

ITEM 4. SECTION 96(2) APPLICATION: 286-296 SUSSEX STREET SYDNEY**FILE NO: D/2014/755/A****SECTION 96 APPLICATION NO: D/2014/755/A****SUMMARY**

Date of Submission:	25 November 2015
Amended Plans	11 May and 20 June 2016
Applicant:	Ausbao (286 Sussex) Pty Ltd c/o Urbis Pty Ltd
Architect:	Smart Design Studio
Developer:	Ausbao (286 Sussex) Pty Ltd
Owner:	Ausbao (286 Sussex) Pty Ltd
Cost of Works:	\$97,242,238

Proposal Summary: The subject Section 96(2) application seeks to modify the approved Stage 1, 80 metre building envelope for a mixed use development, accommodating hotel and residential land uses at 286-296 Sussex Street, Sydney. The application seeks to vary the maximum overall height of the tower to RL 91.300 (a maximum of approximately 83.25 metres) from the approved 80 metres. The application also proposes an additional basement level and modifications to the massing of approved floor plates from level 9 to roof level.

The conditions imposed on the Stage 1 consent (D/2014/755) by the Central Sydney Planning Committee at its meeting on 23 April 2015, that are proposed to be modified as a result of these changes are as follows:

- Condition (2) Approved Stage 1 Development – to be modified to reflect the amended envelope and massing of floor plates;
- Condition (4) Location of Residential Uses – to be modified to reflect the amended height of level 9; and
- Condition (7) Building Height – to be modified to permit the building envelope to have a height of RL 91.300 (a maximum of approximately 83.25 metres).

**Proposal Summary:
(continued)**

The modification of the approved building envelope will ensure consistency between staged development applications on the site, as is required under Section 83D of the Environmental Planning and Assessment Act, 1979. The Stage 2 Development Application D/2015/1700 for the subject site is being assessed concurrently with this application.

The subject application was notified for a period of 14 days, between 2 December 2015 and 17 December 2015. One submission was received, raising concerns about non-compliance with setback requirements to its southern (Bathurst Street) frontage and to the heritage item to the east and the adverse amenity and heritage impacts arising from such non-compliances.

Since the approval of the Stage 1 building envelope, the project has evolved as a result of the competitive design process, the detailed design of building services, and refinement of the architectural expression of the building. As such the proposed modifications to the Stage 1 building envelope are considered to provide a better design outcome and are supported.

Summary Recommendation:

The subject Section 96(2) application is recommended for approval, subject to the modification of Conditions (2) Approved Stage 1 Development, (4) Location of Residential Uses, and (7) Building Height to reflect the modified building envelope.

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) Draft Sydney LEP 2012 Amendment - Minor Policy and Housekeeping Amendments (as exhibited 10 March 2015 to 7 April 2015)
- (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 Apartment Development
- (viii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (ix) State Environmental Planning Policy (Infrastructure) 2007
- (x) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Attachments:

- A - Envelope Massing Plans
- B - Stage 1 Development Application Planning Assessment Report
- C - Shadow Diagrams

RECOMMENDATION

It is resolved that consent be granted to Section 96(2) Application No. D/2014/755/A, subject to Condition (2) Approved Stage 1 Development, Condition (4) Location of Residential Uses, and Condition (7) Building Height being modified, (with modifications shown in ***bold italics*** (additions) and **~~*bold italics strike-through*~~** (deletions)) as follows:

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

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

(1) 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 and a subsequent development application (Stage 2) or applications are required for any work on the site.

(2) APPROVED STAGE 1 DEVELOPMENT

- (a) Development consent is limited to a Stage 1 Concept Plan building envelope and indicative land uses within this envelope, in accordance with Development Application No. D/2014/755, dated 28 May 2014 (as amended), and the following drawings:

Drawing Number	Architect	Date
0002 Revision B Site Plan	Tzannes Associates	5 January 2015
1003 Revision A Floor Plate Schedule	Tzannes Associates	31 March 2015
2000 Revision B North Elevation	Tzannes Associates	5 January 2015
2001 Revision B East Elevation	Tzannes Associates	5 January 2015
2002 Revision B South Elevation	Tzannes Associates	5 January 2015
2003 Revision B West Elevation	Tzannes Associates	5 January 2015
3000 Revision B Section 1	Tzannes Associates	5 January 2015

Drawing Number	Architect	Date
<i>3001 Revision B Section 2</i>	<i>Tzannes Associates</i>	<i>5 January 2015</i>
<i>S96:001, Rev. 3 Site Plan</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>
<i>S96:100, Rev. 3 Floor Plate Schedule</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>
<i>S96:101, Rev. 3 Roof Plan</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>
<i>S96:300, Rev. 3 North Elevation</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>
<i>S96:301, Rev. 3 East Elevation</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>
<i>S96:302, Rev. 3 South Elevation</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>
<i>S96:303, Rev. 3 West Elevation</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>
<i>S96:400, Rev. 3 Section A</i>	<i>Smart Design Studio</i>	<i>20.06.16</i>

and as amended by the conditions of this consent.

