

ATTACHMENT B

**STAGE 1 DEVELOPMENT APPLICATION
PLANNING ASSESSMENT REPORT**

130-134 ELIZABETH STREET, SYDNEY

DEVELOPMENT APPLICATION: 130-134 ELIZABETH STREET SYDNEY**FILE NO:** D/2014/58**DEVELOPMENT APPLICATION NO:** D/2014/58**SUMMARY**

Date of Submission: 17 January 2014

Amended: 14 May 2014

Applicant: CBUS Property

Architect: Kann Finch

Developer: CBUS Property

Owner: CBUS Property 130 Elizabeth Street Pty Ltd ATF 130 Elizabeth Street Unit Trust

Cost of Works: \$105,600,000

Proposal Summary: The proposal seeks consent for a Stage 1 concept proposal, including the following:

- in-principle approval for demolition of the existing commercial building;
- indicative building envelope to a height of 120.5 metres (approximately 38-storeys);
- indicative land uses of ground floor retail/commercial (approximately 242sqm) and residential floor space on Levels 1 to 36 (approximately 14,778sqm); and
- vehicular access off Clarke Street, with indicative basement levels.

The original notification of the application resulted in 16 submissions being received, objecting to the following matters:

- Construction impacts;
- Height;
- Setbacks;
- Privacy/Overlooking;
- Loss of views;
- Overshadowing;
- Museum Station entry; and
- Traffic and Parking impacts.

Proposal Summary:
(continued)

The proposal has been amended during the assessment to modulate the building envelope to minimise the extent of shadow cast onto the northern facade of the residential apartment building at 148A Elizabeth Street, Sydney (Hyde Park Towers). The amended envelope has increased in height to 120.5 metres so as to align with the maximum height of the directly adjacent building at 157 Liverpool Street (The Hyde).

The amended scheme was renotified and resulted in no submissions being received.

The applicant has submitted a written request under the provisions of Clause 4.6 of Sydney Local Environmental Plan 2012 (SLEP 2012) seeking to vary the building height development standard by 10.5 metres (or a 9.5% variation).

This Clause 4.6 variation is not supported at this time, as it is considered that any additional building height above the 110 metre height control should form part of the detailed design Stage 2 Development Application, following the completion of a competitive design process. This additional height will need to give consideration to the design excellence provisions of Clause 6.21(7) of SLEP 2012.

Subject to the imposition of appropriate conditions, as detailed in the recommendation section of this report, it is considered that the proposed building envelope and indicative land uses generally respond to the constraints of the site and applicable planning controls. In those instances where variation is sought to the planning controls, such as street frontage height and setbacks, there is considered to be justifiable immediate context to support the variations.

Summary Recommendation:

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

Attachments:

- A - Building Envelope Plans
- B - Shadow Analysis
- C - Indicative Floor Plans

RECOMMENDATION

It is resolved that, pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979, consent be granted to Development Application No. D/2014/58, subject to the following conditions:

SCHEDULE 1A**Approved Development/Design Modifications/Covenants and Contributions/Use and Operation**

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of an Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development 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>Ground Level Massing Envelope</i>	Kann Finch	January 2014
DA06 Rev A <i>Levels Mezzanine, 01 & 02 Tower Base Massing Envelope</i>	Kann Finch	January 2014
DA07 Rev A <i>Levels 03 -13 Tower Massing Envelope</i>	Kann Finch	January 2014
DA08 Rev B <i>Levels 14 - 24 Tower Massing Envelope</i>	Kann Finch	April 2014
DA09 Rev B <i>Levels 25 -36 Tower Massing Envelope</i>	Kann Finch	April 2014

Drawing Number	Architect	Date
ID06 Rev A Titled '2.4 Street Elevation' <i>Liverpool Street Elevation</i>	Kann Finch	April 2014
ID07 Rev A Titled '2.4 Street Elevation' <i>Elizabeth Street Elevation</i>	Kann Finch	April 2014
ID08 Rev A Titled '2.4 Street Elevation' <i>Clarke Street Elevation</i>	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.

(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.

(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. 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.

(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 Application.
- (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 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 one car share space per 50 car spaces for the exclusive use of car share scheme vehicles is 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 Development 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 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 977.1sqm.
3. Existing on site is a 16-storey commercial building, containing ground floor retail uses and commercial office floor space 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 10**, 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 5**, below, illustrates the context of the site and the existing built form.

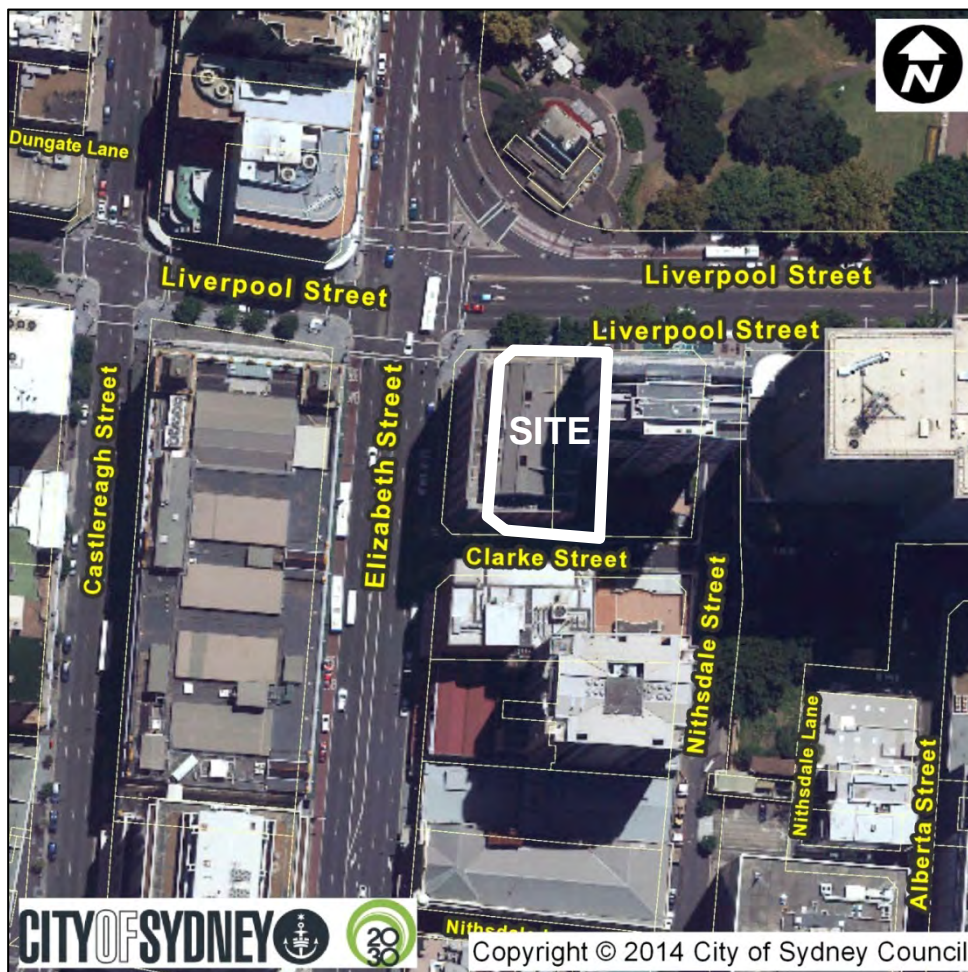


Figure 1: Aerial image of subject site and surrounding area



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.
7. To the east of the site, are high-rise residential and commercial buildings that front Liverpool Street. This row of buildings is generally built to 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, 5 and 6**).
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 7 to 9**, 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 and the NSW State Heritage Register (refer to **Figure 12**, below).



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



Figure 5: View looking eastwards along Liverpool Street towards the site



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



Figure 7: View looking southwards along Elizabeth Street from its intersection with Liverpool Street



Figure 8: Relationship of the site with adjacent residential apartment building to the south ('Hyde Park Towers') and to the east ('The Hyde')



Figure 9: View of the existing building on site and the adjacent apartment building (known as 'The Hyde') as viewed from Clarke Street



Figure 10: The Liverpool Street frontage of the site and existing entry to Museum Station



Figure 11: View of Museum Station and Hyde Park to the north of the site, on the opposite side of Liverpool Street



Figure 12: 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

PROPOSAL

10. The subject application seeks consent for a Stage 1 concept proposal 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, which is able to accommodate a total gross floor area (GFA) of 15,020sqm;
 - (c) indicative future land uses of ground floor retail/commercial floor space (indicatively 242sqm) and residential floor space on Levels 1 to 36 (approximately 14,778sqm);

- (d) basement levels (indicatively shown as 6 levels), with the ability to accommodate approximately 86 car parking spaces, motorcycle spaces, bicycle storage, residential storage and associated plant;
 - (e) vehicular access off Clarke Street; and
 - (f) retention of the access and pedestrian underpass to Museum Station, noting that a redeveloped and integrated entry may form part of a future Stage 2 Development Application for the site.
11. **Figures 13 to 17**, below, illustrate photomontages and elevations of the proposed development. Building envelope plans and elevations of the proposed development are provided at **Attachments A and B**. Indicative floor plans are provided at **Attachment C**.

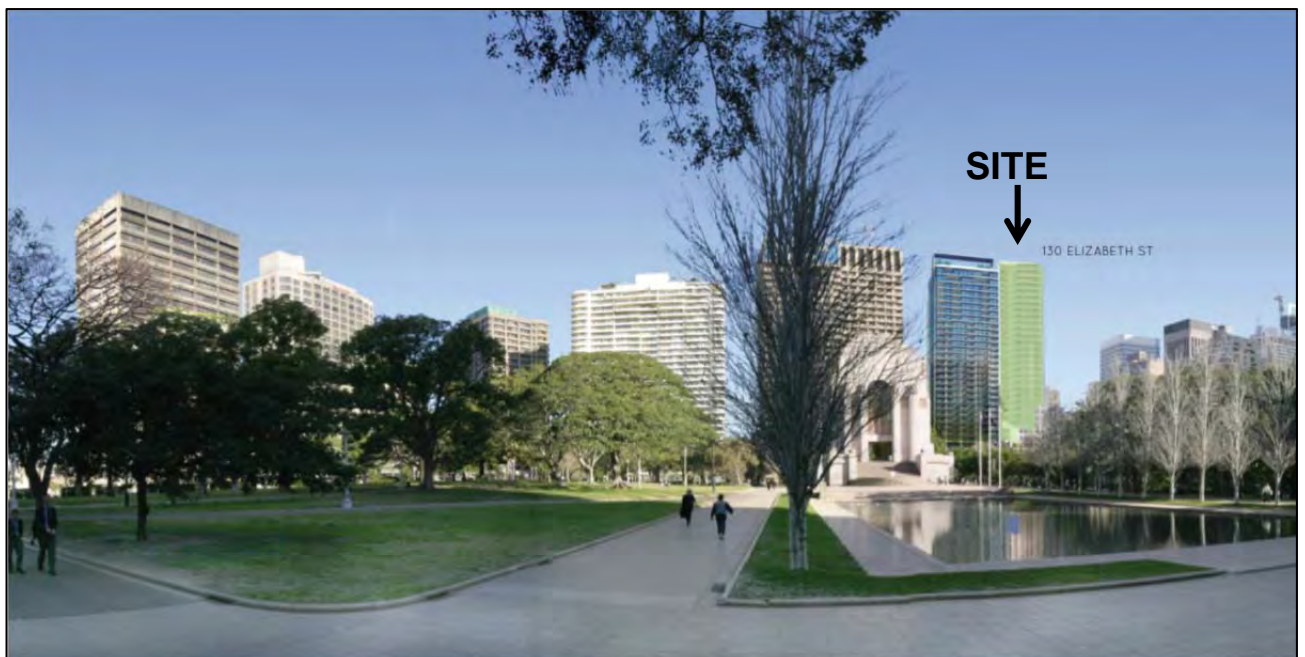


Figure 13: The proposed building envelope in its Liverpool Street context, as viewed from Hyde Park

