

ITEM 5. DEVELOPMENT APPLICATION: 189 - 197 KENT STREET SYDNEY**FILE NO: D/2014/1900****DEVELOPMENT APPLICATION NO: D/2014/1900****SUMMARY****Date of Submission:** 9 December 2014**Amended:** 11 May 2015**Applicant:** Barana Properties (No. 1) Pty Ltd.**Architect:** FJMT**Owner:** Barana Properties (No. 1) Pty Ltd**Cost of Works:** \$56,651,681**Proposal Summary:** The development application (as amended) seeks consent for a Stage 1 concept proposal, consisting of:

- in-principle approval for demolition of the existing commercial building;
- building envelope to a height of 80 meters (approximately 23-storeys);
- indicative residential and retail/commercial land uses;
- vehicular access via Jenkins Street with 4 indicative basement levels.

The application was notified for a 43-day period between 19 December 2014 and 30 January 2015. 5 submissions were received relating to the proposed development. The following matters were raised:

- height;
- setbacks
- privacy/overlooking;
- natural cross ventilation;
- traffic and parking impacts;
- accessibility;
- improvements to land burdened by easement;
- façade treatment;
- demolition of building at Stage 1; and
- impacts of demolition and construction.

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

A condition of consent is recommended to restrict windows or openings to the northern and southern boundaries of the building to ensure that the development has an acceptable impact on the privacy and amenity of adjoining occupants.

A condition of consent is recommended prohibiting residential uses at Basement 4 (RL 12.00 – 15.10), Ground Floor (RL24.40) and Level 1 (RL 28.60) to ensure adequate amenity and separation.

Subject to recommended conditions, the proposed building envelope and indicative land uses generally respond to the constraints of the site and applicable planning controls.

Development Controls:

- (i) Environmental Planning and Assessment Act, 1979
- (ii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (iii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
- (iv) State Environmental Planning Policy No. 32 – Urban Consolidation
- (v) State Environmental Planning Policy No. 55 – Remediation of Land
- (vi) State Environmental Planning Policy No. 65 – Design Quality of Residential Development
- (vii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (viii) State Environmental Planning Policy (Infrastructure) 2007
- (ix) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Attachments:

A - Selected Drawings

RECOMMENDATION

It is resolved that, pursuant to Section 80(1A) of the Environmental Planning and Assessment Act 1979, consent be granted to Development Application No. D/2014/1900, subject to the following conditions:

SCHEDULE 1A**Approved Development/Design Modifications/Covenants and Contributions/Use and Operation****(1) STAGED DEVELOPMENT APPLICATION**

Pursuant to Clause 100 of the *Environmental Planning and Assessment Regulation 2000*, this Notice of Determination relates to a Stage 1 development application. A subsequent development application is required prior to commencement of any work on the site.

(2) APPROVED DEVELOPMENT

- (a) Development consent is limited to a Stage1 concept plan building envelope and indicative land uses within this envelope, in accordance with Development Application No. D/2014/1900, dated 9 December 2014 (as amended), and the following drawings:

Drawing Number	Architect	Date
SK – 401 A	FJMT	11.05.2015
SK – 402 A	FJMT	11.05.2015
SK – 403 A	FJMT	11.05.2015
SK – 404 A	FJMT	11.05.2015
SK – 511 A	FJMT	08.05.2015
SK – 512 A	FJMT	08.05.2015

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.

(3) MATTERS NOT APPROVED

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

- (a) Any demolition, excavation and/or construction;
- (b) The layout and number of residential apartments;
- (c) The number of basement levels and/or the configuration of the basement car parking levels;
- (d) The number of car parking spaces, bicycle spaces, car share or loading spaces/zones;

- (e) The precise quantum of floor space; and
- (f) A 10% design excellence uplift in floor space ratio.

(4) LOCATION OF RESIDENTIAL LAND USES

No residential land uses are approved at Basement Level 4 (RL 12.00), Ground (RL24.40) and Level 1 (RL28.60).

(5) BUILDING ENVELOPES

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

(6) DESIGN EXCELLENCE

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

(7) BUILDING HEIGHT

The maximum height of the building, as defined in the Sydney Local Environmental Plan 2012, must not exceed 80 metres.

(8) FLOOR SPACE RATIO – CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed the maximum permissible, and shall be calculated in accordance with the provisions of Clauses 4.4 and 6.4 of the Sydney Local Environmental Plan 2012.
- (b) Notwithstanding the above (a), the proposal may be eligible for a 10% design excellence uplift in floor space ratio pursuant to the provisions of Clause 6.21(7) of the Sydney Local Environmental Plan 2012.
- (c) Precise details of the distribution of floor space shall be provided with the future Stage 2 Development Application.
- (d) Any floor space ratio in excess of 8:1 shall be subject to a requirement to purchase heritage floor space (HFS) in accordance with the requirements of Clause 6.11 of the Sydney Local Environmental Plan 2012.

(9) RESIDENTIAL LAND USE

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

(10) PUBLIC ART

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

(11) WIND ASSESSMENT

- (a) Prior to the lodgement of a Stage 2 Development Application, the detailed design shall be subject to wind tunnel testing to ascertain the impacts of the development on the wind environment and condition within the publicly accessible pedestrian space, the surrounding streets and neighbouring buildings, communal external areas within the subject development and private open space.
- (b) Any recommendations of the wind tunnel testing required by (a) above, shall be incorporated into the final detailed design lodged as a Stage 2 Development Application.

(12) AUSGRID

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

(13) CONTAMINATION – DETAILED ENVIRONMENTAL SITE ASSESSMENT

- (a) A Detailed Environmental Site Assessment must be submitted for approval with the Stage 2 Development Application. The Detailed Environmental Site Assessment must be carried out in accordance with the NSW EPA Contaminated Site guidelines, certifying that the site is suitable (or will be suitable, after remediation) for the proposed use.

***Note:** Where the Detailed Environmental Site Assessment states the site is suitable for the proposed use, it is to be peer reviewed by a NSW EPA accredited site auditor and a Site Audit Statement submitted to Council prior to granting any consent, certifying that the site is suitable for the proposed use.*

- (b) Where the Detailed Environmental Site Assessment states that a Remediation Action Plan (RAP) is to be undertaken, the RAP is to be peer reviewed by a NSW EPA Accredited Site Auditor and include a statement certifying that the RAP is practical and the site will be suitable after remediation for the proposed use before scheduled conditions of consent can be activated.
- (c) The RAP and NSW EPA Accredited Site Auditors review and statement must be submitted to Council's Health and Building Unit for review and written approval before a schedule of conditions of consent can be activated.

(14) COMPLIANCE WITH ACID SULPHATE SOILS MANAGEMENT PLAN

All recommendations contained in the Preliminary Site Investigation, prepared by Aargus and dated 13 November 2014, must be implemented.

(15) DEMOLITION, EXCAVATION AND CONSTRUCTION NOISE MANAGEMENT PLAN

A site specific noise management plan must be prepared and submitted with the Stage 2 Development Application.

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 (LA90, 15min) 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 during construction works.
- (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.

Note: *Monitoring data must be conducted in full accordance with the NSW EPA Industrial Noise Policy to include 7 days non-weather affected data for a residential use and not more than the permitted number of excluded events*

(16) RESIDENTIAL ACOUSTIC AMENITY

An Acoustic Impact Assessment must be undertaken by a suitably qualified acoustic consultant and submitted with the Stage 2 Development Application in accordance with the provisions of the Sydney Development Control Plan 2012.

(17) CAR PARKING SPACES AND DIMENSIONS

- (a) The permissible number of car parking spaces is to be established as part of the Stage 2 Development Application.

- (b) The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 Parking Facilities Part 1: Off-street car parking, AS/NZA 2890.2 Parking Facilities Part 2: Off-street commercial vehicle facilities and AS/NZS 2890.6 Parking Facilities Part 6 : Off-street parking for people with disabilities.

(18) BICYCLE PARKING AND END OF TRIP FACILITIES

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

Bicycle parking for residents and employees is to be provided in the uppermost basement parking level. Class 2 facilities, or a combination of Class 1 and Class 2 facilities, are considered acceptable for residents. Employee bicycle parking is to be provided in close proximity to end-of-trip facilities.

All visitor bicycle parking is to be provided at-grade in an easily accessible and visible location.

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

(19) LOADING WITHIN THE SITE

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.

(20) 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.

(21) VEHICLE ACCESS

The site must be configured so all vehicles to be driven onto and off the site in a forward direction.

(22) CAR SHARE SPACES

Car share parking spaces are to be provided in accordance with the Sydney Development Control Plan 2012.

***Note:** It is recommended that the Applicant discuss the proposed location of car share parking spaces with car share operators during the detailed design process to ensure that the needs of the developer and the commercial requirements of the car share operator can be accommodated.*

(23) 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.

(24) SERVICE VEHICLE SIZE LIMIT

The Stage 2 Development Application must include a swept path assessment for the largest vehicle to access the proposed servicing area.

(25) TRANSPORT ACCESS GUIDE

A Transport Access Guide, including a strategy for the future availability of the Guide to all residents, employees and/or visitors to the site, is to be submitted with the Stage 2 Development Application.

Note: Transport Access Guide requirements are detailed in section 7.7 of the DCP. Information about preparing Travel Plans is also available on Council's website.

(26) VEHICLE LIFT

The Stage 2 Development Application must include details of the proposed vehicle lift system, including an assessment of vehicle queuing and consequential impacts on the road network, if any.

(27) CENTRAL SYDNEY TRAFFIC AND TRANSPORT COMMITTEE (CSTTC)

The subject site falls within the CSTTC boundary. The application also triggers the requirement for determination by the Central Sydney Planning Committee (CSPC) due to the estimated cost of works. All CSPC items falling within the CSTTC boundary are subject to consideration by the CSTTC.

As such, the Stage 2 Development Application is to include a brief assessment in line with the CSTTC assessment criteria, which includes the following:

- (a) Impact on the road network;
- (b) Future economic welfare and development of Sydney and the State;
- (c) Efficient functioning of businesses in the whole or any part of the Sydney CBD;
- (d) Maintenance of access for freight within the whole or any part of the Sydney CBD;
- (e) Efficiency and traffic safety of the public transport network in the Sydney CBD; and
- (f) Needs of commuters, residents, pedestrians and visitors in the whole or any part of the Sydney CBD.

(28) TRANSPORT IMPACT ASSESSMENT

A detailed Transport Impact Study must be prepared in accordance with the provisions of Section 7.4 of the Sydney Development Control Plan 2012 and shall be submitted with the Stage 2 Development Application.

(29) WASTE COLLECTION

The future Stage 2 Development Application shall demonstrate compliance with Council's requirements for waste collection for residential development and Policy for Waste Minimisation in New Development 2005.

(30) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES

An Access Report shall be submitted with the Stage 2 Development Application to demonstrate that the building has been designed and is capable of being constructed to provide access and facilities for people with a disability in accordance with the *Building Code of Australia*.

(31) ALIGNMENT LEVELS – MAJOR DEVELOPMENT

- (a) The 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.

(32) 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 any Stage 2 Development Application for the site. 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 Stage 1 approved 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 for Stage 2 development.
- (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.

SCHEDULE 2

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

BACKGROUND

The Site

1. The site has a legal description of Lot 1 DP 220397 and is commonly known as 189 – 197 Kent Street, Sydney. It has a primary frontage to Kent Street and a secondary frontage to Jenkins Street.
2. The site has an L-shape allotment with an area of approximately 1195sqm. It has a 42.37 metre frontage to Kent Street and a 20.18 metre frontage to Jenkins Street. The land falls 12 metres east (Kent Street) to west (Jenkins Street) and 2 metres north to south.
3. The site contains an 18-storey commercial building known as ADC House. The building has a height of 62.63 metres (RL80.82) at Kent Street with a nil setback for the full street wall height. ADC House is built to each of the boundaries with a FSA of 20,452sqm and FSR of 17.09:1. It comprises 16 levels of office space, 2 levels of retail space and 4 levels of car parking. A total of 111 car spaces are accommodated within the basement and above ground levels with vehicular access provided via Kent Street.
4. The site is not a heritage item or located within a heritage conservation area. However, it is situated east of the former 'Grafton Bond Store' and south of Jenkins Street. The former 'Grafton Bond Store' including interiors is identified as a state heritage item (Item No. I1813), whilst Jenkins Street is a local heritage item (Item No. I890).
5. Figures 1 to 12 below, illustrate the context of the site and the existing built form.