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

As amended by D/2014/755/A – 11 August 2016

(3) MATTERS NOT APPROVED

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

- (a) any demolition, excavation and/or construction;
- (b) the vehicular access/crossover location on Sussex Street;
- (c) the layout and number of residential apartments;
- (d) the layout of the hotel use or the total number of hotel rooms accommodated;
- (e) the number of basement levels and/or the configuration of the basement car parking levels;

- (f) the number of car parking spaces, bicycle spaces, car share or loading spaces/zones;
- (g) the precise quantum of floor space; and
- (h) a 10% design excellence uplift in floor space ratio.

(4) LOCATION OF RESIDENTIAL LAND USES

No residential land uses are approved within the podium levels of the building. Residential apartments shall not be provided below Level 9 (RL ~~38.450~~ **38.995**).

As amended by D/2014/755/A – 11 August 2016

(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 within the approved envelopes and provide an appropriate relationship with neighbouring buildings.

(6) DESIGN EXCELLENCE AND COMPETITIVE DESIGN PROCESS

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

(7) BUILDING HEIGHT

The maximum height of the building, as defined in the Sydney Local Environmental Plan 2012 (as may be amended), must not exceed ~~83.25~~ **80** metres.

As amended by D/2014/755/A – 11 August 2016

(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 (as amended).
- (b) Notwithstanding clause (a) above, the proposal may be eligible for a 10% design excellence uplift in floor space ratio pursuant to the provisions of Clause 6.21(7) of Sydney Local Environmental Plan 2012.
- (c) Precise details of the distribution of floor space shall be provided with the future Stage 2 Development Application.

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

(9) RESIDENTIAL LAND USE

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

(10) DETAILED DESIGN OF BUILDING

The design brief for the competitive design process shall incorporate the following requirements:

- (a) Preference that vehicular access to the site be provided from Druitt Lane, with a thorough investigation of vehicle access opportunities to be submitted as part of the Stage 2 Development Application;
- (b) Provision of on-site hotel drop off facilities;
- (c) Greater activation of the Druitt Lane ground floor frontage through opportunities;
- (d) Provision of separate entry lobbies for the hotel and residential uses;
- (e) Consideration that the podium treatment to acknowledge the heritage items at 281-287 Sussex Street and 499-501 Kent Street;
- (f) Delivery of a 3.1 metre floor to floor height for all residential levels; and
- (g) A visually interesting treatment is to be applied to the exposed side elevation along the eastern boundary of the site.

(11) HOTEL USE

Documentation shall be submitted with the Stage 2 Development Application for the hotel use and its operation in accordance with the requirements of Section 4.4.8 of the Sydney DCP 2012.

(12) PUBLIC ART

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

(13) WIND

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

(14) AUSGRID

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

(15) CONTAMINATION – DETAILED SITE ASSESSMENT

- (a) A Detailed Environmental Site Assessment (DESA) must be submitted for approval with the Stage 2 Development Application. The DESA must be carried out in accordance with the NSW EPA Contaminated Sites 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 the Health and Building Unit for review and written approval before scheduled conditions of consent can be activated.

(16) COMPLIANCE WITH ACID SULFATE SOILS MANAGEMENT PLAN

All recommendations contained in the Acid Sulfate Soils Management Plan, prepared by Aurecon and dated 21 November 2014, must be implemented.

(17) AIR QUALITY ASSESSMENT

In accordance with the recommendations of the 'Desktop Air Quality Audit', prepared by Coffey Corporate Services Pty, dated 15 May 2014, and the requirements of Clause 7.24 of the Sydney Local Environmental Plan 2012 and Section 3.13.2 of the Sydney Development Control Plan 2012, an Air Quality Assessment Report must be prepared and submitted with the Stage 2 Development Application.

(18) CONSTRUCTION NOISE MANAGEMENT PLAN

A Construction Noise Management Plan must be prepared and submitted with the Stage 2 Development Application. This Plan must be prepared by a suitably qualified acoustic consultant and must detail, but not limited to, the following:

- (a) the equipment to be used during the construction on site, the quantity of all equipment and a plan of how equipment will be operated on site cumulatively;
- (b) the type of work that will be conducted during the construction process;
- (c) details on (any) respite periods and any noise mitigation measures required; and
- (d) detail the extent of community consultation to be undertaken.

(19) RESIDENTIAL ACOUSTIC AMENITY- ACOUSTIC REPORT

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*.

(20) 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/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.

(21) 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.

(22) LOADING WITHIN 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.

(23) 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.

(24) VEHICLES ACCESS

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

(25) ACCESSIBLE PARKING SPACE

The design, layout, signage, line marking, lighting and physical controls of all off-street accessible parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.6 - 2009 Parking facilities Part 6: Off-street parking for people with disabilities.

(26) LOCATION OF ACCESSIBLE CAR PARKING SPACES

Where a car park is serviced by lifts, accessible spaces for people with mobility impairment are to be located to be close to lifts. Where a car park is not serviced by lifts, accessible spaces for people with mobility impairment are to be located at ground level, or accessible to ground level by a continually accessible path of travel, preferably under cover.