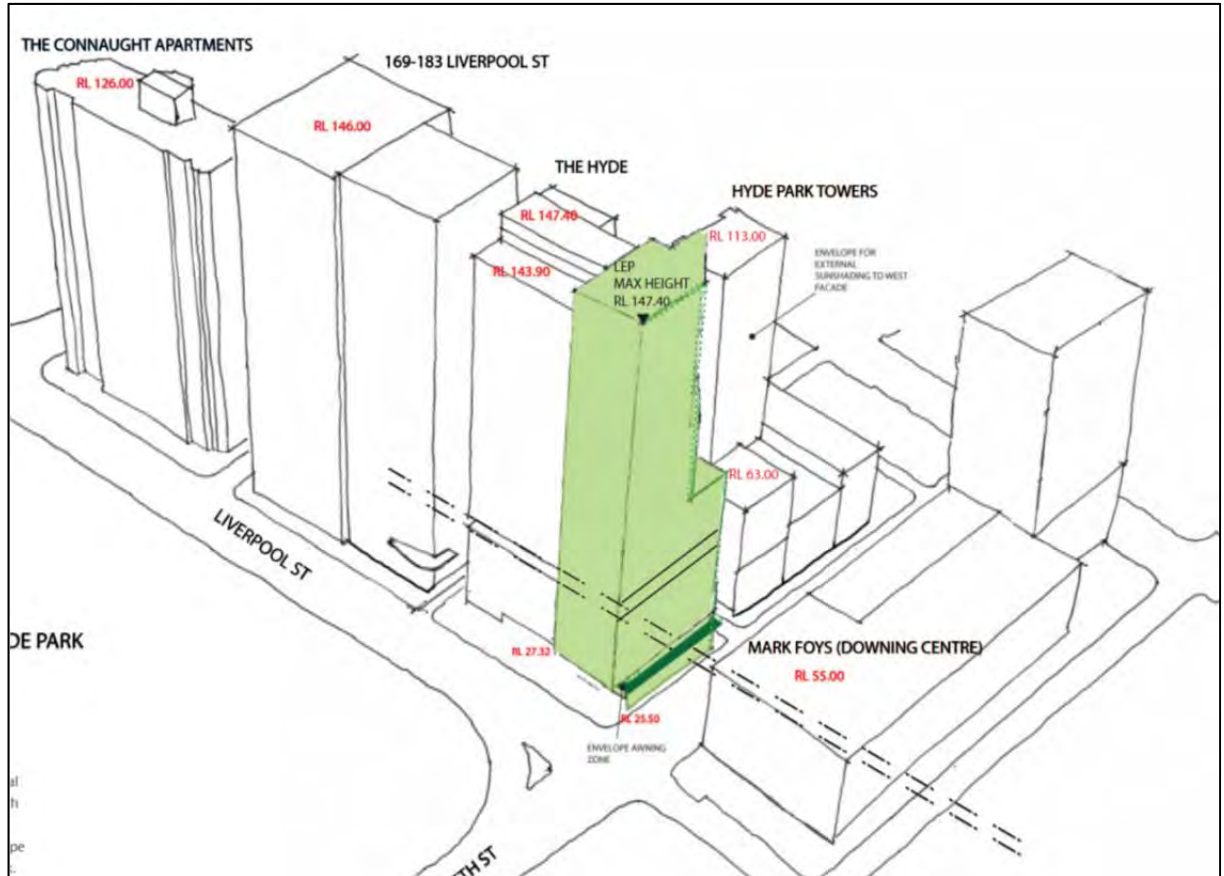


Figure 14: Aerial view of amended building envelope, illustrating the chamfered edge on the southwestern corner

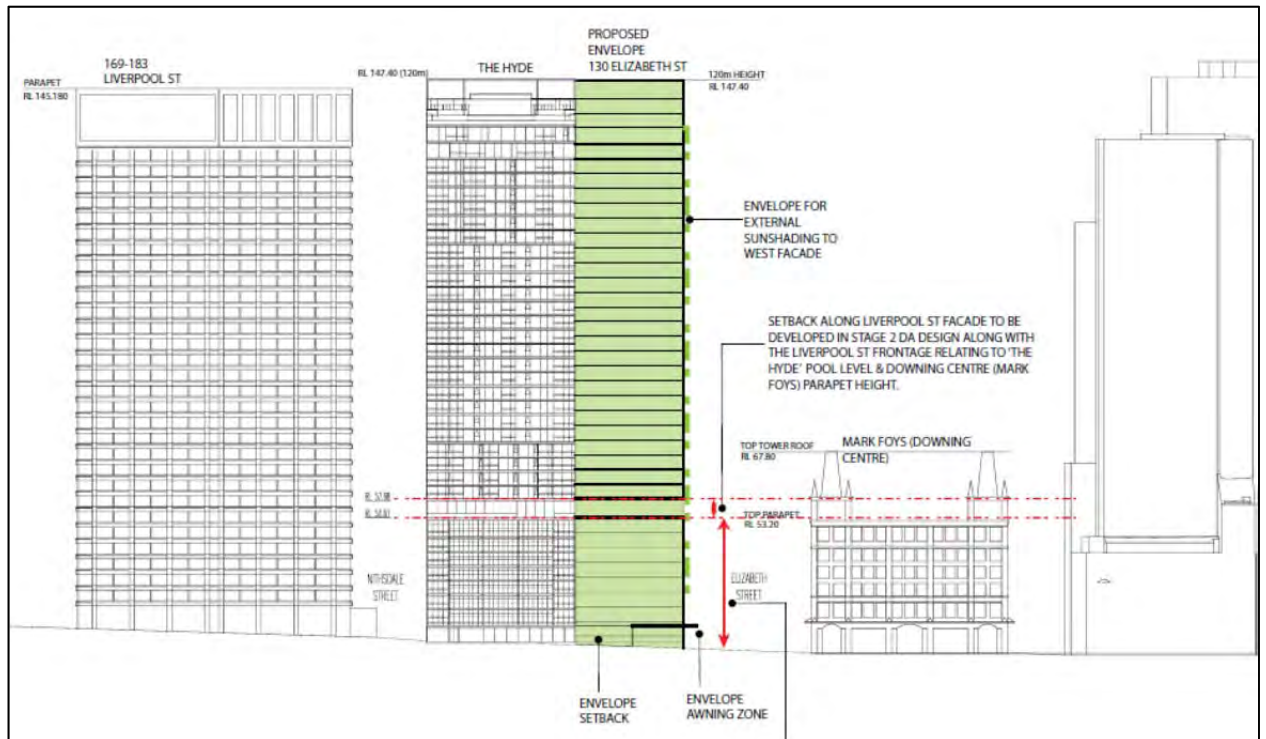


Figure 15: The northern elevation of the proposed building envelope, as viewed from Liverpool Street

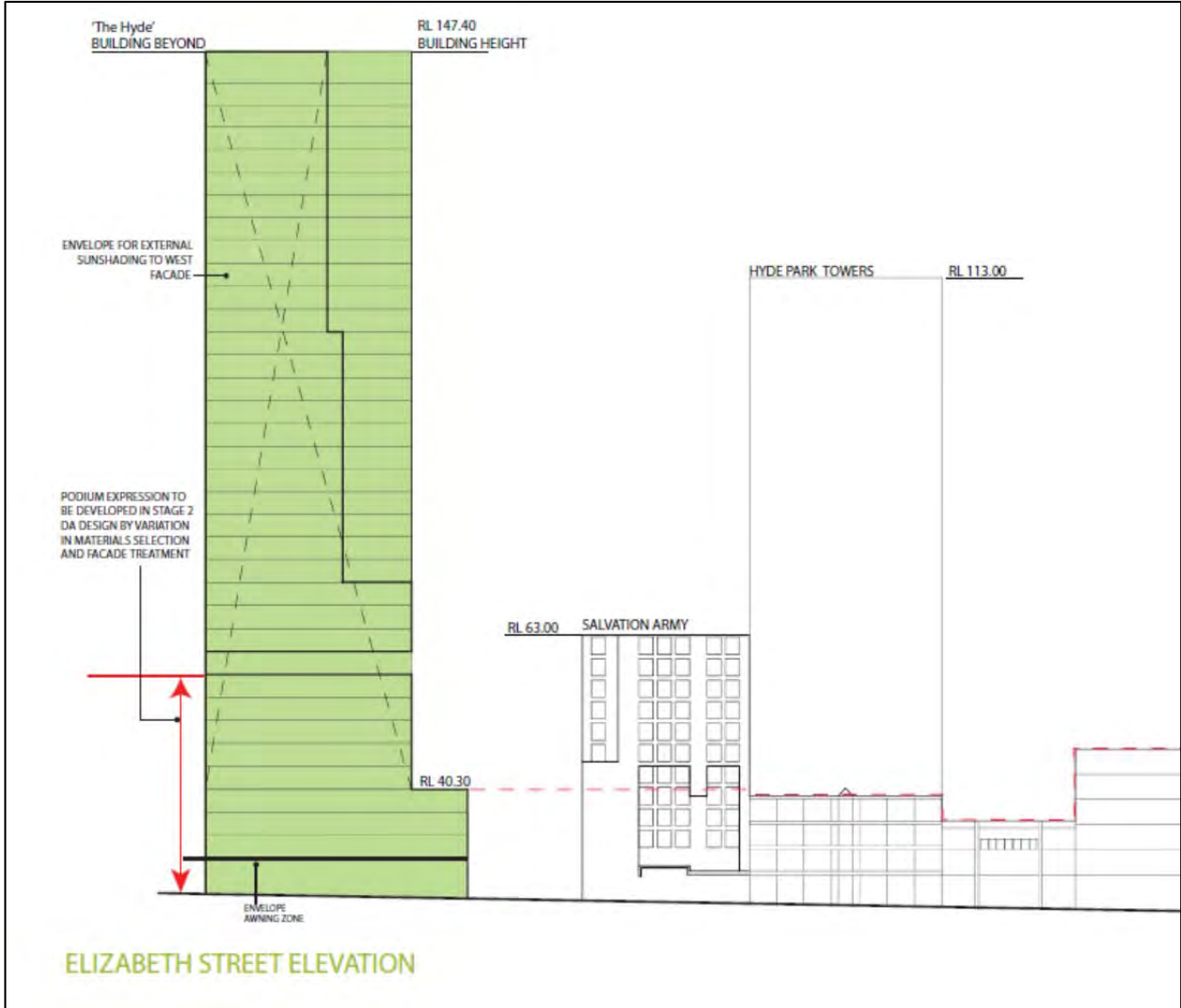


Figure 16: The western elevation of the proposed building envelope, as viewed from Elizabeth Street