Figure 1: Aerial image of subject site and surrounding area

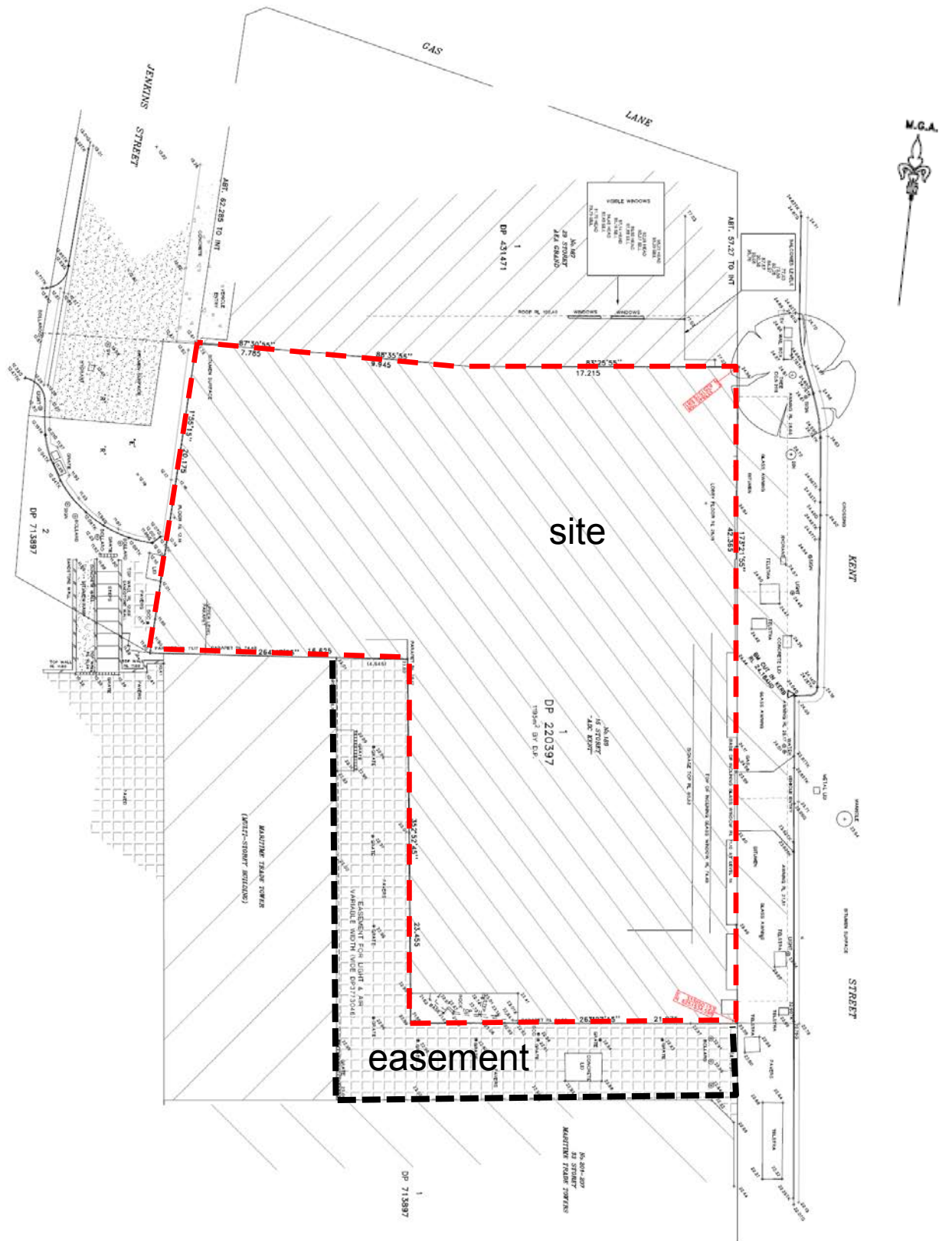


Figure 2: Survey plan illustrating interface of easement and subject site

Surrounding Development

6. The site is surrounded by a mix of residential and commercial uses.
7. To the north of the site at 183 – 187 Kent Street is a 28-storey residential building known as the 'Stamford on Kent'.
8. To the south of the site at 201 – 217 Kent Street is the Maritime Trade Towers Complex. The site incorporates a number of buildings including Symantec House, AON Tower, the former 'Grafton Bond Store' and a northern wing to the Trade Towers. The towers are 24-storeys and 35-storeys respectively whilst the Bond Store and northern wing are both of a maximum 5-storey height. The site also includes a courtyard/laneway area used as a common outdoor recreational space.
9. To the east of the site are Kent Street, Bradfield Highway and Western Distributors, and to the west is the northern wing to the Maritime Trade Towers. The wing ranges in height from a single storey at Kent Street to 5 storeys at Jenkins Street.

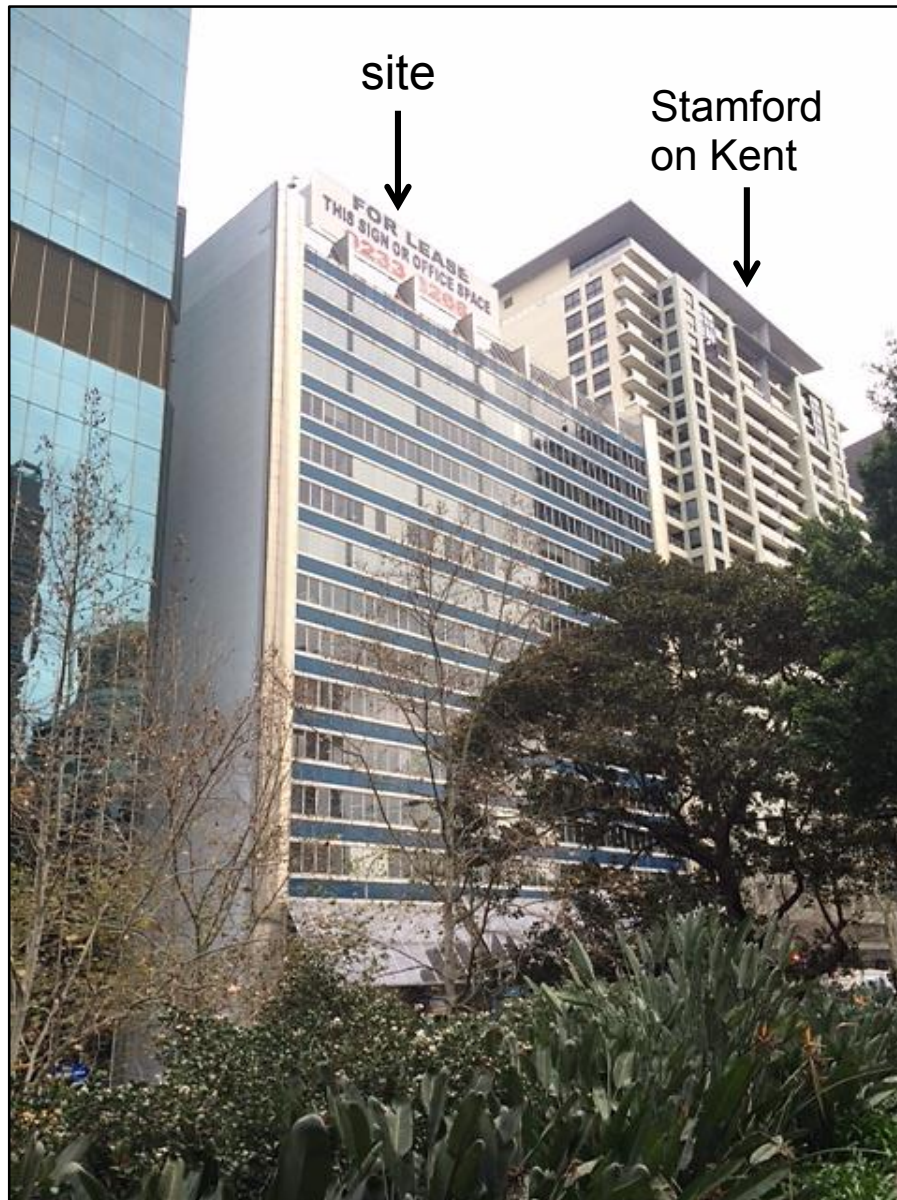


Figure 3: View of site from Kent Street



Figure 4: View of site and Stamford on Kent from York Street

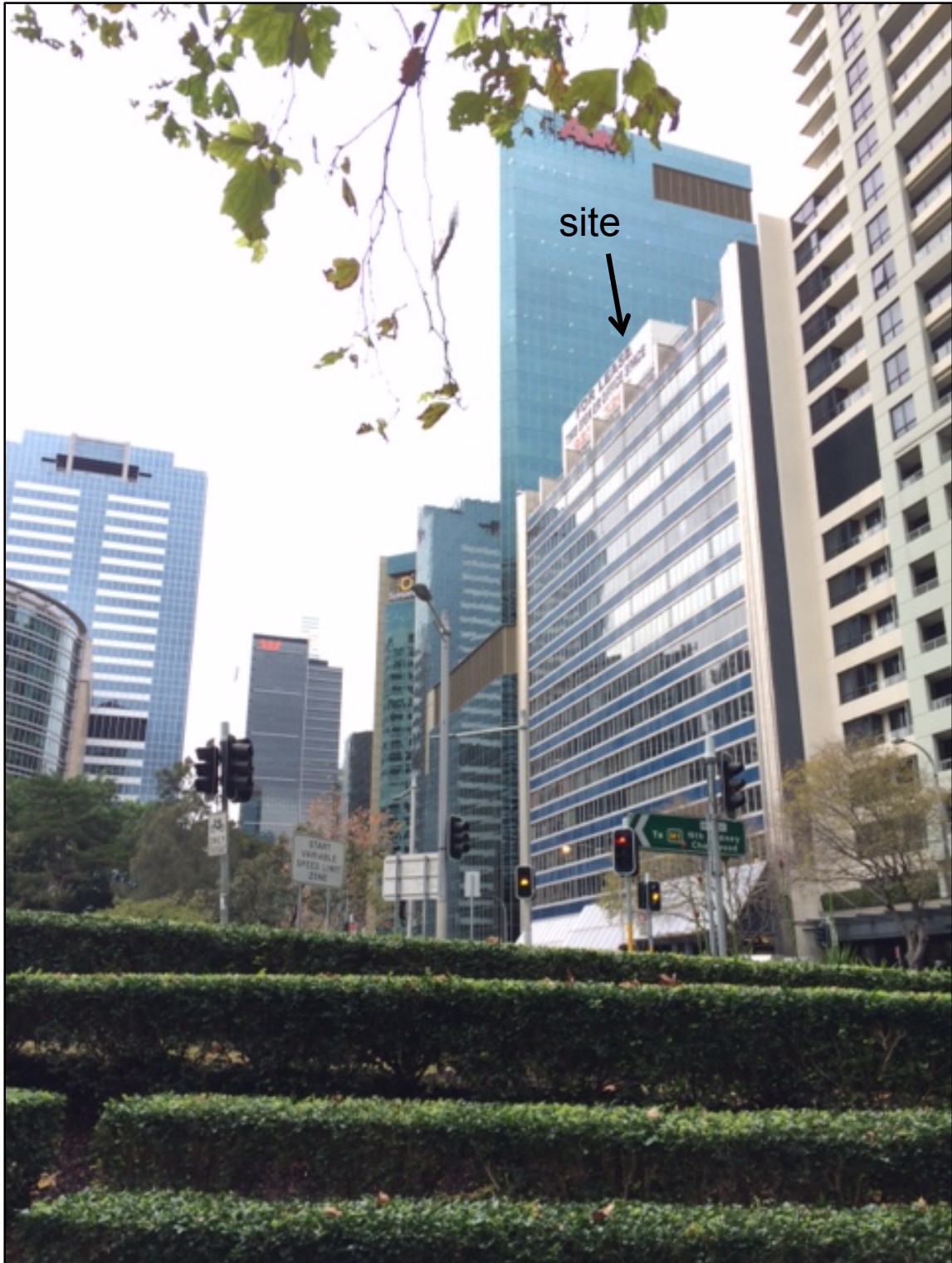


Figure 5: View of site from the intersection of Kent Street and the Western Distributor



Figure 6: View of site from Sussex Street



Figure 7: View of site from Jenkins Street



Figure 8: View of site from recreational area of 201 – 217 Kent Street (Jenkins Street frontage)



Figure 9: View of site from Jenkins Street and interface with northern wing of 201 – 217 Kent Street



Figure 10: View of easement from Kent Street footpath



Figure 11: View of easement/interface of subject site and northern wing of 201 – 217 Kent Street looking south



Figure 12: View of easement/interface of subject site and northern wing of 201 – 217 Kent Street looking north

PROPOSAL

10. The subject application seeks consent for a Stage 1 concept proposal, consisting of;
 - (a) in-principle approval for demolition of the existing commercial building;

- (b) a building envelope ranging between 15 and 23 storeys (80 metres), tested to accommodate approximately 14,460sqm of gross floor area (GFA) equating to a FSR of 12.1:1;
 - (c) indicative future land uses of retail/commercial (ground floor) and residential accommodation (Basement Level 1 – Level 23);
 - (d) four levels of basement car parking; and
 - (e) vehicular access via Jenkins Street.
11. Building envelope plans and elevations of the proposed development are provided at **Attachment A**. Indicative floor plans are provided at **Attachment A**.
12. Figures **13** to **16** illustrate the proposed building envelope in the context of surrounding development.