(27) CAR SHARE SPACES

A minimum of 1 car share space per 50 car spaces for the exclusive use of car share scheme vehicles are to be provided. The basement floor plans submitted with the Stage 2 Development Application must illustrate where these spaces are to be located.

(28) COACH PARKING MANAGEMENT PLAN

A Coach Parking Management Plan for the hotel use is to be submitted with the Stage 2 Development Application.

(29) SERVICE VEHICLE SIZE LIMIT

The Stage 2 Development Application must include swept paths for the largest vehicles to access the building. These will be used to determine a condition for the largest vehicle permitted to service the site.

(30) TRANSPORT IMPACT ASSESSMENT

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

(31) WASTE COLLECTION

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

(32) 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*.

(33) ALIGNMENT LEVELS – MAJOR DEVELOPMENT

- (a) The proposed building floor levels, basement levels, basement car park entry levels and ground levels shown on the approved plans are indicative only and have not been approved as part of this consent.
- (b) Prior to any 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.

(34) PUBLIC DOMAIN PLAN

- (a) A 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.

(35) PUBLIC DOMAIN DAMAGE DEPOSIT

A Public Domain Damage Deposit calculated on the basis of 74 lineal metres of stone (granite and trachyte) site frontage and 36 lineal metres of concrete 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 for Stage 2 Development Application works, 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.

SCHEDULE 2

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

SCHEDULE 3**(36) TRANSPORT FOR NSW CONCURRENCE CONDITIONS**

Transport for NSW has provided the following concurrence conditions under the provisions of Clause 88 of *State Environmental Planning Policy (Infrastructure) 2007*:

- (a) The owners of the site are required to consult with Transport for NSW (TfNSW) prior to lodgement of relevant designs as part of any Design Competition under the relevant provisions of the Sydney Local Environmental Plan 2012 (SLEP) to ensure that the relevant designs have taken into consideration the relationship of the designs with the future CBD Rail Link (CBDRL).
- (b) The owners of the site of the approved development must enter into a Deed of Agreement with TfNSW prior to the lodgement of any Stage 2 application to address the adverse effects of the approved development on the CBDRL identified in State Environmental Planning Policy (Infrastructure) 2007. The Agreement must provide for the following:
 - (i) the design, construction and maintenance of the approved development so as to satisfy the requirements in conditions (c) to (i) below;
 - (ii) allowances for the future construction of railway tunnels in the vicinity of the approved development;

- (iii) allowances in the design, construction and maintenance of the approved development for the future operation of railway tunnels in the vicinity of the approved development, especially in relation to noise, vibration, stray currents, electromagnetic fields and fire safety;
 - (iv) consultation with TfNSW;
 - (v) access by representatives of TfNSW and Sydney Trains to the site of the approved development and all structures on that site;
 - (vi) provision to TfNSW and Sydney Trains of drawings, reports and other information related to the design, construction and maintenance of the approved development;
 - (vii) creation of a restrictive covenant on each of the titles which comprise the approved project so as to satisfy condition (i) below;
 - (viii) such other matters which TfNSW and Sydney Trains considers are appropriate to give effect to (i) to (vii) above; and
 - (ix) such other matters as the owners and TfNSW and Sydney Trains may agree.
- (c) All structures which are proposed for construction or installation, or which are constructed or installed, in connection with the approved development which have a potential impact on the CBDRL must be designed, constructed and maintained in accordance with design criteria specified by TfNSW.
- (d) The design and construction of the basement levels, foundations and ground anchors for the approved development are to be completed to the satisfaction of TfNSW.
- (e) The developer must undertake detailed geotechnical analysis prior to lodgement of any Stage 2 DA to demonstrate likely movements of the ground due to the future CBDRL.
- (f) No modifications may be made to that the approved design without the consent of TfNSW.
- (g) TfNSW, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.
- (h) Copies of any certificates, drawings or approvals given to or issued by TfNSW must be delivered to Council for its records.

- (i) Prior to issue of any Occupation Certificate, a restrictive covenant is to be created upon each of the titles which comprise the approved development pursuant to Section 88E of the Conveyancing Act 1919, restricting any alterations or additions to any part of the approved development which are reasonably likely to adversely affect, or which otherwise are likely to interfere with the design, construction and operation of the proposed Sydney Metro the prior written consent of TfNSW.

(37) ROADS AND MARITIME SERVICES CONDITIONS

The Roads and Maritime Services has provided the following conditions under the provisions of Clause 88 and 103 of *State Environmental Planning Policy (Infrastructure) 2007*:

- (a) Roads and Maritime has previously acquired a strip of land for road at the North East corner of Sussex and Bathurst Streets at the frontage of the subject property, being Lot 1 DP 571666. Roads and Maritime has previously acquired an easement for rock anchors along the northern boundary of Bathurst Street as shown on DP 1046874. The Cross City Tunnel (CCT) runs in stratum beneath Bathurst Street and Sussex Street abutting the subject property. Therefore there are no objections to the development proposal on property grounds provided:
 - (i) any proposed buildings or structures are erected clear of the CCT, Lot 1 DP 571666 and easement for rock anchors;
 - (ii) access to the Roads and Maritime easement is not denied; and
 - (iii) the integrity of the CCT and easement is not compromised.
- (b) The developer is to comply with the requirements of Technical Direction (GTD 2012/001). This will require the developer to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the Roads and Maritime for assessment prior to the approval of any Construction Certificate. The developer is to meet the full cost of the assessment by the Roads and Maritime. This report would need to address the following key issues:
 - (i) The impact of excavation/rock anchors on the stability of the CCT and detailing how the carriageway would be monitored for settlement.
 - (ii) The impact of the excavation on the structural stability of the CCT.
 - (iii) The development must not interfere with the ongoing operation and maintenance of the CCT.
 - (iv) If the development is likely to impact on the CCT, the developer must consult with the operator of the CCT and Roads and Maritime Motorway Management on 8837 0937.

- (c) A Construction Management Plan should be prepared as part of the Stage 2 Development Application documentation which specifies any potential impacts to regular bus services operating on roads within the vicinity of the site. Any impacts from construction vehicles during construction of the proposed works need to be mitigated. Potential impacts on pedestrian access to public transport infrastructure (including bus stops), should be specified. Should any impacts be identified, the duration of the impacts and measures proposed to mitigate these are to be clearly explained and committed to being enforced.

BACKGROUND

The Site

1. The site has a legal description of Lot 1 DP 185342, Lot 1 DP 650321, Lot 1 DP 650520 and Lot 1 DP 657427 and is commonly known as 286-296 Sussex Street, Sydney. The site has three street frontages, Sussex Street to the west, Bathurst Street to the south and DrUITT Lane to the north.
2. The site is irregular in shape, with a splayed corner at the intersection of Bathurst and Sussex Street resulting from a previous road widening dedication. The site has a frontage to Sussex Street of 33.59 metres, a 28.82 metre frontage to Bathurst Street and a 31.55 metre frontage to DrUITT Lane. The site has an area of 1,255sqm.
3. Existing on site is a 9-10 storey commercial building, containing ground floor retail uses and commercial office floor space on levels above. The site currently has vehicular access via driveways from Sussex Street and DrUITT Lane.
4. **Figures 1 to 5**, below, illustrate the context of the site and the existing built form.



Figure 1: Aerial image of 286-296 Sussex Street, Sydney.



Figure 2: The site as viewed from the south-west corner of Sussex and Bathurst Streets.



Figure 3: The site as viewed from Bathurst Street looking west.



Figure 4: The site as viewed from the intersection of Bathurst and Sussex Streets looking north.



Figure 5: The existing ground floor retail and vehicular access to the site on its Sussex Street frontage.

Surrounding Development

5. Development in the vicinity of the site is generally mixed use and is characterised by commercial, retail and residential land uses.
6. To the north of the site, on the opposite side of Druitt Lane, is 278-284 Sussex Street, which is a 16-storey residential apartment building known as the 'Newhaven' (refer to **Figure 6**, below).
7. To the east of the site, on its Bathurst Street frontage, is the 7-storey commercial building at 70-72 Bathurst Street (refer to **Figure 7**, below). To the east of the site, on its Druitt Lane frontage, is the heritage listed 3-4-storey warehouse building at 499-501 Kent Street (refer to **Figure 8**, below).
8. To the south of the site, on the opposite side of Bathurst Street, is the mixed-use development at 298-304 Sussex Street, known as Maestri Towers (refer to **Figure 9**, below).
9. To the west of the site, on the opposite side of Sussex Street, are a series of low-rise buildings (refer to **Figure 10**, below). Directly to the west, on the opposite side of the intersection of Sussex and Bathurst Streets, is the 4 storey mixed-use building at 281-287 Sussex Street, which has residential apartments on its upper levels.



Figure 6: View of the adjacent residential building to the north of the site at 278-284 Sussex Street (Newhaven).



Figure 7: The adjacent commercial building to the east of the site on Bathurst Street (70-72 Bathurst Street).



Figure 8: View of the adjacent heritage listed warehouse building to the east of the site at 499-501 Kent Street, and view of Druiitt Lane (looking west)



Figure 9: View of the mixed-use development at 298-304 Sussex Street (known as Maestri Towers), on the southern side of Bathurst Street.



Figure 10: Existing development located to the west of the site, on the opposite side of Sussex Street.

HISTORY

Stage 1 Development Application – D/2014/755

10. A Stage 1 Development Application (D/2014/755) for the subject site was granted consent by the Central Sydney Planning Committee (CSPC) at its meeting on 23 April 2015.
11. The Stage 1 development application sought consent for the following:
 - (a) in principle approval for demolition of the existing commercial building;
 - (b) an indicative 26-storey (80 metre) building envelope;
 - (c) indicative future land uses of hotel (within the podium levels being ground floor to Level 8) and residential (in the tower from Levels 9 to 25);
 - (d) basement levels (indicatively shown as 4 levels); and
 - (e) vehicular access off Sussex Street.
12. **Figures 11 to 13** below, illustrate elevations of the approved Stage 1 building envelope including setbacks from each of its street frontages.