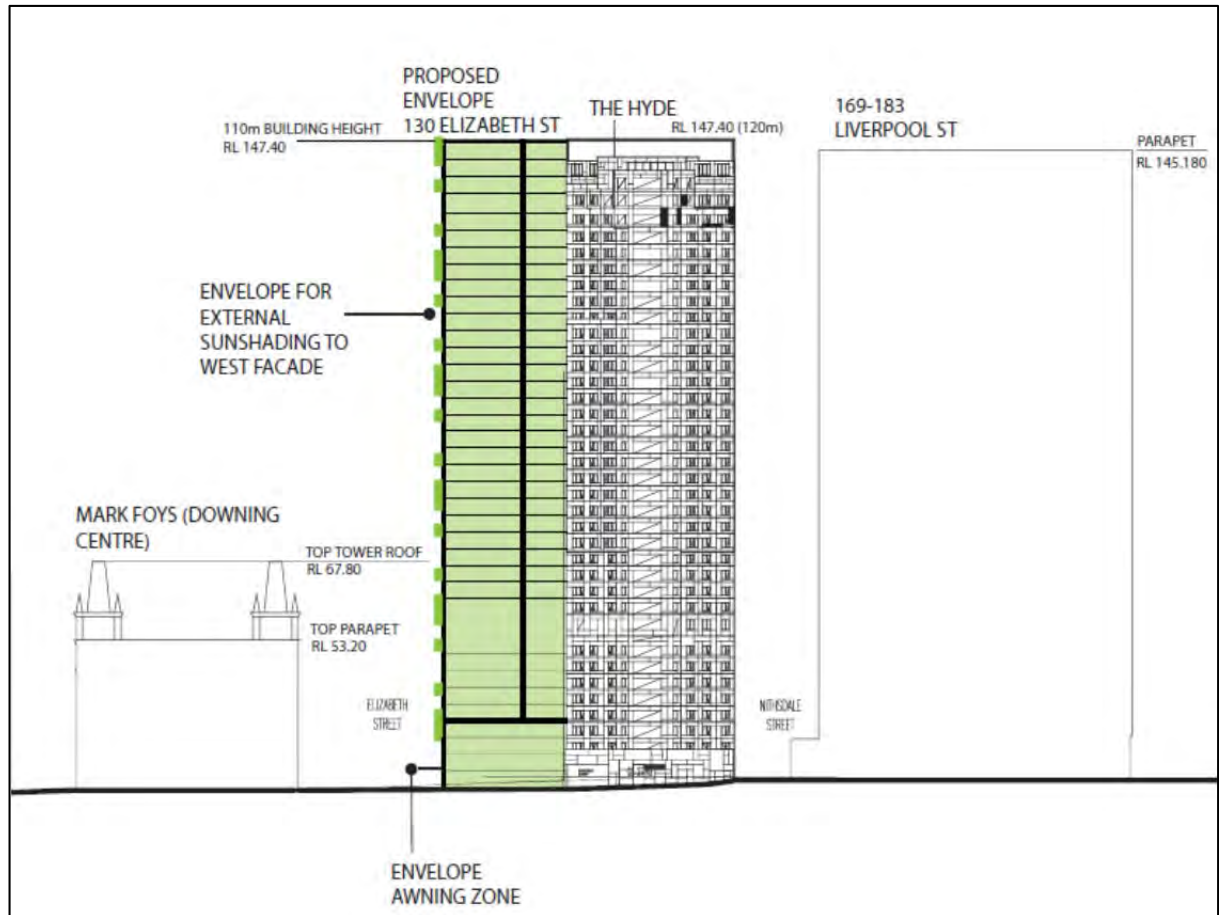


Figure 17: The southern elevation of the proposed building envelope, as viewed from Clarke Street

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

12. Following a preliminary assessment of the application, the matter was referred to the City's Design Advisory Panel at its meeting on 8 April 2014. The issues presented to the Panel were as follows:
 - (a) overshadowing to the to the northern elevation of the residential building to the south of the site (being Hyde Park Towers);
 - (b) separation between the proposed envelope and the existing commercial and residential building to the south of the site, across Clarke Street; and
 - (c) no podium proposed on either Elizabeth or Liverpool Streets, and variation sought to street frontage height and front setback planning controls of SDCP 2012.
13. Further to the above matters, the Design Advisory Panel suggested that:
 - (a) the Applicant carry out further modelling of the building envelope to identify those elements that cast additional shadow across Hyde Park Towers;
 - (b) there was a contextual argument that the height of the envelope could be increased to align with the top of the architectural roof feature on 'The Hyde' building (at 157 Liverpool Street); and

- (c) the architectural design and the building modelling should respond to the scale and articulation of the Mark Foy building opposite, as well as providing an appropriate corner treatment to Liverpool and Elizabeth Streets.
14. The Applicant was advised in correspondence, dated 16 April 2014, that further consideration should be given to the proposed building envelope with regard to those matters outlined above. A meeting was also held with the Applicant on 7 May 2014
15. Amended plans and additional information were submitted on 14 May 2014 to address the above issues. The amended scheme has:
- (a) modified the building envelope to a more slender tower form for its upper levels, including a chamfered southwestern corner on Levels 14 to 36 of the proposal;
 - (b) increased the height of the building envelope to 120.5 metres (RL 147.40);
 - (c) undertaken detailed shadow analysis on the impacts to Hyde Park Towers;
 - (d) modified indicative apartment layouts and unit mix to demonstrate that any future Stage 2 detailed design scheme is capable of complying with the principles and guidelines of SEPP 65/Residential Flat Design Code; and
 - (e) submitted a statement under the provisions of Clause 4.6 of SLEP 2012 seeking to vary the building height development standard of Clause 4.3 of SLEP 2012 by 10.5 metres.

CITY OF SYDNEY ACT 1988

16. Section 51N requires the Central Sydney Planning Committee (the Planning Committee) to consult with the Central Sydney Traffic and Transport Committee (CSTTC) before it determines a DA that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works likely to have a significant impact on traffic and transport in the Sydney CBD. 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."*
17. Having liaised with the City's Access Unit, in this instance, the proposal is not considered to have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary. In particular, the following are noted:
- (a) no physical works are proposed as part of this Stage 1 development application, which is conceptual in nature. Detailed matters in respect of on-site parking, driveway configuration and any modified access to Museum Station will be further addressed as part of the future Stage 2 development application; and
- (b) the comments of both RailCorp and Roads and Maritime Services were sought under the provisions of State Environmental Planning Policy (Infrastructure) 2007, and have been included as recommended conditions attached to this report.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

18. 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.

Heritage Act, 1977

19. The site is located adjacent to 143-147 Liverpool Street, Sydney (the former Mark Foy Emporium) and the Anzac War Memorial (within Hyde Park), which are both items of State Heritage significance and are listed on the State Heritage Register. Due to the proposed development being in the visual catchment of State Heritage Items, the application was referred to the NSW Heritage Council for comment in correspondence, dated 28 January 2014.
20. To date, no response or comment has been received from the Heritage Council. It is noted that the application was referred to the Heritage Council for their information only and to provide an opportunity for their comment, where necessary. As such, there is no legislative impediment to the determination of the application.

State Environmental Planning Policy No 55—Remediation of Land

21. 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.

22. A Preliminary Environmental Site Assessment was submitted with the application to address the requirements of SEPP 55. 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 (Infrastructure) 2007

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

Clause 45 – Electricity transmission

24. 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.
25. It is anticipated that a new substation will be required to be accommodated within the development, and has been included on the mezzanine floor of the indicative floor plans submitted. It is recommended that a condition be imposed requiring that the applicant liaise with Ausgrid prior to the lodgement of a Stage 2 DA and that any required infrastructure be accommodated within the detailed design of the development.

Clause 86 – Excavation in, above or adjacent to rail corridors

26. The application was referred to RailCorp Property on 22 January 2014 under the provisions of Clause 86 of the SEPP (Infrastructure) 2007 as the site is located adjacent to the rail corridor and Museum railway station.
27. In correspondence, dated 8 May 2014, RailCorp has granted their concurrence, subject to the imposition of conditions outlined in Schedule 3.

Clause 101 – Development with frontage to classified road & Clause 104 – Traffic generating development

28. The application was referred to the Roads and Maritime Services (RMS) pursuant to Clause 104 of SEPP (Infrastructure) 2007 on 28 January 2014.
29. In correspondence, dated 19 February 2014, the RMS has advised that they raise no objection to the proposed development and provided advisory conditions for consideration. All conditions recommended duplicate standard conditions of consent and, as such, it is considered that all matters raised have already been appropriately considered or conditioned, and no further conditions are required.

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

30. SEPP 65 requires that in determining an application for a residential flat development of three or more floors and containing four or more apartments, the consent authority take into consideration a number of matters relating to design quality.

31. The proposed development is for conceptual building envelope only and no physical building works are sought, or recommended for approval, as part of this application. In the event that the subject application is approved, the detailed design of the development will be the subject of both a competitive design process and a Stage 2 Development Application.
32. Clause 70B of the Environmental Planning and Assessment Regulation 2000 provides that design verification required under clause 50(1A) is not required for Stage 1 development applications unless the DA contains detailed proposals for a residential flat development or part of that development.
33. As the proposal seeks consent for the indicative residential land use on the site, consideration has been given below to the ability of the envelope and indicative floor plans to achieve the design principles of SEPP 65. A further more detailed assessment against these principles would occur with any Stage 2 Development Application.

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

The proposed scale and massing of the building envelope is contextually appropriate to this southern CBD location. Consideration has been given to the surrounding built form, particularly the strong street wall presence of development on the southern side of Liverpool Street and potential impacts to residential development located to the south of the site.

The proposal has been amended to revise the building envelope to better respond to the immediate built form context, as well as to constraints of the site. The amended scheme seeks to increase the height of the building envelope to 120.5 metres, which is 10.5 metres above the 110 metre building height development standard. Further discussion is provided at the issues section of this report.

Opportunities exist for development of the architecture to further respond to the context of the site, particularly in relation to its prominent location opposite Hyde Park and the State significant heritage item, known as the former Mark Foy's Emporium, located on the opposite side of Elizabeth Street. Further discussion is provided at the issues section of this report.

(b) **Principle 4:** Density

The proposal results in a density of development 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 proposed envelope and its indicative floor plates have been designed to maximise cross ventilation and solar access penetration into future residential apartments. The energy efficiency and sustainability of the design will form part of the future detailed design development application. Appropriate conditions are recommended for imposition to require that the Stage 2 DA comply with SEPP 65 and BASIX.

(d) **Principle 6: Landscape**

It is noted that the CBD context, small site area and setbacks established by surrounding development generally preclude the provision of ground floor level communal open space and/ or deep soil planting on the subject site.

The proposal seeks consent for an indicative building envelope only, and it will be necessary for a more detailed analysis and assessment of any scheme against the landscape principles as part of a future Stage 2 development application. It should also be noted that prior to a Stage 2 development application, a competitive design process will be required to be held for this site. The provision and location of communal and private areas open space within the development will form part of the overall architectural design.

(e) **Principle 7: Amenity**

As the proposal is for a Stage 1 concept proposal only, a more rigorous assessment of the amenity for future residents will occur as part of the Stage 2 detailed design development application. However, as part of the subject application, indicative floor plans have been submitted in order to demonstrate that the floor plates and envelope sought are capable of accommodating a SEPP 65 compliant design. Based on these indicative floor plans, it is considered that the site is capable of providing an adequate level of amenity as:

- (i) 87% of apartments will receive two hours of solar access between 9.00am and 3.00pm on the winter solstice, which exceeds the 70% requirement of the RFDC guidelines;
- (ii) 77% of the units are cross ventilated, which exceeds the RFDC guideline recommendation of 60%;
- (iii) all apartments are able provided with private outdoor space, which will be detailed in the Stage 2 Development Application; and
- (iv) storage areas are able to be provided within the development in accordance with the storage requirements of the RFDC.

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

The proposal is for a conceptual building envelope only, with the detailed design of the building to be the subject of a competitive design process prior to the lodgement of a Stage 2 DA. It is considered that the building is able to be designed to ensure compliance the safety and security principle of the RFDC and the principles of Crime Prevention Through Environmental Design.

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

The indicative scheme accommodates the following unit mix within the building envelope:

- (i) 58 x studio/1 bedroom – 38.9% (DCP control is maximum of 40%);
- (ii) 78 x 2 bedroom – 52.3%; (DCP range is 40-75%); and
- (iii) 13 x 3 bedroom – 8.7 % (DCP range is 10-100%).