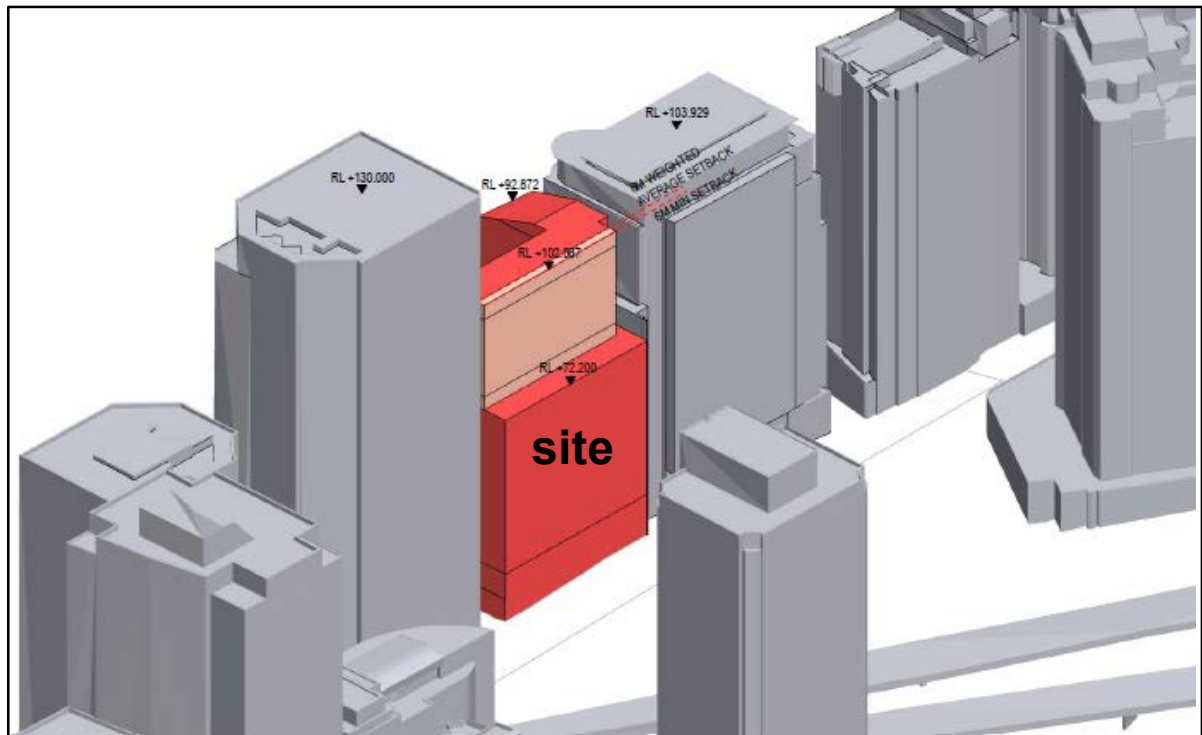


Figure 13: Proposed building envelope as viewed southeast from Kent Street

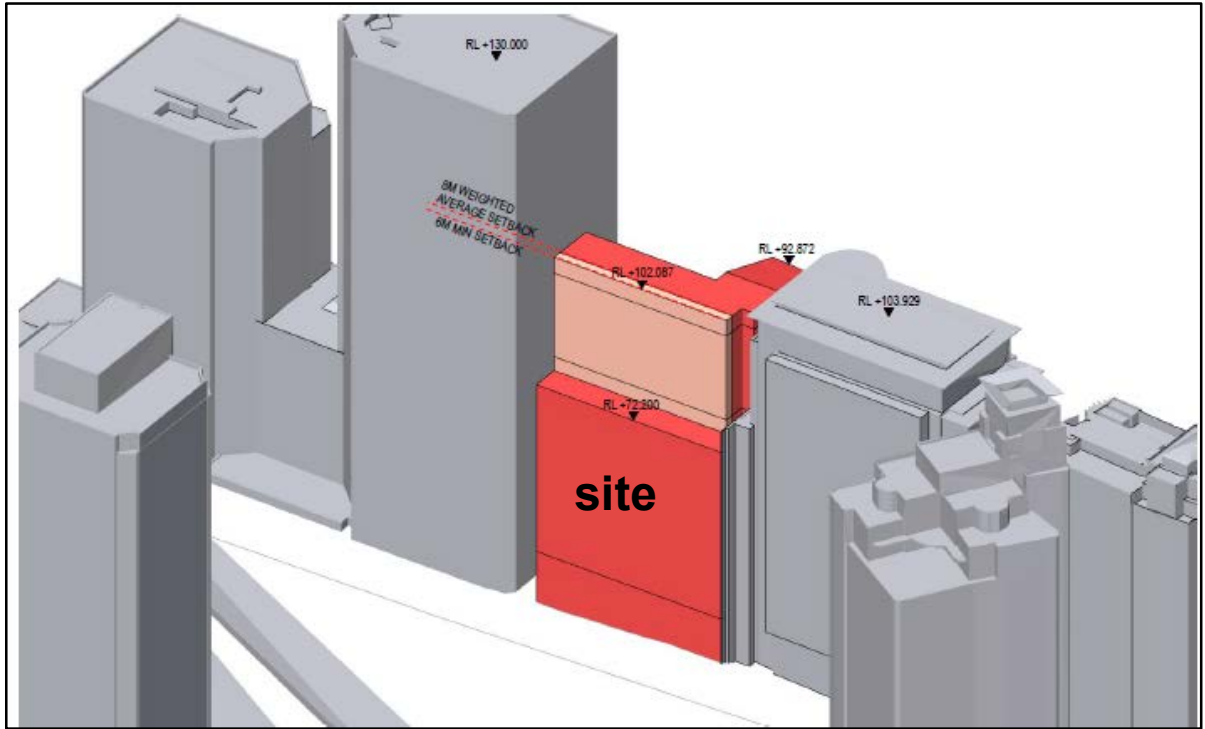


Figure 14: Proposed building envelope as viewed northeast from Kent Street

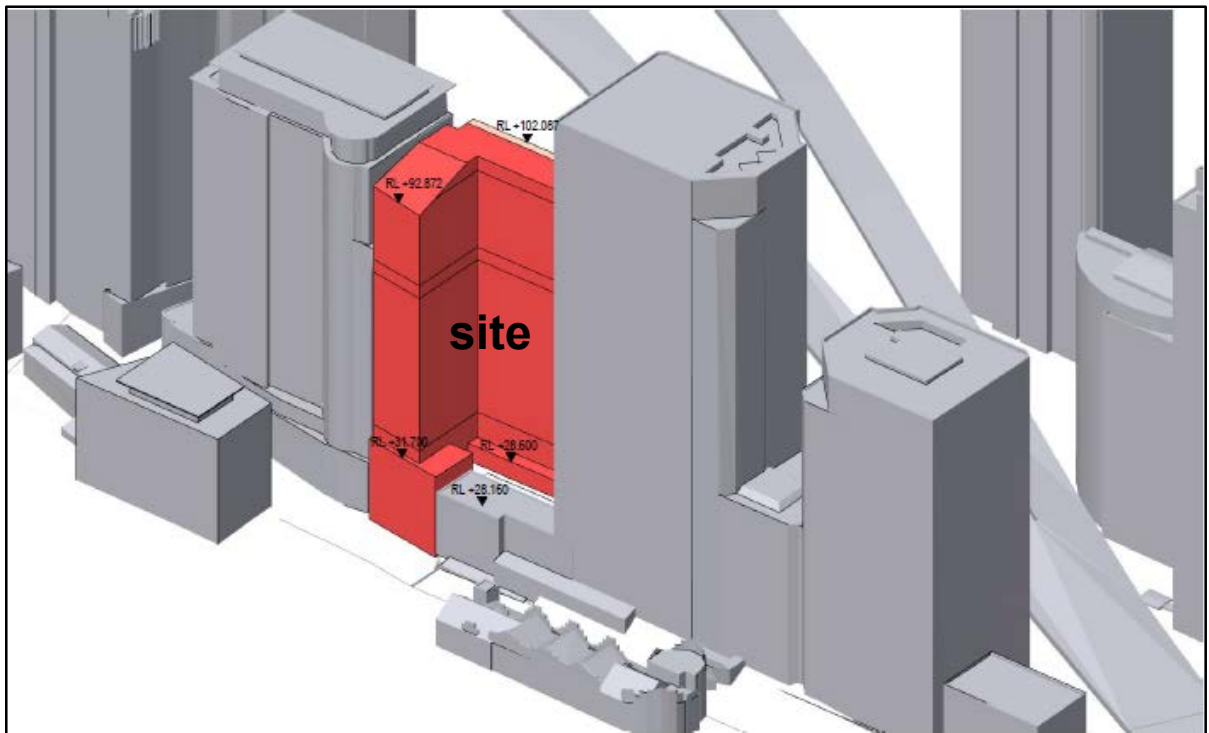


Figure 15: Proposed building envelope as viewed southeast from Jenkins Street

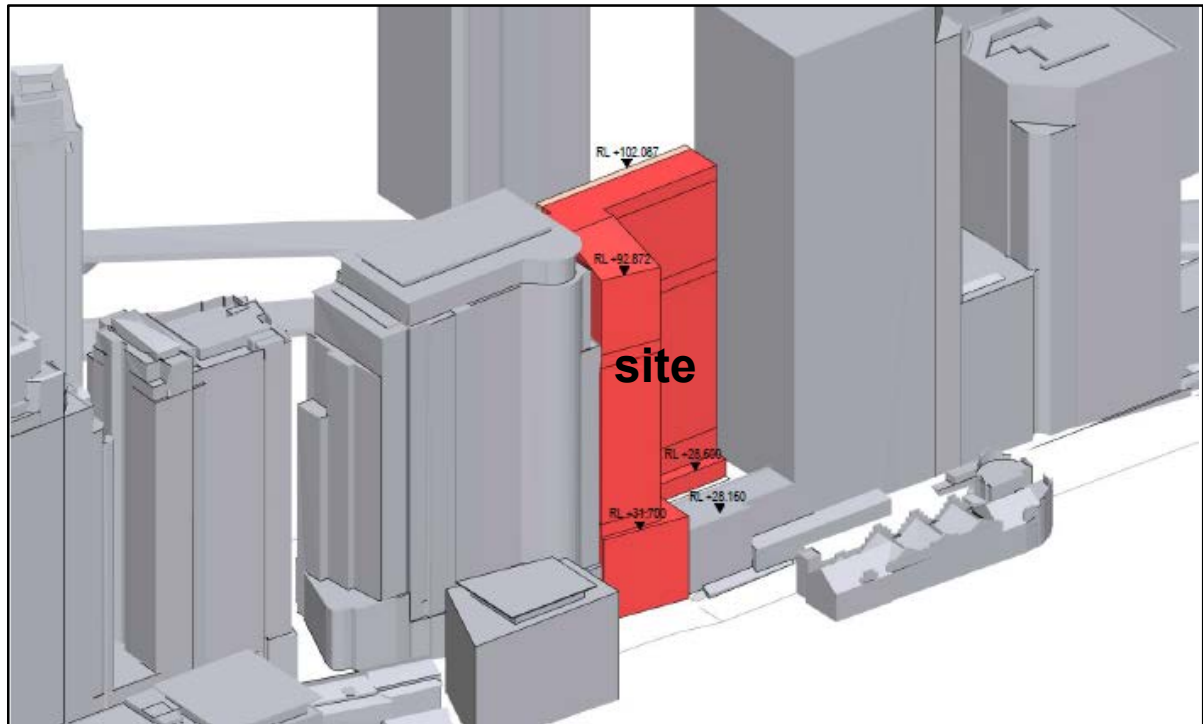


Figure 16: Proposed building envelope as viewed northeast from Jenkins Street

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION AND AMENDMENTS

13. On 26 June 2006, consent was granted to Development Application No. D/2005/1123 for a Stage 1 concept proposal, consisting of:
 - (a) retention of the existing building and a six-storey addition;
 - (b) maximum height of 76.16m above Kent Street (RL 94.30) and 80m (RL 92.26) above Jenkins Street;
 - (c) maximum floor space area of 18,903sqm, equating to a FSR of 15.82:1;
 - (d) basement car parking; and
 - (e) residential accommodation (Tower and Basement Levels 1 – 4) and commercial/retail land uses (Lower Ground and Ground Floor).
14. The consent was not activated and has since lapsed.
15. Following a preliminary assessment of the subject application, the Applicant was advised in correspondence dated 10 April 2015 to amend their application.
16. The following concerns were raised with the proposal:
 - (a) **Driveway location** – The application sought to retain the existing vehicular access point from Kent Street. However, Council's Access and Transport Unit recommended the proposal be amended to relocate the vehicular access to Jenkins Lane and provide communal bicycle facilities at ground floor. Further consideration of a waste storage room adjacent to Jenkins Street was also recommended to ensure the efficient removal of residential waste.

