

ITEM 5. DEVELOPMENT APPLICATION: 130-134 ELIZABETH STREET SYDNEY**FILE NO: D/2014/2013****DEVELOPMENT APPLICATION NO: D/2014/2013****SUMMARY**

Date of Submission:	23 December 2014
Amended:	23 June 2015 and 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:	<p>The subject application seeks consent for a 38-storey mixed use development, and encompasses the following:</p> <ul style="list-style-type: none">• demolition of existing structures;• excavation for basement levels;• vehicular access off Clarke Street;• 140 residential apartments;• 190sqm of retail floor space, comprising 4 retail premises;• 92 car parking spaces;• relocated pedestrian entry to Museum railway station; and• landscaping, public art and public domain works.

The application was notified for 28-days in January/February 2015. The notification of the application resulted in 17 submissions being received, raising the following matters:

- non-compliance of height with Sydney LEP 2012;
- non-compliance of Floor Space Ratio (FSR) with Sydney LEP 2012;
- inconsistency with Stage 1 building envelope;
- design of station entry, including accessibility;
- the appropriateness of the facade and architectural treatment;

Proposal Summary:
(continued)

- traffic and parking;
- overshadowing;
- loss of views/outlook;
- loss of privacy; and
- construction impacts.

The proposal has been amended during the assessment period to address preliminary concerns raised relating to height, upper level setbacks and amenity impacts to the adjacent development (The Hyde). Amended plans and supplementary information were submitted in June and July 2015 to address these matters.

The amended scheme was re-notified for a further 14 day period between 23 June 2015 and 8 July 2015 to the owner of the penthouse apartment of 'The Hyde', as they would be the affected party of these changes. A further submission was received on behalf of the owner of the penthouse apartment in The Hyde on the following basis:

- non-compliance height with Sydney LEP 2012;
- relies on architectural roof feature of 'The Hyde' as a precedent for additional height;
- privacy screens and planter bed will impact on westerly views from 'The Hyde' penthouse;
- overlooking; and
- proposal does not exhibit design excellence.

As the subject application seeks consent for a building with a height above 110 metres, a concurrent Section 96(2) application has been lodged to vary the Stage 1 building envelope (being Development Application D/2014/58). Modification of this Stage 1 building envelope is required to ensure consistency between the staged applications, as is required pursuant to Section 83D of the Environmental Planning and Assessment Act, 1979.

The Applicant has submitted a statement under the provisions of Clause 4.6 of Sydney LEP 2012 to justify the variation of the building height and floor space ratio development standards. As detailed in the Issues section of this report, the building height variation is supported due to the contextual built form and overall improved massing of the subject scheme as opposed to a compliant envelope. The FSR variation is supported in this instance due to a pending amendment to Sydney LEP 2012, which (when gazetted) will permit the exclusion of wintergardens from calculation of FSR.

- Proposal Summary:** (continued) As amended, the proposal is considered to be generally consistent with the relevant planning controls and existing consents in place for the site (as amended), and responds appropriately to the constraints of the site. The proposal is considered to be a satisfactory design outcome and contextually appropriate for its siting in the Sydney CBD.
- Summary Recommendation:** The development application is recommended for approval, subject to conditions.
- Development Controls:**
- (i) Environmental Planning and Assessment Act, 1979
 - (ii) Sydney Local Environmental Plan 2012
 - (iii) Draft SLEP 2012 Amendment - Minor Policy and Housekeeping Amendments (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 - Architectural Plans

RECOMMENDATION

It is resolved that:

- (A) the requirement of Section 51N of the City of Sydney Act 1988 to consult with the Central Sydney Traffic and Transport Committee not apply in this instance as the proposal does not require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD;
- (B) pursuant to the provisions of Clause 4.6 of the Sydney Local Environmental Plan 2012, that the variation sought to Clause 4.3 (Building Height) and Clause 4.4 (Floor Space Ratio) of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (C) consent be granted to Development Application No. D/2014/2013, subject to the following conditions:

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

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

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2014/2013, dated 23 December 2014, and the following drawings:

Drawing Number	Architect	Date
DA03.101(A) Revision A Basement Plan Level B7	Bates Smart	19 December 2014
DA03.102(A) Revision A Basement Plan Level B2-B6	Bates Smart	19 December 2014
DA03.103(A) Revision A Basement Plan B1	Bates Smart	19 December 2014
DA03.200(B) Revision B Ground Level Plan	Bates Smart	2 July 2015
DA03.201(B) Revision B Level 1 Plan	Bates Smart	2 July 2015
DA03.202(B) Revision B Level 2 Plan	Bates Smart	2 July 2015

Drawing Number	Architect	Date
DA03.203(B) Revision B Level 3 Plan	Bates Smart	2 July 2015
DA03.204(A) Revision B Lower Podium Plan Levels 4-6	Bates Smart	2 July 2015
DA03.207(A) Revision B Upper Podium Plan Levels 7-8	Bates Smart	2 July 2015
DA03.209(A) Revision B Lower Setback Level Level 9	Bates Smart	2 July 2015
DA03.210(B) Revision B Low Tower Plan Levels 10-15	Bates Smart	2 July 2015
DA03.216(B) Revision B Upper Setback Plan Level 16	Bates Smart	2 July 2015
DA03.217(B) Revision B Lower Mid Tower Plan Levels 17-20	Bates Smart	2 July 2015
DA03.221(B) Revision B Upper Setback Plan Level 21	Bates Smart	2 July 2015
DA03.222(B) Revision B Upper Mid Tower Plan Levels 22-25	Bates Smart	2 July 2015
DA03.226(B) Revision B Upper Setback Level Level 26	Bates Smart	2 July 2015
DA03.227(B) Revision B High Tower Plan Levels 27-30 & Level 32	Bates Smart	2 July 2015
DA03.231(B) Revision B Upper Setback Level Level 31	Bates Smart	2 July 2015
DA03.233(B) Revision B High Tower Plan Level 33	Bates Smart	2 July 2015

Drawing Number	Architect	Date
DA03.234(B) Revision B High Tower Plan Level 34	Bates Smart	2 July 2015
DA03.235(B) Revision B High Tower Plan Level 35	Bates Smart	2 July 2015
DA03.236(B) Revision B High Tower Plan Level 36	Bates Smart	2 July 2015
DA03.237(B) Revision B Penthouse Level 37	Bates Smart	2 July 2015
DA03.238(B) Revision B Penthouse Level 38	Bates Smart	2 July 2015
DA03.239(B) Revision B Roof Plan/Level 39	Bates Smart	2 July 2015
DA07.001(B) Revision B North Elevation Liverpool Street	Bates Smart	2 July 2015
DA07.002(B) Revision B West Elevation Elizabeth Street	Bates Smart	2 July 2015
DA07.003(B) Revision B South Elevation Clarke Street	Bates Smart	2 July 2015
DA08.001(B) Revision B Section 01	Bates Smart	2 July 2015
DA08.002(B) Revision B Section 02	Bates Smart	2 July 2015
DA08.003(B) Revision B Section 03	Bates Smart	2 July 2015

and as amended by the conditions of this consent.

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

(2) DESIGN MODIFICATION - WINTERGARDENS

Amended plans (elevations and sections) shall be submitted to modify the wind barrier screens of the external elevations of all wintergardens within the proposed development. The wind barrier screens shall be amended to include the following:

- (a) Include a permanent opening that is a minimum of 25% of the external face of each elevation of the respective wintergarden and must include an opening at the top of the enclosure;
- (b) The permanent opening must span the entire length of the balcony/wintergarden; and
- (c) The permanent opening must have a minimum height at the top of the enclosure of minimum of 300mm or 10% of the finished floor to ceiling height of the wintergarden, whichever is greater.

The amended plans and any supplementary information are to be submitted to and approved by the Director City Planning, Development and Transport prior to the issue of any Construction Certificate.

(3) DESIGN MODIFICATION - HEIGHT OF SCREEN AROUND ROOF TERRACE

Amended plans shall be submitted to reduce the height of the screen/parapet around the perimeter of the Level 37 roof terraces to no higher than 1.6 metres above the finished floor level of the terraces.

The amended plans and any supplementary information are to be submitted to and approved by the Director City Planning, Development and Transport prior to the issue of any Construction Certificate.

(4) DESIGN QUALITY EXCELLENCE

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

(5) FLOOR SPACE RATIO - CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed 16.22:1 calculated in accordance with the Sydney Local Environmental Plan 2012. For the purpose of the calculation of FSR, the Floor Space Area of the approved development is 15,849sq.m (including 823sq.m of wintergarden floor space).
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the total and component Floor Space Areas (by use) in the development, utilising the definition under Sydney Local Environmental Plan 2012 applicable at the time of development consent, to the satisfaction of the Principal Certifying Authority.
- (c) Prior to a Construction Certificate being issued, Council's written verification must be obtained, confirming that 3,428sq.m of heritage floor space was allocated (purchased and transferred) to the development, being that floor space in excess of 8:1 as specified in the Sydney Local Environmental Plan 2012. Note: The allocation of heritage floor space has been reduced in accordance with the provisions of Clause 6.11(2)(a) of Sydney Local Environmental Plan 2012.

(6) BUILDING HEIGHT

- (a) The height of the building, including any roof top plant and associated equipment, must not exceed RL 147.4 (AHD) to the top of the building.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the building accords with (a) above, to the satisfaction of the Principal Certifying Authority.

(7) COMPLIANCE WITH SUBMITTED MATERIALS AND SAMPLES BOARD

The design details of the proposed building facade including all external finishes, colours and glazing must be in accordance with the materials schedule and sample board, and specifications, prepared by Bates Smart, and submitted to Council with Development Application D/2014/2013 on 23 December 2014.

(8) RETAIL USE - SEPARATE DA REQUIRED

A separate development application for the fit-out and use of the ground and upper ground floor level retail tenancies must be submitted to and approved by Council prior to that fit-out or use commencing, unless that future use is subject to the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

(9) APPROVED DESIGN ROOF - TOP PLANT

All roof-top plant and associated equipment must be located within the approved building height and behind parapets.

(10) USE OF COMMON AREAS AND FACILITIES

The gymnasium and terrace on Level 3 must be available for the use of all residents of the building, and must be designated as common property on any strata subdivision of the site, with no exclusive use rights.

(11) SIGNS - SEPARATE DA REQUIRED

A separate development application for any proposed signs (other than exempt or complying signs under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 must be submitted to and approved by Council prior to the erection or display of any such signs.

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

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

- (a) Prior to a Construction Certificate being issued, evidence must be provided of Council's written verification of the amount of the contribution as required in (b) below, and then that the levy has been paid to the Council in accordance with this condition. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Direct debit, personal or company cheques will not be accepted.
- (b) The contribution must not be paid to the City of Sydney until it is accompanied by separate written verification by the City of Sydney of the specific amount payable. In order to obtain such verification, the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" indicating the itemised cost of the development must be completed and submitted to Council by the Certifying Authority (CA), together with copies of the plans the subject of the application for the Construction Certificate. A copy of the required format for the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" may be obtained from the City of Sydney One Stop Shop, any of the Neighbourhood Service Centres and the City of Sydney's website (www.cityofsydney.nsw.gov.au).

The Council will consider the documentation submitted under subclause (b) and determine the cost of the proposed development having regard to the information submitted and to such other matters as it considers appropriate and will notify the CA accordingly.

- (c) The items to be included in the calculation of the cost of development are demolition works, site remediation including decontamination, excavation and site preparation, construction costs, fit out, professional fees as part of the design (including design competitions) documentation and implementation process, fixed building machinery, equipment and appliances, kitchens and bar areas, car parking, air conditioning plant and equipment, services (fire, mechanical ventilation, electrical, hydraulic), ceilings, fire protection devices, installation of services (power, water, sewer, telephone), lifts and other essential machinery, floor coverings, Building Code of Australia compliance works, replacement of existing materials, fixtures and fittings, construction related insurance, assessment and construction related fees, charges and GST and any other matter not expressly excluded in (e) below.
- (d) The items to be excluded in the calculation of the cost of development are the cost of land, marketing expenses (excluding display suites etc), finance and interest, building insurance after practical completion, drapery, commercial stock inventory, loose furniture, loose equipment, loose electrical appliances, minor maintenance of existing retained fixtures (patching, repainting) and stamp duty.

(13) ALLOCATION OF PARKING

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

Car Parking Type	Number
Residential spaces	67
Accessible residential spaces	23
Retail parking	1
Car Share	1
Total	92

(14) ALLOCATION OF ACCESSIBLE CAR PARKING SPACES

For residential development, accessible car parking spaces for people with mobility impairment are only to be allocated as visitor parking or to adaptable units. Where allocated to adaptable units, the unit(s) and car spaces must be assigned to the unit in any future strata subdivision of the building.

(15) ASSOCIATED ROADWAY COSTS

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

(16) BICYCLE PARKING AND END OF TRIP FACILITIES

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

Bicycle Parking Type	Number	Requirements
Residential	140	Spaces must be a class 1 bicycle locker (see notes part [i]) or class 2 facilities.
Residential visitor	10	Spaces must be Class 3 bicycle rails
Non-residential	2	Spaces must be Class 2 bicycle facilities
End of Trip Facility Type	Number	
Showers with change area	1	End of trip facilities are to be provided in close proximity to the bike parking area.
Personal lockers	2	

Notes:

- (i) If a basement storage area on title that is large enough to store a bike and is no smaller than a class 1 bike locker this can be counted as a space, except that a minimum of 48 of the residential bicycle parking spaces are to be provided in a class 2 facility located at either ground floor level or basement level 1.
 - (ii) All visitor and customer bicycle parking spaces are to be provided at ground floor level.
 - (iii) Staff and residential bicycle parking spaces can be co-located in a class 2 facility.
- (b) The layout, design and security of bicycle facilities must comply with the minimum requirements of Australian Standard AS 2890.3 Parking Facilities Part 3: Bicycle Parking Facilities. The details must be submitted to and approved by the Principle Certifying Authority confirming prior to the Construction Certificate being issued.

(17) CHANGES TO KERB SIDE PARKING RESTRICTIONS

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

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

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

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

(18) COST OF SIGNPOSTING

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

(19) ON SITE LOADING AREAS AND OPERATION

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

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

(20) PARKING DESIGN

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

(21) PROHIBITION ON PARTICIPATION IN RESIDENT PARKING PERMIT SCHEME - APPLICATION OF CITY OF SYDNEY PARKING POLICY

All owners, tenants and occupiers of this building are advised that it is the Policy of Council that they are not eligible to participate in any existing or proposed Council on-street resident parking schemes. The owner of the dwelling must advise all intending owners, tenants and occupiers of the dwelling of this prohibition in writing at the time of entering into a purchase / lease / occupancy agreement.

(22) SECURITY GATES

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

(23) SERVICE VEHICLE SIZE LIMIT

The size of vehicles servicing the property must be a maximum length of 9.24 metres.

(24) SIGNAGE TO INDICATE NON PARTICIPATION IN RESIDENT PARKING PERMIT SCHEME

Signs reading 'all owners, tenants and occupiers of this building are advised that they are not eligible to obtain an on-street resident parking permit from Council' must be ***permanently displayed and located*** in prominent places such as at display apartments and on all directory boards or notice boards, where they can easily be observed and read by people entering the building. The signs must be erected prior to an Occupation Certificate being issued and must be maintained in good order at all times ***by the Owners of the building***.

(25) SIGNAL SYSTEM

A system of traffic lights and/or mirrors must be installed at the ends of any single lane ramp(s), to indicate traffic movement on the ramp(s). This system must be detailed in the application for a construction certificate. Any system using traffic light signals must maintain a green signal to entering vehicles at the point of entry, and must maintain a red signal when an exiting vehicle is detected upon the ramp or driveway.

(26) SIGNS AT EGRESS

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

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

(27) TRAFFIC WORKS

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

(28) VEHICLE FOOTWAY CROSSING

A separate application is to be made to, and approved by, Council for the construction of any proposed vehicle footway crossing or for the removal of any existing crossing and replacement of the footpath formation where any such crossings are no longer required.

All disused or redundant vehicle crossings and laybacks must be removed and footway, kerb, gutter and road restoration reinstated in accordance with Council's standards, to suit the adjacent finished footway and edge treatment materials, levels and details, or as otherwise directed by Council officers. All construction and replacement works are to be completed in accordance with the approved plans prior to the issue of an Occupation Certificate.

Note: In all cases the construction materials should reinforce the priority of pedestrian movement over that of the crossing vehicle.

(29) PROJECTIONS OVER PUBLIC ROAD

The proposed architectural embellishments attached to the building, shown as overhanging the footways of Elizabeth Street and Clarke Street, must not overhang the alignments of those streets by more than 0.45m, and shall comply with the provisions of Schedule 4 ("Projections over or into public roads") of the Sydney Development Control Plan 2012.

(30) RESTRICTION ON RESIDENTIAL DEVELOPMENT

The following restriction applies to buildings approved for residential use:

- (a) The accommodation portion of the building (levels 1 to 37) must be used as permanent residential accommodation only and not for the purpose of a hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like, other than in accordance with the Sydney Local Environmental Plan 2012.
- (b) A restrictive covenant is to be registered on the title of the development site in the above terms and restricting any change of use of those levels from "residential accommodation" as defined in Sydney Local Environmental Plan 2012. The covenant is to be registered on title prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, to the satisfaction of the Council. All costs of the preparation and registration of all associated documentation are to be borne by the applicant.
- (c) If a unit contains tenants, it must be subject to a residential tenancy agreement for a term of at least three months.
- (d) An owner, tenant or Owners Corporation shall not permit a Building Manager or agent to advertise or organise for short term accommodation or share accommodation in the building.

(31) RESTRICTION ON USE OF CAR SPACES - RESIDENTIAL

The following conditions apply to car parking:

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

(32) WIND ENVIRONMENT STUDY

- (a) The recommendations of the Environmental Wind Speed Measurements on a Wind Tunnel Model Study (Reference number 155/14), prepared by MEL, dated December 2014 shall be implemented in the final design, with details illustrating compliance with this condition to be submitted for approval to the Certifying Authority prior to the issue of a Construction Certificate.

- (b) No consent is given or implied to the installation of a wind break screen/s on or around the indicative outdoor seating area on the Liverpool Street frontage of the site to be associated with the future ground floor retail tenancies. Any wind mitigation measures for a future outdoor dining area should form part of any future use and fit-out development application for the retail tenancies.

(33) EXTERNAL LIGHTING

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

(34) REFLECTIVITY

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

(35) SUBMISSION OF REVISED ACOUSTIC REPORT

Prior to the issue of any Construction Certificate, a revised acoustic report shall be prepared to supplement the content in the report entitled 'Noise Impact Assessment' (Reference: 2539-RPT-AC000(01)), prepared by Inhabit Group, dated 18 December 2014.

The acoustic report must be revised to specify the detail of attenuation measures required to be implemented to achieve the noise criteria (identify specific engineering controls to achieve the required R_w ratings and to ensure compliance with Sydney DCP 2012. This amended acoustic report should include assessment of the gymnasium use, mechanical plant.

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

(36) NOISE - GENERAL

- (a) The emission of noise associated with the use of the premises including the cumulative operation of any mechanical plant and equipment, and air conditioning shall comply with the following:
- (i) The $L_{Aeq, 15 \text{ minute}}$ noise level emitted from the use must not exceed the project specific noise level for that receiver as determined in accordance with the NSW EPA Industrial Noise Policy. Noise must be measured in accordance with the Industrial Noise Policy and relevant requirements of Australian Standard AS 1055-1997 Acoustics – Description and measurement of environmental noise.
 - (ii) Project specific noise levels shall be determined by establishing the existing environmental noise levels, in complete accordance with the assessment $L_{A90, 15 \text{ minute}}$ / rating $L_{A90, 15 \text{ minute}}$ process to be in accordance with the requirements for noise monitoring listed in the NSW EPA Industrial Noise Policy and relevant requirements of Australian Standard AS1055-1997 Standard AS 1055-1997 Acoustics – Description and measurement of environmental noise.

- (iii) Modifying factors in Table 4.1 of the NSW EPA Industrial Noise Policy are applicable.
- (b) A cumulative LAeq,15minute noise level emitted from the use consistent with the operation of any mechanical plant, equipment, tool and air conditioning must not exceed the LA90, 15minute noise level by more than 3dB in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed inside any habitable room of any affected residence or noise sensitive commercial receiver provided that;
 - (i) Where the $L_{A90, 15minute}$ noise level is below the threshold of hearing, Tf at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of Tf corresponding to that Octave Band Centre Frequency shall be used instead.
 - (ii) The $L_{Aeq,15minute}$ noise level and the $L_{A90,15minute}$ noise level shall both be measured with all external doors and windows of the affected residence closed;
 - (iii) The relevant background noise level (LA90, 15 minute) is taken to mean the day, evening or night rating background noise level determined in complete accordance with the methodology outlined in the NSW EPA Industrial Noise Policy and Australian Standard AS1055.1997 Acoustics – Description and measurement of environmental noise.
 - (iv) Background noise shall be established in the absence of all noise emitted from the use but with the ventilation equipment normally servicing the affected residence operating. Background noise measurements are to be representative of the environmental noise levels at the affected location.
 - (v) Modifying factors in Table 4.1 of the NSW EPA Industrial Noise Policy are applicable. Internal Noise measurements are not to be corrected for duration.