It should be noted that this unit mix is not locked in/approved as part of the subject application and will be subject to change as part of the detailed design application; however, it does demonstrate that a generally compliant mix is able to be accommodated within the envelope. Whilst the mix is generally compliant with the unit mix provisions of the SDCP 2012, it is considered that there is opportunity to provide a greater number of the 3-bedroom apartment typology in any detailed design scheme to achieve the DCP minimum requirement of 10%. A condition requiring compliance with the SDCP 2012 unit mix provisions is recommended for imposition.

(h) **Principle 10: Aesthetics**

The proposal is for a conceptual building envelope only, with the detailed design and aesthetics of the building to be the subject of a competitive design process prior to the lodgement of a Stage 2 DA.

34. 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.

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

35. Any future Stage 2 Development Application will be required to satisfy BASIX requirements. A condition is recommended for imposition to advise that any future residential scheme must comply with SEPP (Building Sustainability Index: BASIX) 2004, and that a BASIX certificate must be submitted with any future Stage 2 DA.

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

36. 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.
37. The proposed development of the site is consistent with the aims and objectives of SEPP 32.

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

38. The site is located within the designated catchment for Sydney Harbour, and is subject to the provisions of the SREP (Sydney Harbour Catchment) 2005.

39. 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.

Sydney LEP 2012

40. The site is zoned B8 – Metropolitan Centre under the Sydney Local Environmental Plan 2012 (SLEP 2012). The proposal is defined as a '*residential flat building*' and '*retail premises*', both of which are permissible uses within the B8 – Metropolitan Centre zone pursuant to Clause 2.3 of SLEP 2012.
41. 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	No	<p>Clause 4.3 of SLEP 2012 permits a maximum height of 110 metres for the subject site.</p> <p>The proposed seeks consent for a building envelope with a maximum height of 120.5 metres.</p> <p>The applicant has submitted a written statement under the provisions of Clause 4.6 of SLEP 2012 seeking to vary the building height development standard by 10.5 metres (or 9.5%).</p> <p>Refer to further discussion under the Issues section of this report.</p>
4.4 Floor Space Ratio	Able to comply	<p>Clause 4.4 of SLEP 2012 stipulates a base floor space ratio of 8:1 for the site. Based on the indicative land uses sought at this concept stage of the proposal, Clause 6.4 of SLEP 2012 provides an opportunity for a further 5.9758:1 of floor space where accommodation floor space uses are provided. This equates to a maximum FSR for the development of 13.9758:1.</p> <p>The documentation submitted by the Applicant demonstrates that the proposed building envelope is able to accommodate 15,020sqm of gross floor area, which would equate to a FSR of 15.3734:1.</p>

Compliance Table		
Development Control	Compliance	Comment
.4 Floor Space Ratio (continued)	Able to comply	In order to achieve this FSR, the Applicant is reliant on any future architectural design being awarded the 10% design excellence floor space under the provisions of Clause 6.21 of SLEP 2012. Further discussion is provided at the Issues section of this report, however, it should be noted that no gross floor area or FSR would be approved as part of the subject application.
4.6 Exceptions to development standards	No	The proposal seeks to vary the development standard prescribed under Clause 4.3 (Building Height). See discussion under the heading Issues.
5.9 Preservation of trees or vegetation	Yes	No physical works are proposed as part of the subject application, however, it is noted that at this indicative stage that the proposal does not impact on existing street trees located along the Liverpool Street frontage.
5.10 Heritage conservation	Yes	The site is located in the vicinity of a number of heritage items of State and local significance. The site is also located within the College Street/Hyde Park Special Area. As detailed elsewhere in this report, the application was referred to the NSW Heritage Office under the provisions of the Heritage Act, 1977 due to the development being adjacent to the State listed former 'Mark Foy's Emporium' building (now known as the Downing Centre). Council's Heritage Specialist has raised no objection to the proposed development, subject to the imposition of appropriate conditions.

Compliance Table		
Development Control	Compliance	Comment
6.4 Accommodation floor space	Able to comply	The site is located in 'Area 2', and as such, based on the indicative land uses proposed is eligible for additional accommodation floor space of up to 5.9758:1 of the site area. This accommodation floor space has been included in the collective permissible FSR for the development, as discussed elsewhere within this report. However, no FSR is approved as part of this application.
6.11 Allocation of heritage floor space (HFS)	Able to comply	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 SLEP 2012.
6.16 Erection of tall buildings in Central Sydney	Yes	The proposed building envelope has a maximum height of 120.5 metres, and as such, the objectives of Clause 6.16 are applicable. Refer to further discussion on building height in the Issues section of this report.
6.21 Design excellence	Able to comply	<p>In accordance with Clause 6.21(7) of SLEP 2012, an additional 10% FSR <u>or</u> height may be approved if a competitive design process has been undertaken, and it is considered that the scheme exhibits design excellence.</p> <p>As the proposal is a Stage 1 development application, no architectural design details have been provided. A competitive design process will need to be undertaken prior to any Stage 2 development application being lodged.</p>

Compliance Table		
Development Control	Compliance	Comment
7.5 & 7.7 Car parking ancillary to other development	Able to comply	<p>The proposal illustrates 6 levels of basement levels. Indicative floor plans were submitted as part of the concept proposal to illustrate that 86 car parking spaces are able to be accommodated within these basement levels.</p> <p>Car parking numbers for residential and retail/commercial uses can only be assessed as part of a Stage 2 DA. Parking numbers are determined having regard to the residential unit mix proposed, which is only conceptual at this stage. A condition has been recommended for imposition to advise that no consent is granted to 'lock in' car parking numbers or number of basement levels as part of Stage 1 DA.</p>
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 5 Acid Sulphate Soil (ASS). The Preliminary Environmental Site Investigation prepared for the site identifies that the site is separated by over 600 metres from the nearest Class 2 ASS. Council's Environmental Health Officer has advised that no further investigation is needed to satisfy this clause.
7.15 Flood planning	Yes	The site is not identified as being on flood prone land. Preliminary stormwater and flooding information was provided in a Hydraulic Services report.
7.16 Airspace operations	Yes	The building envelope is not proposed to be constructed to a height that penetrates the prescribed airspace for Sydney Airport.

Compliance Table		
Development Control	Compliance	Comment
7.20 Development requiring preparation of a development control plan	Yes	<p>As the height of the proposed envelope exceeds 55 metres, the provisions of Clause 7.20 of SLEP 2012 are applicable and the preparation of a site specific DCP is required.</p> <p>However, pursuant to the provisions of Section 83C(2) of the Environmental Planning and Assessment Act, 1979, the lodgement of a Stage 1 DA may be considered by the consent authority as satisfying this obligation.</p>

Sydney DCP 2012

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

2. Locality Statements – College Street/Hyde Park Special Character Area
<p>The subject site is located in the College Street/Hyde Park Special Character Area. The proposed is considered to be in keeping with the unique character of the area and design principles in that:</p> <ul style="list-style-type: none"> • the proposed envelope maintains the scale of adjacent buildings along Liverpool Street and will further contribute to the existing street wall, which provides a sense of enclosure to Hyde Park; • the proposed envelope does not impact view lines along key streets into the city, with the scale of the proposed building having the potential to be gateway building into the CBD and as viewed from Hyde Park; • the proposal adopts setbacks that are consistent with neighbouring developments; and • due to the location of the site to the south of Hyde Park, the proposed envelope will not impact on mid-winter lunchtime sun access to Hyde Park.

3. General Provisions		
Development Control	Compliance	Comment
3.2 Defining the Public Domain	Able to comply	The proposal was referred to the City's Public Domain Unit, who have recommended the imposition of appropriate conditions on any consent granted. Primarily these conditions will require more detailed plans of the development's public domain interface and scope of works are part of any Stage 2 DA.
3.2.4 Footpath awning	No, but able to comply	<p>Section 3.2.4 of SDCP 2012 identifies the requirement for awnings on both the Elizabeth and Liverpool Street frontages of the site.</p> <p>The concept plan includes an identified awning zone, 2 metres in depth, along the entirety of the Elizabeth Street frontage. This awning zone proposes to wrap the corner and to continue for the western portion of the Liverpool Street frontage for approximately a 10 metre section.</p> <p>Whilst not providing an awning zone for the length of this Liverpool Street frontage is contrary to the DCP, it is noted that the existing Museum Station entry would prevent a complying awning structure from being provided. This matter can be addressed as part of the design competition and future Stage 2 DA, as there may be opportunities to relocate this station entry as part of the detailed design of the development.</p>

3. General Provisions		
Development Control	Compliance	Comment
3.2.6 Wind effects	Able to comply	<p>A Pedestrian Wind Environment Study was submitted with the application to assess the impacts of the proposed envelope on the public domain/pedestrian environment. Consideration was also given to the indicative layout of the proposed development.</p> <p>The assessment includes recommendations and necessary treatments that will need to be incorporated into the final design to mitigate wind conditions, including awnings, louvres/screens to the balconies and swimming pool deck and retention of vegetation within the public domain. An appropriate condition is recommended requiring further wind testing to be undertaken on the final detailed design and incorporated into the scheme lodged as a Stage 2 DA.</p>
3.3 Design Excellence and Competitive Design Processes	Able to comply	Prior to a submission of a Stage 2 DA, a competitive design process will need to be undertaken.
3.6 Ecologically Sustainable Development	Able to comply	<p>Compliance with the requirements of BASIX will be assessed at Stage 2. Details will need to be submitted with the future Stage 2 DA to demonstrate compliance.</p> <p>The Applicant has also stated their intention that the brief for the competitive design process will encourage architectural firms to incorporate innovative sustainable design measures.</p>
3.7 Water and Flood Management	Yes	Refer to discussion in LEP compliance table.

3. General Provisions		
Development Control	Compliance	Comment
3.9 Heritage	Yes	<p>The concept plan seeks in-principle consent for demolition of the existing building on site. This building was constructed circa 1991, and does not have any heritage contribution to the streetscape or immediate locality.</p> <p>As detailed in the LEP compliance table, above, the site is located in the vicinity of a number of significant heritage items. Appropriate conditions are recommended for imposition to ensure that the detailed design of the proposal takes cues from its heritage context, both in terms of materiality and referencing the scale of the adjacent heritage item (being the former Mark Foy building). Further discussion is provided in the Issues section of this report.</p>
3.11 Transport and Parking	Able to comply	<p>The proposal seeks to maintain vehicular access to the site via its Clarke Street frontage. This is supported by the City's Access and Transport Unit.</p> <p>The concept plan has indicatively illustrated that the basement car parking levels are able to accommodate 86 car parking spaces. It is noted that parking numbers or rates are not approved as part of a Stage 1 DA, and would form part of the detailed design assessment at Stage 2 when the exact land uses and residential apartment mix numbers are known.</p>

3. General Provisions		
Development Control	Compliance	Comment
3.11 Transport and Parking (continued)	Able to comply	<p>Despite this, consideration has been given to the additional parking provision on the site (indicatively being an increase from 22 existing parking spaces to approximately 86 spaces). It has been concluded by the City's Access and Transport Unit that the increased parking numbers would not significantly increase traffic generation, noting that a commercial use (as currently exists) generally has a more frequent turnover of vehicles than a residential use.</p> <p>Appropriate conditions are recommended for imposition to advise that parking numbers and number of basement levels are not approved as part of this application, and outlines matters that must be included in any future Stage 2 DA (i.e. bicycle parking and on-site waste collection).</p>
3.12 Accessible Design	Able to comply	<p>A Preliminary Access Review was submitted with the application. This report notes that the concept plan is able to achieve the statutory requirements of the relevant accessibility legislation, however, does make a number of recommendations to be addressed as part of the detailed design.</p> <p>A condition has been recommended that the development is to provide appropriate access and facilities for persons with disabilities in accordance with the relevant legislation and adopt the recommendations of the Access Review report.</p>
3.13 Social and Environmental Responsibilities	Able to comply	<p>Details will need to be submitted with the future Stage 2 DA to demonstrate compliance with the Crime Prevention Through Environmental Design (CPTED) principles.</p>

