptions to Development Standards) are not applicable. Despite this, consideration has been given to both the objectives of the building height development standard (pursuant to Clause 4.3 of Sydney LEP 2012) and the tests of Clause 4.6 of Sydney LEP 2012 on whether it can be demonstrated that strict numeric compliance with the development standard is unreasonable or unnecessary in this instance.
29. It is considered that the additional height can be supported on this site, and as proposed in the particular configuration designed by Bates Smart in the Stage 2 detailed design application (D/2014/2013), as the proposal is consistent with the objectives for building height, in the following manner:
 - (a) there is a justifiable contextual argument on the subject site that it is able to accommodate additional height above the numeric height control and still be contextually in scale with its neighbours on Liverpool Street. The site is unique in that there is a well established street wall that provides for a height context above the 110 metre height control. This was acknowledged by the DAP, the Design Competition Jury, and within the assessment of the 2006 development consent (and later S96 reports) for 'The Hyde' residential apartment building. Council Officers concur with this opinion;
 - (b) the City's Heritage Specialist is supportive of the additional height as from a heritage perspective, it is considered that the development provides a continuation of the street wall of Liverpool Street and provides an important backdrop to Hyde Park and the Anzac war memorial;
 - (c) the additional height has been setback from both the Liverpool and Elizabeth Street frontages to minimise the visible massing of the upper levels from the street level and Hyde Park public domain, and better relate to the setback of the upper level and roof feature of The Hyde development. It is noted that all structures and floor space of the roof terrace level of the adjacent development ('The Hyde') are also in breach of the 110 metre height control;
 - (d) the additional height has been setback from the northern boundary of the site to align with the architectural roof feature of 'The Hyde'. This design refinement has seen a massing and bulk that is more consistent with the adjacent built form and enables district views to be retained from the penthouse apartment of 'The Hyde', which is consistent with the Sydney LEP 2012 building height objective of view sharing (refer to **Figure 16**, above); and

- (e) the additional height sought does not result in any material overshadowing to surrounding developments or the public domain, and has been assessed as acceptable. Both the proposed building envelope and Stage 2 detailed design development application (which is being concurrently assessed as D/2014/2013) have been amended during the assessment period to set the upper 2 levels of the building back approximately 6 metres from the northern building alignment of the tower. The amended envelope will not cast material shadow on the principal open space or secondary living areas of 'The Hyde' penthouse apartment.
30. This alternative massing is considered to be in the public interest and a better resolution for development on the site than a wholly complying scheme. It is considered that in this instance that variation to the building height standard of 110 metres at Stage 1, whilst utilising the design excellence provisions for floor space ratio as part of the Stage 2 development application, can be supported. On this basis, it is considered that there are unique circumstances that apply to this site which do not establish a precedent.
31. With consideration to the above matters, the proposed variation to the height of the building envelope to 122.7 metres (or RL 147.40) is acceptable.

Building footprint

32. The subject application seeks minor variations to the approved building footprint of the tower (on Levels 26 to 38, inclusive) to the rear. **Figures 17** and **18**, below, illustrate the modified footprint sought within the tower, and highlights the variation sought from the existing approved Stage 1 DA building envelope.