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

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

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

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

- (a) Identification of noise sensitive receivers near to the site.

- (b) A prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the City of Sydney Construction Hours /Noise Code of Practice 1992 for the typical construction hours of 07.00am to 7.00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of neighbouring property.
- (c) A representative background noise measurement ($L_{A90, 15 \text{ minute}}$) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997.
- (d) Confirmation of the level of community consultation that has/is and will be undertaken with Building Managers/ occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (e) Confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise Code.
- (f) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (g) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.
- (h) What plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available.

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

- (a) All works conducted on site which form part of this development must be carried out in accordance with the submitted Demolition, Excavation and Construction Management Plan (DEC NMP) to be submitted and approved at a later date.

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

Such periods must be set and agreed to by Council's Area Planning Manager.

SCHEDULE 1B

Prior to Construction Certification/Commencement of Work/Health and Building

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

(39) HERITAGE INTERPRETATION STRATEGY

- (a) An interpretation strategy for the site must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued. The plan is to be prepared by a suitably qualified and experienced heritage practitioner or historian.
- (b) The interpretation plan must detail how information on the history of the site will be provided for the public and make recommendations regarding public accessibility, signage and lighting. The strategy must specify the locations, and types of the interpretation devices being proposed.
- (c) Prior to an Occupation Certificate being issued, the approved interpretation plan must be implemented to the satisfaction of Council's Area Planning Manager.

(40) ARCHAEOLOGICAL DISCOVERY DURING EXCAVATION

- (a) Should any relics be unexpectedly discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with section 146 of the Heritage Act 1977.
- (b) Should any Aboriginal objects be unexpectedly discovered then all excavation or disturbance of the area is to stop immediately and NSW Government Office of Environment and Heritage is to be informed in accordance with Section 89A of the National Parks and Wildlife Act 1974.

- (c) Should any archaeological remains or Aboriginal objects be discovered, a copy of recording of the finds and the final archaeological summary report is to be submitted to Council prior to the Occupational Certificate.
- (d) If the discovery is on Council's land, Council must be informed.

(41) PUBLIC ART

Final details of the approved public art work must be submitted to and approved by the Director City Planning, Development and Transport prior to issue of a Construction Certificate. The public artwork must be in accordance with the Sydney DCP 2012 and the Public Art Policy.

Installation of the art work must be completed to the satisfaction of Council's Area Planning Manager prior to the issue of an Occupation Certificate.

(42) COMPLIANCE WITH BUILDING CODE OF AUSTRALIA

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

(43) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES

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

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

(44) ADAPTABLE HOUSING

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

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

is to be submitted to the Certifying Authority.

(45) FLOOR TO CEILING HEIGHT

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

(46) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- (a) The Construction Traffic Management Plan accompanying this Development Application has not been approved by this consent.

- (b) A Construction Traffic Management Plan must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued.

(47) DEMOLITION, EXCAVATION AND CONSTRUCTION MANAGEMENT

- (a) Prior to the commencement of demolition and/or excavation work the following details must be submitted to and be approved by the Principal Certifying Authority:
 - (i) Plans and elevations showing distances of the subject building from the location of adjoining and common/party walls, and (where applicable) the proposed method of facade retention.
 - (ii) A Demolition Work Method Statement prepared by a licensed demolisher who is registered with the WorkCover Authority. (The demolition by induced collapse, the use of explosives or on-site burning is not permitted.)
 - (iii) An Excavation Work Method Statement prepared by an appropriately qualified person.
 - (iv) A Waste Management Plan for the demolition and or excavation of the proposed development.
- (b) Such statements must, where applicable, be in compliance with AS2601-2001 Demolition of Structures, the Work, Health and Safety Act 2011 and Regulation; Council's Policy for Waste Minimisation in New Developments 2005, the Waste Avoidance and Resource Recovery Act 2001, and all other relevant acts and regulations and must include provisions for:
 - (i) A Materials Handling Statement for the removal of refuse from the site in accordance with the Waste Avoidance and Resource Recovery Act 2001.
 - (ii) The name and address of the company/contractor undertaking demolition/excavation works.
 - (iii) The name and address of the company/contractor undertaking off site remediation/disposal of excavated materials.
 - (iv) The name and address of the transport contractor.
 - (v) The type and quantity of material to be removed from site.
 - (vi) Location and method of waste disposal and recycling.
 - (vii) Proposed truck routes, in accordance with this development consent.

- (viii) Procedures to be adopted for the prevention of loose or contaminated material, spoil, dust and litter from being deposited onto the public way from trucks and associated equipment and the proposed method of cleaning surrounding roadways from such deposits. (Note: With regard to demolition of buildings, dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site).
 - (ix) Measures to control noise emissions from the site.
 - (x) Measures to suppress odours.
 - (xi) Enclosing and making the site safe.
 - (xii) Induction training for on-site personnel.
 - (xiii) Written confirmation that an appropriately qualified Occupational Hygiene Consultant has inspected the building/site for asbestos, contamination and other hazardous materials, in accordance with the procedures acceptable to WorkCover Authority.
 - (xiv) An Asbestos and Hazardous Materials Clearance Certificate by a person approved by the WorkCover Authority.
 - (xv) Disconnection of utilities.
 - (xvi) Fire Fighting. (Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed).
 - (xvii) Access and egress. (Demolition and excavation activity must not cause damage to or adversely affect the safe access and egress of the subject building or any adjacent buildings).
 - (xviii) Waterproofing of any exposed surfaces of adjoining buildings.
 - (xix) Control of water pollution and leachate and cleaning of vehicles tyres (proposals must be in accordance with the Protection of the Environment Operations Act 1997).
 - (xx) Working hours, in accordance with this development consent.
 - (xxi) Any WorkCover Authority requirements.
- (c) The approved work method statements and a waste management plan as required by this condition must be implemented in full during the period of construction.

(48) DILAPIDATION REPORT – MAJOR EXCAVATION/DEMOLITION

- (a) Subject to the receipt of permission of the affected landowner, dilapidation report/s, including a photographic survey of 157-167 Liverpool Street, Sydney and 136-140 Elizabeth Street, Sydney are to be prepared by an appropriately qualified structural engineer prior to commencement of demolition/excavation works. A copy of the dilapidation report/s together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Certifying Authority and the Council prior to the issue of a Construction Certificate.

UPON COMPLETION OF EXCAVATION/DEMOLITION

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

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

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

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

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

- (a) Conform to the specifications and standards contained in Managing Urban Stormwater: Soils and Construction (Landcom, 2004); the Guidelines for Erosion and Sediment Control on Building Sites (City of Sydney, 2004); and the NSW Protection of the Environment Operations Act 1997.
- (b) Include a drawing(s) that clearly shows:
- (i) Location of site boundaries and adjoining roads.
 - (ii) approximate grades and indications of direction(s) of fall.
 - (iii) approximate location of trees and other vegetation, showing items for removal or retention.
 - (iv) location of site access, proposed roads and other impervious areas.

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

(50) ROAD OPENING PERMIT

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

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

(51) OPERATING HOISTING DEVICES INCLUDING BUILDING MAINTENANCE UNITS OVER A PUBLIC ROAD

If it is proposed to install a building maintenance unit or operate a hoisting device above a road (footpath) including swinging, hoisting material/equipment and slewing any part of the device, a separate application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993 must be made to Council to obtain approval.

Note: Building maintenance unit means a power operated suspended platform and associated equipment on a building specifically designed to provide permanent access to the faces of the building for maintenance (Work Health and Safety Regulation 2011).

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

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

(53) CLASSIFICATION OF WASTE

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

(54) NOTIFICATION – NEW CONTAMINATION EVIDENCE

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

(55) ASBESTOS REMOVAL WORKS

- (a) All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with WorkCover NSW, holding either a Friable (Class A) or a Non- Friable (Class B) Asbestos Removal Licence which ever applies.
- (b) Five days prior to the commencement of licensed asbestos removal, WorkCover must be formally notified of the works. All adjoining properties and those opposite the development must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone number and email address.
- (c) All works must be carried out in accordance with the Work Health and Safety Regulation 2011 and the NSW Government and WorkCover document entitled How to manage and control asbestos in the work place: Code of Practice (NSW WorkCover) and the City of Sydney Managing Asbestos Policy.

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

The site notice board must include the following:

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

(56) LANDSCAPING OF THE SITE

- (a) A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate for above ground building works. The plan must include:
 - (i) Location of existing and proposed structures on the site including, but not limited to, existing and proposed trees, paved areas, planted areas on slab, planted areas in natural ground, lighting and other features;

- (ii) Details of earthworks and soil depths including mounding and retaining walls and planter boxes (if applicable). The minimum soil depths for planting on slab must be 1000mm for trees, 450mm for shrubs and 200mm for groundcovers;
 - (iii) Location, numbers, type and supply of plant species, with reference to NATSPEC (if applicable);
 - (iv) Details of planting procedure and maintenance;
 - (v) Details of drainage, waterproofing and watering systems.
- (b) Prior to the issue of a Construction Certificate, a maintenance plan is to be submitted to and approved by the Principal Certifying Authority. The maintenance plan is to be complied with during occupation of the property.
- (c) All landscaping in the approved plan is to be completed prior to an Occupation Certificate being issued.

(57) FUTURE FOOD USE - MECHANICAL VENTILATION PROVISION

The approved mechanical exhaust systems are to be designed to be capable of accommodating exhaust requirements for all ground floor and Level 1 retail tenancies in accordance with relevant Australia Standards, in order to allow for the event that any of the tenancies are approved for future use by food premises or other uses which require mechanical exhaust. Any exhaust system servicing an area where food is being cooked must discharge exhaust air at roof level.

(58) CAR PARK VENTILATION

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

(59) MECHANICAL VENTILATION

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

(60) ALIGNMENT LEVELS – MAJOR DEVELOPMENT

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

(61) PAVING MATERIALS

The surface of any material used or proposed to be used for the paving of colonnades, thoroughfares, plazas, arcades and the like which are used by the public must comply with AS/NZS 4586:2004 (including amendments) "Slip resistance classification of new pedestrian surface materials".

(62) PHOTOGRAPHIC RECORD / DILAPIDATION REPORT - PUBLIC DOMAIN

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

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

The form of the recording is to be as follows:

- (a) A PDF format report containing all images at a scale that clearly demonstrates the existing site conditions;
- (b) Each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage;

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

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

(63) PRESERVATION OF SURVEY MARKS

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

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

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

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

(64) PROTECTION OF SURVEY INFRASTRUCTURE

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

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

(65) PUBLIC DOMAIN PLAN

- (a) A detailed Public Domain Plan must be prepared by a suitably qualified architect, urban designer, landscape architect or engineer and must be lodged with Council's Public Domain Section and be approved by the Director City Planning, Development and Transport prior to a Construction Certificate being issued for public domain work or above ground building work, whichever is later. The Public Domain Plan must be submitted with a completed Public Domain Plan checklist (available in the City of Sydney's Public Domain Manual).
- (b) The Public Domain Plan must document all works required to ensure that the public domain complies with the City of Sydney's Public Domain Manual, Sydney Streets Design Code and Sydney Streets Technical Specification, including requirements for road pavement, traffic measures, footway pavement, kerb and gutter, drainage, vehicle crossovers, pedestrian ramps, lighting, street trees and landscaping, signage and other public domain elements. If an Alignment Levels condition applies to the development, the Public Domain Plan submission must incorporate the approved Alignment Levels. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.
- (c) The works to the public domain are to be completed in accordance with the approved Public Domain Plan and Alignment Levels plans and the Public Domain Manual before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.
- (d) A Public Domain Works Deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges and the Public Domain Manual. The Public Domain Works Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for completion of the obligations under this consent.
- (e) Council's Public Domain section must be contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to a Construction Certificate being issued.
- (f) The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.

(66) PUBLIC DOMAIN WORKS - HOLD POINTS AND HANDOVER

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

(67) STORMWATER AND DRAINAGE - MAJOR DEVELOPMENT

- (a) Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work, details of the proposed stormwater disposal and drainage from the development in accordance with Council's standard requirements and details of the provision and maintenance of overland flow paths must be submitted to and approved by Council. All approved details for the disposal of stormwater and drainage are to be implemented in the development.
- (b) Any proposed connection to the Council's underground drainage system will require the owner to enter into a Deed of Agreement with the Council and obtain registration on Title of a Positive Covenant prior to Construction Certificate being issued for public domain works or above ground building works, whichever is earlier, and prior to the commencement of any work within the public way.
- (c) An "Application for Approval of Stormwater Drainage Connections" must be submitted to the Council with the appropriate fee at the time of lodgement of the proposal for connection of stormwater to the Council's drainage system.

Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), but excluding approved preparatory or demolition work, a stormwater quality assessment must be undertaken by a suitably qualified drainage engineer and must be approved by Council, demonstrating how the development will be designed to ensure that the flow of post-development pollutants from the site due to stormwater will be reduced.

(68) DEFECTS LIABILITY PERIOD – PUBLIC DOMAIN WORKS

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

(69) DEMOLITION/SITE RECTIFICATION

The following conditions apply to the development:

- (a) Demolition or excavation must not commence until a Construction Certificate has been issued for construction of the substantive building.
- (b) Prior to the Construction Certificate being issued, documentary evidence must be provided to Council that the owner of the site has entered into a Deed with Council, the cost of preparation and execution of such Deed (including stamp duty and registration fees) to be borne by the applicant, which contains such conditions as the Council reasonably requires to ensure the matters set out in this condition are adequately provided for.
- (c) Without limiting the generality of paragraph (b), the Deed must provide for:
 - (i) A bank guarantee to be provided in the sum of \$244,250 dollars as security for the costs of such works provided that:
 - a. the maximum liability under the Deed must not exceed \$244,250 dollars; and
 - b. the Council may accept a lesser amount as security if substantiated by detailed design and Quantity Surveyor costing for works which meet the objectives of the condition.
 - (ii) Council to be given sufficient contractual rights to be able to ensure that in any of the following events namely:
 - a. demolition of the existing building has commenced but not been completed;
 - b. the existing building has been demolished; or
 - c. the site has been excavated; or
 - d. the erection of the structure has commenced;
 - (iii) that it, or any person authorised by it, may enter the site and carry out such works at the cost of the applicant (or such other person as the Consent Authority may approve) as may be then appropriate in the circumstances in each of the abovementioned events, to:
 - a. make the building safe and of an appearance acceptable to Council at ground level;

- b. allow the ground level to be landscaped and of an appearance acceptable to Council from any public vantage point; or
- c. for the hole to be covered to allow it to be landscaped and of an appearance acceptable to Council from any public vantage point; or
- d. in the event that the new building is constructed beyond the ground floor, to allow any hoardings to be removed and the ground floor development to be completed to a tenable stage;

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

- (d) If the site is commenced to be developed and there is suspension in activity for 6 months (or suspensions of activity which in the aggregate exceed 6 months), resulting in a building site which has an appearance not acceptable to Council, then the Council will have the readily enforceable rights to:
 - (i) require certain works including but not limited to those works necessary to achieve the results referred to in sub-clause (c) (iii) to take place on the site; and
 - (ii) in the event of default, have the right to enter and carry out these works and to call upon security in the nature of a bank guarantee to cover the cost of the works.
- (e) The Deed may, if the Director City Planning, Development and Transport is satisfied, provide for an adjustment of the guarantee amount during the course of construction to reflect that, as the development progresses, the likelihood and nature of the appropriate site rectification works may change. The stages of reduction will be:
 - (i) Stage 1 – Completion of the site excavation and all construction works necessary to complete all parts of the Development to street level, including sealing of the slab at that level.
 - (ii) Stage 2 – Completion of all construction works necessary to complete the structure of the Development to the roof level.
 - (iii) Stage 3 – Issue of the Final Occupation Certificate.
- (f) If a claim for an adjustment is made, the Deed must also provide that any such claim is to be supported by the following:
 - (i) Certification (from an accredited certifier) that the relevant stage is complete;
 - (ii) Detailed schedule of completed works carried out in the relevant stage;
- (g) Quantity Surveyors costing of the likely site rectification works required at each remaining stage.

(70) DRAINAGE AND SERVICE PIT LIDS

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

(71) PROTECTION OF STONE KERBS

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

(72) PUBLIC DOMAIN DAMAGE DEPOSIT

A Public Domain Damage Deposit calculated on the basis of 2 lineal metres of asphalt footway along Clarke Street site frontage and 2 lineal metres of stone paver footway along the Liverpool Street site frontage must be lodged with Council in accordance with the City of Sydney's adopted Schedule of Fees and Charges. The Public Domain Damage Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for repairing any damage to the public domain in the vicinity of the site.

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

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

(73) PUBLIC DOMAIN LIGHTING

- (a) Prior to a Construction Certificate for public domain works or above ground building works being issued, whichever is later, a detailed Public Domain Lighting Plan for pedestrian and street lighting in the public domain must be prepared by a suitably qualified, practicing lighting engineer or lighting designer and must be submitted to and approved by Council. The Lighting Plan must be prepared in accordance with the City of Sydney's Interim Draft Sydney Lights Design Code, Sydney Streets Design Code, *Sydney Streets Technical Specification* and Public Domain Manual and must include the following:
- (i) Vertical and horizontal illuminance plots for the public domain lighting design to demonstrate compliance with all relevant Australian Standards and to meet the lighting categories and requirements specified by the City;
 - (ii) The location, type and category of existing and proposed lights, including details of luminaire specifications, required to ensure compliance with City policies and Australian Standards;
 - (iii) Footing locations and structural details;
 - (iv) Location and details of underground electrical reticulation, connections and conduits;
 - (v) Certification by a suitably qualified, practicing lighting engineer or lighting designer to certify that the design complies with City policies and all relevant Australian Standards including AS 1158, AS 3000 and AS4282;
 - (vi) Structural certification for footing designs by a suitably qualified, practicing engineer to certify that the design complies with City of Sydney policies and Australian Standards.
- (b) The public domain lighting works are to be completed in accordance with the approved plans and the City of Sydney's Public Domain Manual before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.

(74) TACTILE GROUND SURFACE INDICATORS AND HANDRAILS

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

(75) PHYSICAL MODELS

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

Note:

- (i) The models must be constructed in accordance with the Model Specifications available online at <http://www.cityofsydney.nsw.gov.au/development/application-guide/application-process/model-requirements>. Council's modellers must be consulted prior to construction of the model.
- (ii) The models are to comply with all of the conditions of the Development Consent.
- (iii) The models must be amended to reflect any further modifications to the approval (under section 96 of the Environmental Planning and Assessment Act) that affect the external appearance of the building.

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

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

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

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

(77) APPLICATION FOR HOARDINGS AND SCAFFOLDING ON A PUBLIC PLACE

- (a) A separate application under Section 138 of the Roads Act 1993 is to be made to Council to erect a hoarding and/or scaffolding (temporary structures) in a public place.
- (b) Where a consent is granted allowing the placement of temporary structures in a public place the structures must comply fully with Council's Policy for the Design of Construction Hoardings and the conditions of any consent granted including:
 - (i) maintaining a current and valid consent for the full duration that the temporary structures are installed in the public place (Section 139, Roads Act 1993);
 - (ii) bill posters and graffiti being removed within 24 hours of their placement (Clause 3.1);
 - (iii) maintaining temporary structures in a clean and tidy condition including repainting where directed by an authorised officer of Council (Clause 3.1);
 - (iv) hoarding site fences complying with Clause 3.3 - Element 3;
 - (v) site sheds on decks of Type B hoardings being fully screened from the public place (Clause 3.3 - Element 5); and
 - (vi) providing and maintaining operational artificial lighting systems under Type B hoardings (Clause 3.3 – Element 9).

(78) BARRICADE PERMIT

Where construction/building works require the use of a public place including a road or footpath, approval under Section 138 of the Roads Act 1993 for a Barricade Permit is to be obtained from Council prior to the commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.

(79) LAND SUBDIVISION

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

(80) STRATA SUBDIVISION

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

(81) ELECTRICITY SUBSTATION

An electricity substation (S.896) exists on the site. Prior to any works occurring that impact on this substation, the developer shall negotiate with Ausgrid, to Ausgrid's satisfaction, regarding the removal, alteration or replacement of this substation.