- (b) **Building Height** – Preliminary assessment of the proposed elevations noted encroachment of the roof and plant above the 80 metre maximum height plane. The Applicant was advised to reduce the height of the building envelope to comply with the development standard.

As proposed, the Kent Street podium is approximately 47.8m in height and therefore inconsistent with the Central Sydney street frontage height of 20 – 45 metres. It was recommended that the Applicant provide justification of the non-compliance for consideration by Council.

- (c) **Residential Amenity** – In testing the indicative apartment layouts within the proposed building envelope, it was apparent that the scheme did not achieve compliance with the residential amenity provisions of the Sydney DCP 2012 or the RFDC with regard to solar access and cross ventilation. The Applicant was advised to provide solar access diagrams at an hourly interval and demonstrate how single facing apartments could achieve natural cross ventilation.

17. On 11 May 2015, the Applicant submitted an amended scheme consistent with the recommendations relating to the driveway location and building height. Additional information was submitted in response to concerns over the proposed street frontage height and residential amenity.
18. Following further assessment of the proposed setbacks, the Applicant was advised in correspondence dated 1 July 2015 to provide justification of the proposed rear (western) setback. Specifically, impacts upon the development potential of 201 – 217 Kent Street. A response was received from the Applicant on 21 July 2015.

CITY OF SYDNEY ACT 1988

19. Section 51N requires the Central Sydney Planning Committee (the Planning Committee) to consult with the Central Sydney Traffic and Transport Committee (CSTTC) before it determines a DA that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works likely to have a significant impact on traffic and transport in the Sydney CBD. A full extract of this Section is provided below.

“51N Planning proposals having a significant impact on traffic and transport in the Sydney CBD

- (1) *The Planning Committee must consult the CSTTC before it exercises a function under Part 4 that will result in the making of a decision that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD.*
- (2) *The Planning Committee must take into consideration any representations made by the CSTTC within the period of 21 days (or such other period as is agreed to by the CSTTC and the Planning Committee in a particular case) after consultation takes place.*

- (3) *The Planning Committee may delegate to a subcommittee of the Planning Committee, or the general manager or another member of the staff of the City Council, any of its functions under this section other than this power of delegation. A delegation can be given subject conditions. A delegation does not (despite section 38) require the approval of the Minister administering that section.*
- (4) *The failure of the Planning Committee to comply with this section does not invalidate or otherwise affect any decision made by the Planning Committee.”*
20. Having liaised with the City's Access and Transport Unit, in this instance, the amended proposal is not considered to have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

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

State Environmental Planning Policy No 55—Remediation of Land

22. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed. A Preliminary Site Investigation Report was submitted with the development application to address the requirements of SEPP 55.
23. As the Stage 1 concept proposal seeks to retain the four existing basement levels, Council's Health Unit is satisfied there will be no disturbance to the ground or soil and the site can be made suitable for the proposed use.
24. On 12 January 2015, the Applicant confirmed in writing that no excavation is proposed or required in order to accommodate parking.

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

25. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority must take into consideration a number of matters relating to design quality.
26. The proposed development is for a conceptual building envelope only. No physical building works are sought or recommended for approval as part of this Stage 1 Development Application. In the event that the subject application is approved, the detailed design of the development will be the subject of both a competitive design process and Stage 2 Development Application.
27. Clause 70B of the Environmental Planning and Assessment Regulation 2000 provides that the design verification required under Clause 50(1A) is not required for Stage 1 Development Applications unless the DA contains detailed proposals for a residential flat development or part of that development. Given the proposal seeks consent for indicative residential land use, a SEPP 65 Statement was submitted with the application.

28. In light of the indicative residential land use, consideration has been given below to the ability of the envelope and indicative floor plans to achieve the design principles of SEPP 65. A more detailed assessment against these principles would occur with the Stage 2 Development Application.

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

The proposed scale and massing of the building envelope is contextually appropriate to the CBD location and provides an appropriate form to accommodate its intended future uses.

(b) **Principle 4:** Density

The proposed density is consistent with the objectives of the planning controls and considered appropriate given the context of the site within the CBD including its proximity to established infrastructure, public transport, community and recreational facilities.

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

The proposed envelope and its indicative floor plates are capable of maximising the cross ventilation and solar access penetration of future residential apartments. The energy efficiency and sustainability of the development will form part of the future detailed design at Stage 2. Appropriate conditions are recommended requiring the Stage 2 Development Application to comply with SEPP 65 and BASIX.

(d) **Principle 6:** Landscape

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

The proposal seeks consent for an indicative building envelope only. As such, a more detailed analysis and assessment of landscape design and principles will be considered as part of a future Stage 2 Development Application. Given a competitive design process will be required for this site, the provision and location of communal and private open space will form part of the overall architectural design of the development.

(e) **Principle 7:** Amenity

As the proposal is for a Stage 1 concept proposal only, a more rigorous assessment of the amenity for future residents will occur as part of the Stage 2 detailed design development application. However, in order to demonstrate that the floor plates and envelope are capable of achieving compliance with SEPP 65, the Applicant has submitted indicative floor plans. An assessment of these plans indicates the following:

- (i) 70.7% of the indicative apartments are able to receive two hours of solar access between 9am and 3pm on the winter solstice. This complies with the minimum requirement of 70% as specified within the RDFC guidelines;
- (ii) All apartments are provided with private open space. This is to be fully detailed in the future Stage 2 Development Application;

- (iii) an appropriate range of room dimensions and shapes are provided in accordance with the minimum apartment sizes of the RFDC guidelines;
- (iv) storage areas are able to be provided within the development in accordance with the storage requirements of the RFDC guidelines; and
- (v) as proposed, 63% of indicative apartments achieve cross ventilation. However, only 30% of apartments are capable of achieving *natural* cross ventilation in accordance with the RFDC guidelines. Although the application proposes alternative solutions to ventilation including an open void and plenum method, as discussed elsewhere in this report, reconsideration of the indicative floor plans including the requirement for retail/commercial uses at the lower floors (See Condition (4)) will improve the opportunity for greater natural cross ventilation and compliance with the relevant planning controls.

As amended, it is considered that the site is generally capable of providing an adequate level of amenity for future residents.

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

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

(g) **Principle 9: Social dimensions and housing affordability**

The indicative scheme accommodates the following unit mix:

- (i) Studio/1 bedroom – 40% (DCP maximum of 40%);
- (ii) 2 bedroom – 47% (DCP range of 40 – 75%); and
- (iii) 3 bedroom – 13% (DCP range of 10 – 100%).

It should be noted that this unit mix is not confirmed/approved as part of the subject application and will be subject to amendment as part of the detailed design application. However, as proposed, the mix demonstrates compliance with the Sydney DCP 2012.

(h) **Principle 10: Aesthetics**

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

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

SEPP 65 Apartment Design Guide (ADG)

30. The Apartment Design Guide (ADG) was implemented on 19 June 2015. The Guide provided design criteria and general guidance about how development proposals can achieve the design principles identified in SEPP 65.
31. Although the application was lodged prior to inception of the ADG, the proposal has been considered in terms of the relevant design criteria. Whilst the tested envelope demonstrates compliance with most objectives of the Guide, the proposed scheme does not achieve sufficient natural cross ventilation. See discussion under 'Issues'.

State Environmental Planning Policy (Infrastructure) 2007

32. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.
33. In accordance with the Clause 45 of the SEPP, the application was referred to Ausgrid. No objection was raised to the proposed development subject to submission of a Connection Application form to enable Ausgrid to assess the impacts of the proposed development on its infrastructure and determine electrical supply requirements. A condition is recommended requiring the Applicant to consult with Ausgrid prior to the lodgement of a Stage 2 Development Application.
34. The application is subject to Clause 101 of the SEPP as the site has frontage to the Western Distributor, which is a classified road. The application is considered to satisfy Clause 101 of the Infrastructure SEPP, subject to conditions of consent, as it does not provide access to the site from the classified road and is capable of reducing the potential impact of traffic noise and vehicle emission on the development through the Stage 2 detailed design.
35. The application is subject to Clause 102 (impact of road noise) of the SEPP as the average daily traffic volume of Kent Street is more than 40,000 vehicles. The application is capable of satisfying Clause 102 of the Infrastructure SEPP through the Stage 2 detailed design.
36. In accordance with Clause 104 of the SEPP, the application was referred to the RMS. No objection was raised to the proposed development.

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

37. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
38. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.

39. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development.
40. The development is consistent with the controls contained with the deemed SEPP.

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

41. Any future Stage 2 Development Application will be required to satisfy BASIX requirements. A condition is recommended requiring any future residential scheme to comply with SEPP (Building Sustainability Index: BASIX) 2004.

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

42. 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.
43. The proposed development of the site is consistent with the aims and objectives of SEPP.

Sydney LEP 2012

44. The site is located within the B8 – Metropolitan Centre zone. The proposed use is defined as a *mixed use development* comprising residential accommodation and commercial uses. The proposal is permissible within the zone.
45. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Table		
Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	A maximum height of 80m is permitted. The application proposes a maximum height of 80m, consistent with the development standard. Due to the sloping topography of the site, the overall height of the building envelope varies between approximately RL 98.30 (72.6m) at Kent Street and approximately RL 93.90 (approx.78.8m) at Jenkins Street.

Compliance Table		
Development Control	Compliance	Comment
4.4 Floor Space Ratio	Able to comply	<p>A base FSR of 8:1 is permitted.</p> <p>However, in accordance with Clause 6.4 of the Sydney LEP 2012, the application seeks additional accommodation floor space of up to 3:1. This equates to a maximum FSR for the development of 11:1.</p> <p>The GFA calculations submitted by the applicant demonstrate that the proposed building envelope is capable of accommodating 14,460sqm of gross floor area. This equates to a FSR of 12.1:1.</p> <p>In order to achieve an FSR of up to 12.1:1, the Applicant is required to undertake a competitive design process in accordance with the provisions of Clause 6.21 of the Sydney LEP 2012. The Stage 2 scheme must demonstrate design excellence and be awarded an amount of additional floor space by Council of up to 10%.</p> <p>Further discussion is provided in the Issues section of this report. However, it should be noted that no gross floor area of FSR is confirmed or approved as part of the subject application.</p>
5.10 Heritage conservation	Yes	<p>The concept plan seeks in-principle approval for demolition of the existing building on site, known as ADC House. The building was constructed c. 1966 and has minimal heritage significance.</p> <p>Although the site itself is not of heritage significance, it is located adjacent to the state heritage listed 'Grafton Bond Store' and locally listed Jenkins Street.</p> <p>The proposed scale of the building envelope and its siting is not considered to detract from the significance of either item and is acceptable with regard to the provisions of Clause 5.10.</p>

Compliance Table		
Development Control	Compliance	Comment
6.4 Accommodation Floor Space	Able to comply	<p>The site is located in Area 3 of Central Sydney and is eligible for additional accommodation floor space of up to 3:1 of the site area for residential accommodation.</p> <p>As such, this accommodation floor space has been included in the collective permissible FSR for the development as discussed elsewhere within this report.</p>
6.11 Allocation of heritage floor space (HFS)	Able to comply	Utilisation of any accommodation floor space and competition bonus floor space will be subject to a condition at Stage 2 requiring allocation of heritage floor space.
6.16 Erection of tall buildings in Central Sydney	Yes	<p>The proposed building envelope has a height in excess of 55m. As such, the application has been assessed against the objectives of the Clause and is considered to comply.</p> <p>See discussion under 'Issues'.</p>
6.21 Design Excellence	Able to comply	<p>In accordance with Clause 6.21 of the Sydney LEP 2012, an additional 10% of FSR or height may be granted to a development that has been subject of a competitive design process and considered to exhibit design excellence.</p> <p>As the proposal is a Stage 1 development application, no architectural design details have been provided. However, as a competitive design process must be undertaken prior to lodgement of a Stage 2 development, it is considered the future development is capable of complying with the Clause.</p>
7.5 & 7.7 Car parking ancillary to other development	Able to comply	<p>The proposal seeks to retain and utilise the existing 4 levels of basement car parking.</p> <p>As parking numbers are not approved as part of a Stage 1 development application, this aspect will be assessed as part of the Stage 2 development application subject to land uses, residential apartment mix and numbers.</p>

Compliance Table		
Development Control	Compliance	Comment
7.14 Acid Sulphate Soils	Yes	The site is identified as containing Class 5 Acid Sulphate Soil. Although no excavation is proposed, Council's Health Unit have advised that any disturbance to the ground or soil would require further investigation by the applicant, given proximity of the site to a Class 1 Acid Sulphate Soil area.
7.17 Flood planning	Yes	Council's Flooding Engineers have reviewed the application and confirmed the site is not subject of a flooding risk.
7.20 Development requiring preparation of a development control plan	Yes	As the height of the proposed envelope exceeds 55 metres, preparation of a site specific DCP is required. However, in accordance with the provisions of Section 83C of the <i>Environmental Planning and Assessment Act 1979</i> , the lodgement of a Stage 1 development application may be considered by the consent authority as satisfying this obligation.