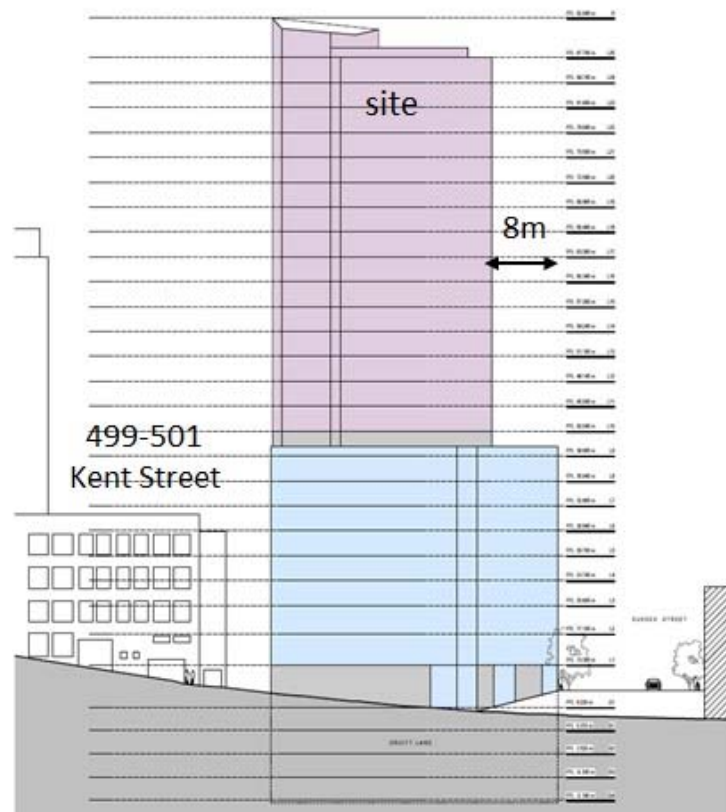


Figure 11: Northern (Druitt Lane) elevation of Stage 1 concept approval showing 8m approved setback above street wall height to Sussex Street.

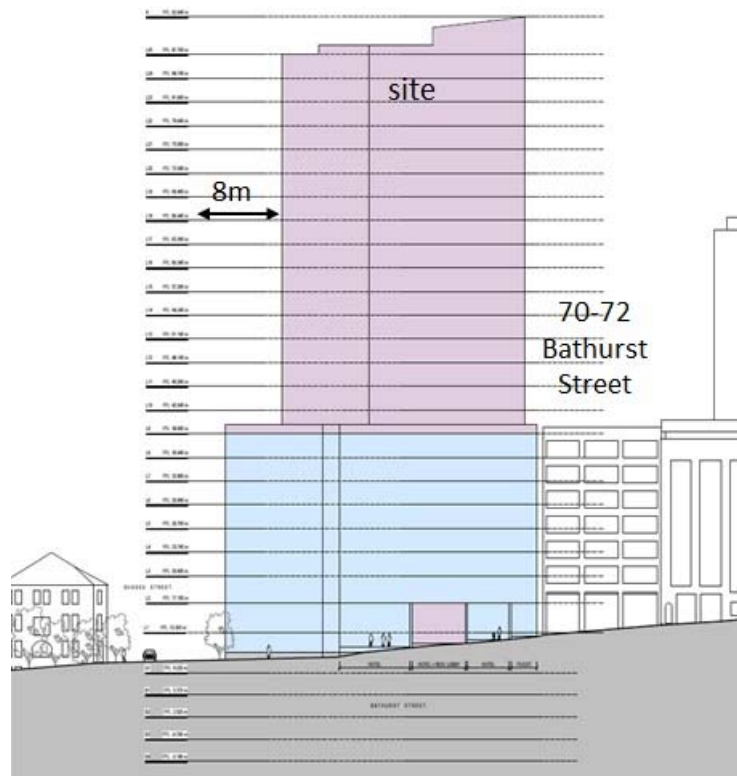


Figure 12: Southern (Bathurst Street) elevation of Stage 1 concept approval showing 8m approved setback above street wall height to Sussex Street.