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

(82) TELECOMMUNICATIONS PROVISIONS

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

(83) UTILITY SERVICES

To ensure that utility authorities are advised of the development:

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

(84) WASTE MANAGEMENT FACILITIES

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

- (a) the residential garbage room to be designed in accordance with Council's Policy for Waste Minimisation in New Developments 2005 to allow for cleaning, draining and management of the room,

- (b) all areas accessed by Council's waste collection vehicles must be provided with a minimum vertical clearance of 4 metres, taking such items as pipes, ducts and the like into account,
- (c) the residential garbage room servicing the proposed building to include adequate space for the separation of putrescible waste from waste suitable for recycling,
- (d) the physical separation of residential waste from that generated by the commercial tenancy which is to be collected by a private contractor.

(85) WASTE AND RECYCLING MANAGEMENT - RESIDENTIAL

- (a) The Waste Management Plan accompanying this Development Application has not been approved by this consent.
- (b) A Waste Management Plan is to be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued. The plan must comply with the Council's Policy for Waste Minimisation in New Developments 2005. All requirements of the approved Waste Management Plan must be implemented during construction of the development.
- (c) The building must incorporate designated areas or separate garbage rooms constructed in accordance with Council's Policy for Waste Minimisation in New Developments 2005, to facilitate the separation of commercial waste and recycling from residential waste and recycling.

UPON COMPLETION OF THE DEVELOPMENT

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

(86) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL

- (a) The Waste Management Plan accompanying this Development Application has not been approved by this consent.
- (b) A Waste Management Plan is to be approved by the Certifying Authority prior to a Construction Certificate being issued. The plan must comply with the Council's Policy for Waste Minimisation in New Developments 2005. All requirements of the approved Building Waste Management Plan must be implemented during construction of the development.

UPON COMPLETION OF THE DEVELOPMENT

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

SCHEDULE 1C**During Construction/Prior to Occupation/Completion****(87) OCCUPATION CERTIFICATE TO BE SUBMITTED**

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

(88) HOURS OF WORK AND NOISE – CBD

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

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

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

(89) SITE NOTICE OF PROJECTS DETAILS AND APPROVALS

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

- (a) Minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size;
- (b) The notice is to be durable and weatherproof and is to be displayed throughout the construction period;
- (c) A copy of the first page of the development approval, building approval (including any modifications to those approvals) and any civic works approvals is to be posted alongside the notice in weatherproof casing;
- (d) The approved hours of work, the Principal Certifying Authority including contact address and certification details, the name of the site manager, the responsible managing company, its address and 24 hour contact phone number for any enquiries, including construction/noise complaint, are to be displayed on the site notice;

- (e) The notice(s) is to be mounted at eye level on the perimeter hoardings and is also to state that unauthorised entry to the site is not permitted.

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

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

(91) LIGHTING OF SITE OUTSIDE OF STANDARD CONSTRUCTION HOURS

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

(92) BASIX

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

(93) ENCROACHMENTS – NEIGHBOURING PROPERTIES

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

(94) ENCROACHMENTS – PUBLIC WAY

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

(95) SURVEY

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

(96) SURVEY CERTIFICATE AT COMPLETION

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

(97) COVERING OF LOADS

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

(98) EROSION AND SEDIMENT CONTROL

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

During the construction period;

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

(99) HAZARDOUS AND INDUSTRIAL WASTE

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

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

(100) VEHICLE CLEANSING

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

(101) STREET NUMBERING – MAJOR DEVELOPMENT

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

(102) SYDNEY WATER CERTIFICATE

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

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

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

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

(103) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site.
- (b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- (d) In addition to any approved construction zone, provision must be made for loading and unloading to be accommodated on site once the development has reached ground level.
- (e) The structural design of the building must allow the basement and/or the ground floor to be used as a loading and unloading area for the construction of the remainder of the development.
- (f) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval under Section 68 of the Local Government Act 1993 must be obtained.

(104) NO OBSTRUCTION OF PUBLIC WAY

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

(105) USE OF MOBILE CRANES

The following requirements apply:

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

SCHEDULE 2

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

SCHEDULE 3**TRANSPORT FOR NSW CONCURRENCE CONDITIONS**

Transport for NSW has provided the following concurrence conditions under the provisions of Clause 86 of State Environmental Planning Policy (Infrastructure) 2007:

(106) Prior to the undertaking of demolition works or the issuing of a Construction Certificate that enables the undertaking of demolition works (whichever occurs first), the Applicant shall undertake a condition and dilapidation survey of the rail tunnels. A detailed report of this survey shall be submitted to Sydney Trains for endorsement. The length of tunnel to be surveyed shall be as determined by Sydney Trains. The report shall include, but not limited to:

- (a) Details of defects (eg locations on the tunnel wall)
- (b) Size of cracks (eg length, orientation, pattern and width)
- (c) Photos of the defects with labels showing locations on the tunnel wall lining and station cavern wall
- (d) Any signs of wetness, staining and seepage occurring on the defects.

(107) Prior to the undertaking of demolition works or the issuing of a Construction Certificate that enables the undertaking of demolition works (whichever occurs first), the Applicant shall submit for Sydney Trains endorsement a Ground Vibration Monitoring Report. This report is to detail, but not limited to:

- (a) proposed monitoring method
- (b) proposed monitoring location

- (c) proposed monitoring frequencies
 - (d) proposed trigger levels and action plans should trigger levels be exceeded.
- (108)** Prior to the undertaking of demolition works or the issuing of a Construction Certificate that enables the undertaking of demolition works (whichever occurs first), the Applicant shall submit for Sydney Trains endorsement the following documentation:
- (a) Ground Movement Monitoring Plan of the existing tunnels
 - (b) Risk Assessment Report
 - (c) Safe Work Method/Demolition & Construction management plan and methodology
 - (d) Machinery to be used during excavation/construction
 - (e) As it is proposed that the existing piles will be used as the retention system for the proposed excavation, details regarding the current condition of these piles given that they have already undergone deformations during the previous construction activities, and whether this design solution is still appropriate.
- (109)** The Applicant is advised that subject to the outcome of the condition and dilapidation assessment of the existing tunnels, Sydney Trains may require that the suitable vibration criteria be reduced to a level lower than the recommended 20mm/s in the rail tunnels.
- (110)** Prior to the undertaking of demolition works or the issuing of a Construction Certificate that enables the undertaking of demolition works (whichever occurs first), the Applicant is to submit to Sydney Trains for endorsement a revised acoustic assessment report. The Applicant must incorporate in the development all the measures recommended in the report and by Sydney Trains. This revised report shall address the following:
- (a) the impact on the rail tunnel wall linings by the induced vibration from the demolition, excavation and construction work.
- (111)** Prior to the issuing of a Construction Certificate or the commencement of works (whichever occurs first) the Applicant shall obtain advice from Sydney Trains regarding the need to enter an Agreement with Sydney Trains and RailCorp, on terms to the satisfaction of Sydney Trains and RailCorp, for the purpose of ensuring the protection of rail infrastructure facilities and the rail corridor or in connection with the carrying out of any rail functions or operations within the adjoining rail corridor and rail easements and to ensure rail safety. In the event that Sydney Trains advises that such an Agreement is required, the Applicant shall enter into this Agreement at the nominated timing by Sydney Trains. The Applicant is to bear all Sydney Trains' and RailCorp's costs of entry into any Agreement required by these conditions. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- (112) Prior to the demolition of the existing basement structure being undertaken, the actual nature and extent of existing retention support along the site boundaries shall be investigated in order to confirm design assumptions. The investigation results are to be submitted to Sydney Trains for review. If required by Sydney Trains the Applicant shall undertake the necessary structural design changes prior to any Construction Certificate being issued that enables the installation of secondary retention piles, bracing truss and bulk excavation works.
- (113) Unless amendments are required in order to obtain approval/certification from Sydney Trains in relation to the items listed in Condition 114 below, all excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings and recommendations detailed in the following documents:
- (a) Geotechnical Investigation Report prepared by Douglas Partners (Ref: 73507.01-Rev1) dated December 2014.
 - (b) Numerical Analysis Report prepared by Douglas Partners (Ref: 73507.01) dated December 2014.
 - (c) Stage 2 DA: Structural Concept Design Report prepared by Bonacci Group dated 12 December 2014
 - (d) Bates Smart Drawings as follows:
 - (i) SK-001 – Rail Section D, Revision D, dated 18/5/2015
 - (ii) SK-002 – Rail Section E, Revision D, dated 18/5/2015
 - (iii) SK-003 – Rail Section F, Revision D, dated 18/5/2015
 - (iv) SK-004 – Rail Section G, Revision D, dated 18/5/2015
 - (v) SK-005 – Rail Section H, Revision D, dated 18/5/2015
 - (vi) SK-006 – Rail Section J, Revision D, dated 18/5/2015
 - (vii) SK-007 – Rail Section K, Revision D, dated 18/5/2015
 - (e) Bonacci Drawing - Bulk Excavation Plan and Site Section – SK10, Revision P5

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming which of the documentation listed in this condition are to now apply or are superseded as a result of the compliance with Condition 114 below. The measures detailed in the documents approved/certified by Sydney Trains under this Condition are to be incorporated into the construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Principal Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

- (114) The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate that enables the installation of secondary retention piles, bracing truss and bulk excavation works:
- (a) The proposed basement will introduce a differential groundwater drawdown within both existing cut and cover and mined tunnels. The actual impact of such differential drawdown needs to be assessed and submitted to Sydney Trains.
 - (b) Final Structural and shoring design, which includes (but not limited to):
 - (i) The shoring wall design shall also include the surcharge loads imposed from the tunnel foundation with live loads.
 - (ii) As the entire western shoring wall is affected by the zone of influence due to its close proximity, the shoring systems shall be designed to the Asset Standards Authority standard T HR Cl 12080 ST.
 - (iii) Load bearing piles be designed and tested in accordance with AS2159-2009. Details of proposed pile testing are to be detailed on relevant structural drawing(s).
 - (iv) Foundations/footings shall be designed in accordance with the current Australian Standards.
 - (c) Revised Numerical Analysis Report, which includes (but not limited to):
 - (i) Comprehensive numerical modelling based on the installation of horizontal truss system and side bracing to determine the predicted ground movement and the impact of the changes in stress regime in the ground surrounding the tunnels. This can lead to stress concentrations or stress relief in the surrounding ground and eventually cause movement within the ground. These effects can directly impact on the tunnel linings or the support elements and must therefore be assessed.
 - (ii) numerical analytical modelling shall be based on the existing conditions of the tunnel wall lining from the findings of the dilapidation survey.
 - (iii) Confirmation whether the pillar separating the two tunnels in the reviewed Douglas Partners numerical analysis was modelled as a structural element or is the pillar modelled using Class V sandstone. If Class V, advice as to whether Class V Sandstone is strong enough to be acting as a pillar support is to be provided.
 - (iv) Include the new building loading in the analysis.
 - (v) Include extra sequence for inclusion of existing building load.
 - (vi) Details as to when the pressure of 10kPa and 20kPa was applied in the construction sequence. This is required to enable the assessment as to whether the modelling has allowed for stress relief to occur.

- (vii) Confirmation as to where the section for Plot 3 (provides contours of displacement around the tunnels) was taken.
 - (viii) Commentary from the structural engineer who has carried-out an independent analysis using the information provided in the report to verify the stresses and comment on the expected behaviour of the lining.
 - (ix) Justification of the in-situ stress assumption.
 - (x) Settlement predictions (Note: due to the invert of the excavation is below the tunnel invert, a differential settlement profile is expected).
 - (xi) The impact of the movements on the cut and cover section of the tunnel.
 - (xii) It appears that the ground movement is occurring uniformly along the excavated face and it is expected that bedding movements to occur during the basement excavation. This will induce shear movements within the tunnel lining and needs to be commented on in the report.
 - (xiii) Any identified defects or cracks found within the tunnel wall during the dilapidation survey shall be incorporated in the numerical analytical modelling to determine whether it will have an impact on serviceability and durability performance issues.
- (d) Revised Structural Design Report.
 - (e) Consideration of an alternative solution to brace back to the northern and southern side wall constructions.
 - (f) As the excavation work will be involved with high strength rock and heavy excavators or equipment may be required to carry out the works, a comprehensive assessment of the induced vibration from the rock excavation shall be undertaken to determine the permissible trigger levels for the induced vibrations cause by rock exaction.
 - (g) Risk assessment study (SFAIRP) shall be carried out in accordance with the Asset Standards Authority standard T HR CI 12080 ST.
 - (h) Revised Construction Management Plan, which includes (but not limited to):
 - (i) the trigger levels for the ground measurements in the vertical, horizontal and rotational directions.
 - (i) As the excavation of the lowest basement levels and installation of the shoring wall will be in medium to high strength sandstone rock, this may have an induced vibration issue on the structural integrity of the tunnel wall lining. A vibration monitoring plan and programme with stipulated trigger levels for movements and vibrations shall be submitted for review to safeguard against any further damages or deterioration to the existing conditions of tunnel wall lining.

- (j) Further analysis regarding the transition between cut and cover construction and driven construction of the City Circle Tunnels.
 - (k) Confirmation whether the pillar separating the two tunnels in Douglas Partners numerical analysis was modelled as a structural element or is the pillar modelled using Class V sandstone? If Class V, is Class V Sandstone strong enough to be acting as a pillar support?
- (115)** Prior to the undertaking of demolition works or the issuing of a Construction Certificate that enables the undertaking of demolition works (whichever occurs first), the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance is to cover these specific works. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure and must be in place for the duration of these specific works. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to the issuing of the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- (116)** Prior to the undertaking of works or the issuing of the first Construction Certificate (whichever occurs first), the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the entire works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to the issuing of the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.
- (117)** Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.
- (118)** All rock faces shall be inspected by an engineering geologist during excavation to confirm that the site conditions are consistent with design assumptions, to verify the stability of the faces and advise Sydney Trains on any bolting or anchoring requirements.
- (119)** Asset Standards Authority standard T HR CI 12070 ST requires that during construction works, the maximum peak particle velocity (PPV) in the tunnel lining shall not exceed 12.5mm per second. Accordingly, the Allowable Vibration Limit is to be limited to 12.5mm per second.
- (120)** Should the Applicant wish to undertake additional geotechnical borehole testing on completion of demolition works, these boreholes shall not be undertaken until written approval has been obtained from Sydney Trains.
- (121)** Due to the possibility of encountering potential rock reinforcement anchors/dowels installed to stabilise the tunnel during construction or during operation, in the event that anchors/dowels are encountered, the excavation activities are to cease and Sydney Trains advised. The risk to the tunnel may need to be assessed and stabilised. The continuation of any further excavations are to be in accordance with Sydney Trains requirements.

No rock anchors/bolts are to be installed into RailCorp's property (this includes stratum and easements). Any rock anchors installed below or above the rail tunnels must have their length taken right across to the other side of the corridor and must not end under the rail tunnel. Prior to any Construction Certificate being issued that enables the installation of secondary retention piles, bracing truss and bulk excavation works the Applicant shall submit to Sydney Trains structural plans verifying compliance with this condition. Prior to the issuing of a Construction Certificate for Stage 4 works the Applicant shall provide confirmation (and endorsed by a Registered Surveyor) that the rock anchors have not entered into rail property, easements or stratum.

- (122)** Prior to any Construction Certificate being issued that enables the installation of secondary retention piles, bracing truss and bulk excavation works, the Applicant shall obtain advice from Sydney Trains as to whether the items listed in Conditions 106, 107, 108 and 109 need to be undertaken and/or apply to this stage of works. Should Sydney Trains advise that these conditions apply (in total or in part) then compliance with these conditions for this stage of works shall be met (including the required endorsement by Sydney Trains being obtained) prior to the Principal Certifying Authority issuing the required Construction Certificate.
- (123)** Prior to the issuing of a Construction Certificate that enables the installation of secondary retention piles, bracing truss and bulk excavation, the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance is to cover these specific works. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure and must be in place for the duration of these specific works. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to the issuing of the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- (124)** At any time during the demolition, excavation and construction period deemed necessary by Sydney Trains, and prior to the issue of the Occupation Certificate, a joint inspection of the rail tunnels is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during works to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.
- (125)** Prior to any Construction Certificate being issued that enables the installation of secondary retention piles, bracing truss and bulk excavation works, the Applicant is to submit to Sydney Trains for endorsement a revised Electrolysis Report. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. This revised report shall include a recommendation to carry out periodic testing of the LV earths established within the development to ensure that any accelerated rate of corrosion of the LV earth electrodes is caught early. The Principal Certifying Authority is not to issue the Construction Certificate until it has confirmed that these measures are to be installed and have been indicated on the Construction Drawings.

- (126) Prior to any Construction Certificate being issued that enables the installation of secondary retention piles, bracing truss and bulk excavation works, the Applicant is to submit to Sydney Trains a plan showing all mobile craneage and other aerial operations to be used during this stage or works and any subsequent stages of works that may be located above or in close proximity of the rail tunnels during the entire works period. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- (127) Prior to any Construction Certificate being issued that enables the construction of footings and basement to ground level, the Applicant shall obtain advice from Sydney Trains as to whether the items listed in Conditions 106, 107, 108 and 109 need to be undertaken and/or apply to this stage of works. Should Sydney Trains advise that these conditions apply (in total or in part) then compliance with these conditions for this stage of works shall be met (including the required endorsement by Sydney Trains being obtained) prior to the Principal Certifying Authority issuing the required Construction Certificate.
- (128) Prior to the issuing of a Construction Certificate that enables the construction of footings and basement to ground, the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance is to cover these specific works. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to the issuing of the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- (129) Prior to the closure of the existing pedestrian entrance to Museum Station or prior to any Construction Certificate being issued in relation to the new pedestrian entrance to Museum Station which is required to enable the undertaking of any works (whichever occurs first), the Applicant shall obtain advice from Sydney Trains as to the need to enter into any Agreement to enable such a closure, the closure time period and required opening date, the demolition and removal of the existing entrance and infrastructure/services, the construction of the new entrance and infrastructure/services, any change to the hours of operation of the new entrance, and the process in amending the current easement that benefits Sydney Trains. In the event that Sydney Trains advises that such an Agreement is required, the Applicant shall enter into this Agreement at the nominated timing by Sydney Trains. The Agreement shall be in accordance with the terms stipulated by Sydney Trains and the Applicant is to bear all Sydney Trains' and RailCorp's costs of entry into any Agreement.

- (130)** Prior to any Construction Certificate being issued in relation to the new pedestrian entrance to Museum Station the Applicant shall submit final construction details to Sydney Trains for endorsement by its Configuration Change Board (CCB). The Applicant shall comply with all requirements stipulated by Sydney Trains (including the CCB). The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- (131)** The amendment of the current easement benefitting Sydney Trains for the existing Museum Station entrance shall be the responsibility of the Applicant and at their cost. The easement for the new Museum Station entrance shall be prepared on completion of the entrance works. The new easement and easement terms are to be endorsed by Sydney Trains prior to registration on title. The Principal Certifying Authority is not to issue any Occupation Certificate until written confirmation has been received from Sydney Trains confirming of its endorsement of the new easement and easement terms, and Principal Certifying Authority has received confirmation that the Applicant has registered this new easement on title.
- (132)** The new pedestrian entrance to Museum Station shall not be owned by Sydney Trains, RailCorp or Transport for NSW and shall be maintained by the building owners.
- (133)** Prior to the issuing of a Construction Certificate that enables the construction of podium levels – Ground to Level 1, the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance is to cover these specific works. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure and must be in place for the duration of these specific works. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to the issuing of the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- (134)** Prior to any Construction Certificate being issued that enables the construction of podium levels – Ground to Level 1, the Applicant shall obtain advice from Sydney Trains as to whether the items listed in Conditions 106, 107, 108 and 109 need to be undertaken and/or apply to this stage of works. Should Sydney Trains advise that these conditions apply (in total or in part) then compliance with these conditions for this stage of works shall be met (including the required endorsement by Sydney Trains being obtained) prior to the Principal Certifying Authority issuing the required Construction Certificate.

- (135)** Prior to the issuing of a Construction Certificate that enables the construction of lower tower – Level 2 – Level 14 and construction of upper tower – Level 15 – Level 37, the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance is to cover these specific works. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure and must be in place for the duration of these specific works. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to the issuing of the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- (136)** Prior to any Construction Certificate being issued that enables the construction of lower tower – Level 2 – Level 14 and construction of upper tower – Level 15 – Level 37, the Applicant shall obtain advice from Sydney Trains as to whether the items listed in Conditions 106, 107, 108 and 109 need to be undertaken and/or apply to this stage of works. Should Sydney Trains advise that these conditions apply (in total or in part) then compliance with these conditions for this stage of works shall be met (including the required endorsement by Sydney Trains being obtained) prior to the Principal Certifying Authority issuing the required Construction Certificate.
- (137)** Prior to the issuing of any Occupation Certificate the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into Sydney Trains property, easements or stratum, unless agreed to be these authorities. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- (138)** Sydney Trains and Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.
- (139)** Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains must be submitted to Council for its records prior to the issuing of a Construction Certificate or Occupation Certificate.
- (140)** The applicant is to comply with any conditions issued by Sydney Trains as part of the endorsement/certification by Sydney Trains of any of the submitted documentation required under the above conditions.