3. General Provisions		
Development Control	Compliance	Comment
3.14 Waste	Able to comply	<p>The concept plan provides indicative floor plans to demonstrate that on-site garbage collection is able to occur.</p> <p>Whilst this layout is indicative at this stage, the City Access and Transport Unit have noted that the indicative waste collection arrangement may be non-compliant with AS2890.1.</p> <p>Conditions have been recommended to advise that further details on swept path analysis for a standard length Council waste collection vehicle will be required to be submitted as part of any Stage 2 DA. Further assessment of the proposal against the provisions of SDCP 2012 and the Waste Minimisation Policy will occur as part of the Stage 2 DA.</p>

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.1 Building height	Able to comply	The proposed building envelope has demonstrated that the envelope is able accommodate residential floor-to-floor heights of 3.1 metres.
4.2.3.1 Solar access	Yes	As detailed in the assessment of the proposal against the provisions of SEPP 65 and the RFDC, based on the indicative floor plans, a total of 87% of all residential apartments receive a minimum of 2 hours direct sunlight to the living room windows and private open space in mid-winter between 9.00am and 3.00pm. This exceeds the requirements of both the DCP and the RFDC.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.3.1 Solar access (continued)	Yes	The building envelope has been amended during the assessment to respond to shadows cast across a nearby residential apartment building. Refer to further discussion in the Issues section of this report.
4.2.3.12 Flexible housing and dwelling mix	Able to comply	Indicative floor plans were submitted with the concept plan demonstrating that the envelope is able to accommodate a generally compliant unit mix, and that this layout would achieve the residential amenity guidelines of the DCP and RFDC. Compliance with the unit mix provisions of the DCP will form part of the Stage 2 DA.
4.2.6 Waste minimisation	Able to comply	Refer to previous discussion under Section 3.14 of SDCP 2012.

5. Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.1 Street frontage heights	No	New development is to incorporate a street frontage height or podium between 20 to 45 metres in height, dependant on the street context and/or characteristic built form. In this instance, the proposed envelope does not accommodate a podium element. Further discussion is provided at the issues section below.

5. Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.2.1 Front setbacks	No	<p>As detailed above, the proposed building envelope does not seek to incorporate a podium element on either the Liverpool or Elizabeth Street frontages of the site.</p> <p>The proposed envelope has a nil setback on its Elizabeth Street (western) boundary from ground floor to the uppermost floor of the building. On the Liverpool Street (northern) boundary, the entire above ground level envelope is setback approximately 5.5 metres from the site boundary.</p> <p>As the proposal does not adopt the traditional podium and setback tower form on either street frontage, the scheme is seeking variation from the street frontage height and front setback controls of Section 5.1.1 and 5.1.2 of SDCP 2012. Refer to further discussion in the Issues section of this report.</p>
5.1.2.2 Side and rear setbacks	Yes	<p>The proposed envelope is built to its eastern side boundary. Whilst this is numerically non-compliant with the side setback controls of Section 5.1.2.2 of SDCP 2012, no objection is raised in this instance as the adjacent apartment building to the east (known as 'The Hyde' at 157 Liverpool Street) is also built to this common boundary.</p> <p>Therefore, the lack of setback on this boundary will not result in adverse amenity impacts as both buildings will have blank facades at this interface.</p> <p>In the southeastern corner of the site, the proposed building envelope has been setback between 6.5 and 8.5 metres from the eastern boundary from Level 3 to 36 of the proposed building envelope. The location of this setback is supported as it will ensure that the depth of the future building will be generally consistent with 'The Hyde' when viewed from Clarke Street, and will minimise environmental and amenity impacts to the south facing windows of 'The Hyde'.</p>

5. Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.2.2 Side and rear setbacks (continued)	Yes	<p>With regard to setbacks to the rear, the subject site backs onto Clarke Street. The proposed envelope is built to the boundary from ground floor level to Level 2. Above this, the envelope is setback a variable distance between 4 and 5.3 metres from the boundary of the site. It is noted that the indicative floor plans have sited building services and communal facilities at the lower levels, and therefore, there is no objection to the nil setback on these levels. From Levels 3 and above, there is a minimum separation between the proposed building envelope and the commercial building to the south (at 140 Elizabeth Street) of approximately 13-15 metres.</p> <p>It is noted that above a height of 25 metres, that the proposed separation distances between the envelope and the neighbouring commercial building will be less than that desired by the RFDC (being 18 metres). In this instance, considering the indicative floor plans provided and the orientation of the site, future residential apartments on the site are unlikely to be designed with the primary outlook being the south. Therefore, this separation will be able to be appropriately designed through internal layouts and window placement.</p>
5.1.5 Building exteriors	Able to comply.	The proposal is a concept envelope only. The architecture and materiality will form part of a competitive design process and Stage 2 Development Application.
5.1.8 Award and allocation of heritage floor space	Able to comply	Refer to discussion in LEP compliance table.

ISSUES**Solar Access**

43. Following a preliminary assessment of the originally lodged application, it was noted that the proposed building envelope cast additional shadows across the northern elevation of the residential apartment building to the south of the site, known as 'Hyde Park Towers' at 148A Elizabeth Street.
44. An examination of the floor and strata plans for Hyde Park Towers identified that two apartments were generally located on the northern elevation of that building for its middle levels. Whilst these apartments are generally oriented to either the east or west, they do have secondary windows to their living rooms on the northern elevation, and their primary open space is a small balcony located on this northern elevation.
45. The application was presented to the City's Design Advisory Panel at its meeting on 8 April 2014, where the proposed shadowing impacts of the building envelope were outlined.
46. A recommendation of the Panel was that the applicant should be required to undertake further modelling to identify which elements of the envelope were responsible for the new shadowing being cast on Hyde Park Towers. In relation to the proposal, the Panel provided the following recommendations:
 - (a) *"that the building envelope be adjusted to provide solar access to the Hyde Park Towers residential building. This could be achieved by incorporating modelling to the upper southwest corner of the envelope.*
 - (b) *that the height of the envelope could be increased to match the top of the architectural roof feature of the adjacent building on Liverpool Street, subject to overshadowing analysis. In this case no architectural roof feature should be permitted."*
47. Following feedback on the preliminary assessment of City staff, and the above comments of the Design Advisory Panel, the Applicant submitted an amended scheme on 14 May 2014 to address these matters.
48. This amended scheme provides an alternative design response to the site by chamfering off the southwestern corner of the envelope on Levels 14 to 36 to create a more slender tower form. **Figures 18 to 21**, below, illustrates a comparison of floor plates and envelopes between the originally lodged scheme and the amended proposal.
49. In order to retain the yield of the originally envelope, the Applicant is seeking to increase the height of envelope by 10.5 metres to a maximum height of 120.5 metres (RL 147.40). **Figure 22**, below, illustrates the areas where the chamfered edge is proposed, and the additional height sought to the envelope to accommodate the redistributed floor space. This height would align with the top of the architectural roof feature of 'The Hyde' building located to the east of the site.

50. Further discussion on this matter is provided under the heading of ‘Building Height’ below. However, it is noted that the two matters must be considered separately and modulating the envelope to protect the amenity of the adjacent residential apartment building is not in itself sufficient justification to increase the height of the building. Instead, it is a necessary response to a constrained site.



Figures 18 and 19: The originally lodged tower floor plate (left) and the tower floor plate of the amended scheme, including the chamfered corner (right)

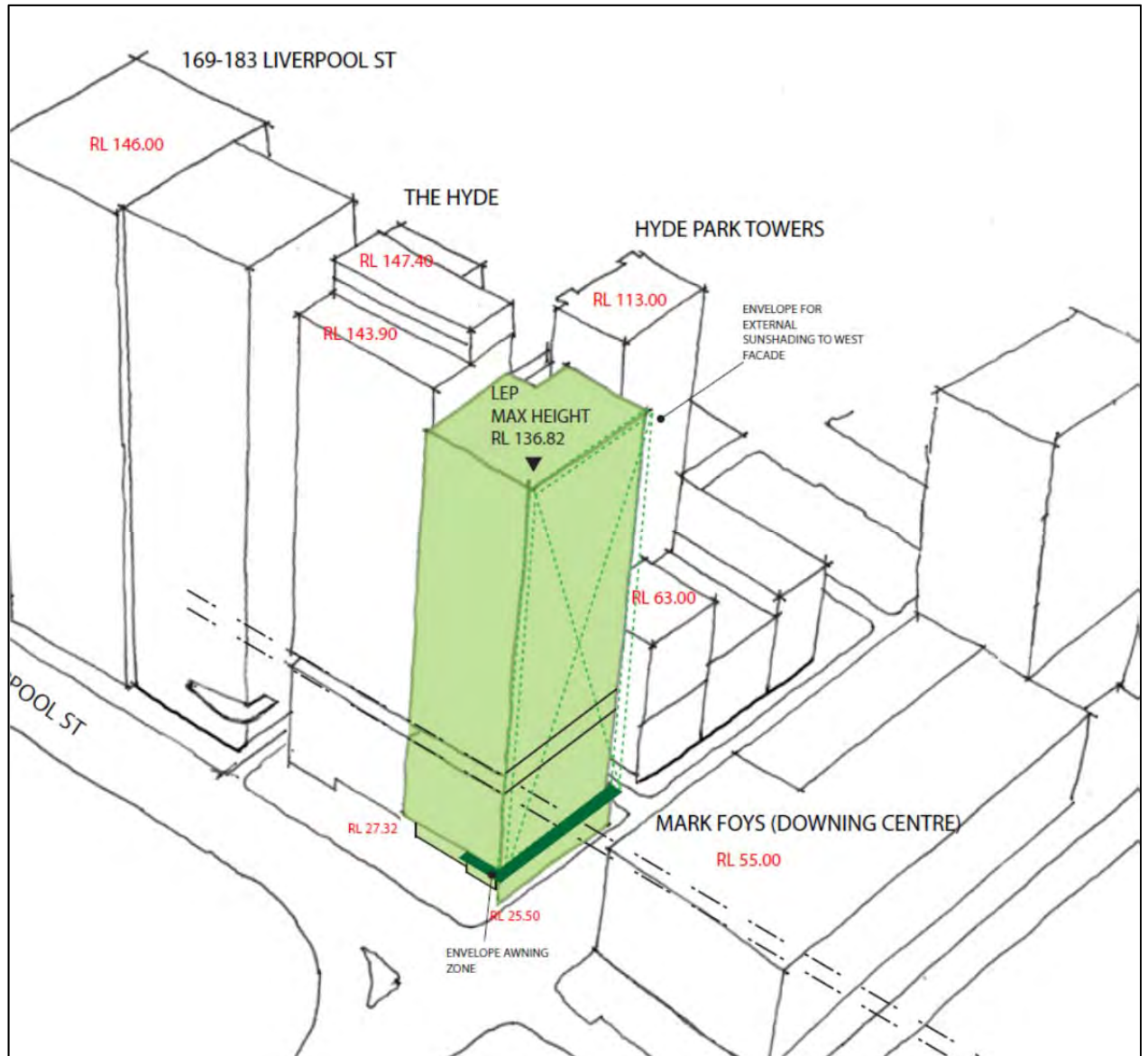


Figure 20: An axometric drawing of the originally lodged building envelope (to a height of 110 metres)