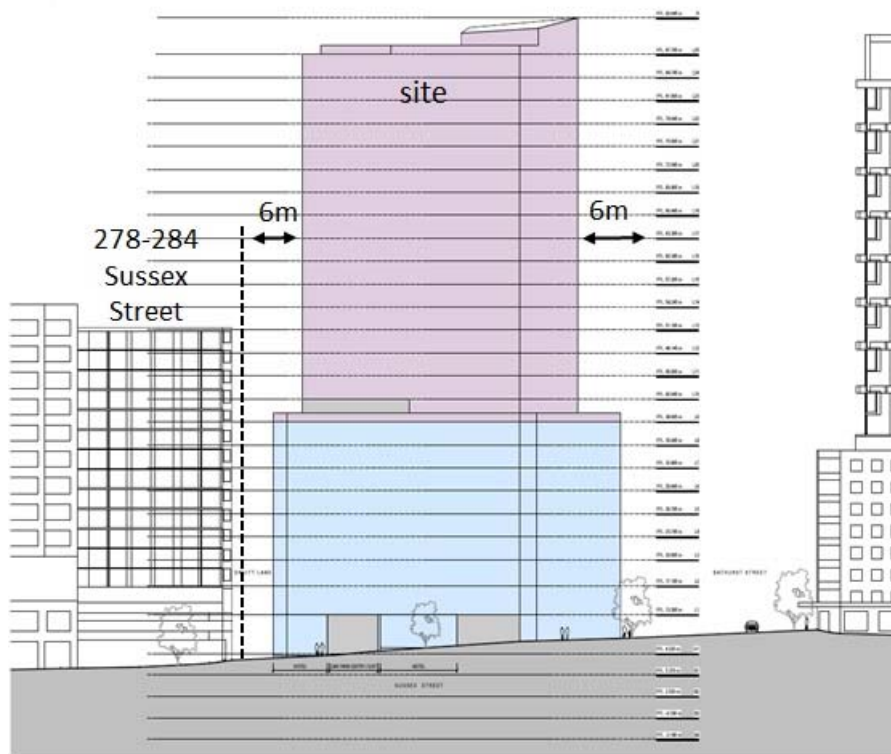


Figure 13: Western (Sussex Street) elevation of Stage 1 concept approval showing 6m approved setback above street wall height to Bathurst Street and 6m setback from the centreline of Druitt Lane.

13. A standard condition was imposed to define the maximum height of the Stage 1 envelope as follows:

(7) BUILDING HEIGHT

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

14. Following the Stage 1 development consent, the Applicant commissioned a competitive design alternatives process for the site. Four architectural firms were invited to submit and present a design proposal with the Design Jury selecting the Smart Design Studio scheme as the winning design in July 2015.
15. The winning design scheme has been refined through several iterations of design amendments in response to issues raised by Council officers, prior to lodgement and during the assessment of the Stage 2 Development Application (D/2015/1700) being considered concurrently with the subject proposal.

PROPOSAL

16. The subject Section 96(2) application seeks consent to modify the approved Stage 1 building envelope to vary the maximum overall height of the tower to RL 91.300 (a maximum of approximately 83.25 metres) from the approved 80 metres. The application also proposes an additional basement level and modifications to the massing of approved floor plates from level 9 to roof level.
17. The proposed modifications to the building envelope arise from the winning scheme to come out of the design competition, the design of building services including locating plant and equipment on the roof, to incorporate an architectural roof feature to screen rooftop plant and equipment, and further refinements made through the detailed design process of the Stage 2 Development Application.
18. The conditions imposed on the Stage 1 consent that relate to the design changes described at paragraph 16 above, are proposed to be modified in the following manner:
 - (a) modify Condition (2) Approved Stage 1 Development – to reflect the amended envelope and massing of floor plates;
 - (b) modify Condition (4) Location of Residential Uses – to reflect the amended height of level 9; and
 - (c) modify Condition (7) Building Height – to permit the building envelope to have a height of RL 91.300 (a maximum of approximately 83.25 metres).

CITY OF SYDNEY ACT 1988

19. 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.

20. The proposed modification does not have any altered impact on traffic or transport in the Sydney CBD, beyond that assessed in the original Stage 1 Development Application. As part of the assessment of that application, it was determined in liaison with the City's Access Unit, that consultation with the CSTTC was not necessary at this stage.

THRESHOLD TEST

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

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

22. Besides the matters discussed in this report, the assessment against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979 (EP&A Act, 1979) contained in the report to the CSPC at its meeting on 23 April 2015 are still relevant.
23. A copy of the original planning assessment report for Development Application D/2014/755 is provided at **Attachment B**.

ISSUES

Variations to Building Envelope and Massing

24. As the extent of these variations are not considered to be minor in nature, and in order to ensure consistency between staged applications as required pursuant to Section 83D of the EP&A Act, 1979, the subject application has been lodged to modify the Stage 1 building envelope.

Building Height

25. The Stage 1 building envelope was approved by the CSPC on 23 April 2015 with a maximum height of 80 metres.
26. Since the approval of the Stage 1 building envelope by the CSPC, the project has evolved as a result of:
- (a) a competitive design process held in mid-2015, with the Smart Design Studio scheme being named the winning design;
 - (b) detailed information now known on the design of lift overruns, and spatial requirements for plant and equipment to adequately service the building; and
 - (c) refinement of the architectural expression of the building, to provide an architectural roof feature being an upward projection of facade elements to screen those rooftop services.
27. Proposed modifications to the overall height of the approved Stage 1 building envelope are shown in **Figures 14 to 16** below.