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 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.

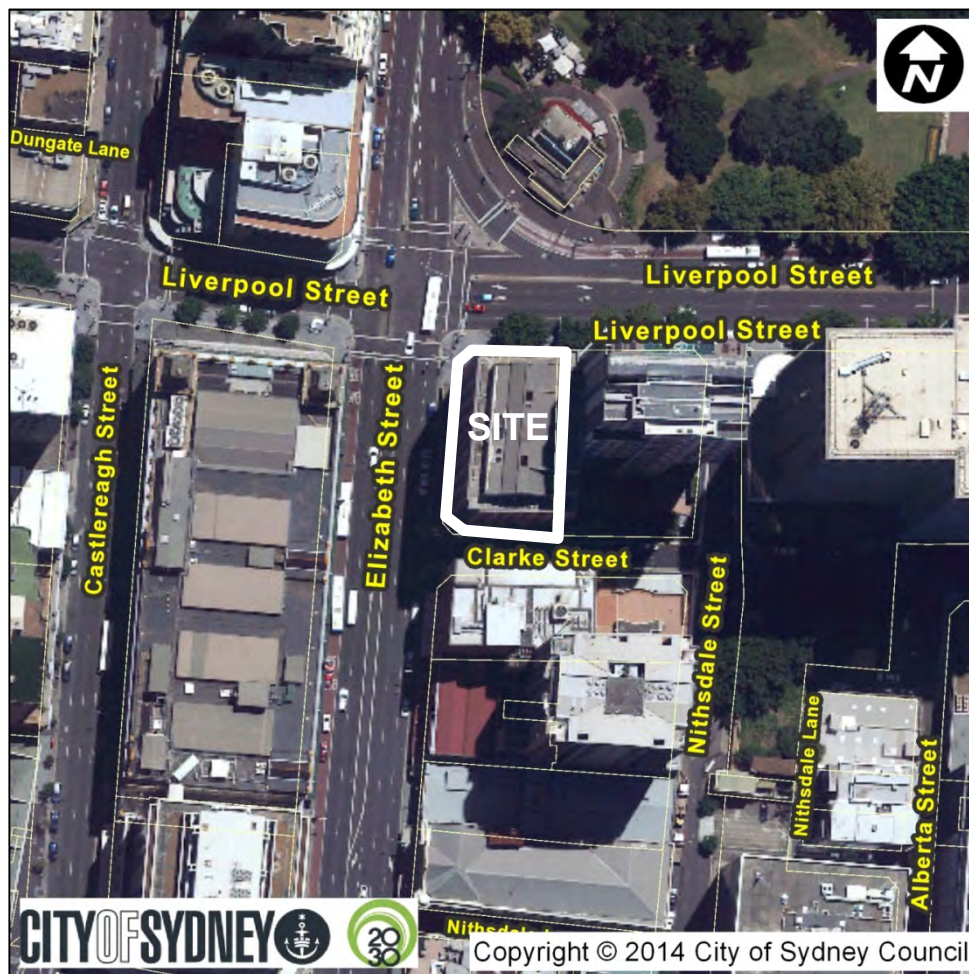


Figure 1: Aerial image of subject site and surrounding area



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

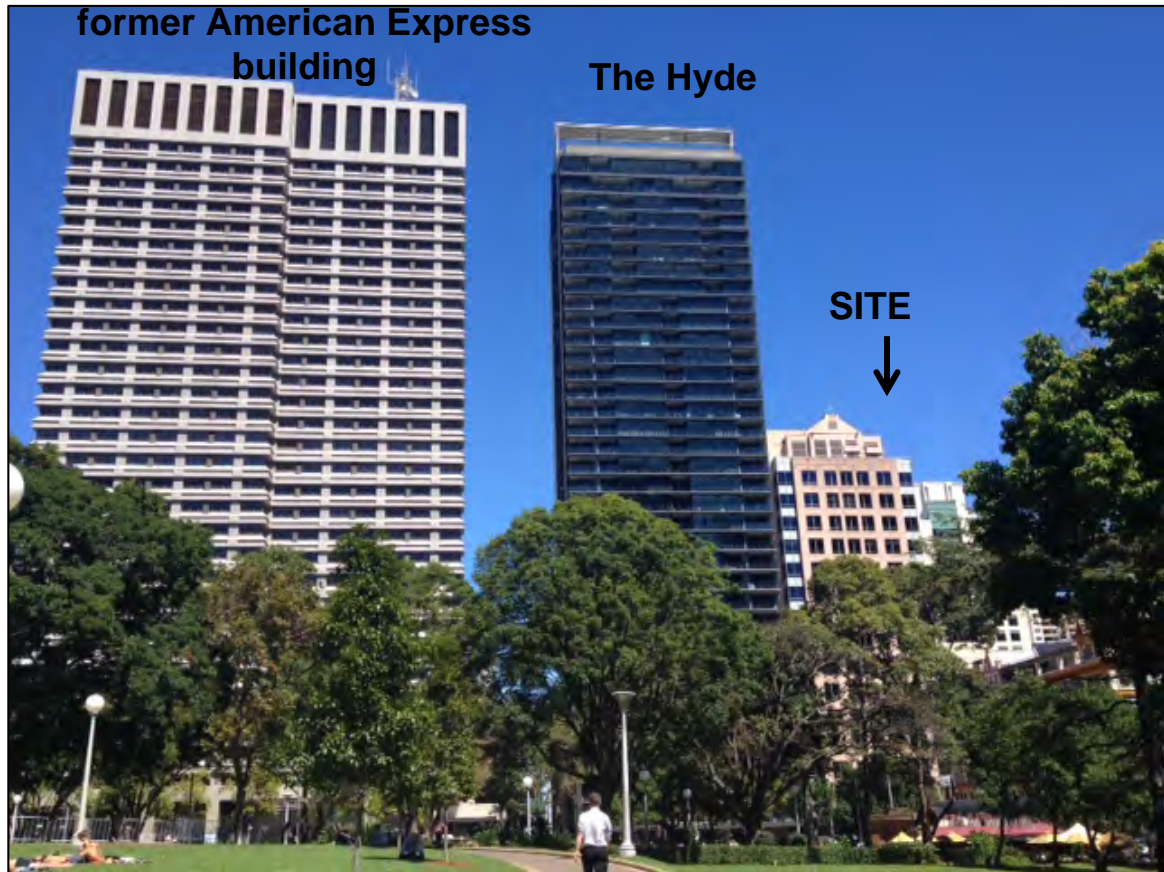


Figure 3: The site and its streetscape context, as viewed from Hyde Park

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 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, 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 (Sydney LEP 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

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 application 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) indicative basement levels;

- (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.

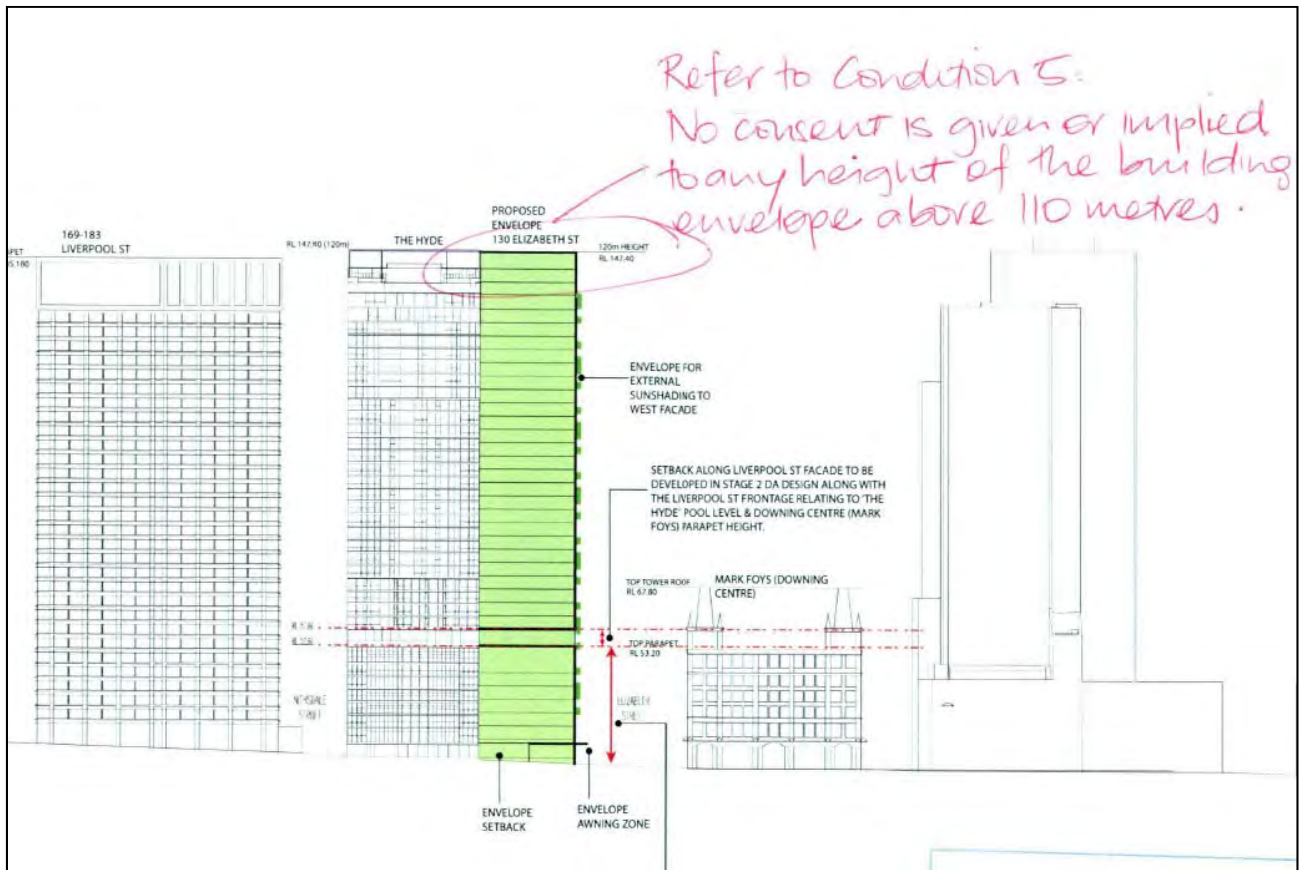


Figure 13: The approved Stage 1 building envelope for the site as viewed from Liverpool Street

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 allow 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.*

Design Competition Process

14. Following the Stage 1 development consent, the Applicant commissioned an architectural design competition process for the site. Five architectural firms were invited to submit a design proposal in September 2014. Five firms accepted the invitation to participate in the competition, these were:
- (a) Bates Smart;
 - (b) Kann Finch/Luigi Rosselli;
 - (c) Jackson Teece;
 - (d) WMK; and
 - (e) FJMT.
15. Presentations were given to the Design Jury on 20 October 2014, with the Design Jury selecting the Bates Smart scheme as the winning design.
16. The Design Jury advised in their 'Competitive Design Alternatives – Jury Report' that a few aspects of the Bates Smart design should be reviewed and developed through design development prior to the lodgement of the Stage 2 DA, these included:
- (a) articulation and treatment of the recesses to define the stacked boxes;
 - (b) the depth of the blades to assist with solar protection and provide depth to the facade.
 - (c) Consideration to the cleaning and maintenance of the shelves and facades;
 - (d) the treatment and appearance of the vertical 'slot' element adjacent to 'The Hyde' to establish a clear articulation between the buildings;
 - (e) supporting a building height that matched the architectural roof feature of 'The Hyde'. However, noted that the relationship of the upper levels of the building with 'The Hyde' needed further resolution;
 - (f) deletion of the communal pool and replacement with a common area/communal open space; and
 - (g) further investigation on the station entry stair and consultation with Transport for NSW.
17. The Jury concluded that the Bates Smart scheme would be able to be recommended to achieve design excellence, subject to clarification on the above in the detailed design of the scheme.

18. This Bates Smart scheme was lodged as the subject Stage 2 Development Application for the site on 23 December 2014, in conjunction with a concurrent Section 96 (2) application (D/2014/58/A) to modify the Stage 1 building envelope.

Amendments to the Development Application

19. A series of meetings were held with the Applicant, both pre-lodgement and early in the assessment process, where the non-compliance with the building height and the treatment of the upper levels was raised as a matter that would likely require resolution prior to determination.
20. Following a preliminary assessment of the development application by Council staff, it was requested that the Applicant amend their scheme to setback the upper levels of the building from the northern boundary of the site.
21. Amended plans were submitted on 23 June 2015 and 3 July 2015, and modified the proposal in the following manner:
- (a) modification to the upper 2 levels of the development (being Levels 37 and 38) to set these floors back 6 metres from the northern (Liverpool Street) boundary of the site and approximately 2.4 metres from the western (Elizabeth Street) boundary of the site;
 - (b) reconfiguration of tower's recessed levels (from Levels 15 to 35) to modify the facade expression to 'restack' the boxes and proportions of the facade;
 - (c) reconfiguration of internal floor plans across all levels, including reduction of total number of residential apartments from 148 to 140 units; and
 - (d) modification to floor plates on Levels 25 to 35 to delete balconies that were previously proposed on the southwestern corner.
22. The amended plans are the subject of assessment within this report.

PROPOSAL

23. The subject application seeks consent for the following works:
- (a) demolition of all existing structures on site;
 - (b) excavation and construction of 7 basement car parking levels, accommodating 92 car parking spaces and residential storage/bicycle parking;
 - (c) vehicular access off Clarke Street, including loading dock/on-site garbage collection facilities;
 - (d) construction of a 38-storey mixed-use development, with a gross floor area of 15,849sqm (including wintergardens), that accommodates 190sqm of retail floor space at ground floor level and Level 1 and 140 residential apartments on Levels 2 to 38;
 - (e) relocated pedestrian entry to Museum Railway Station; and
 - (f) landscaping, public art and public domain works.

24. **Figures 14 to 19** below, illustrate photomontages of the proposed development. It should be noted that these photomontages were submitted with the application at the time of lodgement, and the proposal has been amended during the assessment to treatment of the upper levels of the building from that depicted in the montages. Architectural plans and elevations of the proposed development are provided at **Attachments A and B**.



Figures 14 and 15: Elevation drawings of the northern (Liverpool Street) elevation (left) and the western (Elizabeth Street) elevation (right). Both elevations illustrate the amended scheme



Figure 16: Photomontage of the proposed development (as originally lodged) as viewed from Elizabeth Street, looking south



Figure 17: Photomontage of the proposed development (as originally lodged) as viewed from Liverpool Street, looking east



Figure 18: Photomontage of the proposed development (as originally lodged) as viewed from Elizabeth Street, looking north



Figure 19: Photomontage of the proposed podium treatment

CITY OF SYDNEY ACT 1988

25. 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. 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."*

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

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

27. The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979 (EP&A Act, 1979), including consideration of the following matters:

(a) Environmental Planning Instruments and DCPs.

Heritage Act 1977

28. 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 13 January 2015.
29. 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. As such, there is no legislative impediment to the determination of the application.

State Environmental Planning Policy (Infrastructure) 2007

30. The provisions of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) have been considered in the assessment of the development application.

Clause 45 – Electricity transmission

31. 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 the ISEPP on 13 January 2015.
32. In correspondence, dated 3 February 2014, Ausgrid advised that there is an existing electricity substation within the building to be demolished. A condition requiring the developer to negotiate with Ausgrid prior to any work impacting on the existing substation is included.

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

33. The application was referred to Sydney Trains/Transport for NSW on 13 January under the provisions of Clause 86 of the ISEPP as the site is located adjacent to a rail corridor and Museum railway station.
34. In correspondence, dated 4 March 2015, Sydney Trains requested additional information from the developer. This additional information was provided to Sydney Trains directly by the applicant between March and June 2015.

35. In correspondence, dated 1 July 2015, Sydney Trains 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

36. The application was referred to the Roads and Maritime Services (RMS) pursuant to Clauses 101 and 104 of ISEPP on 13 January 2015.
37. In correspondence, dated 16 January 2015, the RMS has advised that the development does not trigger a referral to the RMS for concurrence. No recommended or advisory conditions were provided.

State Environmental Planning Policy No 55—Remediation of Land

38. State Environmental Planning Policy No. 55 (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.
39. A Preliminary Environmental Site Assessment was submitted with the Stage 1 development application and remains valid in the assessment of the subject application.
40. Council's Health and Building Unit are satisfied that sufficient information has been submitted to conclude that the site can be made suitable for the proposed uses and satisfy the requirements of SEPP 55, subject to the imposition of appropriate conditions.

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

Transitional provisions for the amendments to SEPP 65:

41. On 23 September 2014, the Department of Planning and Environment exhibited proposed amendments to State Environmental Planning Policy No. 65 (SEPP 65), which includes the replacement of the Residential Flat Design Code (RFDC) with an Apartment Design Guide.
42. The amended legislation came into force on 17 July 2015 and included transitional provisions. These transitional provisions state that any application lodged before 19 June 2015 and not determined before 17 July 2015, must be assessed against the version of SEPP 65 that was in force prior to 19 June 2015.
43. As the subject application was lodged on 23 December 2014, it is covered by the transitional provisions, it must be assessed against the previous version of SEPP 65 and the RFDC. Notwithstanding this, the amendments to SEPP 65 are a relevant consideration under Section 79C of the EP&A Act, 1979, as they were on public exhibition at the time the application was lodged. As such, consideration has been given to the amendments to SEPP 65 and the Apartment Design Guide.

Assessment:

44. SEPP 65 requires that in determining an application for a residential apartment development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including the following 10 design quality principles:

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

Generally complies: The building envelope and analysis undertaken as part of the Stage 1 assessment concluded that the proposed building envelope was contextually appropriate to this southern CBD location. Consideration was 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.

Generally, the massing of the building reflects the desired built form of the Stage 1 consent. The proposed development seeks consent for a building to a height of RL 147.4 (which equates to a maximum height of 122.7 metres) so as to align with the maximum height of the architectural roof feature of the adjacent apartment building (known as 'The Hyde' at 157 Liverpool Street). Refer to further discussion at the issues section of this report.

- (b) Principle 4: Density

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

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

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

- (d) Principle 6: Landscape

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

The development incorporates a communal terrace on Level 3, which provides approximately 177sq.m of communal open space (which is 18% of the site area). This area allows passive recreation and social interaction amongst residents, as well as supplementing the areas of private open space that are provided within the majority of apartments (refer to **Figures 20** and **21**).

The proposal includes an area of approximately 197sq.m of the front setback of the development to Liverpool Street for activation of the public domain through potential outdoor seating zones and a new/relocation of the pedestrian entry to Museum railway station, including a public art installation. Further discussion on the station entry is provided at the issues section of this report.



Figure 20: The proposed communal open space and associated planting at Level 3



Figure 21: A sectional drawing of the proposed landscaping works to the Level 3 communal terrace

(e) Principle 7: Amenity

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

- (i) All units have a 2.7 metre floor to ceiling height.
- (ii) 79.3% of apartments will receive 2 or more hours of solar access between 9.00am and 3.00pm on the winter solstice, which exceeds the RFDC requirement of 70% for dense urban environments.
- (iii) 67.9% of the units are naturally cross ventilated, which exceeds the 60% requirement of the RFDC.

- (iv) The development proposes each apartment typology with an internal area range as detailed below:
- a. 1 bedroom: 58sq.m-69sq.m (RFDC guideline: 50sq.m);
 - b. 2 bedrooms: 66sq.m -95sq.m (RFDC guideline: 70sq.m); and
 - c. 3 bedrooms: 113sq.m -230sq.m (RFDC guideline: 95sq.m).
 - d. 92.1% of all apartments (being 129 apartments) within the development are provided with an internal area in excess of the RFDC guidelines. The small number of 2 bedroom apartments that have an internal area that are technically below the RFDC guideline are supported in this instance, as the design of each unit allows for a compact unit option with efficient design, and does not compromise on internal amenity.
- (v) All apartments are provided with a combination of internal storage within their individual apartments and within designated storage cages within the basement, with the storage available exceeded the requirements of SEPP 65.
- (vi) 93.6% of all apartments (being 131 apartments) are provided with private outdoor open space in the form of balconies or wintergardens. Whilst this is a departure from the RFDC, which recommends all apartments be provided with private open space, the Sydney DCP 2012 does allow up to 25% of all apartments within a development to not have individual private open space.
- (f) Principle 8: Safety and Security

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

- (g) Principle 9: Social Dimensions

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

- (i) 43 x 1 bedroom – 31% (Sydney DCP control is maximum of 40%);
- (ii) 68 x 2 bedroom - 49%; (Sydney DCP range is 40-75%); and
- (iii) 29 x 3 bedroom – 21% (Sydney DCP range is 10-100%).