Sydney DCP 2012

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

3. General Provisions		
Development Control	Compliance	Comment
3.1 Public Domain Elements	Able to comply	The proposed development requires use of Jenkins Street via Gas Lane for vehicular access to the basement car parking levels. As Gas Lane is identified on the ' <i>Proposed streets and lanes map</i> ' of the Sydney DCP 2012, the proposed development is required to ensure access rights of the public and other owners and provide access for service vehicles. The proposed development is unlikely to impact serviceability of the Lane.

3. General Provisions		
Development Control	Compliance	Comment
3.1.5 Public Art	Able to comply	<p>A Public Art Strategy is to be developed for the site in accordance with the Sydney DCP 2012 and the Public Art Policy. The Strategy shall form part of the documentation lodged with a Stage 2 Development Application.</p> <p>The requirement to accommodate public art as part of the redevelopment of the site shall form the competitive design process brief, with the nominated location included as part of the Stage 2 Development Application.</p>
3.2 Defining the Public Domain	Able to comply	The proposal was referred to Council's Public Domain Unit who have recommended conditions requiring a Public Domain Plan as part of the Stage 2 Development Application.
3.2.1.1 Sunlight to publicly accessible spaces	Able to comply	The proposed building envelope does not result in additional shadowing to publicly accessible open space at the times and dates specified within the Sydney DCP 2012 (April and June).
3.2.1.2 Public Views	Able to comply	The proposed building envelope will not impact existing views to or from Sydney Harbour as the Harbour is obscured by existing development and construction including Barangaroo.
3.2.6 Wind effects	Able to comply	<p>A Pedestrian Wind Environment Statement has been submitted with the application.</p> <p>The conclusions of this assessment indicate that wind conditions resulting from a future Stage 2 development would be acceptable subject to recommendations to ameliorate north-easterly winds.</p> <p>Notwithstanding the above, a condition is recommended requiring the submission of a wind effects report as part of the Stage 2 development application.</p>

3. General Provisions		
Development Control	Compliance	Comment
3.3 Design Excellence and Competitive Design Processes	Able to comply	<p>Prior to submission of a Stage 2 development application, a competitive design process is required to be undertaken.</p> <p>A Design Excellence Strategy has been submitted with the application in accordance with the requirements of Section 3.3.8 of the Sydney DCP 2012.</p>
3.5.3 Tree Management	Yes	The site is located adjacent to a street tree on Kent Street. However, as no physical works are proposed at Stage 1, the indicative proposal does not impact upon health of the existing tree.
3.6 Ecologically Sustainable Development	Able to comply	Compliance with the requirements of BASIX will be assessed at Stage 2. Details will need to be submitted with the future Stage 2 development application to demonstrate compliance.
3.7 Water and Flood Management	Yes	Refer to discussion in the Sydney LEP 2012 compliance table.
3.9 Heritage	Yes	Refer to discussion in the Sydney LEP 2012 compliance table.
3.11 Transport and Parking	Able to comply	<p>The concept plan has indicatively illustrated 4 basement car park levels.</p> <p>As parking numbers are not approved as part of a Stage 1 Development Application, this aspect will be assessed as part of the Stage 2 Development Application subject to land uses, residential apartment mix and numbers.</p> <p>Based on the indicative parking layout and number of spaces proposed, the City Access and Transport Unit have advised the proposal would not cause a significant increase to traffic generation.</p> <p>Appropriate conditions are recommended confirming that parking numbers and the number of basement levels are not approved as part of this application. This includes matters relating to the future Stage 2 Development Application such as bicycle facilities and on-site waste collection.</p>

3. General Provisions		
Development Control	Compliance	Comment
3.11.10 Vehicle Access	Able to comply	<p>The application initially sought to retain vehicular access via the existing Kent Street driveway.</p> <p>On 11 May 2015, the application was amended to provide vehicular access via Jenkins Street consistent with the recommendations of Council's Access and Transport Unit.</p> <p>See discussion under 'Issues'.</p>
3.11.13 Design and location of waste collection points and loading area	Able to comply	<p>The proposed waste collection point is from Jenkins Street.</p> <p>Following a preliminary assessment of waste collection, the applicant was advised to amend the garbage room to ensure sufficient space for bins and bulky goods.</p> <p>On 11 May 2015, the application was amended to include a bulky goods storage room and increased garbage collection room. A condition is recommended to ensure sufficient waste facilities at Stage 2 detailed design.</p>
3.12 Accessible Design	Able to comply	<p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p>
3.13 Social and Environmental Responsibilities	Able to comply	<p>A CPTED report is required to be submitted with the future Stage 2 Development Application.</p>

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	Able to comply	The proposed building envelope has included concept plans and sections demonstrating a residential floor to floor height of 3.1 metres. A condition is recommended requiring the detailed design to be developed with a minimum floor to floor height of 3.1 metres to ensure that a finished internal clearance of 2.7 metres is achieved.
4.2.3 Amenity	Able to comply	The proposed building envelope is capable of complying with the relevant provisions relating to amenity. See discussion under 'Issues'.
4.2.3.12 Flexible housing and dwelling mix	Able to comply	Indicative floor plans submitted with the subject application demonstrate that the envelope is able to accommodate a compliant unit mix. A condition is recommended requiring the detailed Stage 2 Development Application to ensure compliance with the unit mix specified within the Sydney DCP 2012.

5. Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.1.1 Street frontage heights	No	The proposed building envelope has a street frontage height of approximately 47.8m metres (RL 72.20) to Kent Street and 19.7 metres (RL 31.70) to Jenkins Street. See discussion under 'Issues'.
5.1.2 Building setbacks	No	See discussion under 'Issues'.
5.15 Building bulk	Yes	The proposed building envelope has residential floor plates of approximately 929sqm, consistent with the requirements of the Sydney DCP 2012.

5. Specific areas – Central Sydney		
Development Control	Compliance	Comment
5.16 Building exteriors	Able to comply	The proposal is a concept envelope only. The architecture and materiality will form part of a competitive design process and Stage 2 development application.
5.1.9 Award and allocation of heritage floor space	Able to comply	Utilisation of any accommodation floor space and competition floor space will be subject to conditions at Stage 2 requiring allocation of heritage floor space equal to 50% of the accommodation floor space utilised in the detailed design.

ISSUES

Floor Space

47. Documentation has been submitted as part of this application to demonstrate that the subject building envelope is able to accommodate up to 14,460sqm of GFA. This equates to a FSR of 12.1:1, incorporating a 10% bonus FSR for design excellence under the provisions of Clause 6.21(7)(b) of the Sydney LEP 2012.
48. At this time, it is premature to award any floor space as part of a concept plan as the maximum permissible floor space is calculated proportionally on land uses, which are not confirmed in as part of the Stage 1 application. Given that commercial uses are recommended at Ground and Level 1, the maximum permitted FSR will be less than that proposed by the Applicant.
49. It is recommended that no FSR be approved as part of the subject application and that a condition be imposed requiring any future Stage 2 development application to be compliant with the FSR development standard of the Sydney LEP 2012 (excluding a 10% award).

Street frontage heights

50. The proposed building envelope has a street frontage height of approximately 47.8m (RL 72.20) to Kent Street and 19.7m (RL 31.70) to Jenkins Street
51. Section 5.1.1 of the Sydney DCP 2012 specifies the street frontage height of a new building must be between 20 and 45 metres above the site ground level. In this regard, the proposed street frontage heights of 47.8 and 19.7 metres respectively, represent a minor departure from the provisions.
52. Notwithstanding the above, Section 5.1.1(a) of the Sydney DCP 2012 encourages the specific height to be set with regard to the predominant street frontage height of adjacent buildings and buildings in the vicinity. Figures 17 and 18 over page provide the street frontage height of the Maritime Towers, subject site and Stamford on Kent apartments.
53. As demonstrated in **Figure 17**, the street frontage heights of these buildings vary considerably at Kent Street and are generally provided without a podium. At Jenkins Street, the street frontage is somewhat consistent south of Gas Lane.

54. In consideration of the above, the proposed street frontage height of 47.8m to Kent Street and 19.7 metres to Jenkins Street is considered contextually appropriate having regard to adjacent development. As such, the minor non-compliance with the Sydney DCP 2012 is acceptable.