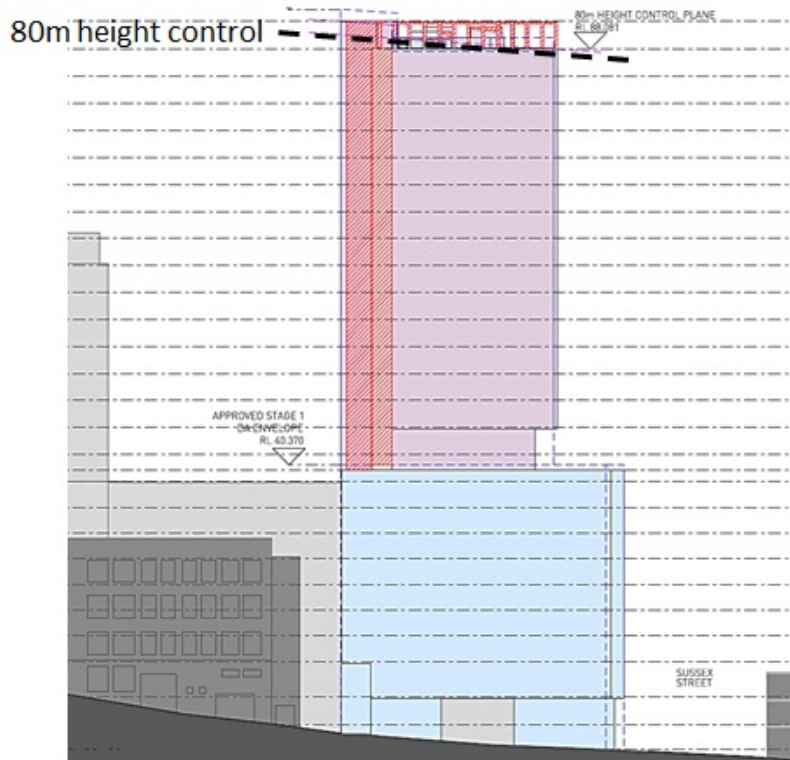


Figure 14: Northern (Druitt Lane) elevation of proposed modifications to approved Stage 1 envelope.



Figure 15: Southern (Bathurst Street) elevation of proposed modifications to approved Stage 1 envelope.

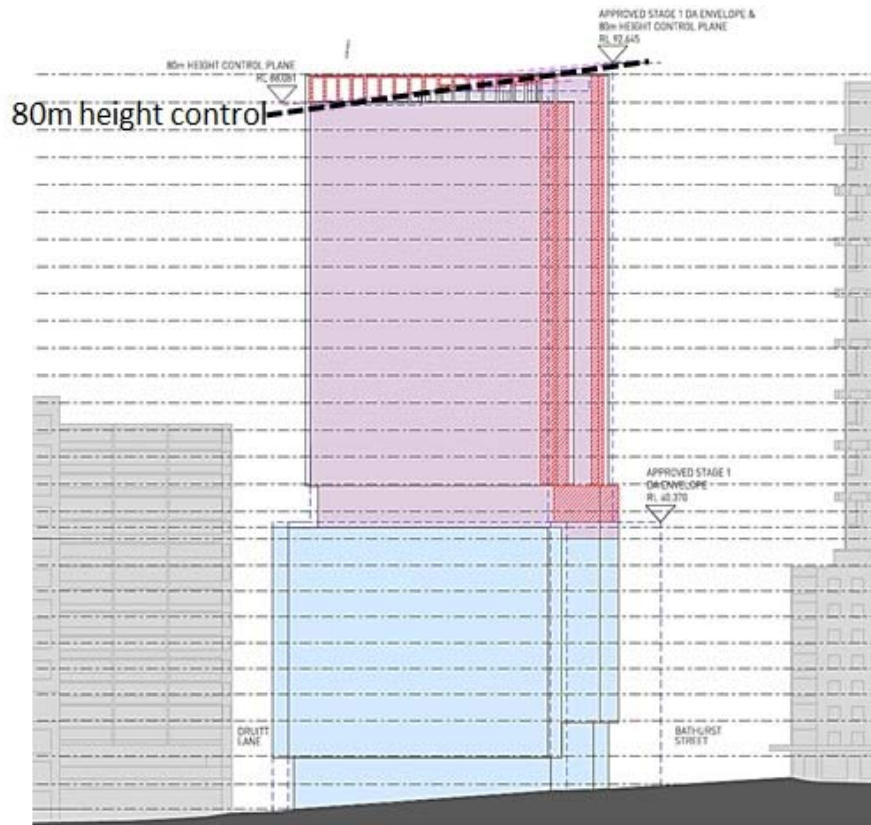


Figure 16: Western (Sussex Street) elevation of proposed modifications to approved Stage 1 envelope.

28. Pursuant to LEP clause 4.3 the site is subject to a maximum permitted building height of 80 metres.
29. The proposal seeks to modify the approved height to increase the overall height from 80 metres to a maximum height of approximately 83.25 metres. This is measured to the top of plant and lift overrun, to the top of the roof of the Level 25 apartment and to the top of the architectural roof feature, and which represents a maximum variation of 4% (3.25 metres) to the building height development standard.
30. As the subject application is a Section 96 modification, the provisions of LEP clause 4.6 Exceptions to Development Standards are not applicable. Nonetheless, consideration has been given to both the objectives of the building height development standard pursuant to LEP clause 4.3 and the tests of LEP clause 4.6 as to whether it can be demonstrated that strict numeric compliance with the development standard is unreasonable or unnecessary in this instance.
31. It is considered that the additional height can be supported on this site, and as proposed in the particular configuration designed by Smart Design Studio in the Stage 2 detailed design application (D/2015/1700) being concurrently assessed, as the proposal is consistent with the objectives for building height under LEP clause 4.3, for the following reasons:
 - (a) the height of the development is appropriate to its site and context because:
 - (i) the site's sloping topography, which falls approximately 5.5 metres southeast to northwest, establishes a similarly sloping maximum height plane of 80 metres across the site pursuant to LEP clause 4.3;