The proposal achieves compliance with the Sydney DCP 2012 requirements, and is considered to be acceptable in providing a range of housing options.

(h) Principle 10: Aesthetics

Complies: The proposed design has adopted an architectural expression that embraces the scale and materiality of the heritage listed Mark Foys building. The facade treatment has been designed as a series of stacked boxes, with the 'podium' and tower being distinguished by their materiality and proportions.

45. 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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

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

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

49. State Environmental Planning Policy (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.
50. The proposed development of the site is consistent with the aims and objectives of SEPP 32.

Sydney LEP 2012

51. The site is zoned B8 – Metropolitan Centre under the Sydney Local Environmental Plan 2012 (Sydney LEP 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.
52. The relevant matters to be considered under Sydney LEP 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 Sydney LEP 2012 permits a maximum height of 110 metres for the subject site.</p> <p>The proposed seeks consent for a building envelope which has a maximum height of 122.7 metres.</p> <p>Whilst the additional height has been assessed as satisfactory as part of the concurrent Section 96 application to the Stage 1 building envelope (D/2014/58/A), and the proposed development is consistent with this height, the proposal still represents a numeric variation to the height control. As such, the applicant has submitted a written statement under the provisions of Clause 4.6 of Sydney LEP 2012 seeking to vary the building height development standard by 12.7 metres (or 11.5%).</p> <p>Refer to the Issues section of this report.</p>
4.4 Floor Space Ratio 6.4 Accommodation floor space	No	<p>Clause 4.4 of Sydney LEP 2012 stipulates a base floor space ratio of 8:1 for the site, with Clause 6.4 providing an opportunity for a further 5.98:1 of floor space where accommodation floor space uses are provided. This equates to a maximum FSR of 13.98:1.</p> <p>The proposed development also seeks to utilise the design excellence provisions pursuant to Clause 6.21, where a further 10% of FSR is possible where the scheme lodged has won a competitive design process and is considered by the consent authority to exhibit design excellence.</p> <p>As amended, the proposal is eligible for the 10% design excellence FSR on the combined total of base and accommodation floor space (i.e. an additional 1.398:1).</p>

Compliance Table		
Development Control	Compliance	Comment
		<p>Considering all applicable floor space provisions allowable under the Sydney LEP 2012, the maximum permissible FSR for this development would be 15.378:1.</p> <p>The proposed development has a gross floor area of 15,849sq.m, which equates to a FSR of 16.22:1.</p> <p>The Applicant has submitted a written statement under the provisions of Clause 4.6 of Sydney LEP 2012 seeking to vary the FSR development standard by 823sq.m (or 5.48%).</p> <p>Refer to further discussion under the Issues section of this report.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the development standard prescribed under Clause 4.3 (Building Height) and Clause 4.4 (Floor Space Ratio).</p> <p>Refer to the Issues section of this report.</p>
5.9 Preservation of trees or vegetation	Yes	<p>The proposal does not impact on existing street trees located along the Liverpool Street frontage.</p>
5.10 Heritage conservation	Yes	<p>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</p> <p>The proposal seeks 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. No objection has been raised to the demolition of the building by Council's Heritage Specialist.</p>

Compliance Table		
Development Control	Compliance	Comment
		<p>Council's Heritage Specialist has reviewed the application and advised that the height and scale of the building is supported as it creates a consistent massing to the backdrop of Hyde Park. The lower podium is considered to emphasise the height of the former Mark Foy's building opposite, and the use of polished stone cladding on the podium facade is consistent with, and relates to, the adjacent State heritage item.</p> <p>Council's Heritage Specialist is of the view that the lower podium architecture on the Elizabeth Street frontage could have a stronger horizontal emphasis. It is not recommended that this matter be pursued as detailed consideration has been given to the architectural treatment and its relationship to adjacent heritage buildings/monuments by both the competition jury and the Design Advisory Panel, and is concurred with by Council's Planning Officers.</p>
6.11 Allocation of heritage floor space (HFS)	Yes	<p>A total of 4,428sq.m of HFS is applicable to the development, based on the HFS requirements under Clause 6.11(1)(a), (d) and (e) of Sydney LEP 2012, and has been calculated on the following basis:</p> <ul style="list-style-type: none"> • 50% of accommodation floor space = 2,922sq.m; • 50% of design excellence floor space = 683sq.m; and • 100% of any additional floor space permitted under Clause 4.6 = 823sq.m. <p>Clause 6.11(2)(a) of Sydney LEP 2012 permits a further reduction of HFS by 50% or 1,000sqm (whichever is the lesser) where the scheme has undergone a design competition process.</p> <p>With this further reduction, the HFS allocation is 3,428sq.m.</p>

Compliance Table		
Development Control	Compliance	Comment
6.16 Erection of tall buildings in Central Sydney	Yes	<p>As the proposed development has a height that exceeds 55 metres, the provisions of this clause are applicable. The proposal has been assessed as meeting the objectives for tower developments within Central Sydney as it:</p> <ul style="list-style-type: none"> • is contextually appropriate; • creates residential apartments with good amenity; • does not adversely impact on the amenity of adjacent buildings; and • encourages active uses at ground level.
6.21 Design excellence	Yes	<p>The proposal met the thresholds of Clause 6.21(5) of Sydney LEP 2012, and as such, the applicant was required to undertake a competitive design process prior to lodging a Stage 2 development application.</p> <p>As detailed in the relevant history section of this report, this process was held between September to October 2014. Bates Smart were named the winning scheme on 20 October 2014, however, the Design Jury recommended that a number of matters be further explored prior to the lodgement of any Stage 2 development application.</p> <p>Pursuant to the provisions of Clause 6.21(7) of Sydney LEP 2012, where a proposal has been the winning entry of a competitive design process and the consent authority is satisfied that the building exhibits design excellence, a further 10% of height or FSR may be awarded.</p> <p>As previously noted in this report, it is considered that the proposal is entitled to the award and utilisation of the design excellence floor space.</p>

Compliance Table		
Development Control	Compliance	Comment
7.5 & 7.7 Car parking ancillary to other development	Yes	<p>Pursuant to Clauses 7.5 and 7.7 of Sydney LEP 2012, a maximum of 91 car parking spaces are permitted based on the proposed land uses.</p> <p>A total of 92 car parking spaces are proposed within the basement which results in a minor exceedance of the car parking provisions of Sydney LEP 2012.</p> <p>It is recommended that a condition be imposed to advise that a maximum of 90 residential spaces and 1 retail car parking space are permitted in accordance with the maximums stipulated in the LEP. The remaining additional car parking space must be provided as a car share space in accordance with the Sydney DCP 2012 provisions.</p>
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing class 5 Acid Sulphate Soil (ASS). The Preliminary Environmental Site Investigation prepared and submitted with the Stage 1 DA, 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.</p>
7.15 Flood planning	Yes	<p>Appropriate conditions have been recommended by the City's Engineers.</p>
7.16 Airspace operations	Yes	<p>The development is not proposed to be constructed to a height that penetrates the prescribed airspace for Sydney Airport.</p>
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>The subject application seeks consent for demolition and redevelopment of the site as part of the subject application, and is therefore, considered to adequately address the requirements of this clause.</p>

Compliance Table		
Development Control	Compliance	Comment
7.20 Development requiring preparation of a development control plan	Yes	<p>The site has a valid Stage 1 consent (being D/2014/58). This Stage 1 consent is the equivalent of a development control plan and details allowable building envelopes, land uses and vehicular access points. It is considered that current Stage 1 consent for the site addresses the requirements of Clause 7.20 of Sydney LEP 2012.</p> <p>Further discussion is provided at the issues section of this report with regard to consistency of the proposal with the Stage 1 development consent.</p>
7.24 Development near Cross City Tunnel ventilation stack	Yes	<p>The site is located outside of the area identified on the 'Locality and Site Identification Map' as being land affected by Cross City Tunnel Ventilation Stack. As such, no further investigation or conditions are required.</p>

Sydney Development Control Plan 2012

53. The relevant matters to be considered under Sydney Development Control Plan 2012 (SDCP 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 development 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 proposal does not impact view lines along key streets into the city; • 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
3.1.5 Public Art	Yes	A Public Art Strategy has been submitted with the application, and has identified the proposed new station entry pavilion on Liverpool Street as the preferred location for the integration of public art in the development. The Strategy has identified alternative locations on the Liverpool Street frontage of the site within the building forecourt. Appropriate conditions have been recommended to require the development of this strategy prior to Construction Certificate.
3.2 Defining the Public Domain	Yes	<p>A conceptual public domain plan has been submitted with the application to satisfy a condition of the Stage 1 consent. This documentation has been reviewed by the City's Public Domain Unit, who have advised that conceptually the plan is generally acceptable.</p> <p>Conditions have been recommended requiring that the detailed construction stage drawings of this public domain plan be submitted at Construction Certificate stage.</p> <p>The proposal incorporates ground floor level retail and the residential lobby on both Liverpool and Elizabeth Streets, which activates both these street frontages.</p>
3.2.4 Footpath awning	Yes	As required by Section 3.2.4 of Sydney DCP 2012, the proposed development incorporates an awning on both the Elizabeth and Liverpool Street frontages of the site. The design of this awning has been integrated into the architecture of the building, and has a variable height above footpath level along both street frontages due to the fall in topography across the site. At its lowest point, the awning is 3.5 metres above footpath level, which is consistent with the desired height specified in the Sydney DCP 2012.

3. General Provisions		
Development Control	Compliance	Comment
3.2.6 Wind effects	Yes	<p>A Pedestrian Wind Environment Study was submitted with the application.</p> <p>The conclusions of this assessment are that the wind conditions along the pedestrian footpaths on all street frontages will be compliant with the relevant criteria developed to ensure pedestrian comfort and safety.</p> <p>The Wind Study has made recommendations regarding wind barriers to the proposed outdoor seating areas on Liverpool Street associated with the future retail uses on the ground floor/Level1. It is considered that as the final use and fit-out of these spaces does not form part of the subject application, that any wind barriers required to facilitate outdoor dining should form part of the separate development applications for the use of the tenancies. A condition is recommended.</p>
3.2.7 Reflectivity	Yes	<p>A reflectivity report has been submitted to assess the reflectivity impacts of the facade treatment on pedestrians and drivers.</p> <p>The conclusions of this assessment are that where glazing elements on the northern and western facades are constructed with a 20% reflectivity they are acceptable. A recommendation is made within the report that all metal plant louvres and non-glazed panel systems should be of a matte finish to diffuse reflectivity.</p> <p>An appropriate condition is recommended.</p>
3.2.8 External lighting	Yes	An appropriate condition is recommended.
3.3 Design Excellence and Competitive Design Processes	Yes	Refer to Issues section of this report.

3. General Provisions		
Development Control	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The development is able to comply with BASIX for the residential component.
3.7 Water and Flood Management	Yes	Conditions relating to stormwater drainage have been recommended by Council's Engineer.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Appropriate conditions of consent have been recommended for imposition.
3.9 Heritage	Yes	Refer to Sydney LEP 2012 compliance table.
3.11 Transport and Parking	Yes	Appropriate conditions are recommended in relation to the provision of car parking spaces and bicycle storage within the basement car park.
3.11.13 Design and location of waste collection points	Yes	The proposed development has been designed to accommodate on-site garbage collection by a waste collection vehicle 9.24 metres in length in accordance with Council's Policy for Waste Minimisation.
3.12 Accessible Design	Yes	<p>The proposal incorporates 26 adaptable apartments. This equates to 18.6% of all apartments within the development, which exceeds the 15% requirement of Section 3.12.2 of Sydney DCP 2012.</p> <p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the Sydney DCP 2012 and the BCA.</p>
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the Code for Waste Minimisation in New Developments 2005.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.1.2 Floor to ceiling heights	Yes	<p>The proposed ground floor retail spaces have a variable floor to floor height of between 4 and 6.5 metres, which exceeds the minimum requirements of 3.6 metres as specified by the Sydney DCP 2012.</p> <p>The proposal provides residential floor to floor heights of a minimum of 3.1 metres, in order to ensure adequate internal floor to ceiling heights can be delivered on completion of the development.</p>
4.2.3.1 Solar access	<p>Yes</p> <p>Yes</p>	<p>A total of 79% of all apartments (being 111 apartments) receive a minimum of 2 hours direct sunlight to their living rooms and private open space in mid-winter between 9.00am and 3.00pm.</p> <p>The Stage 1 application assessed the potential shadowing impacts of the envelope on surrounding properties and the public domain, and concluded that no unreasonable overshadowing would result.</p>
4.2.3.3 Internal common areas	Yes	The residential floors of the tower building have been designed to have natural light to common corridors and lift lobbies.
4.2.3.5 Landscaping 4.2.3.6 Deep Soil 4.2.3.7 Private open space 4.2.3.9 Ventilation 4.2.3.8 Common open space	Yes.	Refer to discussion provided under SEPP 65 assessment.
4.2.3.11 Acoustic privacy	Yes	An Acoustic Assessment was submitted with the application. The City's Environmental Health Officer has concluded that a further acoustic assessment will be required to be submitted at Construction Certificate stage.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.3.12 Flexible housing and dwelling mix	Yes	As detailed elsewhere within this report, the proposed development provides a unit mix that is consistent with the Sydney DCP 2012 provisions and ensures a range of housing typologies will be available.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The proposal utilises architectural language and materials to provide visual interest, as well as breaking up the perceived bulk and scale of the development.
4.2.6 Waste minimisation	Yes	The proposal has been amended to incorporate on-site garbage collection. Appropriate conditions have been recommended for imposition.

5.1 Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1 Street frontage heights	Yes (consistent with Stage 1 envelope)	The proposed development does not incorporate a traditional podium element. Whilst this represents a departure from the street frontage height (podium) planning controls, this variation was supported as part of the assessment of the Stage 1 development application. The proposed development is consistent with the approved Stage 1 building envelope, and is therefore considered to be satisfactory in this instance.

5.1 Specific areas – Central Sydney		
Development Control	Compliance	Comment
		<p>It is noted that the proposed design references the height and materiality of the adjacent Mark Foys State listed heritage item, as was a requirement of the Stage 1 consent and design competition brief. This aids in providing a pedestrian scale to the northern elevation, breaks up the building bulk and references the heritage context of the building. This design solution is considered to achieve a key objective of a podium feature relating to a proposal being contextually compatibility with both the streetscape and nearby heritage items.</p>
5.1.2.1 Front setbacks	Yes (consistent with Stage 1 envelope)	<p>As addressed above, the proposal has been designed without a traditional podium and tower element. As such, the proposal numerically departs from the front setback planning controls on both Liverpool and Elizabeth Streets.</p> <p>As addressed above, this matter was assessed as acceptable as part of the Stage 1 development application due to the contextual nature of the site and the established development pattern of buildings along Liverpool 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.</p>

5.1 Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.2.2 Side and rear setbacks	Yes (consistent with Stage 1 envelope)	<p>The proposal has been designed to be generally compliant with the approved building envelope, and the setbacks from the eastern and southern neighbours that were established as acceptable as part of the assessment of the Stage 1 development application.</p> <p>With regard to setbacks to the rear, there is a minimum separation between the proposed development and the commercial building to the south (at 140 Elizabeth Street) of 15 metres for the lower levels of the building.</p> <p>The proposed scheme has set the building back further from the southern boundary of the site on the mid to upper levels of the tower, resulting in habitable rooms being separated beyond the minimum requirement of the RFDC (of 18 metres). It is noted that this is an improvement from the Stage 1 building envelope.</p>
5.1.5 Building exteriors	Yes	The design of the proposed development, particularly the podium element, is considered to have successfully considered and referenced its heritage context through the use of materials, proportioning and scale.
5.1.8 Award and allocation of heritage floor space		Refer to discussion in the Sydney LEP 2012 compliance table.

ISSUES

Consistency with Stage 1 consent

54. The provisions of Section 83D of the EP&A Act, 1979 state that where a Stage 1 development consent for a site remains in force, that the determination of any further development application in respect to that site cannot be inconsistent with the Stage 1 consent.
55. The table, below, provides an assessment of the proposed development against the key conditions imposed on the Stage 1 development consent, being D/2014/58.

Stage 1 consent requirement	Comment
<p>Approved Development (Condition 1)</p> <p>Stage 2 to be contained within the Approved Envelope (Condition 3)</p> <p>Building Height (Condition 5)</p>	<p>The proposal does seek variation to the envelope that was approved pursuant to the Stage 1 consent. The extent of variation proposed relates to the provision of an additional 12.7 metres above the maximum height of 110 metres.</p> <p>Where variations to the envelope occur (to the rear boundary), these projections are minor and do not result in any amenity or environmental impacts.</p> <p>Further discussion is provided on the extent of variation with the Stage 1 consent elsewhere within this report. Furthermore, in order to ensure consistency between the staged development applications as is required by Section 83D of the EP&A Act, 1979, a concurrent Section 96 application has been lodged seeking variation to the building envelope. A separate planning assessment report has been prepared for the Section 96 application to the Stage 1 DA (D/2014/58/A).</p>
<p>Design Excellence & Competitive Design Process (Condition 4)</p>	<p>As detailed elsewhere within this report, following the determination of the Stage 1 application, the applicant undertook a competitive design process, with Bates Smart being named the winning scheme.</p> <p>It is noted that the design competition brief included a design excellence strategy that indicated to the competitors that there was a possibility of exploring additional height on the subject site above the approved 110 metres. All entrants elected to explore this additional height in their competition schemes.</p> <p>In the Competitive Design Alternatives – Jury Report, the Design Jury concluded that they were of the view that the Bates Smart scheme would be able to achieve design excellence, subject to some minor clarification in the detailed design (which is outlined in the background section of this report).</p> <p>It is considered that the competitive design process held for the proposal has satisfied the requirements of Condition 4 of the Stage 1 consent.</p> <p>Part (b) of this condition requires that the proposal must exhibit design excellence. Whilst the jury were of the opinion that the proposal exhibited design excellence in the form originally lodged, it was concluded during the assessment that the proposal did require amendment to address the amenity/environmental impacts associated with the siting of the additional height (above 110 metres), and ultimately, to achieve the objectives of design excellence. As such, the scheme has further evolved, but is still considered to retain the design intent of the winning scheme.</p>

Stage 1 consent requirement	Comment
Floor Space Ratio (Condition 6)	Refer to discussion in the issues section of this report.
Residential Land Use (Condition 7)	As detailed elsewhere within this report, the proposed development has been designed to comply with the principles of SEPP 65, the rules of thumb of the RFDC, BASIX and the residential amenity provisions of the Sydney DCP 2012.
Detailed Design of the Building (Condition 8)	<p>The architecture of the proposal has appropriately referenced the adjacent heritage listed building at 143-147 Liverpool Street (the former Mark Foy Emporium) through both a horizontal recess to reflect the scale of the heritage item, and through materiality</p> <p>The overall height and scale of the development is consistent with the existing streetscape for development on the southern side of Liverpool Street, and provides a backdrop to the war memorial when viewed from Hyde Park. It is considered that the overall form of the development, along with its materials and colour palette has appropriately considered the heritage context of the site.</p> <p>A relocated and redesigned station entry is proposed on the Liverpool Street frontage of the site, which has been designed as part of the competitive design process to complement the architecture of the new development, improve the private/public domain interface on this street frontage and improve natural light down into the existing pedestrian tunnel. Refer to the Issues section of this report.</p> <p>The proposal has incorporated awnings into the architectural design of the development on both the Elizabeth and Liverpool Street frontages of the site.</p>
Waste Collection (Condition 9)	The proposed development has been designed to accommodate on-site waste collection by a standard length garbage truck.
Heritage Impact Statement (Condition 10)	A Heritage Impact Statement has been submitted with the application in accordance with this condition.
Wind (Condition 11)	A wind assessment was submitted with the application in accordance with this condition.
Accessibility (Condition 12)	The recommendations of the Access Report, prepared by Morris-Goding Accessibility Consulting have been incorporated into the detailed design of the building.

Stage 1 consent requirement	Comment
Ausgrid (Condition 13)	The application was referred to Ausgrid as part of the assessment of the application. Refer to discussion under SEPP (Infrastructure) 2007.
Public Domain Plan (Condition 14)	A Public Domain Plan has been prepared and submitted with the proposal in accordance with the requirements of this condition.
Public Art (Condition 15)	A Public Art Strategy has been submitted with the proposal in accordance with this condition.
Contamination (Condition 16)	This condition was imposed as an advisory condition in relation to the discovery of potential contaminants on site. This condition has again been recommended for imposition on the subject application by the City's Environmental Health Specialist. It is noted that the preliminary contamination assessment submitted with the Stage 1 DA confirmed that the site is suitable for its intended uses with regard to the provisions of SEPP 55.
Bicycle Parking and Facilities (Condition 17)	Bicycle parking has been provided in the development as required by the condition imposed on the Stage 1 consent. However, the City's Transport Planner has advised that the location of the visitor bicycle parking within the basement is not suitable. A condition has been recommended to advise that all visitor parking (which has been reduced to a total of 10 spaces based on the site context) is to be provided at ground level. Amended plans illustrating compliance with this requirement will need to be provided at Construction Certificate stage.
Car Share Spaces (Condition 19)	One car share parking space has been provided within the basement in accordance with the requirements of this condition.
Location of Driveway (Condition 20)	A new vehicular crossover is proposed on the Clarke Street frontage of the site, and has been sited in accordance with the requirements of this condition.
Lift Access and Queuing Analysis (Condition 23)	Whilst a car lift was indicatively proposed as part of the Stage 1 DA, the proposed car park and vehicle access has been designed with ramps rather than any mechanical lifts for vehicles. As such, the requirements of this condition are no longer relevant.