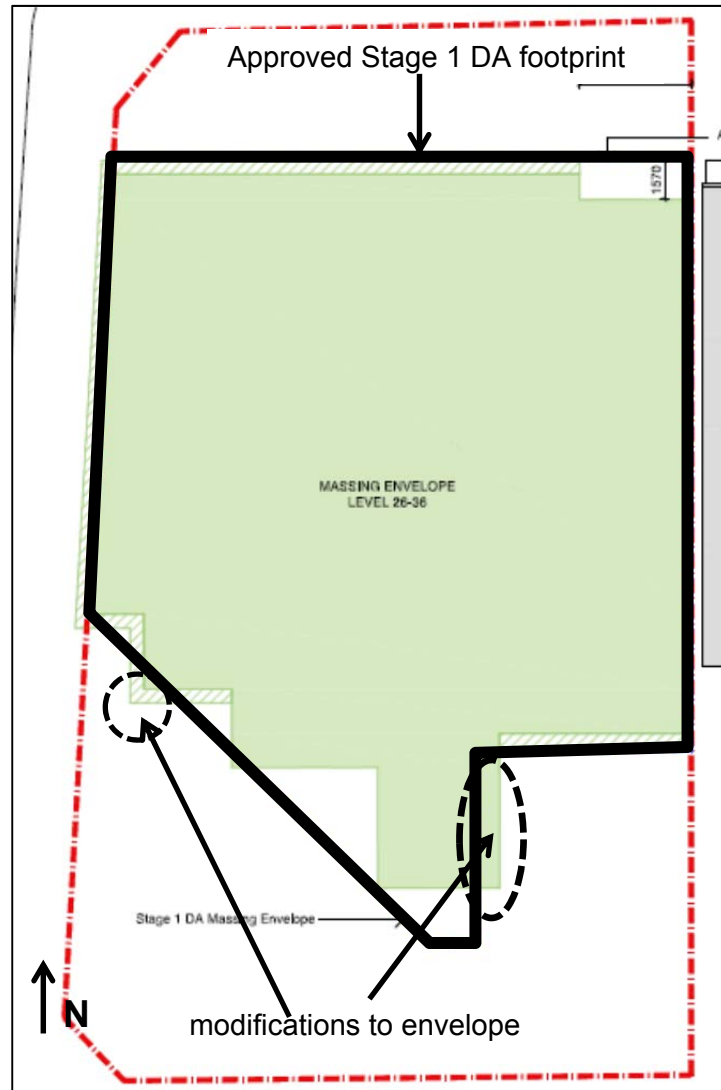


Figure 17: The variations proposed to the Stage 1 building footprint on Levels 26 to 36

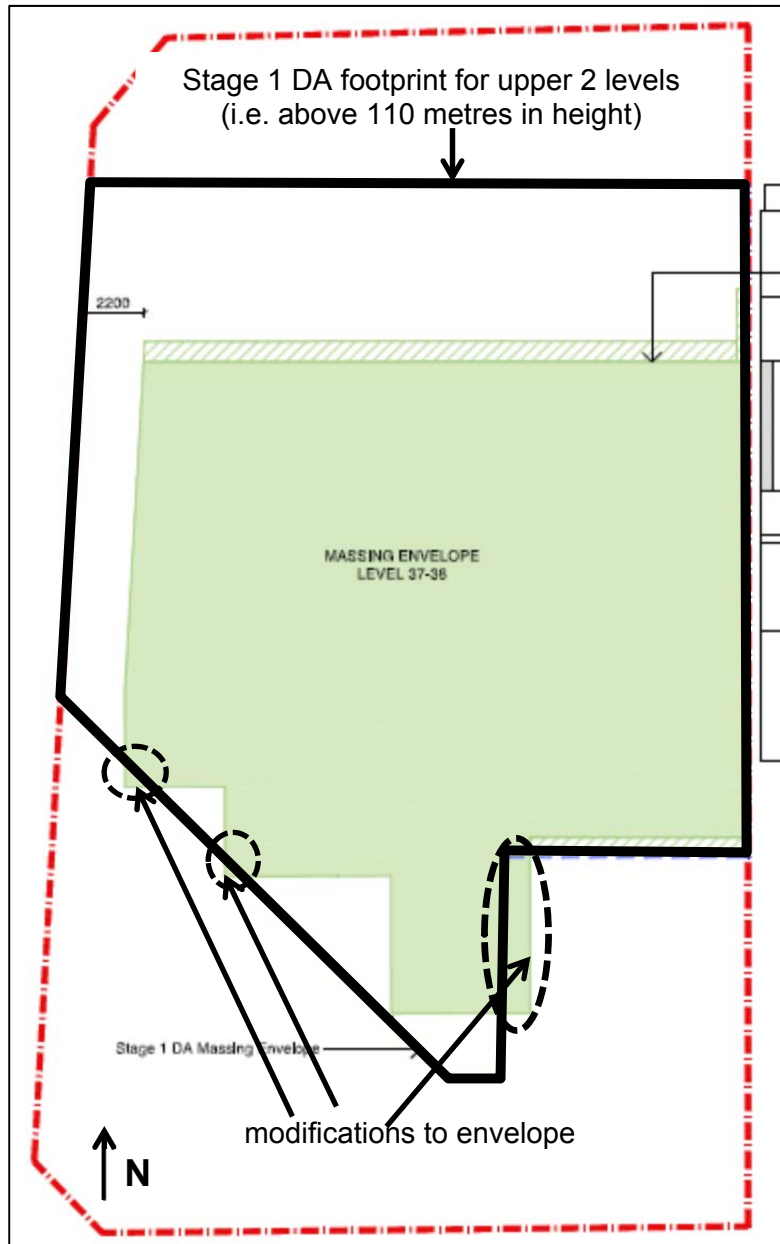


Figure 18: The variations proposed to the Stage 1 building footprint on Levels 37 and 38