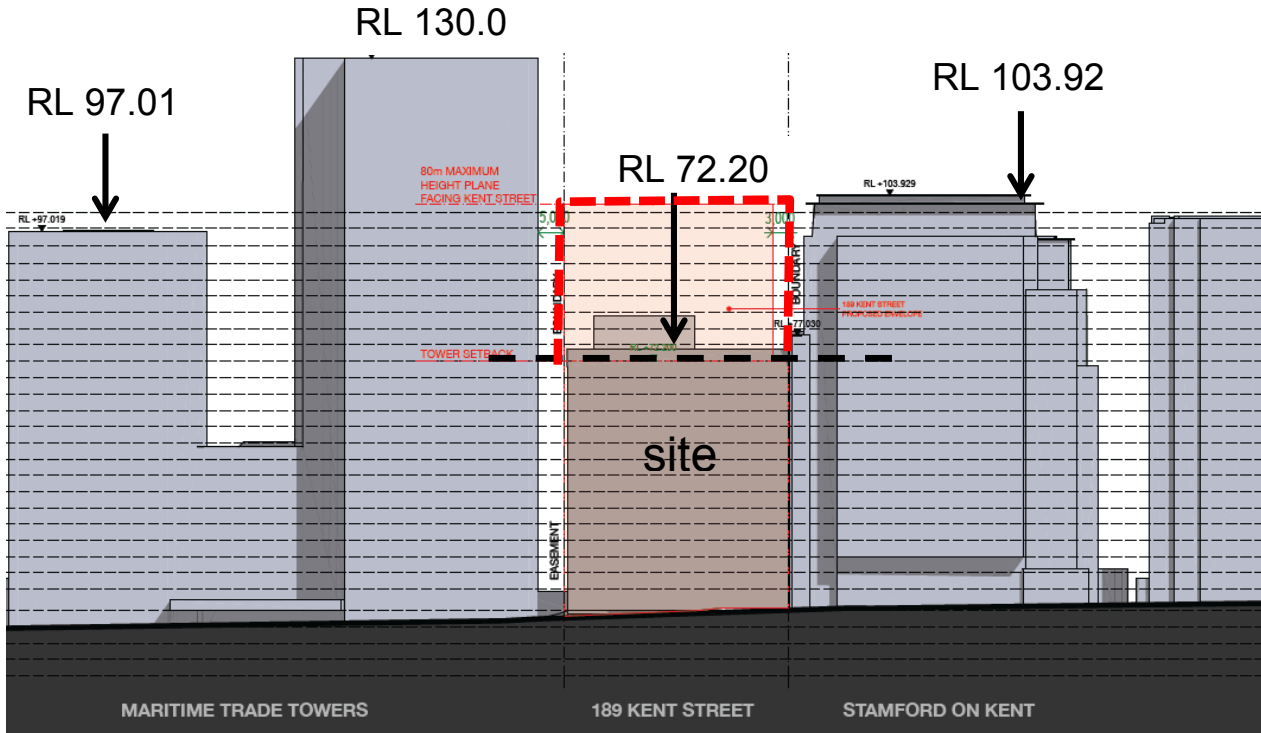


Figure 17: Kent Street wall height of proposed and surrounding development

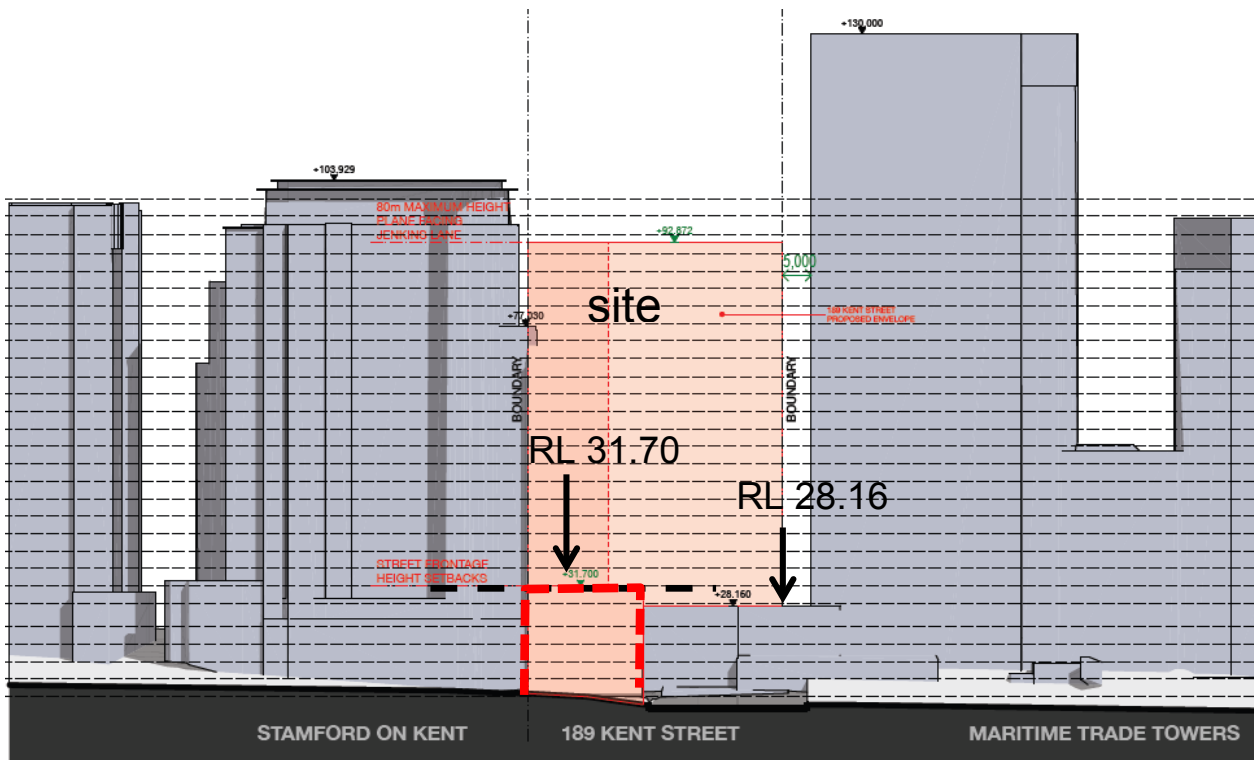


Figure 18: Kent Street wall height of proposed and surrounding development

Setbacks

Setbacks to Kent Street and Jenkins Street (front and rear)

55. The indicative building envelope includes a stepped setback from Kent Street between 6 to 11 metres above the street wall height (RL 72.20). At the rear to Jenkins Street, the building is setback approximately 1 metre above the street wall.
56. Section 5.1.2.1(1) of the Sydney DCP 2012 specifies buildings must be set back a minimum weighted average of 8 metres above the street frontage height with no part of the building setback less than 6 metres. Whilst the proposal maintains an adequate weighted front setback of 8 metres from Kent Street, the setback to Jenkins Street is inconsistent with the control.
57. Notwithstanding the above, the predominant setback of the Stamford on Kent to the north is approximately 6m from the centre line of Jenkins Street. In this regard, the proposed setback provides consistency with the streetscape whilst complying with the general objectives for setbacks as specified within of Section 5.1.2(a) of the Sydney DCP 2012 including enhanced amenity in terms of daylight, outlook, view sharing, ventilation and privacy.

Primary rear setback (western boundary)

58. A Title Search for the adjoining site at 201 – 217 Kent Street Sydney, reveals it is burdened by an easement for light and air in the north-eastern corner of the lot. The easement is approximately 4.5 metres wide with an L-shaped configuration extending west from Kent Street and north from AON Tower (Refer **Figure 19**).
59. The proposed development maintains a setback of approximately 1.5 metres from the rear (western) boundary at Ground Floor and Level 1. Incorporating the width of the easement, this provides a maximum separation of 6 metres between the single level northern wing of 201 – 217 Kent Street and the Level 1 terraces of the subject site. Between Level 2 and 23, the setback from the rear (western) boundary increases to approximately 4.5 metres. Incorporating the width of the easement, this provides a maximum separation of approximately 9 metres between the commercial wing and subject site (Refer **Figure 20** and **Figure 21**).
60. Section 5.1.2.2 of the Sydney DCP 2012 specifies a minimum setback of 6 metres from the rear property boundary for principal balconies of residential buildings to a height of 45 metres. Above 45 metres, the minimum setback is increased to 12 metres in order to ensure visual privacy is achieved between buildings.
61. The RFDC specifies a minimum building *separation* of 9m between habitable rooms/balconies and non-habitable rooms up to four storeys. This is increased to 13 metres between five to eight storeys, and 18 metres above nine storeys.
62. The recent amendments to SEPP 65 included the introduction of the ADG and design criteria. Any future Stage 2 Development Application will be required to be assessed against the criteria which are generally consistent with the separation distances required by the RFDC.