Stage 1 consent requirement	Comment
RailCorp Concurrence Conditions	<p>The Applicant has been in on-going discussions with Sydney Train and Transport for NSW since the approval of the Stage 1 development application. Sydney Trains and Transport for NSW reviewed the conceptual station entry design following the design competition and provided feedback with regard to their engineering standards, tread dimension and design of the circular stair, pedestrian flow, durability and security/safety.</p> <p>These comments resulted in modifications to the stair design from those originally presented at the design competition stage.</p> <p>As detailed elsewhere within this report, the application was formally referred to Sydney Trains and Transport for NSW under the provisions of ISEPP on 13 January 2015 for their concurrence. Concurrence was granted in correspondence, dated 1 July 2015, and these concurrence conditions have been listed at Schedule 3 of the recommended conditions.</p>

Building Height and Design Refinement of Upper Levels

Stage 1 Development Application – Relevant History:

56. The Stage 1 development application was modified during its assessment from a generally complying building envelope to one that sought consent to exceed the maximum building height development standard of 110 metres, to a height of approximately 38 storeys or approximately 120.5 metres (refer to **Figure 13**).
57. These modifications were made as a response to the following issues that were raised during the assessment of the Stage 1 development application, and are relevant in the consideration of the subject application:
- (a) the envelope originally lodged was generally compliant with the built form controls for the site pursuant to Sydney LEP 2012 and Sydney DCP 2012, including a compliant height. This 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). The northern elevation of 'Hyde Park Towers' included the primary open space for a number of apartments;
 - (b) further modelling was undertaken during this assessment to determine that if the envelope was chamfered off in the southwestern corner of the tower between Levels 14 to 36, then the affected apartments in 'Hyde Park Towers' would retain 1 hour 50 minutes or greater of direct solar access between 9.00am and 3.00pm on the winter solstice, which is generally consistent the solar access provisions of Sydney DCP 2012 and SEPP 65/RFDC. This was assessed as acceptable in the Stage 1 development application based on the existing site constraints and the extremely dense CBD environment (refer to **Figure 22**, below, which illustrates the chamfer of the envelope);

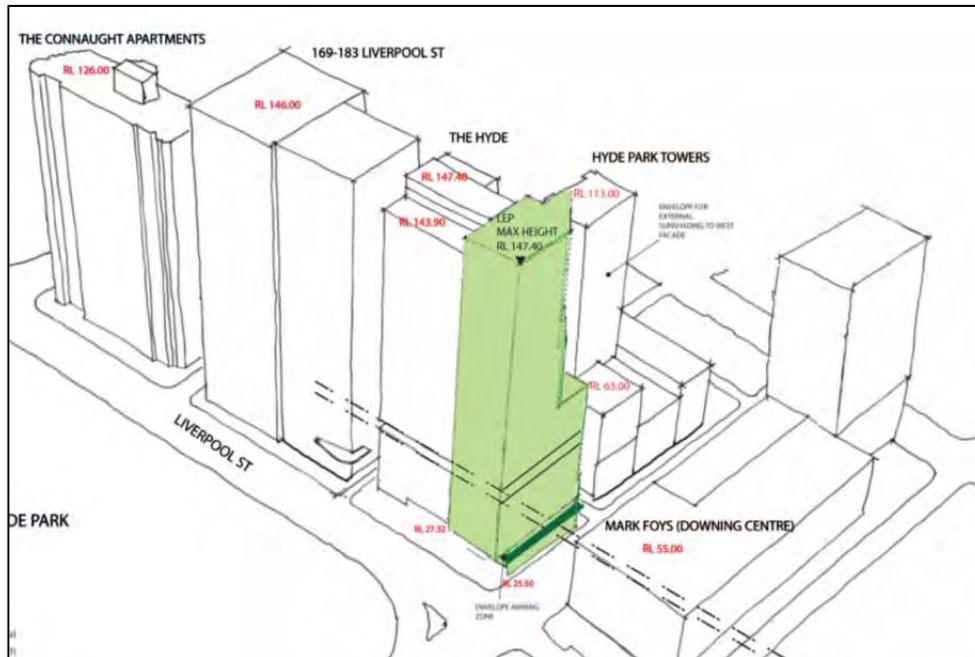


Figure 22: Aerial view of amended Stage 1 DA building envelope, which illustrates the chamfered edge on the southwestern corner

- (c) The application was considered by the City's Design Advisory Panel (DAP), who supported the chamfering of the envelope and creating a more slender tower in order to preserve the amenity for residents in 'Hyde Park Towers'. In addition to the amenity impacts noted above, DAP also noted that they were of the view that this site could accommodate additional height, to align with the height of the architectural roof feature of 'The Hyde'. This was due to:
- (i) the established context tall buildings to the south of Hyde Park, which present a strong street wall (refer to Figure 3). This height and street wall is established by the adjacent development to the east of the site along Liverpool Street, being 'The Hyde' (RL 147.4), the 'American Express' building (RL 146) and 'The Connaught' (RL 126); and
 - (ii) the site being located at the intersection of two prominent CBD streets and being a highly visible site from a number of locations in the public domain, including Hyde Park. DAP were of the opinion that replicating this additional height and terminating the corner would make an important visual statement at this location.

58. The conclusions of the Stage 1 assessment (D/2014/58) 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 as 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.

Design Competition:

59. The proposed development has been the subject of a Competitive Design Alternatives Process, with the Bates Smart scheme being selected by the Design Jury as the winning scheme. It is noted that the Bates Smart scheme elected to utilise the exploration zone for additional height, as was outlined in competition brief.
60. Following completion of the competition, the Jury Report notes that the Bates Smart scheme needed resolution to address a number of matters, one of which was as follows:

“The Jury were comfortable with the proposed building height matching the architectural roof feature of The Hyde, but noted that the roof setback adjacent to The Hyde does not fully align with the roof to the new building. The relationship of the upper levels of the building with The Hyde needs to be resolved in detailed design.”

Subject Application:

61. The subject development application was lodged with a maximum height of 122.7 metres, and did not propose to set the upper levels back from the northern front building line.
62. Following a preliminary assessment of the application, which included consideration of the following matters, it was concluded that modifications were required to the scheme:
 - (a) the content and recommendations of the design jury report, in particular the above comment relating to the treatment of the upper levels;
 - (b) matters raised in submissions, including the undertaking of view analysis modelling from the private open space of the penthouse apartment of the adjacent property ('The Hyde');
 - (c) the established height and pattern of adjacent development, including the development assessment for the adjacent building of 'The Hyde' (being D/2006/1400), which included justification and support of a variation to the building height for an additional floor and an architectural roof feature above the 110 metre building height development standard;
 - (d) the feedback of the DAP, including advice on recommended architectural modifications that should be made to the proposal in the event that the upper levels are set back from the northern building line; and
 - (e) the objectives of the building height development standard (Clause 4.3 of Sydney LEP 2012) and the objectives and tests for varying a development standard pursuant to Clause 4.6 of Sydney LEP 2012.
63. **Figures 23 to 25**, illustrates envelope massing prepared by the applicant to illustrate a comparison in the massing between the approved Stage 1 DA, the Stage 2 DA as originally lodged and as modified with the upper 2 levels setback.

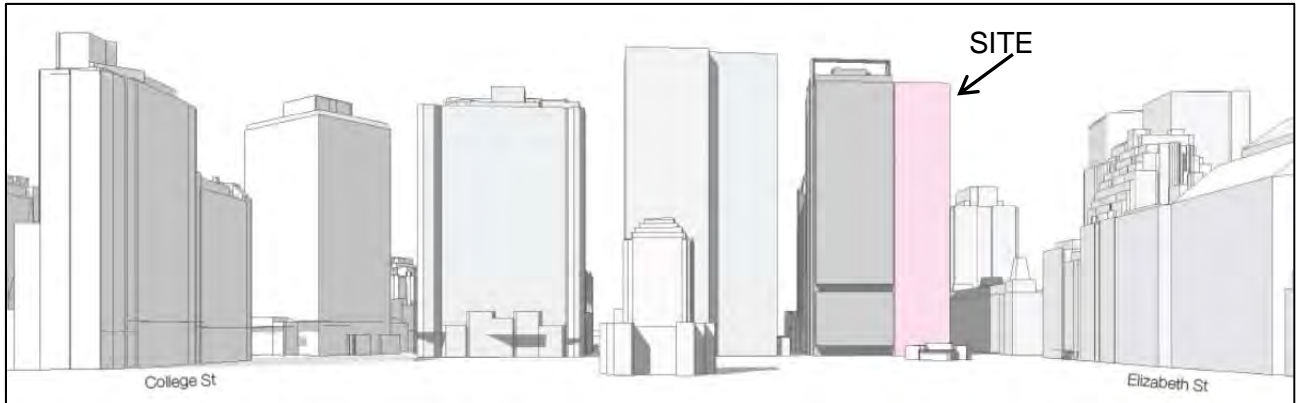


Figure 23: Stage 1 DA building envelope massing (i.e. 110 metres) as viewed from Hyde Park

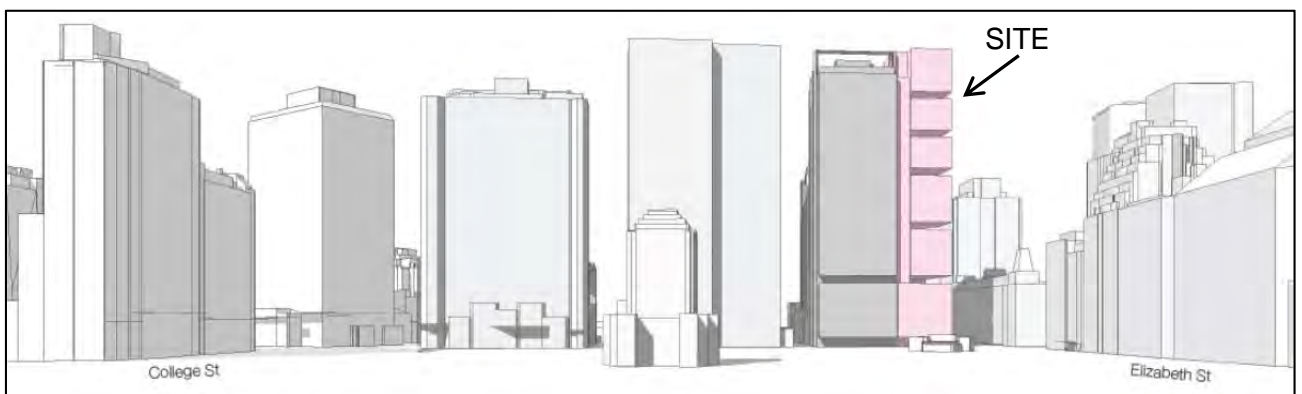


Figure 24: Stage 2 DA building massing (as originally lodged) as viewed from Hyde Park

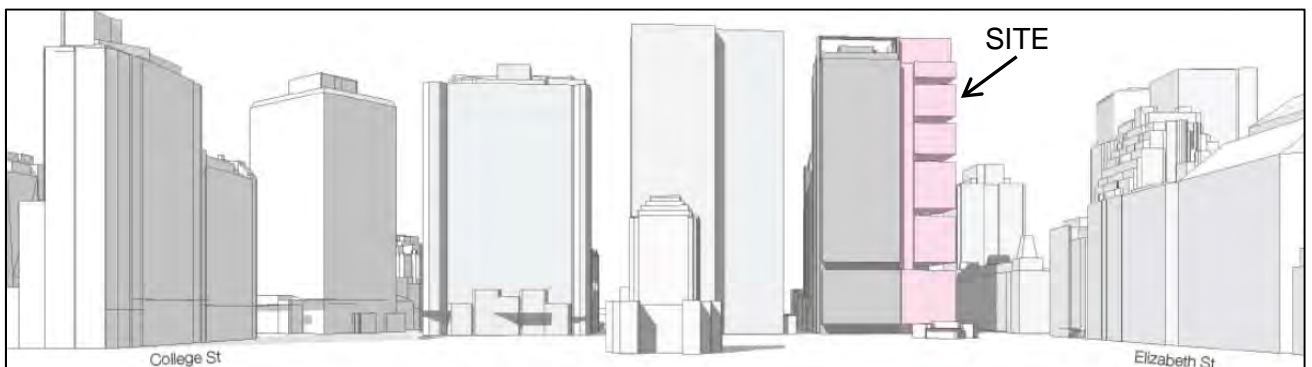


Figure 25: Indicative envelope with the upper 2 levels setback to align with the architectural roof feature of 'The Hyde', as viewed from Hyde Park

64. Based on the above, the Applicant was advised in June 2015 that the proposal required design refinement to address impacts associated with the additional height, which related to:
- (a) the obstruction of westerly district views and outlook from 'The Hyde' penthouse, which occurred as a result of the non-complying element of the building; and
 - (b) bulk and scale of the upper levels on this visible corner site, with this massing being inconsistent with the upper levels of 'The Hyde'.



Figure 26: View modelling undertaken by the City Modellers to illustrate the westerly view/outlook obstruction from the penthouse of 'The Hyde' and the visual bulk

65. In response, the Applicant formally submitted amended plans on 23 June 2015 and 3 July 2015 to set back the upper 2 floors (being Levels 37 and 38) of the building, including the following modifications:
- (a) a setback of 6 metres for the upper 2 levels from the northern boundary of the site (Liverpool Street) so as to align with the architectural roof feature of 'The Hyde';
 - (b) a setback of between 2.4 metres from the western boundary (Elizabeth Street) so that these upper levels are clearly delineated from the levels below and are less visible from the street;
 - (c) a reconfiguration of the tower levels below (on Levels 15 to 35) to re-proportion the 'stacked boxes' and location of the recesses. It is noted that this correlates with the recommendation of the DAP.
66. **Figures 27 to 30**, below, illustrate the comparison of the originally lodged and proposed scheme with relation to the setback of the upper levels.



Figures 27 and 28: The scheme as originally lodged (left) and, as modified with the upper two levels setback (right), as viewed from Elizabeth Street looking south

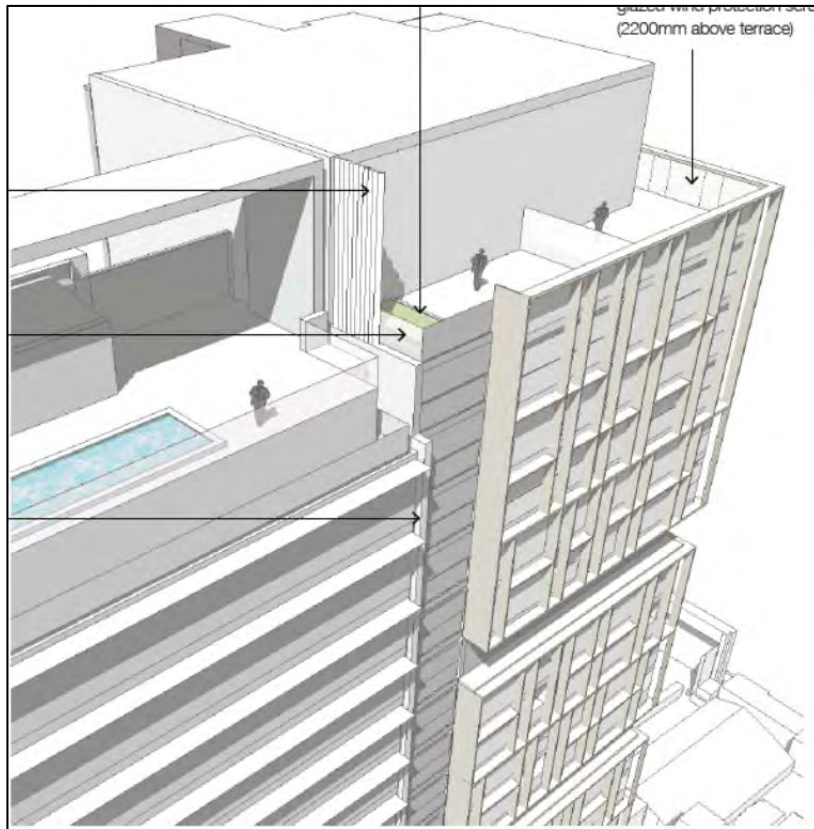


Figure 29: An aerial view (looking northeast) of the amended massing of the upper 2 levels of the building and the relationship with the principal open space of the penthouse apartment of 'The Hyde'



Figure 30: An aerial view (looking northwest) of the amended massing of the upper 2 levels of the building

67. In its amended form, the proposal is considered to address the matters raised by City staff and the DAP, retains the design integrity of the winning scheme of the competitive process and maintains consistency with the Stage 1 consent and the design parameters established by that application.
68. Further consideration with regard to variation of the 110 metre building height development standard is addressed below.

Exception to Development Standard - Building Height

69. Clause 4.3 of Sydney LEP 2012 stipulates a maximum building height of 110 metres for this site.
70. As amended, the proposal has a variable maximum height of between 120.9 metres and 122.7 metres. The variable height results of the sloped topography of the site from north to south. This results in a maximum variation to the building height development standard of up to 12.7 metres. **Figures 31** and **32**, below, illustrate those elements of the building that are in breach of the building height development standard.
71. It should be noted that the concurrent assessment of the Section 96 application (D/2014/58/A), has considered the appropriateness of a building envelope in this location to a height of 122.7 metres (or RL 147.40). As such, the development is proposing a height that will be consistent with its Stage 1 building envelope (as amended).
72. Despite the fact that the proposed height of the development is consistent with the Stage 1 building envelope (as amended), the proposal does seek a numeric variation from the 110 metre building height development standard. As such, the applicant is relying on the provisions of Clause 4.6 of Sydney LEP 2012 to seek an exception to the height development standard by 12.7m. This represents an 11.5% exceedance of the height control.
73. Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The CSPC may grant the exception as the Director-General's concurrence can be assumed where Clause 4.6 is adopted as per Department of Planning Circular PS 08-003 dated 9 May 2008.
74. In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the height development standard has been considered against the objectives and provisions of Clause 4.6 in the following table:

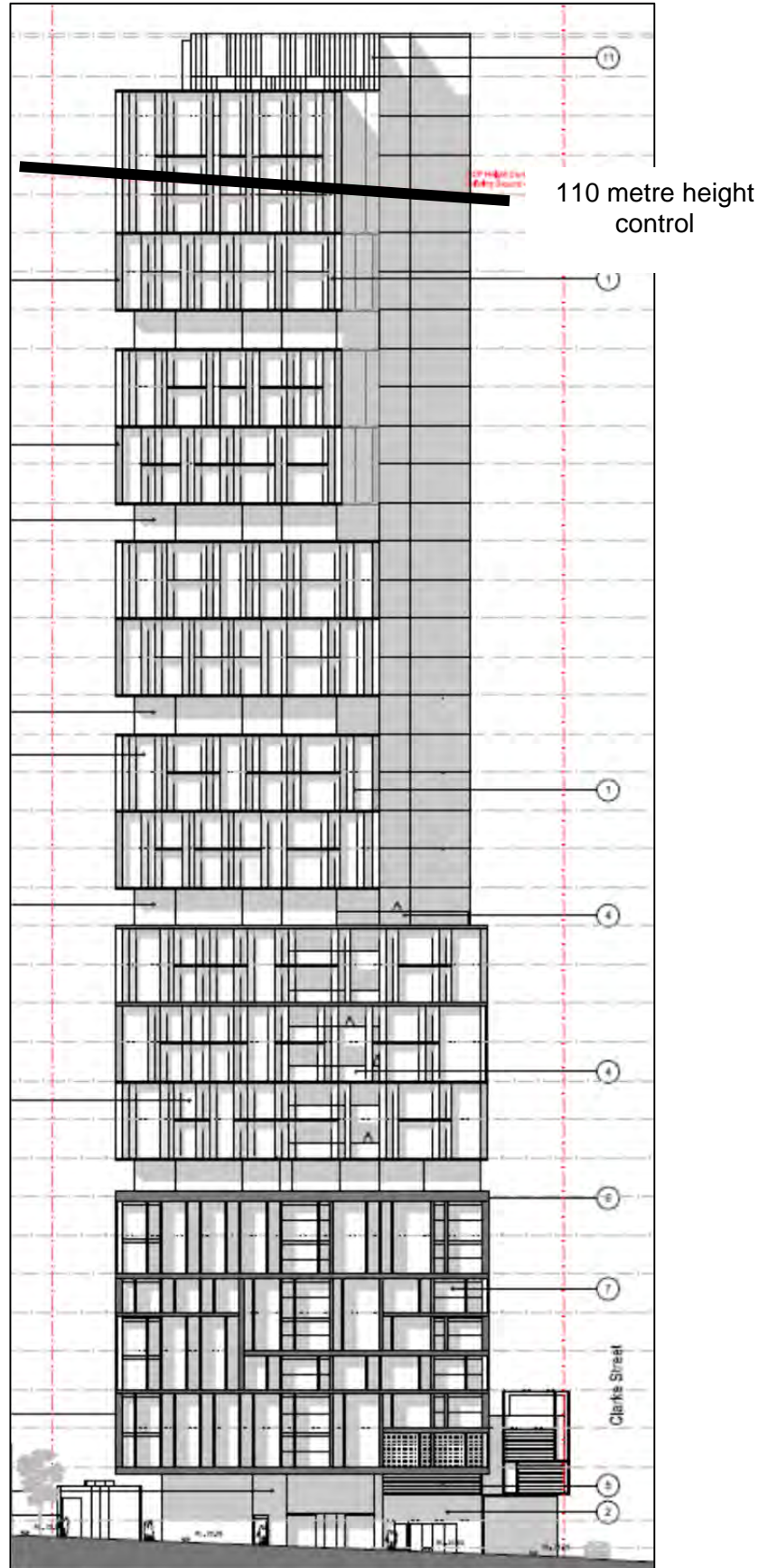


Figure 32: View of the Elizabeth Street elevation illustrating the extent of breach to the building height development standard