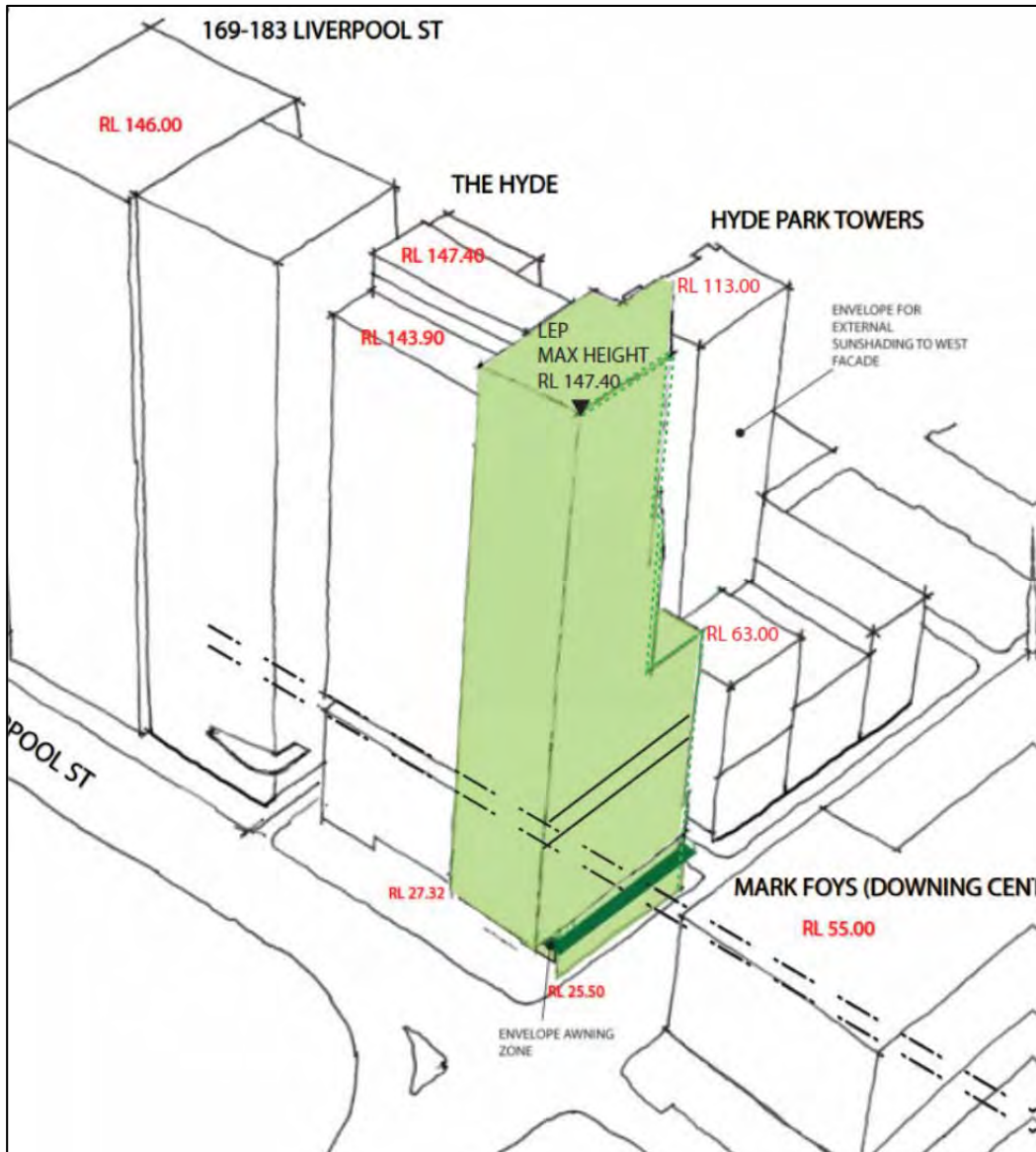


Figure 21: An axometric drawing of the amended building envelope incorporating the additional height (to 120.5 metres) and the chamfered southwestern corner

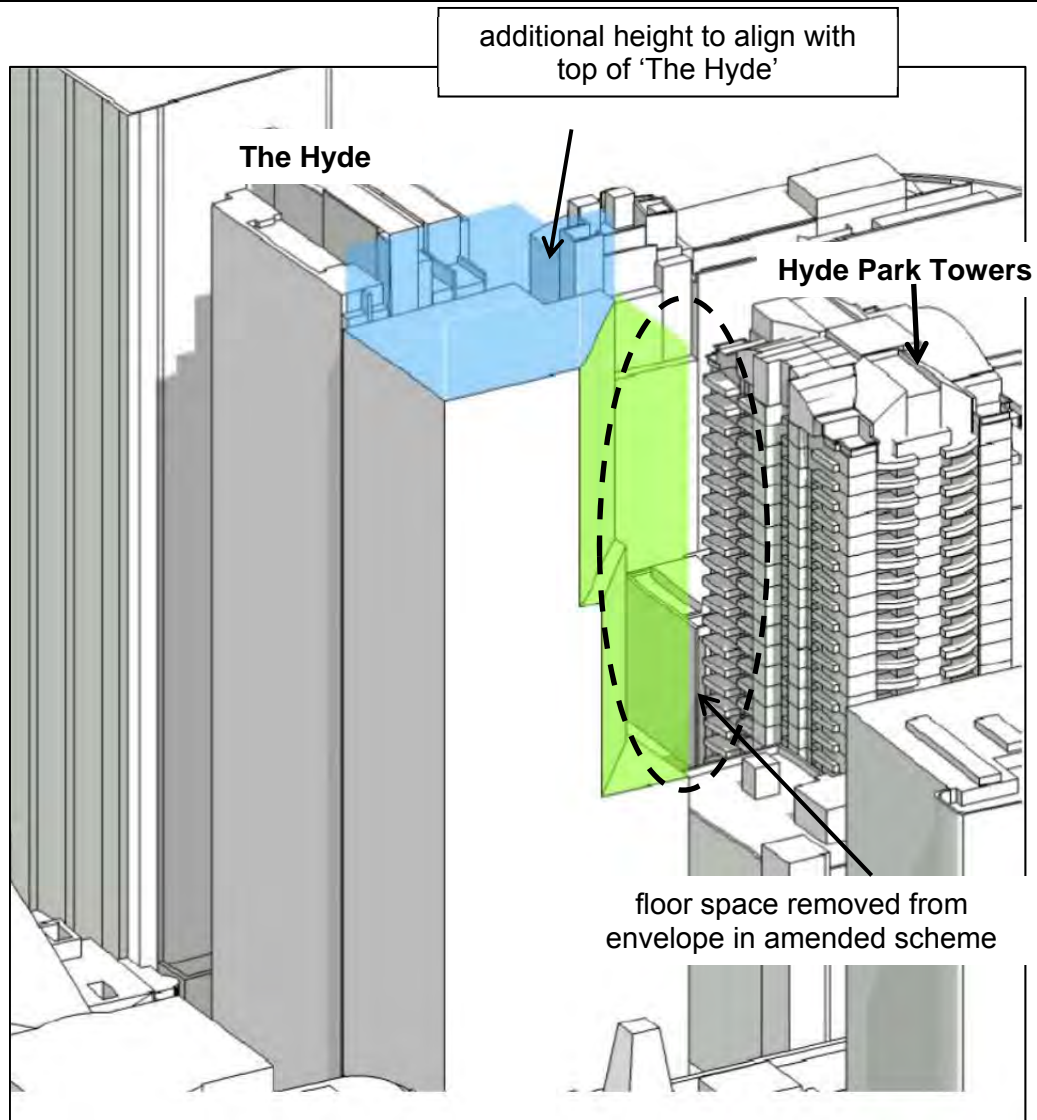


Figure 22: Proposed building envelope looking southwest, illustrating proposed chamfered corner and additional height where floor space is to be redistributed

51. The Applicant has submitted detailing modelling and shadowing analysis to demonstrate that the revised building envelope responds to the primary concern of overshadowing to Hyde Park Towers. This additional shadow analysis is provided at **Attachment B** to this report.
52. Due to the orientation of the sites, any redevelopment of this site will cast new shadows across the building at Hyde Park Towers. The amended scheme has reduced the extent of impact, with the envelope casting new shadows generally between 12 midday and 2.00pm on the 21 June. The specific impacts to the northern elevation of Hyde Park Towers on the winter solstice is detailed below:
 - (a) as a result of the amended building envelope, a further 25 minutes of direct solar access on the winter solstice will now be retained for the northwestern oriented apartments in Hyde Park Towers. This additional solar access will allow these apartments to receive 2 hours solar access on the winter solstice in accordance with both Section 4.2.3.1 of SDCP 2012 and SEPP 65/RFDC; and

- (b) as a result of the amended building envelope, approximately 35 minutes of additional solar access will be retained to the northeastern oriented apartments in Hyde Park Towers on the winter solstice. As a result of this additional solar access, the collective total for these apartments would increase to 1 hour and 50 minutes on 21 June.
53. Whilst these northeastern apartments will receive approximately 10 minutes less direct solar access on the winter solstice than the DCP requirements, the proposal is considered satisfactory in this instance as:
- (a) a number of built form factors that are unrelated to the subject site and the proposed envelope have a detrimental impact on Hyde Park Towers. Firstly, the site is located to the south of the buildings that front Liverpool Street. This built form is characterised by a street wall with tall buildings of 110 metres or greater. Hyde Park Towers is significantly shadowed throughout the day on the winter solstice by both the former American Express building (at 169-183 Liverpool Street) and The Hyde building.
- (b) the subject apartments within Hyde Park Towers are built to the site's northern boundary. Currently these apartments benefit from additional borrowed amenity due to the fact that both properties to its north are yet to be developed to their full potential. It is noted that there are no restrictions on the title of Hyde Park Towers or the immediately adjacent commercial building (at 140 Elizabeth Street) which would prevent the redevelopment of 140 Elizabeth Street. In the event that 140 Elizabeth Street is redeveloped, these secondary living room windows could be obstructed;
- (c) genuine modifications have been made to the scheme to preserve the amenity of these units and to achieve very near numeric compliance with the applicable solar access planning controls in what is a very dense CBD environment. To achieve strict compliance would prevent any redevelopment on the subject site, which is considered to be unreasonable; and
- (d) modelling and analysis has been done to demonstrate that whilst a number of units will not receive two hours of solar access on the winter solstice, that these apartments will receive a minimum of two hours (if not greater) from September through to April (i.e. for seven months of the year).
54. The amended scheme is considered to have satisfactorily addressed preliminary concerns raised regarding overshadowing to the adjacent property, and ensures that the northern windows and balconies in the Hyde Park Towers receive adequate solar access on the winter solstice.

Building Height

55. Clause 4.3 of the Sydney LEP 2012 stipulates a maximum building height of 110 metres for the site.
56. As originally lodged in January 2014, the proposal had a height of 110 metres. The revised scheme submitted on 14 May 2014 has sought to address the abovementioned solar access issue by redistributing floor space from the southwestern corner of the envelope (to the uppermost portion of the building (refer to **Figure 22**, above)).

57. The amended proposal seeks to increase the maximum height of the building envelope to 120.5 metres. This results in a technical variation from the development standard by a maximum of 10.5 metres or a 9.5% variation. The applicant is relying on the provisions of Clause 4.6 of SLEP 2012 to vary the height development standard by a maximum of 10.5 metres.
58. **Figures 23 and 24**, below, illustrate those elements of the building envelope that are in breach of the building height development standard.