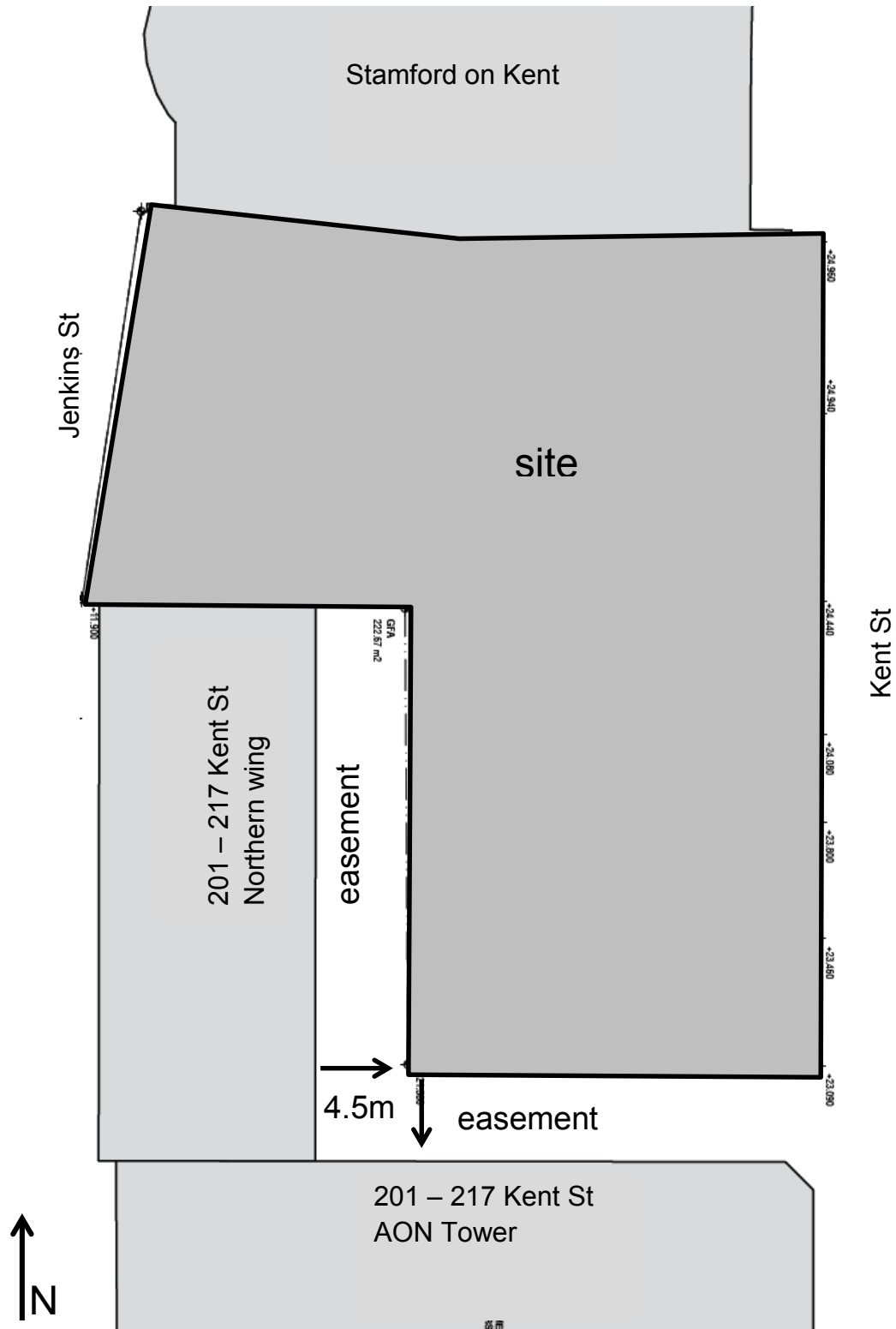


Figure 19: Relationship of easement to subject site

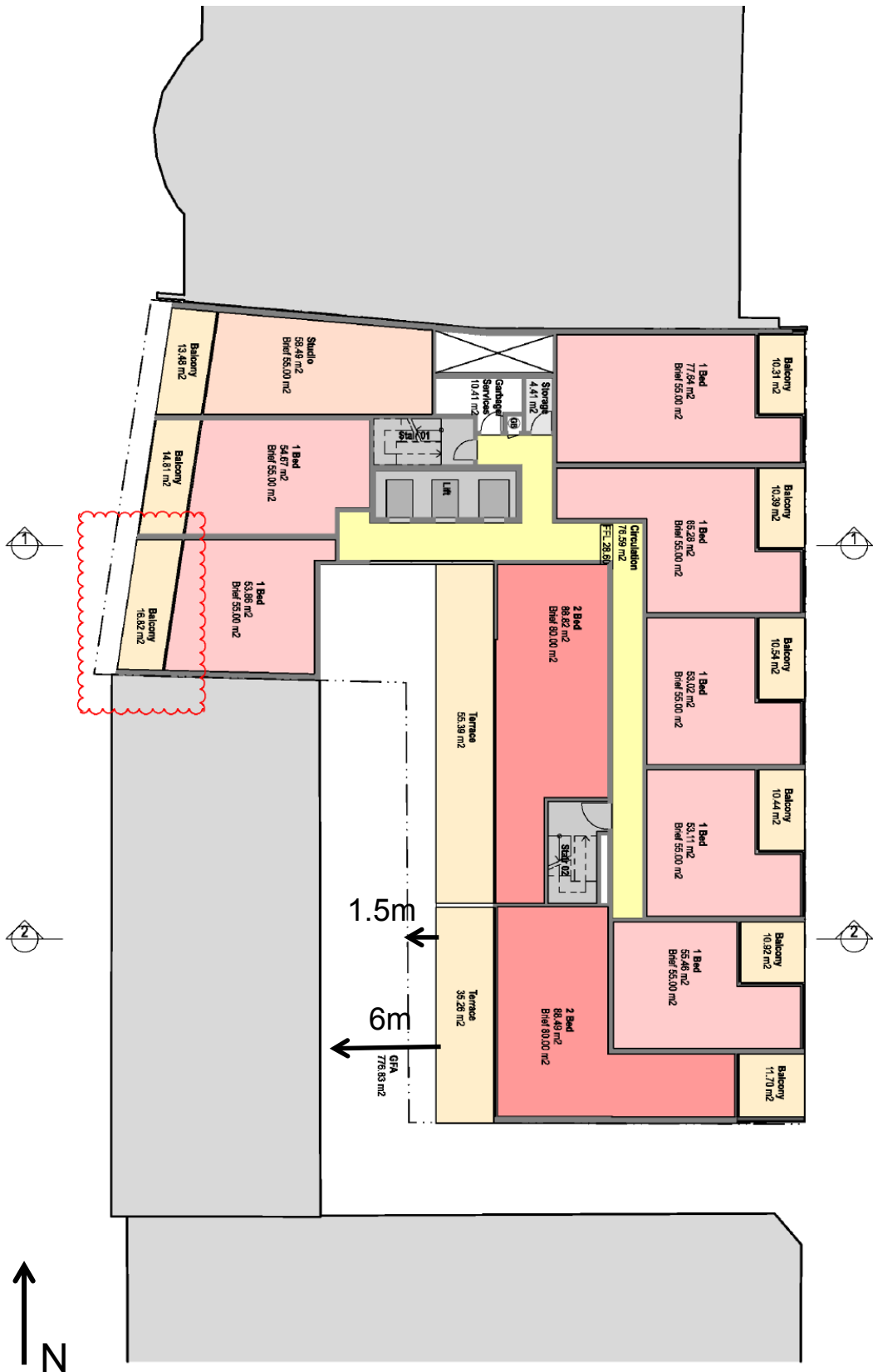


Figure 20: Level 1 indicative floor plan

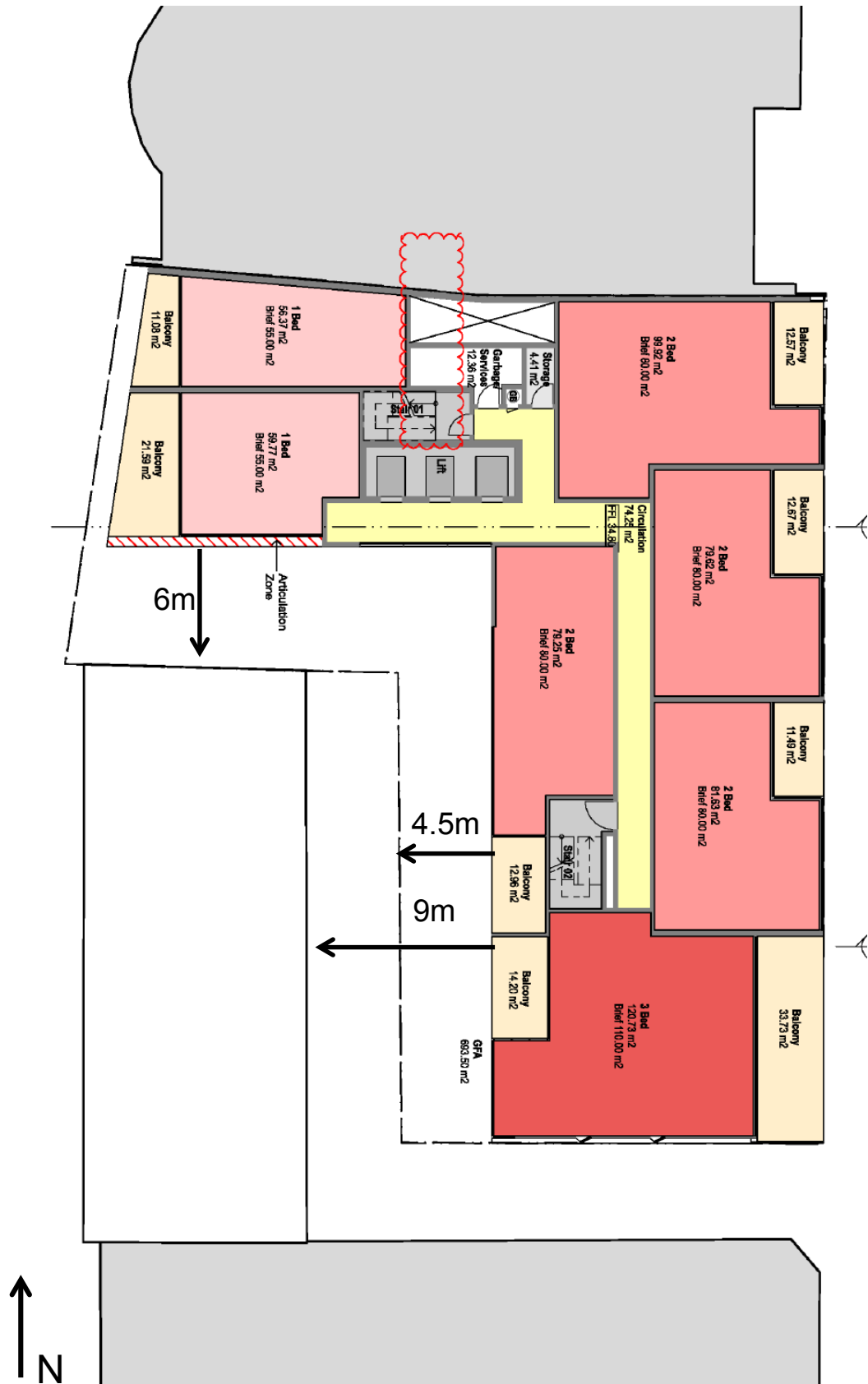


Figure 21: Level 2 - 3 indicative rear setbacks

63. The proposed rear (western) setback is inconsistent with the minimum setback and separation required by the Sydney DCP 2012 and RFDC. However, it is considered acceptable in this instance as:
- (a) A review of Council records indicates the existing FSR calculation for the adjoining site (201 – 217 Kent Street) as 8.75:1. In accordance with the Sydney LEP 2012, the maximum achievable FSR for the site is 12.1:1. This incorporates a base FSR of 8:1, accommodation floor space of up to 3:1 and 10% competitive design bonus, equating to approximately 26,000sqm of additional residential/hotel GFA or 18,000sqm of commercial floor space.
 - (b) Notwithstanding (a), 201 – 217 Kent Street is heavily constrained in terms of future potential development, taking into account:
 - (i) the AON and Symantec Towers are 109 metres and 82 metres in height respectively. As the Sydney LEP 2012 specifies a maximum building height of 80 metres for the site, further development of the Towers would contravene the current City of Sydney height controls;
 - (ii) the site contains the former 'Grafton Bond Store and Sandstone Wall' which are of State Heritage significance (SHR 1813). Any future development must occur outside the SHR curtilage and respond in t
 - (iii) the subject site benefits from an easement for light and air which burdens the Maritime Towers Complex at its northern boundary. The easement requires a spatial separation of 4.5 metres to be retained in perpetuity; and
 - (iv) the western frontage of 201 – 217 Kent Street has a steep topography to Hickson Road significantly limiting the ability to develop within close proximity to the boundary.
 - (c) In consideration of the above, any future development of the adjoining site is likely to occur in the location of the northern wing. However, as submitted by the Applicant, the footprint of this area is approximately 400sqm in area and therefore too small to support a viable commercial floor plate or achieve the economic viability required for a high rise residential/hotel development. In this regard, the building is unlikely to be developed or achieve sufficient amenity for occupants consistent with the relevant planning controls.
 - (d) In order to achieve sufficient amenity for occupants of both buildings, it is recommended that the Ground Floor and Level 1 are restricted to commercial/retail uses. This will ensure compliance with the minimum 6 metre setback required from the rear boundary as specified within the Sydney DCP 2012.
 - (e) Given the increased setback of 4.5 metres from the boundary above Level 1 (RL 31.70) and the limited development potential of the single storey northern wing at 201 – 217 Kent Street, a 9 metre rear separation is considered contextually appropriate subject to conditions and further design refinement as part of the future Stage 2 Development Application.

Side setbacks

64. The application proposes a nil setback from the southern boundary to AON Tower. Incorporating the easement for light and air, this equates to a separation of 4.5 metres.
65. Section 5.1.2.2 the Sydney DCP 2012 specifies a minimum side setback of between 6 – 12 metres. However, in cases such as this, where walls without windows are proposed, the development is not required to be setback. As such, no issue is raised regarding the nil southern setback to AON Tower.
66. At the south western boundary to the northern wing of the Maritime Towers, the application proposes a common wall at the Ground Floor and Level 1, before setting back approximately 6 metres at Level 2 and above (Refer **Figure 20** and **Figure 21**). Whilst not strictly complying with the side setback control, the indicative apartments maintain a single aspect to the west with an 'articulation zone' along the southern wall which is envisaged to include privacy screens and/or louvers to ensure adequate privacy between buildings. Further, given the site constraints of 201 – 217 Kent Street (see discussion under 'Primary rear setback'), neither development is likely to be impacted by the setback above Level 2, with an approximate separation of 34 metres maintained between the apartments and AON Tower to the south.
67. The application proposes a nil setback from the northern boundary to a height of 47.8 metres to Kent Street (RL 72.20). Above this, the tower is partially setback approximately 4 metres from the northern boundary. Whilst no windows are proposed along the northern boundary of the subject development, the Stamford on Kent has six levels of windows and balconies above RL 74.46.
68. Notwithstanding the above, the windows and balconies are setback approximately 2.9 metres from the boundary. Incorporating the 4 metre setback of the subject development, this provides a separation of approximately 6.9 metres ensuring adequate visual privacy for the occupants of the Stamford on Kent. This is illustrated in **Figure 22** over page.
69. As the concept plans indicate a blank wall to the northern and southern boundaries, the proposed side setbacks are considered acceptable subject to conditions restricting windows or openings on the northern and southern boundaries. This will ensure that the future development has an acceptable impact on the privacy and amenity of adjoining occupants. Further, resolution of the northern and southern walls will be lodged with the detailed design Stage 2 Development Application and shall ensure a visually interesting façade treatment.

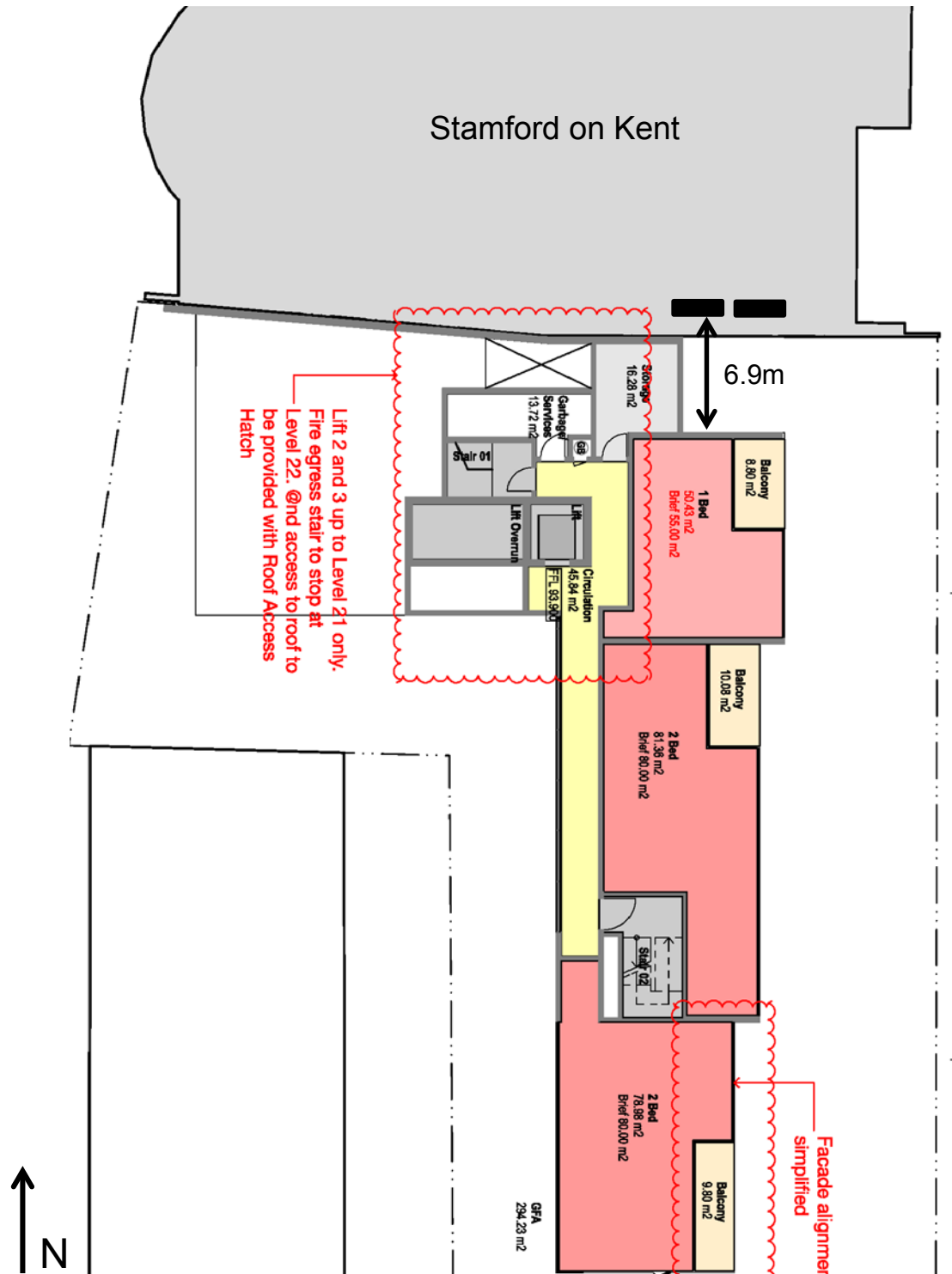


Figure 22: Approximate location of SOK windows in relation to subject site (above Level 16)

Amenity

Cross-Ventilation

70. The indicative Stage 1 floor plans achieve 30% *natural* cross-ventilation to apartments. The RFDC Rules of Thumb require a minimum 60% of apartments to achieve natural cross-ventilation.