Clause 4.6 Requirement	Assessment
<p>4.6(4)(a)(i)</p> <p>The applicant must submit a written request to vary the development standard demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard</p>	<p>A written request has been submitted to Council justifying the proposed contravention of the height development standard on the following basis:</p> <ul style="list-style-type: none"> a) the site is located on a prominent street corner in the CBD, which is the junction of a range of building heights and typologies. The additional height will allow a strong termination of this prominent street corner; b) buildings to the east form a strong street wall enclosure to Hyde Park, with the adjacent buildings to the east ('The Hyde', 'The American Express' Building and 'The Connaught') all projecting above the 110 metre height control. The continuation of this height will provide a consistent backdrop as viewed from Hyde Park and the war memorial; c) the proposed maximum height of the proposal is consistent with the top of the architectural roof feature of 'The Hyde' and the height of the 'American Express' building; d) the additional height has been as redistribution of bulk on the site, and allows a more appropriate stepping down towards the heritage listed Mark Foys building; and e) a key benefit of the additional height has been the creation of a more slender tower and redistribution of floor space from the southwestern corner of the site (as per the Stage 1 envelope) to reduce overshadowing on 'Hyde Park Towers'.
<p>4.6(4)(a)(ii)</p> <p>Council must be satisfied that the proposed development is consistent with the objectives of the development standard and the objectives for development within the zone</p>	<p>The objectives of the B8 – Metropolitan Centre zone are:</p> <ul style="list-style-type: none"> • To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy; • To provide opportunities for an intensity of land uses commensurate with Sydney's global status; • To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve workforce, visitors and wider community; • To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling; and • To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.

Clause 4.6 Requirement	Assessment
	<p>The objectives of the development standard are:</p> <ol style="list-style-type: none"> a) to ensure the height of development is appropriate to the condition of the site and its context, b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas, c) to promote the sharing of views, d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas, e) in respect of Green Square: <ol style="list-style-type: none"> i. to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and ii. to ensure the built form contributes to the physical definition of the street network and public spaces. <p>The applicant submits that the proposal complies with the objectives of Clause 4.3 as the proposal:</p> <ul style="list-style-type: none"> • responds to the established height of adjacent developments to the east of the site along Liverpool Street; • responds to a desired development pattern identified in the Hyde Park Special Character Area to maintain the scale and street wall pattern of existing development along Liverpool Street, which provides a southern enclosure to Hyde Park; • responds to its heritage context by stepping the envelope down towards the southwest corner of the site to better reflect the scale of the heritage listed Mark Foys building; • the applicant has reiterated that this contextual argument for additional height on this site as a trade off for improving the amenity (by way of increased solar access) to 'Hyde Park Towers' was a solution and recommendation of DAP as part of the consideration of the site at the Stage 1 DA phase of the project. The Panel did note that a more slender tower with the chamfered southwestern corner was a more appropriate design for this prominent site than a complying scheme, which resulted in adverse environmental impacts; and • the proposed redistributed envelope (i.e. the chamfering from the southwestern corner) allows for increased view sharing from Hyde Park Towers towards the western edges of Hyde Park.

Clause 4.6 Requirement	Assessment
	<p>Comment:</p> <p>The applicant's written rationale addresses the objectives associated with contravening the development standard and overall is considered to be acceptable. Further detailed rationale and analysis of the City staff is provided in the above issue on the design refinement of the upper levels of the development.</p> <p>The proposed development is consistent with the objectives for height provided under Clause 4.3 of the Sydney LEP 2012 for the following reasons:</p> <ul style="list-style-type: none"> • As detailed extensively throughout this report, 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 DAP, the Design Competition Jury and within the assessment of the 2006 development consent (and later S96 reports) for 'The Hyde' residential apartment building. • 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. • As amended, 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 public domain, and better relate to the setback of the upper level and roof feature of The Hyde development. With it noted that all structures and floor space of the roof terrace level of The Hyde are also in breach of the 110 metre height control. • As amended 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 objective of view sharing. • The development is consistent with the objectives of the B8 Mixed Use zone.

75. As detailed above, extensive modelling of the building envelope occurred as part of the Stage 1 development application and resulted in the removal of a significant portion of what was a generally complying envelope. The removal of the southwestern corner of the envelope achieved both:
- (a) a preservation and enhancement of solar access to another residential building; and
 - (b) an alternative envelope that more appropriately transitioned between the dominant street wall of towers along Liverpool Street to the lower scale State heritage item to the west.
76. 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. As such, it is considered that in this instance, the utilisation of Clause 4.6 to vary the building height standard whilst utilising the design excellence provisions for floor space ratio can be supported. Furthermore, it should be noted that the variation to height is concurrently recommended for approval as part of the Stage 1 consent, and the use of Clause 4.6 in this instance is a technicality to ensure consistency between the staged applications. On this basis, it is considered that there are unique circumstances that apply to this site and the utilisation of Clause 4.6 in this instance does not set a precedent for the City.
77. The written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the height development standard and it is recommended that a Clause 4.6 exception be granted, pursuant to the Director-General's general concurrence of May 2008.

Exception to Development Standard - Floor Space Ratio

78. Clause 4.4 of Sydney LEP 2012 stipulates a base floor space ratio of 8:1 for the site, with Clause 6.4 providing an opportunity based on the proposed land use mix in the development for a further 5.98:1 of floor space where accommodation land uses are provided.
79. The applicant has advised that they seek to utilise the design excellence provisions of Clause 6.21(7)(b) of Sydney LEP 2012. This clause permits a further 10% of floor space where the scheme lodged has won a competitive design process and is considered by the consent authority to exhibit design excellence. As detailed within this report, the proposed development is the winning scheme for a competitive design process, and as amended during the assessment to resolve the setback and treatment of the upper levels is considered by the City staff to be exhibiting design excellence. As such, the proposed development is eligible for the 10% design excellence floor space.
80. Considering all applicable floor space provisions allowable under Sydney LEP 2012, the maximum permissible FSR for this development would be 15.378:1 (or 15,026sq.m).
81. The proposed development has a gross floor area of 15,849sq.m as defined by Sydney LEP 2012, which equates to a FSR of 16.22:1.

82. The applicant is relying on the provisions of Clause 4.6 of SLEP 2012 to seek an exception to the floor space ratio development standard by 823sq.m. This represents a 5.48% exceedance of the floor space ratio control (inclusive of accommodation floor space and design excellence floor space).
83. Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The CSPC may grant the exception as the Director-General's concurrence can be assumed where Clause 4.6 is adopted as per Department of Planning Circular PS 08-003 dated 9 May 2008.
84. In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the height development standard has been considered against the objectives and provisions of Clause 4.6 in the following table:

Clause 4.6 Requirement	Assessment
<p>4.6(4)(a)(i)</p> <p>The applicant must submit a written request to vary the development standard demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard</p>	<p>A written request has been submitted to Council justifying the proposed contravention of the floor space ratio development standard on the basis that there is currently an exhibited draft amendment to Sydney LEP 2012 which will permit partially enclosed wintergardens to be excluded from the calculation of gross floor area on high rise development, as a result of wind impacts and the useability of balconies.</p> <p>The additional 823sq.m of gross floor area sought in this application relates entirely to partially enclosed wintergardens, which under the current definition of 'gross floor area' must be included in the calculation of FSR. The applicant seeks variation as these wintergardens have been designed to comply with the draft amendment to Sydney LEP 2012 in that:</p> <ul style="list-style-type: none"> • The proposed development exceeds 30 metres in height; • The proposed wintergardens are not able to be fully enclosed, with permanently open slots for natural ventilation; • No wintergardens exceed 15% of the apartment floor area to which they are associated; • The design of the wintergardens incorporates vertical sliding panels that allows these areas to become a functioning external area to the apartment; and • The bulk of the building is no greater with the inclusion of the proposed wintergardens than if these spaces were designed as traditional balconies.

Clause 4.6 Requirement	Assessment
<p>4.6(4)(a)(ii)</p> <p>Council must be satisfied that the proposed development is consistent with the objectives of the development standard and the objectives for development within the zone</p>	<p>The objectives of the B8 – Metropolitan Centre zone are:</p> <ul style="list-style-type: none"> • To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy; • To provide opportunities for an intensity of land uses commensurate with Sydney's global status; • To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve workforce, visitors and wider community; • To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling; and • To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises. <p>The objectives of the development standard are:</p> <ol style="list-style-type: none"> a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future, b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic, c) to provide for an intensity of development that is commensurate with the capacity of existing planned infrastructure, d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality. <p>The applicant submits that the proposal complies with the objectives of Clause 4.4 as the proposal:</p> <ul style="list-style-type: none"> • subject to the gazettal of the draft amendment to Sydney LEP 2012, the proposal would be consistent with the FSR standard applying to the site, and provides sufficient floor space to meet the anticipated development needs for the foreseeable future;

Clause 4.6 Requirement	Assessment
	<ul style="list-style-type: none"> • the proposed variation does not provide any material impact on the built form or appearance of the building, as the wintergardens could be more conventional open balconies and overcome the technical non-compliance. Given the high levels of wind at the upper levels and noise at the lower levels of the building, the proposed wintergarden arrangement provides a higher level of amenity for future residents of the building; • the development is not a high traffic generating use, and the addition of wintergardens as floor space does not result in the additional traffic generation; • the proposal is located in close proximity to existing public transport infrastructure, as well as the future light rail project. The proposed density in the subject location as a 'transit oriented' development is supported by planning legislation at all levels of government; and • the design of the development has been through a design alternatives process and is considered to result in a design and form that exhibits design excellence and responds positively to the desired character of the Special Character Area. <p>Comment:</p> <p>Despite the numeric variation sought, the proposed development is considered to be consistent with the objectives of both the floor space ratio development standard and the B8 – Metropolitan Centre zone.</p> <p>In this instance, the applicant's written request and rationale is supported based on the imminent gazettal of the draft amendment to Sydney LEP 2012, which will allow the exclusion of wintergardens on what would be wind affected balconies.</p> <p>However, in order to support the variation of FSR on the basis of the LEP amendment, it is recommended that a design modification condition be imposed to ensure that the design of these wintergardens not only complies with the draft LEP amendment but also with the draft DCP provisions for wind affected balconies.</p> <p>As such, it is recommended that a design modification condition be imposed to require that each wind screen (i.e. the wintergarden glazing) be amended to include permanent openings that are at least 25% of the external face of each elevation of the wintergarden.</p>

85. It is considered that the written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance, subject to compliance with the conditions of consent noted above. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the height development standard and it is recommended that a Clause 4.6 exception be granted, pursuant to the Director-General's general concurrence of May 2008.

Station Entry

86. An escalator currently exists on site, which provides pedestrian entry to an underpass tunnel beneath Liverpool Street and connects to Museum railway station (refer to **Figure 33**, below). This escalator is located within the front setback of the existing development from its Liverpool Street frontage, and is located wholly within the boundaries of the subject site. This existing escalator was built as a requirement of the 1989 development consent for the redevelopment of the site.



Figure 33: The existing escalator station entry located on the site

87. This entry is currently owned and maintained by the landowner, with an easement on title benefitting Rail Corporation of NSW (now known as Transport for NSW) for a right of footway. The existing entry/access is generally open between the hours of 6.00am to 8.00pm, with the access under the control of Transport for NSW.

88. During the assessment of the Stage 1 development application, it was identified that the redevelopment of the site was an opportunity to improve the existing station entry, both in terms of its location and design. A condition was imposed on the Stage 1 consent requiring that the design brief for the competitive design process incorporate a requirement that the competitors explore an alternative pedestrian entry to the underpass/station.
89. The subject application seeks to demolish the existing access and provide a replacement entry located in closer proximity to the intersection of Liverpool and Elizabeth Streets. The proposal is a glazed circular enclosure with a central light well, which is also identified as the preferred location for the installation of a piece of public art. At this indicative stage, the public art strategy identifies a preference for a light installation art work.
90. The Architect's design rationale for the proposed entry is to improve the public domain, create an identifiable marker of the entry and maximise natural light to the subterranean tunnel through the utilisation of a glass façade and light well. **Figures 34 and 35**, below, illustrate the proposed relocated station entry.

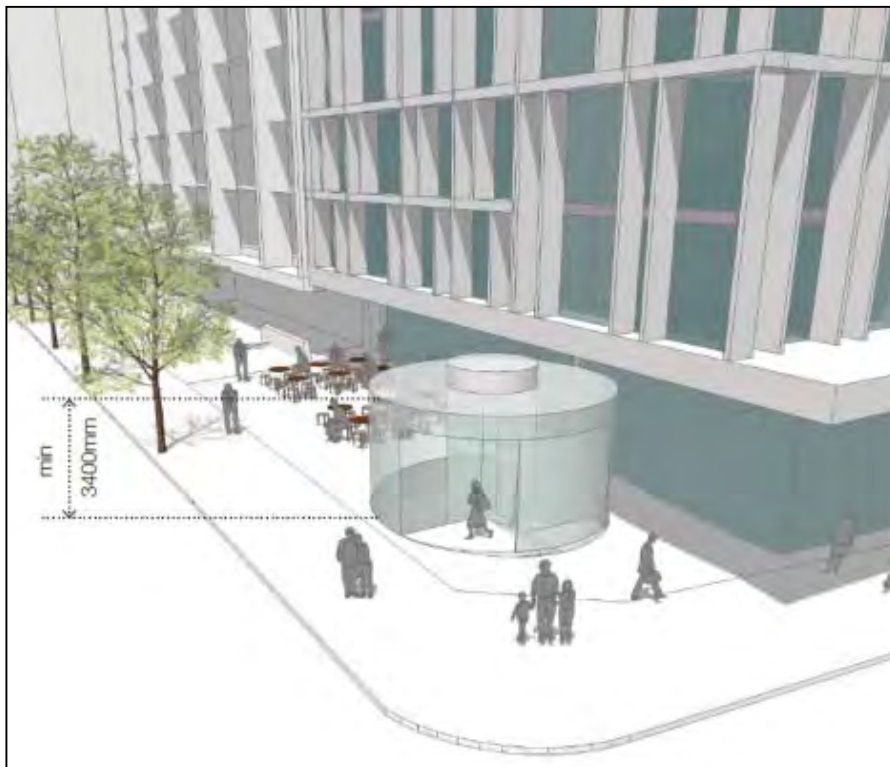


Figure 34: Illustration of the proposed new circular glazed pedestrian entry to Museum Station

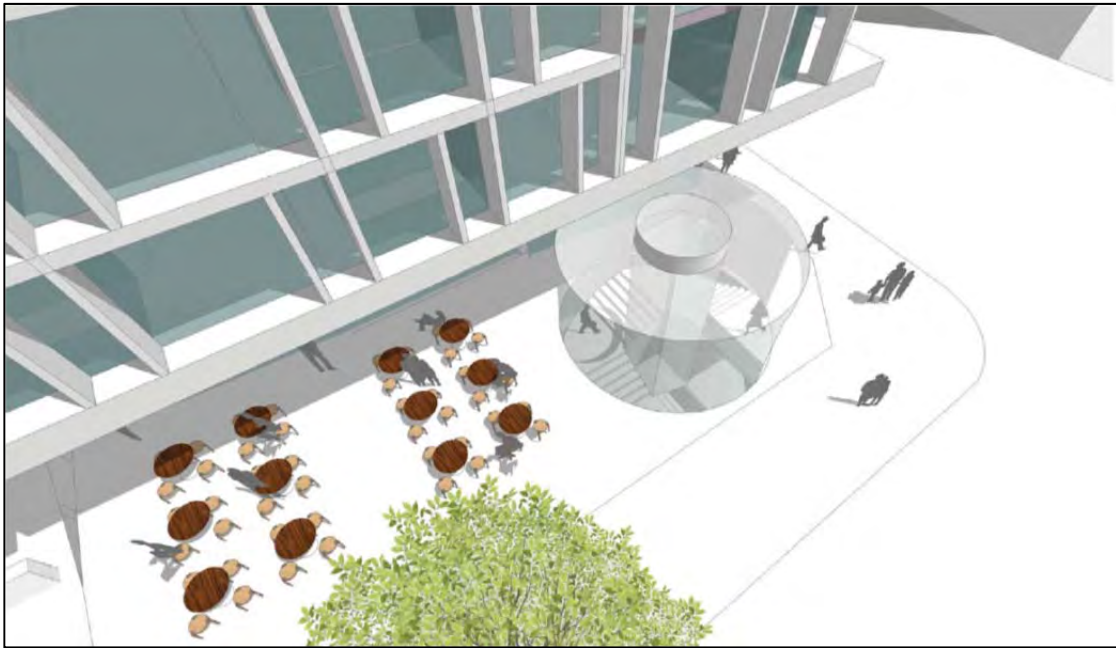


Figure 35: Illustration of the proposed new circular glazed pedestrian entry to Museum Station

91. A number of submissions have been received raising concerns with the proposed station entry, notably the removal of the escalators and replacement with traditional stairs and the impacts on accessibility to the station.
92. It is agreed that accessibility to the station is a parameter issue, however, the position of Transport for NSW and the City’s assessment staff is that the existing entry does not, nor has it ever, provided access to Museum Station for people with a disability. The existing heritage listed pedestrian underpass tunnel is not accessible and contains a series of 8 stairs (refer to **Figure 36**, below) between the subject site and the concourse of Museum Station. The existing tunnel is constrained and does not contain an adequate head height clearance to facilitate the removal of these stairs and replacement with a compliant gradient ramp. Furthermore, these stairs are located outside the boundaries of the site.

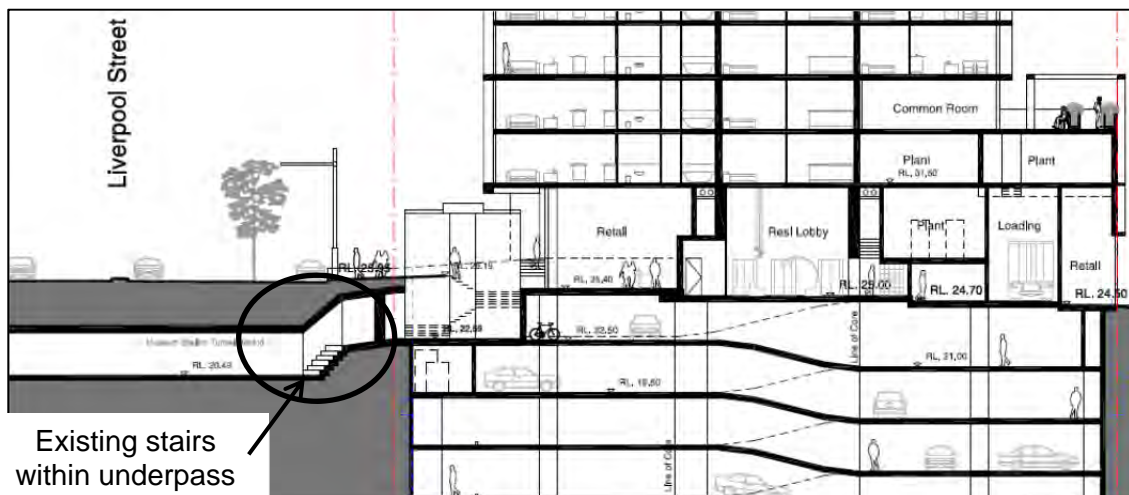


Figure 36: A sectional drawing illustrating the proposed relocated station entry and the impediments of the existing stairs and level changes within the underpass tunnel

93. It should be noted that construction works have commenced on the Museum Station upgrade being undertaken by Transport for NSW, which once completed will provide:
- (a) A new lift connecting the entry of the station on the opposite corner of Elizabeth and Liverpool Streets from the site to the underground station concourse;
 - (b) 2 new lifts connecting the station concourse with the platforms;
 - (c) An accessible ramp at the station entry; and
 - (d) A new accessible toilet.
94. It is considered that the substantive upgrade works being undertaken by Transport for NSW to Museum Station (on the opposite side of Liverpool Street) address the concerns raised in submissions regarding accessibility of the station.
95. With regard to the removal of the existing escalators and the replacement with a stair, it is noted that the ownership and management expenses would remain with owner/s of the site (which will become an owner's corporation). Advice has been provided by both Transport for NSW and the Applicant regarding the existing on-going maintenance and breakdown issues with the current escalators. As these escalators do not provide an accessible entry to the station, and this is being provided elsewhere, the proposed arrangement provided is considered to be a reasonable alternative.
96. Extensive consultation has occurred with Sydney Trains and Transport for NSW regarding the modified entry. No objection has been raised to the design, subject to the final construction drawings and details being submitted to Sydney Trains for approval prior to a Construction Certificate.