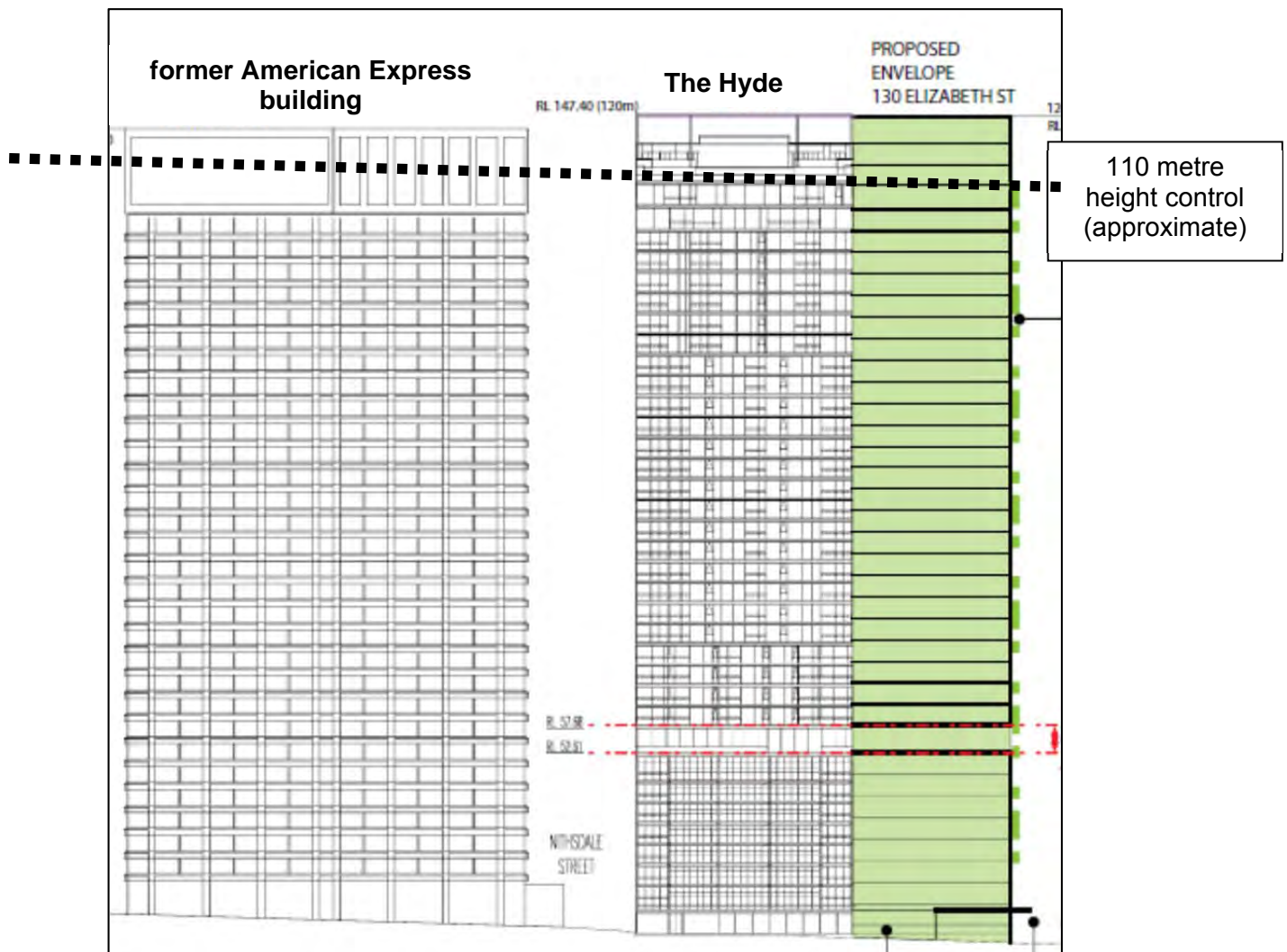


Figure 23: View of the northern elevation of proposed building envelope illustrating the extent of technical breach to the building height development standard

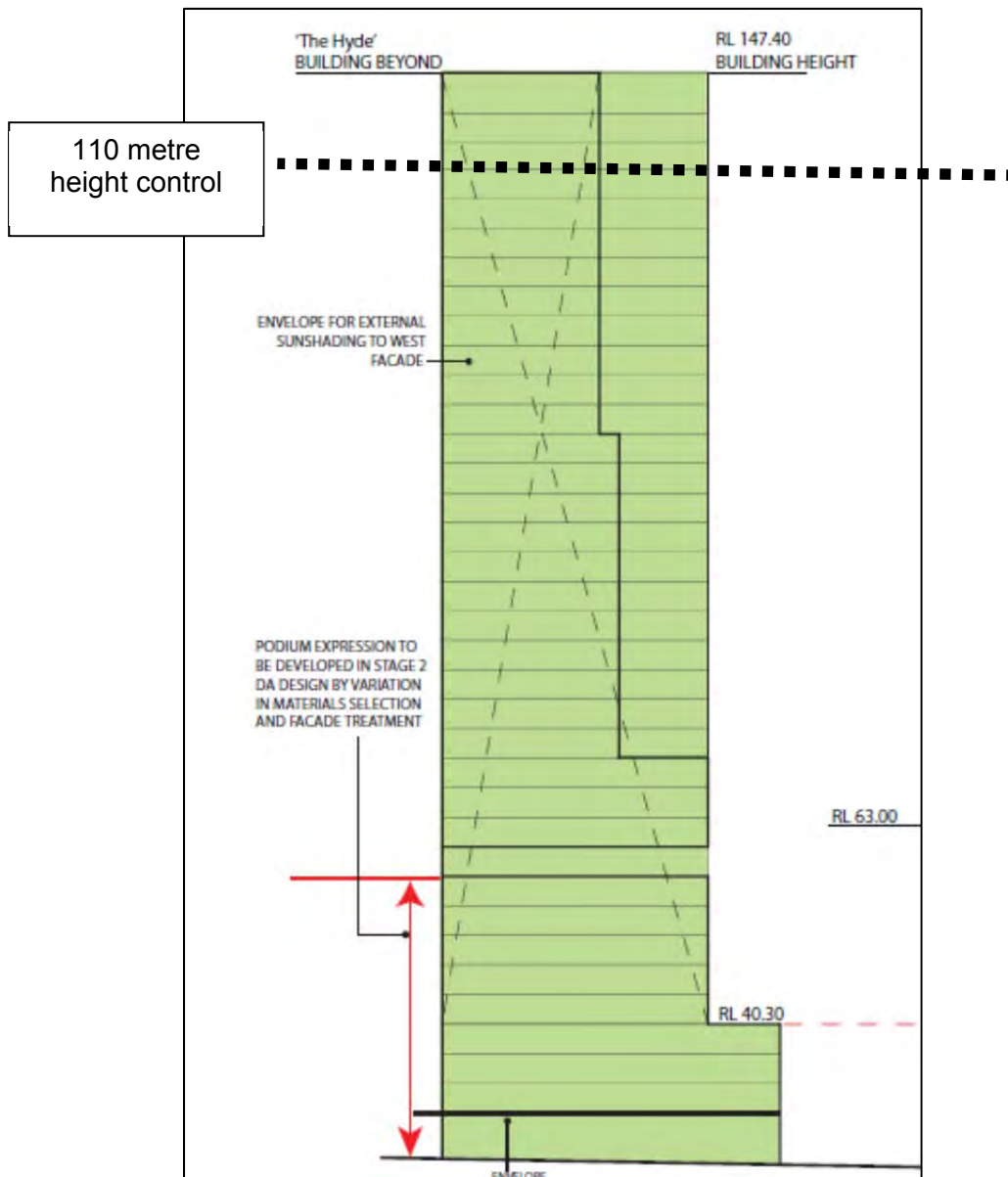


Figure 24: View of the western elevation of proposed building envelope illustrating the extent of technical breach to the building height development standard

59. As part of the assessment of the subject application, consideration has been given to whether the subject site is capable of accommodating additional height above the 110 metre development standard, notably to its contextual fit and amenity impacts to adjacent properties. Furthermore, the Design Advisory Panel noted:
- (a) that this site had a unique context and may be able to accommodate additional height due to the precedent established by the prominent development along Liverpool Street, notably The Hyde (RL 147.40), the former American Express building (RL 146) and The Connaught building (RL 126). These tall buildings present a strong street wall height that defines the southern edge of Hyde Park; and

- (b) that the site is located at the intersection of two prominent CBD streets and is a highly prominent site that is visible from a number of locations in the public domain (including from within Hyde Park). The Panel were of the opinion that replicating the additional height of both buildings to the east could make an important visual statement at this location. It is noted, however, that this is dependent on the architecture of any future scheme.
60. Whilst it is agreed that there may be merit in a tower form that exceeds the current building height development standard for this site, it is considered to be premature that this should be determined as part of any Stage 1 concept proposal. Where a built form above 110 metres is sought, this should form part of the design competition brief. It is considered that the most appropriate time for Council to award any additional height is following the completion of a design competition for the site and as part of any future Stage 2 Development Application. This may be considered under the provisions of Clause 6.21(7)(a) of SLEP 2012, which permits an additional 10% height for a winning architectural scheme being assessed by both the Competition Design Jury and Council as satisfying the design excellence provisions of SLEP 2012.
61. As such, it is not considered appropriate that the written statement submitted by the applicant under Clause 4.6 to vary the building height development standard should be supported at this time.
62. Instead, it is recommended that a condition be imposed to advise that the building envelope is only approved to a height of 110 metres. However, this condition is to note that opportunity exists to seek additional building height through the design excellence provisions of Clause 6.21(7) of SLEP 2012.

Street Frontage Height & Front Setbacks

63. The desired built form for tower development within Central Sydney, as stipulated by Section 5.1.1 and 5.1.2 of the SDCP 2012, incorporates a podium element that is built to the street boundary and varies in height between 20 and 45 metres, dependent on the site context. Above a height of 45 metres, additional storeys are to be set back between 6 to 8 metres.
64. The proposal does not seek to modulate the building envelope to incorporate a podium element with the tower levels further setback from either street frontage. The proposal incorporates the following:
- (a) a building envelope that adopts a nil setback on the Elizabeth Street frontage for the height of the building; and
- (b) on the Liverpool Street frontage, the ground floor footprint is setback between 6.4 and 11 metres from the northern boundary with the collective above ground level envelope setback 5.5 metres from the northern boundary of the site.
65. Whilst the proposal represents a departure from the street frontage height (podium) and front setback control of Section 5.1.1 and 5.1.2 of SDCP 2012, it is considered that the variation can be supported in this particular instance as the proposal still achieves the objectives of SDCP 2012, in the following manner:

- (a) the proposed lack of a street frontage height on this site is contextually appropriate due to the established development pattern of buildings along Liverpool Street. The site's immediate neighbours to the east have been developed over a number of decades, and whilst all these sites have different street frontage widths and architectural styles, all have been developed with no podium and present a consistent setback pattern to the street. The continuation of this development pattern will provide definition to the public domain and strengthen the sense of enclosure to Hyde Park, which are desired elements for this Special Character Area as noted in SDCP 2012. **Figures 25 and 26**, below, demonstrate an analysis of this Liverpool Street context;