71. The RFDC provides that where development seeks to vary the minimum standards, it must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms. As proposed, the application seeks to utilise an open void to the northern boundary and the plenum method to increase cross-ventilation to 60%.
72. Although detailed design plans will form part of a Stage 2 Development Application, the ability for the envelope to achieve compliance with these guidelines must be assessed at Stage 1 to ensure adequate amenity for future residential use.
73. As proposed, the alternative methods to achieve cross-ventilation are unsatisfactory. However, taking into account the below, it is considered the Stage 2 detailed design is capable of improving *natural* cross-ventilation compliance, as:
 - (a) after 19 June 2015, all apartment development applications are subject to the design criteria of the Apartment Design Guide (ADG) and amendments to SEPP 65. The Design Criteria of Objective 4B – 3, requires at least 60% of apartments to be naturally cross-ventilated in the first nine storeys of the building. Above this height, apartments are deemed to be cross-ventilated.
 - (b) as a condition is recommended restricting commercial/retail uses between Ground and Level 1 (see discussion under ‘Rear setback’), the Design Criteria applies to six residential floors between Level 2 – 8. At present, 27% of the indicative apartments between Level 2 – 8 achieve natural cross-ventilation in accordance with the ADG.
 - (c) in view of the above, the Stage 2 detailed design is likely to require modification in terms of apartment layout and configuration. This is envisaged to include dual aspect, cross-through and corner apartments. Consideration will also need to be given to the number and location of lift cores. The detailed Stage 2 design shall be resolved through a competitive design process, ensuring compliance with the relevant controls relating to cross-ventilation and amenity as specified within the ADG.

Solar Access

74. As proposed, the building envelope is capable of achieving a minimum 2 hours of direct sunlight to 71% of indicative apartments between 9am and 3pm during winter solstice (21 June). With the recommendation for restriction of commercial/retail uses at Level 1, this is increased to 76% of apartments consistent with the requirements of the Sydney DCP 2012 and RFDC.
75. The Applicant has undertaken an overshadowing study for the proposed building envelope. Although the Stage 1 development application proposes a larger scale envelope than the existing, any additional shadowing will not significantly impact upon the public domain and will generally remain contained within the shadow of the existing buildings within its vicinity

Vehicular Access and Deletion of Apartment at Basement 4 Level

76. In its original form, the proposal sought to continue use of the existing Kent Street access point. At the request of Council, the application was subsequently amended to provide access to Jenkins Street.

77. The application proposes an indicative apartment at Basement 4 (B4) Level directly adjacent to the Jenkins Street car park access point. Given the proximity of the driveway and garbage waste room to the apartment balcony, the ability for this apartment to achieve sufficient amenity in terms of outlook, visual and acoustic privacy and ventilation is heavily compromised. A condition is recommended restricting apartments at the B4 Level.

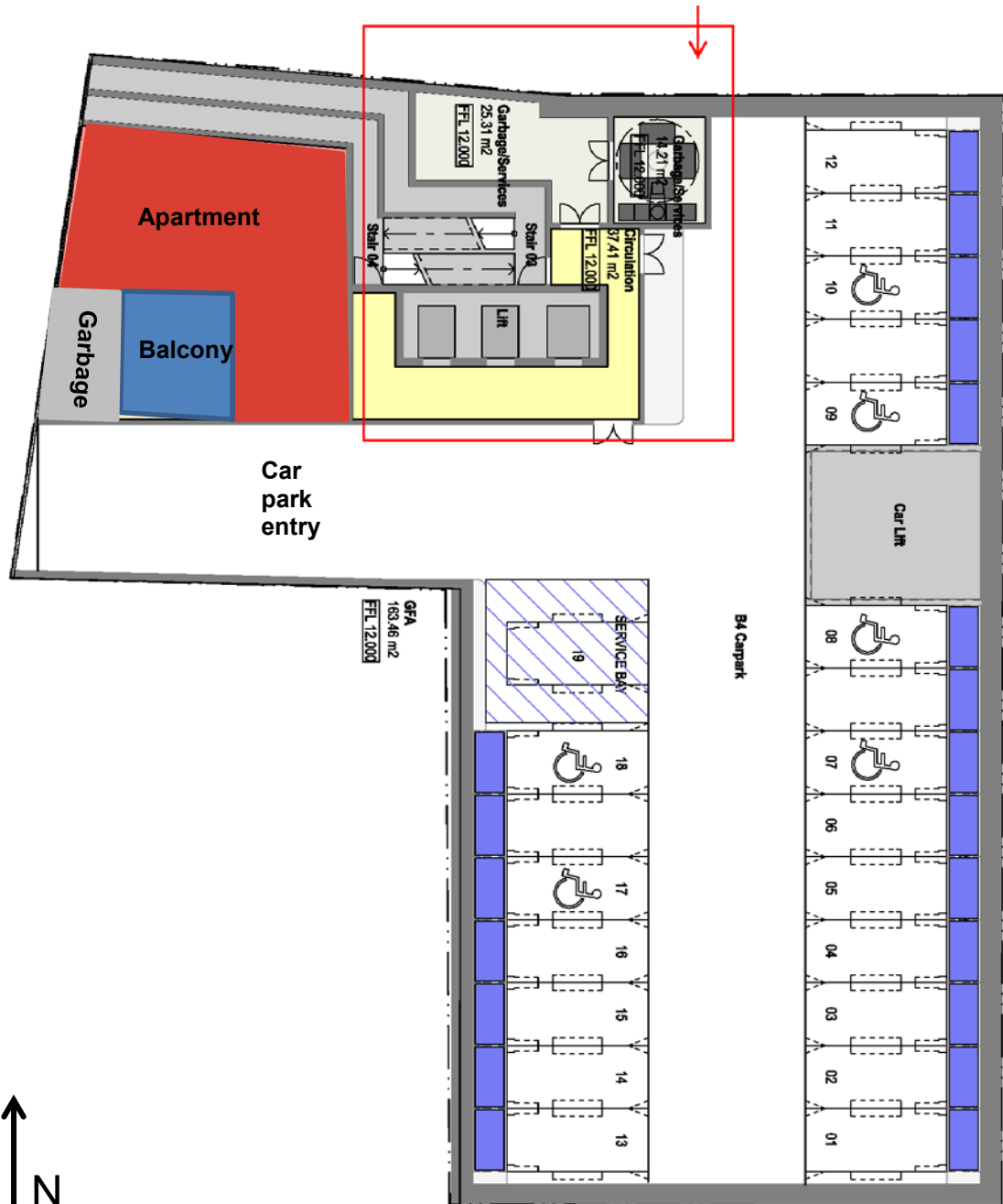


Figure 23: Indicative Basement 4 Plan

Other Impacts of the Development

78. 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

79. 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

80. The application was referred to Council's Urban Design and Heritage Specialists; Public Domain Unit; Health Unit; Waste Services and Transport and Access Unit. All appropriate conditions recommended for imposition from these referrals have been included in the recommended section of this report.

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

81. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 43 days between 19 December 2014 and 30 January 2015. As a result of this notification there were 5 submission(s) received.

- (a) The location of the car parking access on Kent Street should be reviewed and Jenkins Lane considered for both car access and loaded.

Response – The Applicant has amended the proposal to provide vehicular access via Jenkins Street.

- (b) The opportunity exists to greatly enhance the courtyard located in between 201 Kent Street and the subject site and improve accessibility through the site.

Response – Further consideration to the exterior grounds and communal open space of the subject site will form part of detailed Stage 2 detailed design.

- (c) Treatment of the south wall of the proposed building needs to be considered to ensure an acceptable outlook and appearance from the commercial tower at 201 Kent Street.

Response – Further consideration of the exterior façade and resolution will form part of detailed Stage 2 detailed design.

- (d) The concept building envelope above the Stamford on Kent's 19th floor does not comply with the City of Sydney DA requirement to have a setback of 4m along the total northern face with the additional requirement for no windows.

Response – Refer to discussion under 'Issues' regarding Sydney DCP 2012 requirements for side setbacks and walls without windows.

- (e) Treatment will be required to the apartments facing west and south to ensure that the interface between the existing commercial tower and the proposed new building is acceptable.

Response – The concept plans indicate a blank wall for the full height of the building at the southern boundary. A condition is recommended to ensure this is incorporated in the detailed Stage 2 detailed design.

- (f) The Stage 1 DA envelope should be in full compliance with the height controls under the Sydney LEP 2012. If the Applicant seeks to vary this control, this requires a variation under Clause 4.6 of the Sydney LEP 2012, which is not provided with the application.

Response – The Applicant has provided amended plans demonstrating full compliance with the 80m height development standard. As such, a Clause 4.6 variation is unnecessary.

- (g) Demolition of the building should not be considered until the grant of a Stage 2 Development Application.

Response – In accordance with Clause 2.7 of the Sydney LEP 2012, demolition of the existing structure will not be granted as part of this application as demolition of a building or work may be carried out only with development consent. No consent is granted to building works as part of the Stage 1 development application.

- (h) Errors within the Statement of Environmental Effects relating to surrounding land uses.

Response – Council acknowledges the above mentioned errors within the Statement of Environmental Effects prepared by JBA and has considered the Stage 1 Development Application in terms of its permissibility within the B8 – Metropolitan Centre Zone.

- (i) Impacts upon surrounding residential development in respect of demolition, excavation, building works and noise.

Response – Further consideration of these matters including submission of Construction Management and Demolition Plans will form part of the Stage 2 development application assessment.

- (j) The large ventilation shaft to the north of the envelope could involve the use of high capacity fans, which when operating, cause a reverberation effect or droning noise through to Stamford on Kent affecting amenity.

Response – The application seeks consent for an indicative scheme only. However, in the event a void forms part of the Stage 2 design concept, it will be required to comply with the relevant provisions of the Sydney DCP 2012 and ADG including acoustic privacy.

- (k) Clauses are required to be inserted in the framing of the Stage 2 DA to provide owners at Stamford on Kent legal recourse for damages to Stamford on Kent sustained throughout the construction period and to establish the technical procedures, work schedules and methods to be employed to protect owners to minimise significant disruption to their daily lives.

Response – Conditions providing legal recourse for damages is outside the scope of Council jurisdiction and in the event of such named damage, shall be resolved privately between the developer and Stamford on Kent owners. Further consideration of these matters including submission of Construction Management and Demolition Plans will form part of the Stage 2 Development Application assessment and conditions of any approval.

- (l) The Barana Pty Ltd Stage 1 DA obliges Stamford on Kent Owners Corporation (OC) to protect OC property interests by seeking potentially costly professional advice to maintain the safety and security of the residences comprising Stamford on Kent. It seems incumbent upon the Stamford on Kent OC to seek support from Barana P/L and its selected developer to ensure in its preliminary budgeting that likely costs to neighbours do not attach to the Stamford on Kent OC.

Response – This is not a matter for Council consideration.

- (m) Stamford on Kent OC is concerned that a previous DA submitted to COS by Barana Pty Ltd in 2005 lapsed after some years without development. Stamford on Kent expenses incurred in seeking advice on that occasion constituted a waste of financial resources and owner energy. The OC does not wish these circumstances repeated and trusts that the current DA is serious.

Response – In accordance with the Environmental Planning and Assessment Act, nothing prevents the submission of a development application.

PUBLIC INTEREST

82. 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

83. Section 61 contributions will form part of the Stage 2 Development Application.

RELEVANT LEGISLATION

84. The Environmental Planning and Assessment Act, 1979.

CONCLUSION

85. The proposal seeks consent for a Stage 1 concept plan for an 80 metre building envelope on the site at 189 – 197 Kent Street, Sydney.
86. As amended, and subject to imposition of the recommended conditions, that the proposed building envelope and indicative land uses appropriately respond to constraints of the site and applicable planning controls. In those instances where numeric variation is sought to the planning controls, such as setbacks, there is considered to be justifiable context and planning grounds to support the extent of the variation.
87. Accordingly, Development Application No. D/2014/1900 is recommended for approval, subject to the recommended conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Michaela Briggs, Planner)