33. As is evident in **Figures 17 and 18**, the extent of variations sought to the building footprints in the upper tower levels (i.e. on Levels 26 to 38) are minor in nature and relate to the mechanical plant requirement to be accommodated on each floor and minor encroachments where the corner of the rectilinear form projects slightly beyond the splayed Stage 1 envelope (in the southwestern corner).
34. The proposed modifications to the building envelope and footprint in the upper tower levels are supported in this instance as:
 - (a) the overall modified envelope sought does not accommodate any increase in gross floor area or floor space ratio than the envisaged in the Stage 1 DA;

- (b) the minor projections of the footprints on the southwestern corner do not cast any additional shadow on adjacent properties to the rear, with it noted that the majority of the proposed Stage 2 DA detailed design is set further back from the splayed/chamfered southwestern corner of the site; and
- (c) the slight increase in the envelope by 1 metre towards to the east is required to marginally increase the width of the plant room. This has been a consequence of the detailed design stage of the project. Due to the use of these areas on each floor as plant and not habitable floor space, the reduction in setback from the eastern boundary is acceptable as it will not give rise to any overlooking or amenity impacts to the adjacent property.

Other Impacts of the Development

35. 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

36. 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

37. The subject Section 96 application was referred to Council's Urban Designer; and Heritage Specialist.

EXTERNAL REFERRALS

Notification, Advertising and Delegation

38. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days between 6 January 2015 and 21 January 2015. As a result of this notification there were two (2) submissions received, the content of which is summarised below:

- (a) The additional height will cast shadows over both 'Hyde Park Towers' and 'The Hyde' (particularly the penthouse apartment).

Response – The shadowing impact of an envelope to a height of RL 147.40 was assessed as satisfactory as part of the original Stage 1 development application. This material was reviewed again as part of this assessment, and has been found to be satisfactory as the same conclusions have been reached. A copy of the original assessment report for that application is included as **Attachment B** to this report. Detailed assessment of the overshadowing impacts on apartments in 'The Hyde', 'Hyde Park Towers' and to the public domain was considered as part of that assessment. As the applicant had sought approval at that time for an envelope to RL 147.40, the assessment considered all shadowing cast by an envelope to height of RL 147.40.

Both the building envelope and Stage 2 detailed design development application have been amended during the assessment period to set the upper 2 levels of the building back approximately 6 metres from the northern building alignment of the tower. This setback will align the envelope above 110 metres with the architectural roof feature of 'The Hyde', and is generally consistent with the massing and form approved on that development in 2006 (D/2006/1400), which also exceeds the 110 metre building height development standard (built to a height of RL147.40). The amended envelope will not cast material shadow on the principal open space or secondary living areas of 'The Hyde' penthouse apartment.

- (b) The additional height will affect the westward aspect of the penthouse apartment of 'The Hyde'.

Response – Refer to detailed assessment in the Stage 2 development application (D/2014/2013), which has been concurrently assessed with the subject Section 96 application. As amended, the envelope and detailed design DA have been setback to align with the architectural roof feature of 'The Hyde', which retains the westerly outlook from the penthouse apartment principal open space.

- (c) The height should remain at 110 metres and in line with that of 'The Hyde' as the two buildings form a wall when viewed from Hyde Park, and additional height will be out of character.

Response – Refer to discussion in both the subject report and in the issues section of the Stage 2 development application (D/2014/2013). The additional height and its siting has been supported in this instance due to the context established by the existing development to the east of the site (along Liverpool Street), which have been developed above a height of 110 metres. The design rationale of continuing this additional height to maintain the predominant street wall height and terminate the corner has been supported by the City's Heritage Specialist, Urban Designer, the Design Advisory Panel and the Competitive Process Design Jury. This advice is also supported by Council's Planning Officer. This was considered to be right design approach, noting the high visibility of the site from the public domain (including Hyde Park) and its heritage context.

PUBLIC INTEREST

39. 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 Contribution

40. A Section 61 contribution pursuant to the Central Sydney Development Contribution Plan 2013 will be a condition of the Stage 2 development application.

RELEVANT LEGISLATION

41. The Environmental Planning and Assessment Act 1979.

CONCLUSION

42. The necessity to modify the approved building envelope will ensure consistency between staged development applications on the site as is required under Section 83D of the EP&A Act, 1979.
43. Following the completion of the competitive design process, detailed design of the building and subsequently assessment of the Stage 2 development application (D/2014/2013), it has been considered to be a better design outcome to modify the Stage 1 building envelope. As modified, the proposed envelope is considered to be contextually appropriate and has sited the additional height in such a location so as to minimise amenity and environmental impacts on neighbouring properties. In this instance, the modifications to the Stage 1 building envelope are supported and it is recommended that the application be approved.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Nicola Reeve, Senior Planner)