Height of Wind screen around penthouse apartment terraces

97. The amendments made to the scheme has seen the creation of two roof terraces on Level 37 to service the two penthouse apartments (refer to **Figure 37**, below).

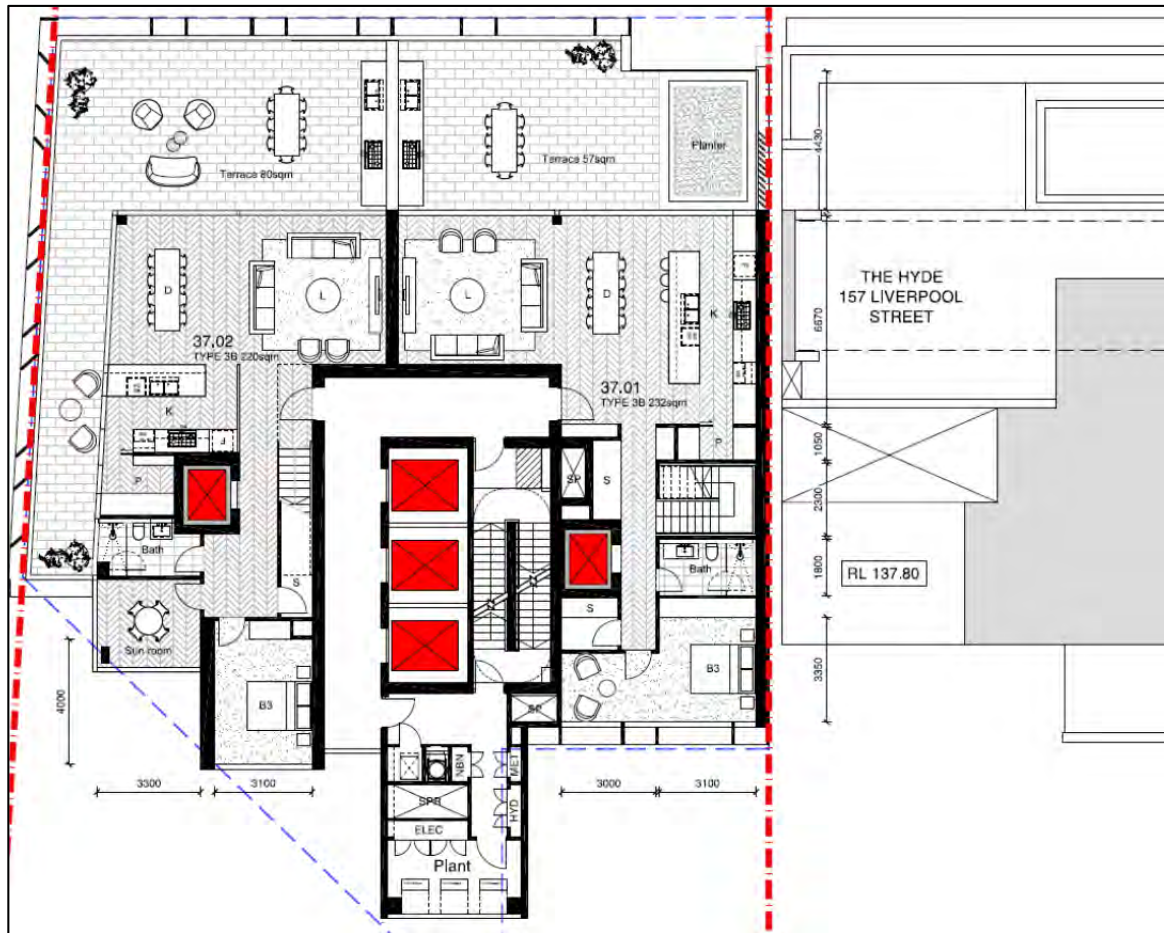


Figure 37: The proposed floor plan and roof top terraces of the penthouse apartments on Level 37 of the subject development

98. The amended scheme incorporates a 2.2 metre high wind screen/parapet around the northern and western perimeter of the Level 37 roof terraces (refer to **Figures 38 and 39**, below).
99. The Applicant contends that the height of these screens is required to mitigate wind impacts that might negate the use and enjoyment of these terraces by the future residents. A supplementary statement has been submitted from the Wind Consultant, which states that with a wind screen of 2.2 metres, the terraces would be provided with a good level of protection from direct wind flow when sitting or standing on the terrace. The statement also provides commentary that if the height of the screen is reduced, that the terraces would have increased exposure to wind flow.
100. Whilst it is agreed that some form of wind mitigation measures would be required to these terraces, after reviewing the original wind impact assessment and supplementary statement, it is considered that insufficient justification has been provided to support a wind screen at a height of 2.2 metres above the terrace floor level. Based on the information available, it is recommended that a design modification condition be imposed reducing the height of these screens to a maximum of 1.6 metres from the finished floor level. This design modification will result in the parapet height being more closely aligned with the parapet and balustrade height of 'The Hyde'.



Figure 38: View of the proposed parapet/wind mitigation screen around the perimeter of the penthouse roof terraces

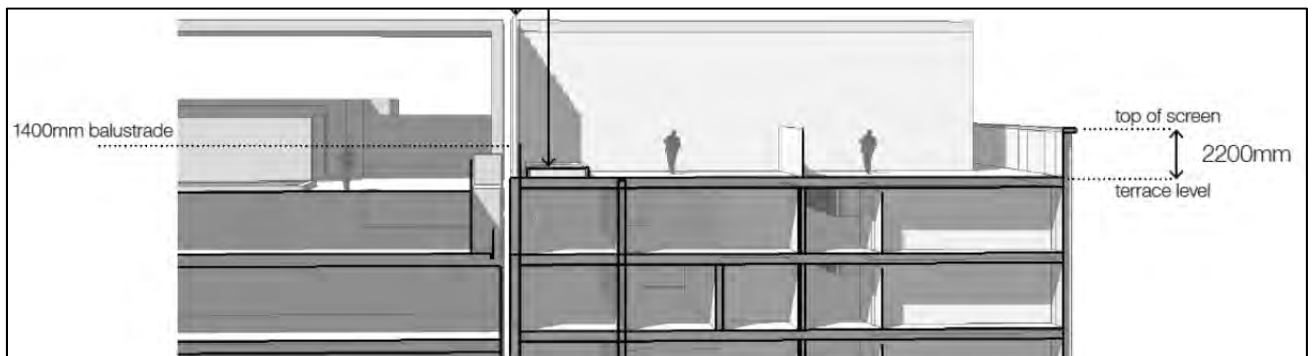


Figure 39: Section drawing illustrating the relationship of the proposed penthouses terraces with that of 'The Hyde' and the indicative 2.2 metre high wind screen

Other Impacts of the Development

101. The proposed development is capable of complying with the BCA.
102. 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

103. 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

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

EXTERNAL REFERRALS**Notification, Advertising and Delegation (Submission(s) Received)**

105. 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 13 January 2015 and 11 February 2015. As a result of this notification there were seventeen (17) submissions received, the content of which is summarised below:

Height:

- (a) The height of the development should align with that of its neighbour (The Hyde), as this is an important vista when viewed from Hyde Park and the proposed development will be visually prominent when viewed from the public domain.
- (b) Object to any height above 110 metres. The proposal should align with the top of 'The Hyde' parapet and not the architectural roof feature.
- (c) Additional height impacts on the amenity and views from the penthouse apartment of 'The Hyde'.

Comment: Refer to discussion on building height in the issues section of this report.

- (d) The subject application has not measured the height of the building from the correct existing ground level. The existing basement level of RL21 should be used as the existing ground level for this site, with the proposal then resulting in a maximum building height of 126.4 metres.

Comment: Existing ground level as defined by the Sydney LEP 2012 has been tested in a number of recent Land and Environment Court judgements, with the outcome being that on built upon sites that ground level should be taken from the surrounding public domain and not basement levels. As such, this objection is not concurred with. Refer to discussion on building height within this report for the extent of variation from the 110 metre building height development standard.

- (e) The height of the building and its upper level treatment does not appear to have responded to the feedback of the design jury, who advised in their jury report that further design refinement was required.

Comment: The application has been amended during the assessment to set back the upper floors of the development to better relate to the adjacent building and minimise the visibility of the additional floors from the public domain.

Station Entry:

- (f) Object to the design of the replacement station entry, in particular the removal of the existing escalators as these are necessary for ease of access for the aged, disabled, small children and tourists etc.
- (g) The replacement of the existing escalator with a stair will slow pedestrian movements to and from the station and result in congestion.
- (h) The replacement entry should incorporate a lift, and the existing stairs in the tunnel should be replaced with a ramp.
- (i) Impacts of closure of the existing station entry during the construction period.

Comment: Refer to discussion in the issues section of this report.

Both the existing and the relocated station entry locations are wholly within the boundaries of the site and are a private asset, with an easement for public access.

The concerns raised in relation to accessibility are noted, however, in its current state the existing access is not an accessible entry to Museum Station as there are stairs located in the existing pedestrian tunnel located under Liverpool Street. No works are able to occur to the pedestrian tunnel itself as this is not part of the development site, and is under the ownership of Transport for NSW and any scope of works to this tunnel is burdened by the heritage listing of the tunnel.

With regard to accessibility, it should be noted that the principal entry to Museum Station (located on the opposite side of Liverpool Street) is currently being upgraded to include a pedestrian lift that provides accessible entry directly to the station concourse level.

Facade treatment/Architecture:

- (j) The facade treatment is considered to be busy and does not sit happily with its context when viewed from Hyde Park and the ANZAC war memorial, and is a direct contradiction with the urban design objective of discretion and being passive.
- (k) The stacked box design detracts from the competition winning architecture of 'The Hyde'.

Comment: The proposal is the winning scheme of a competitive design process, selected by a design jury of respected design professionals, as is required by the design excellence provisions of Clause 6.21 of Sydney LEP 2012. As part of this design excellence process and the assessment of the application, detailed consideration was given to the context of the site and the various vistas in which the site would be viewed, with the façade treatment, height and interface with the adjacent development considered to be acceptable.

Traffic and Parking:

- (l) The proposal will create additional traffic congestion in an already busy area of the CBD, particularly in the narrow Clarke Street.
- (m) Install a turning lane or island in the northbound lanes in Elizabeth Street to turn into Clarke Street.

Comment: The proposed vehicular movement to and from the site, and the ability of the local road network to accommodate these additional vehicle movements has been assessed by the City's Transport Planner. The conclusion of this assessment is that the number of vehicle movements is considered to be negligible and that the existing local road network is able to accommodate the additional movements without any infrastructure changes being required.

- (n) The existing footpath in Clarke Street is narrow. It is requested that the car park entry for the development be setback from the southern boundary of the site to improve the footpath width and improve visibility to/from vehicles.

Comment: The location of the vehicle access and the setback of the building at ground level from Clarke Street was assessed as acceptable as part of the Stage 1 development application. The proposed development has been designed to be consistent with the setbacks approved at Stage 1.

Amenity impacts:

- (o) Loss of westerly views from balconies north facing balconies on Level 17 and above of 'The Hyde', as the proposed building sits further north than 'The Hyde' building.

Comment: The building, including facade articulation and fins, is wholly located within the setback and envelope approved as part of the Stage 1 development application. This includes the northern setback, which was approved at Stage 1 to align with the northern building line of the adjacent development ('The Hyde').

The following was noted in the Stage 1 planning assessment report:

'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 development is not considered to result in the loss of iconic views westward along Liverpool Street.'

- (p) Increased shadowing cast by the development over 'The Hyde' over northern facade.

Comment: As detailed above, the proposed development complies with the Stage 1 building envelope and the northern alignment of the development aligns with that of 'The Hyde'. Due to this alignment and the orientation of the site, and overshadowing to the northern facade would be minor and limited to late afternoon.

- (q) The proposal will compromise the privacy of residents in 'The Hyde' due to the proximity of the developments.

Comment: The proposed development is aligned with the adjacent development ('The Hyde'), and there is a solid wall adjacent to the shared boundary that precludes any overlooking between these developments. With regard to the rear of the development, the element that protrudes centrally within the tower floor plates is plant room, and therefore, there is no privacy implications with regard to overlooking of the southern facade of 'The Hyde'.

As detailed elsewhere within this report, the upper levels of the proposed development have been amended to be setback. The design of this setback had incorporated appropriate privacy measures to mitigate overlooking between the adjacent penthouse apartments.

- (r) The submitted acoustic assessment has not considered the impacts of the mechanical plant.

Comment: Noted. An appropriate condition has been recommended for imposition requiring a further acoustic report to be submitted prior to the issue of a Construction Certificate.

Construction impacts:

- (s) The proposed excavation will compromise the stability of the adjacent building.
- (t) Concerned about noise and dust from construction works.

Comment: Appropriate conditions are recommended for imposition to address these matters.

- (u) Insufficient information has been submitted with regard to the changes to the electricity substation.

Comment: As requested by Ausgrid, a condition has been recommended for imposition requiring further consultation by the developer with Ausgrid prior to any work impacting on the existing substation within the building.

- (v) Request that a dilapidation report and asbestos management plan be required prior to any construction works commencing and that regular cleaning of 'The Hyde' be undertaken by the developer due to the additional dust generated by the demolition and construction.

Comment: Appropriate conditions are recommended for imposition to address dilapidation report on adjacent properties and to address the removal of any asbestos/hazardous material if discovered on site during demolition works.

It is not considered to be reasonable for the City to impose a condition to require regularly cleaning of 'The Hyde' during the demolition and construction period. This would be a private matters between the parties, should an agreement to this effect be undertaken.

Floor Space:

- (w) The proposal exceeds the maximum permissible FSR for the site/development, and gives rise to material impacts to adjoining properties. The Clause 4.6 variation should not be supported.

- (x) The wintergardens should be counted as floor space. The wintergardens add to the visible bulk and scale compared to an open balcony.

Comment: Noted. Refer to the issues section of this report to further discussion on the draft LEP amendment for exclusion of wintergardens from the calculation of the FSR.

Other:

- (y) Inconsistency with the Stage 1 development consent with regard to height.

Comment: A concurrent Section 96 application has been lodged to the Stage 1 building envelope to vary the height to ensure consistency between the applications, as is required by the EP& A Act, 1979.

- (z) The bulk and scale of the development will be uncharacteristic and unsympathetic to the adjacent heritage items.

Comment: This comment is not concurred with by the City's Senior Heritage Specialist. This matter is addressed within the LEP compliance table and discussion on building height within this report.

- (aa) Support the application as it will provide further residential accommodation to Sydney and help to alleviate low vacancy rates.

Comment: Noted.

- (bb) Object to the application being notified over the January holiday period when many residents are away.

Comment: Noted. In accordance with the City's notification policy, despite the application being lodged on 23 December 2014, the notification period did not commence until 13 January 2015 to take into account the Christmas/New Year period. The application was notified for 28-days, until mid-February, which is considered to cater for people being on leave over the summer holiday period. Furthermore, the City accepted late submissions for this application from a number of nearby residents, all of these late submissions have been considered in the assessment of the application.

106. As a result of the modifications to the upper levels of the building, it was considered that in accordance with Section 1.3 of Schedule 1 of Sydney DCP 2012, the adjacent owner of the penthouse apartment in The Hyde be notified of the amendments as the modifications made directly affected that apartment. The amended plans and associated documentation were re-notified to this owner for a period of 14 days between 23 June 2015 and 8 July 2015.

107. A further submission was received on behalf of the owner of the penthouse apartment of The Hyde on 14 July 2015, raising the following matters with the amended scheme:

- (a) non-compliance height with Sydney LEP 2012.
- (b) relies on architectural roof feature of The Hyde as a precedent for additional height.

Comment: It is acknowledged that whilst the amended scheme has set the upper 2 floors back from the northern boundary and front building line of the development, the proposal still numerically results in a breach to the building height development standard. Refer to the discussion in the issues section of this report that details the design rationale for the additional height and considers the proposal against the objectives and test of Clause 4.6 of Sydney LEP 2012.

- (c) privacy screens and planter bed will impact on westerly views from The Hyde penthouse.

Comment: Consideration has been given to the proposed privacy screen located on the western boundary of The Hyde penthouse private open space and its interface with the proposed private open space of Apartment 37.01 on Level 37 of the proposed development. Consideration has been given to the appropriate height, length and material/design of this screen to alleviate direct overlooking between apartments in the respective buildings, whilst maintaining outlook from The Hyde.

The proposal includes a screen that extends approximately 2.5 metres from the northern face of the architectural roof feature of The Hyde. The length proposed protects direct overlooking into the internal areas of each apartment and obscures views between the users of the adjacent terraces.

The privacy screen is proposed as vertical fins fixed on an angle to allow views through the screen from The Hyde, but preventing views from within the apartment of 37.01 to the areas of open space of The Hyde penthouse. It is not agreed that the privacy screen itself results in material view loss. As detailed in the body of the report, the principal views from this apartment are to the north, with district views available to the west. The siting of the screen, and its length, does not obscure these district views as is evident from Figure 26 in this report. It should be noted that the screen generally aligns with the built form of the World Tower development (to the west of the site). District views that are currently available in the corridor along Liverpool Street would be unobstructed by this screen.

With regard to the planter bed, this has been sited to ensure that users of the terrace of Apartment 37.01 are setback approximately 4 metres from the western balustrade of The Hyde penthouse terrace. This coupled with the aforementioned screen are considered to be reasonable measures to mitigate direct overlooking and separation between users. It is noted that the proposed planter bed is approximately 400mm deep, therefore, does not have a soil depth to sustain large trees or shrubs that would be of a height to obstruct views.

- (d) proposal does not exhibit design excellence.

Comment: This comment is not concurred with as detailed throughout the assessment of this report.

PUBLIC INTEREST

108. 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**

109. The development is subject to a Section 61 Contribution pursuant to the City of Sydney Act 1988 and the Central Sydney Development Contributions Plan 2013, which equates to 1% of the total cost of the development. The contribution amount is required to be verified at Construction Certificate stage, and would be approximately \$1,155,550 (based on the current construction costs of the project).

RELEVANT LEGISLATION

110. The Environmental Planning and Assessment Act 1979.

CONCLUSION

111. The proposal seeks consent for a 38-storey mixed-use development, accommodating 190sq.m of retail floor space and 140 residential apartments, at 130 Elizabeth Street, Sydney.
112. Amendments have been made to the scheme since it was originally lodged in December 2014 to respond to the preliminary issues raised by City staff, namely regarding the design of the upper levels of the building and their interface with the adjacent development. Amended plans and supplementary information were submitted in June and July 2015 to address these matters.
113. As the subject application seeks consent for a building with a height above 110 metres, a concurrent Section 96(2) application has been lodged to vary the Stage 1 building envelope (being DA D/2014/58/A). Modification of the Stage 1 building envelope is required to ensure consistency between these staged applications, as is required pursuant to Section 83D of the EP&A Act, 1979.
114. Whilst the proposed development results in numeric non-compliances with the FSR and building height development standards, in this instance, the written request submitted by the applicant to justify the departures from the floor space ratio and height development standards under the provisions of Clause 4.6 of Sydney LEP 2012 are supported.
115. The proposed development is considered to be generally consistent with the relevant planning controls and existing consents in place for the site (as amended), and responds appropriately to the constraints of the site. The proposal is considered to be a satisfactory design outcome and contextually appropriate for its siting in the Sydney CBD. As such, the application is recommended for approval, subject to conditions, including the concurrence conditions of Sydney Trains.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Nicola Reeve, Senior Planner)