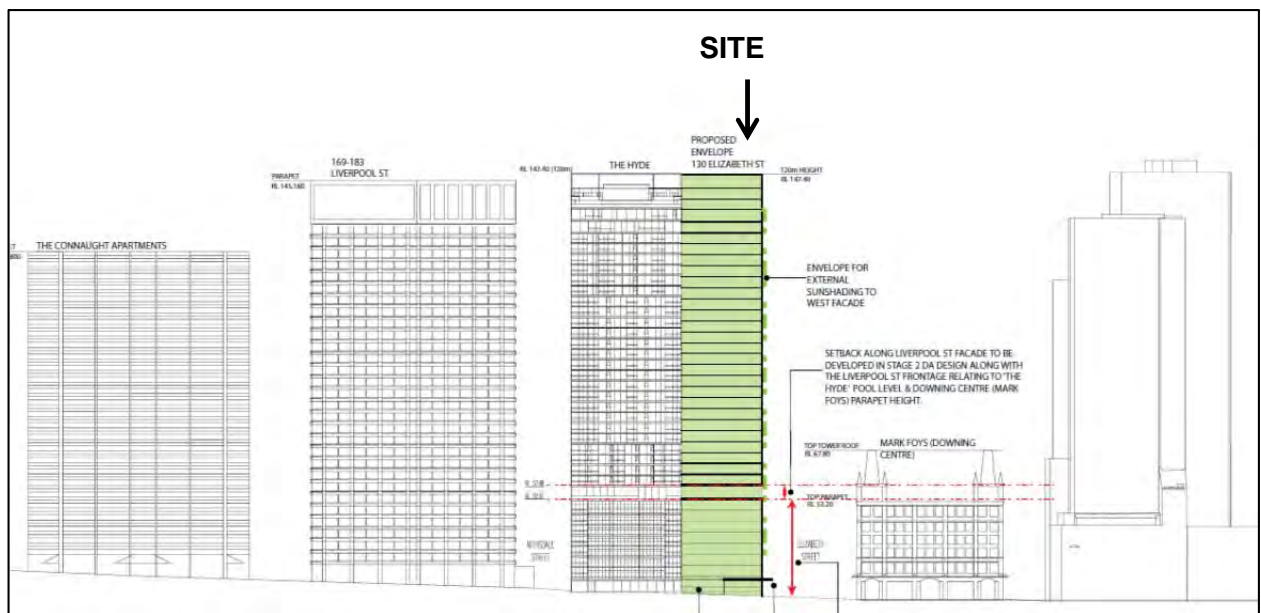


Figure 25: The proposed building envelope in its Liverpool Street context, noting that these buildings do not contain a street frontage height/podium

- (b) the collective building envelope is setback from the northern boundary (Liverpool Street frontage) of the site in response to the existing station entry located within the front setback. It is recommended that a condition be imposed requiring the design competition brief to require consideration of consolidating this entry into the redeveloped building on site to improve the public domain treatment. Secondly, the 5.5 metre setback, whilst a numeric variation from the planning controls, will ensure that the proposal aligns with the adjacent building at 157 Liverpool Street (The Hyde);
- (c) to the west of the site, on the opposite side of Elizabeth Street, is the State heritage listed former Mark Foy Emporium building (now known as The Downing Centre). Whilst no podium is proposed, the height and scale of this building should be utilised in any architectural scheme developed to aid in providing a pedestrian scale to the northern elevation, to break up the building bulk and to reference the heritage context of the building. Whilst this is not a traditional street frontage height/podium, referencing the height of this building through a combination of building articulation and a change in materiality will achieve many of the objectives of a podium feature;

- (d) on the Elizabeth Street frontage of the site, analysis has established that there is variation in the street frontage height in properties to the south of the site (refer to **Figure 27**). It is not considered that incorporating a traditional podium element on this frontage will benefit the future design of the building or result in any positive impacts to the streetscape or neighbouring properties. Instead, it is considered that the amended envelope has incorporated the chamfered edge in the southwestern corner, which both improves the amenity to residents to the south and lessens the building bulk when viewed from or along Elizabeth Street. The detailed design of the building will need to consider how the facade treatment on Liverpool Street (i.e. referencing the scale of the former Mark Foy building) wraps the corner and relates the podium heights of adjacent buildings to the south;
 - (e) due to the site being located opposite Hyde Park, the variations to the setback controls will have negligible effects on daylight access to street level and views of the sky from a pedestrian levels;
 - (f) as detailed elsewhere in this report, it is not the lack of a podium element that was resulting in adverse shadowing being cast onto Hyde Park Towers. The proposal has been amended to modulate the envelope on the southwestern corner to preserve adequate levels of solar access to the adjacent apartment building to the south; and
 - (g) a wind assessment has been submitted with the subject application. The conclusions of this wind assessment are that as a result of the proposed massing, the wind conditions around the subject site will remain similar to the existing conditions. Recommendations have been made with regard to retaining existing street trees and incorporating an awning and appropriate conditions have been imposed to ensure that these recommendations are included in the final design.
66. On balance, with consideration to the above factors that may be impacted when varying the street frontage height and setbacks of a building envelope, the proposed variation is supported in this instance. It is considered that proposed form is contextually appropriate, and the variation to the planning controls does not result in greater environmental or amenity impacts.



Figure 26: Lack of established podium on adjacent buildings on Liverpool Street, and location of podium interpretation zone to reflect height of the adjacent State heritage listed Mark Foy Emporium building



Figure 27: No established podium/street frontage height along Elizabeth Street

Floor Space

67. Documentation has been submitted as part of this application to demonstrate that the subject building envelope is able to accommodate a total of 15,020sqm of gross floor area. This equates to a FSR of 15.3734:1, which includes a 10% bonus FSR for design excellence under the provisions of Clause 6.21(7)(b) of SLEP 2012.

68. As part of the development application documentation, the Applicant has prepared a design excellence strategy indicating their intent that following any positive determination of the subject Stage 1 Development Application, that a competitive design process will be undertaken. As part of this process a competition brief will outline that it is the intention that additional 10% FSR available under the provisions of Clause 6.21 of SLEP 2012 be sought.
69. As is similar to the argument for additional height, it would be premature to award any floor space as part of a concept plan, as:
- (a) the maximum permissible floor space is calculated proportionally on land uses, which are not locked in as part of the Stage 1 application; and
 - (b) the 10% bonus floor space for design excellence will be based on the final architectural design being assessed by both the competition design jury and Council as satisfying the design excellence provisions of SLEP 2012.
70. As such, it is recommended that no FSR be approved as part of the subject application, but rather, a condition be imposed to advise that any future Stage 2 development application must be compliant with FSR development standard of SLEP 2012 (excluding a 10% uplift).
71. It should also be noted that the provisions of Clause 6.21(7) of SLEP 2012 allow up to an additional 10% 'bonus' FSR or building height, not both. The Applicant will need to clarify their intent on whether they are pursuing height or FSR under these design excellence provisions as part of their design competition brief.

Other Impacts of the Development

72. The proposed development is capable of complying with the BCA.
73. 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

74. 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

75. The application was referred to Council's Urban Designer; Heritage Specialist, Public Domain Unit; Health Unit; 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**

76. In accordance with Schedule 1 of 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 28 January 2014 and 26 February 2014. As a result of this notification, sixteen (16) submissions were received. Thirteen (13) of these were pro-rata submissions. The content of these submissions is summarised below:

Construction impacts:

- (a) Impact of excavation and construction on The Hyde building.
- (b) Request a detailed photographic dilapidation report be undertaken.
- (c) Require the developer to undertake regular removal of dust and debris from the facade of The Hyde during construction.
- (d) No timeframe is included in the application for likely demolition works to commence.

Response: The subject application is a Stage 1 concept plan only. No demolition is proposed or recommended for approval as part of the subject application. The developer will be required to prepare more detailed information in relation to geotechnical investigation as part of the Stage 2 Development Application, and it is likely that any consent granted for a Stage 2 Development Application would include dilapidation report requirements for the adjacent building, known as The Hyde.

Height:

- (e) The proposal should not be allowed to exceed the 110 metre building height development standard.

Response: As part of the Stage 1 concept plan, development consent is limited to a building envelope to a height of 110 metre. Any additional height above the development standard will need to form part of the Stage 2 Development Application.

Setbacks:

- (f) The building envelope should be required to align with The Hyde building on its Liverpool Street frontage.
- (g) The setbacks of the proposal from Clarke Street are not in alignment with The Hyde building.

Response: The amended building envelope aligns with the adjacent building at 157 Liverpool Street, both at ground and upper levels of the building envelope. The proposed setbacks from the Clarke Street frontage have been assessed as satisfactory when considered against the footprint of the existing commercial building on site, the separation distances to properties to the south, and in response to preserving solar access to properties to the south. The tower envelope proposed is marginally deeper than that of The Hyde (by approximately 1 metre); however, this is considered to be acceptable when the collective modulation of the envelope is considered.

Amenity:

- (h) Loss of privacy from the rear of The Hyde building due to the location of balconies.
- (i) Object to location and design of the communal pool area due to noise and privacy impacts to the bedrooms of The Hyde building.

Response: The floor plans submitted with the application are indicative only and are not approved as part of the subject application. The internal planning of windows, balconies and communal facilities will form part of the brief for competitive design process. The final architectural design of the building, including internal layouts, will be the subject of a further Stage 2 development application.

- (j) Loss of views from bedrooms to the west from protrusion behind the rear building line of The Hyde building.
- (k) Loss of views westward along Liverpool Street from The Hyde building.

Response: Apartments in The Hyde are oriented towards Hyde Park to the north. When considered against the principles of Tenacity Consulting v Warringah [2004] NSWLEC 140, the proposed envelope is not considered to result in the loss of iconic views from south facing windows of The Hyde development. It is noted that any existing views over the rooftop of the existing building is an oblique outlook of the City skyline from a secondary room (i.e. bedrooms), not the principal living space.

Overshadowing:

- (l) Overshadowing to the northeastern corner units of Hyde Park Towers.
- (m) Overshadowing to the outdoor balcony at Level 8 of The Hyde.

Response: The proposed building envelope has been amended to ensure that the northeastern oriented apartments in the Hyde Park Towers building retain 2 hours of solar access in midwinter (21 June), in accordance with the provisions of SDCP 2012. The outdoor balcony on Level 8 of The Hyde building is located on the northern facade of that development and would not be impacted by the proposed envelope.

Station entry:

- (n) Access to Museum Station should be enhanced by the proposal and incorporated into any design.

Response: A condition is recommended for imposition requiring that the competitive design brief include a review of the existing entry to Museum Station located within the public domain to the north of the site, to try to incorporate this feature into any redevelopment of the subject site.

Traffic and Parking:

- (o) The proposal will increase congestion to the immediate surrounding area, both pedestrians and vehicles.

Response – No car parking is approved as part of the subject application. However, the indicative car parking numbers are consistent with the maximum numbers permissible under SLEP 2012. Being a predominately residential development, it is not anticipated that the proposal would generate significant additional pedestrian movements to the area, and would not be unreasonable considering the CBD location of the site.

77. As a result of a scope of amendments proposed, the amended scheme was re-notified for a 28-day period in accordance with Schedule 1 of SDCP 2012. The amended scheme was notified and advertised for a 28-day period between 22 May 2014 and 20 June 2014. No submissions were received as a result of the re-notification of the application.

PUBLIC INTEREST

78. 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**

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

RELEVANT LEGISLATION

80. The Environmental Planning and Assessment Act 1979.

CONCLUSION

81. The proposal seeks consent for a Stage 1 concept plan for a 120.5 metre building envelope on the site at 130-134 Elizabeth Street, Sydney.
82. The proposal has been amended during the assessment to modulate the building envelope to minimise the extent of shadow cast onto the northern facade of the residential apartment building at 148A Elizabeth Street, Sydney (Hyde Park Towers).
83. It is noted that the amended scheme has sought to increase the height of the building envelope to 120.5 metres, which represents a numeric departure from the building height development standard by 10.5 metres (or a 9.5% variation). The Applicant has submitted a written request under the provisions of Clause 4.6 of SLEP 2012 seeking to vary the building height development standard due to the contextual relationship of adjacent buildings along Liverpool Street and due to the improvements made to the amenity of the adjacent residential apartments than a strictly compliant scheme.
84. Whilst there may be contextual merits that allow the subject site to accommodate additional height, it is considered that this should form part of the detailed design Stage 2 Development Application, following the completion of a competitive design process where there is greater certainty in the architectural form and distribution of massing.
85. It is considered that as amended, and subject to the imposition of the recommended conditions, that the proposed building envelope and indicative land uses generally respond to the constraints of the site and applicable planning controls. In those instances where variation is sought to the planning controls, such as street frontage height and setbacks, there is considered to be justifiable immediate context to support the variations.
86. Development Application D/2014/58 is recommended for approval, subject to the recommended conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Nicola Reeve, Senior Planner)