- (ii) the detailed design of the building and of building services, has located the necessary plant and lift overrun so as to minimise any visual or other impacts and which protrude above the maximum 80 metre height plane and outside the previously approved Stage 1 envelope by between 120 and 600 millimetres;
 - (iii) the detailed design incorporates an architectural roof feature being an upward projection of facade elements to screen the rooftop plant and equipment described above and to finish off the building;
 - (iv) while it is not standard practice to modify a Stage 1 envelope to accommodate an architectural roof feature, the proposed modification is firstly required to accommodate the rooftop plant and equipment, and then as a secondary consideration is also to accommodate the architectural roof feature for the purpose of providing a complete and thorough assessment of the impacts of the bulk and massing of these new building elements; and
 - (v) as discussed elsewhere in this report the negligible net overshadowing impacts of the proposed modification are considered to be minimal in the dense urban context of the CBD and are acceptable;
- (b) the development ensures an appropriate height transition to adjacent heritage items:
- (i) as per the advice of Council's Heritage Specialist, the proposed vertical massing of the podium and tower is responsive to heritage items in the vicinity and provides a suitable backdrop to Sydney Town Hall and St Andrews Cathedral;
 - (c) the verticality of its form promotes view sharing by reducing the impact on views from Sydney Square and its state listed heritage buildings; and
 - (d) it provides an appropriate height transition from its location on the western edge of Central Sydney to areas adjacent to the west in Darling Harbour which are currently undergoing a similar transformation.
32. With consideration of the above matters, the proposed minor variation to the height of the building envelope to 83.25 metres (or RL 91.300) is acceptable.

Floor Plates, Massing, Setbacks

33. The subject application also proposes modifications to:
- (a) the massing of approved floor plates from level 9 to roof level; and
 - (b) to setbacks from its eastern and Bathurst Street frontages.
34. **Figures 17 to 21** below illustrate the modified floor plates and highlight the variation sought from the existing approved Stage 1 building envelope.

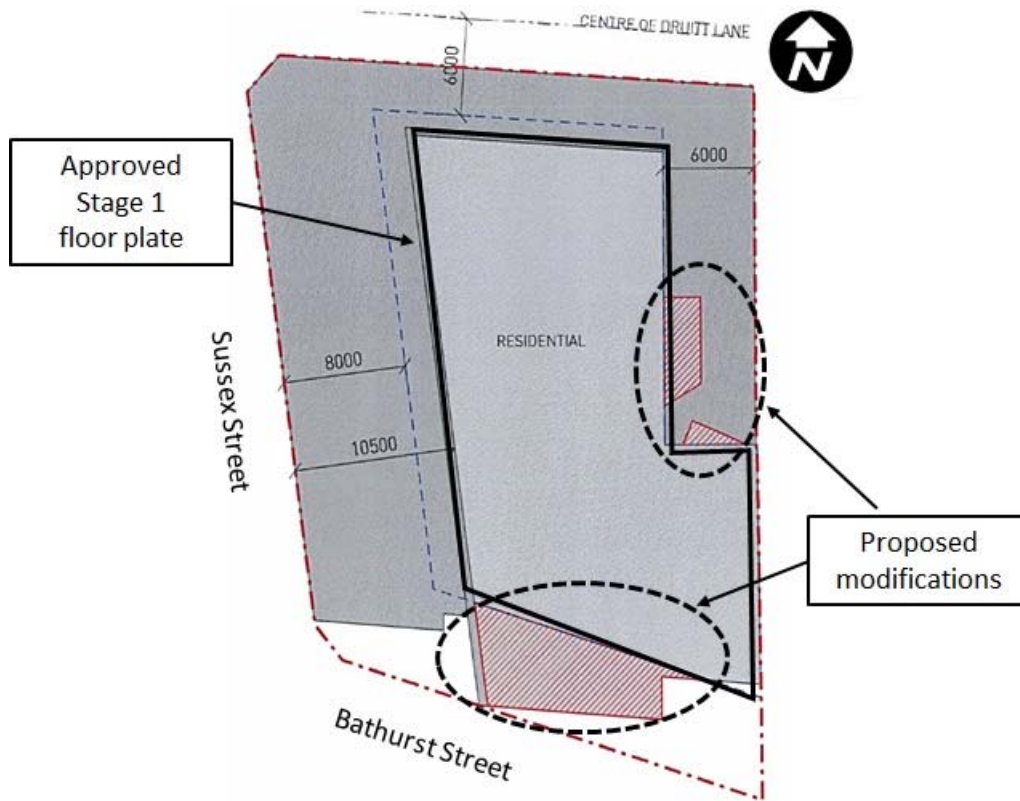


Figure 17: Proposed modifications to floor plates – levels 9 to 10.

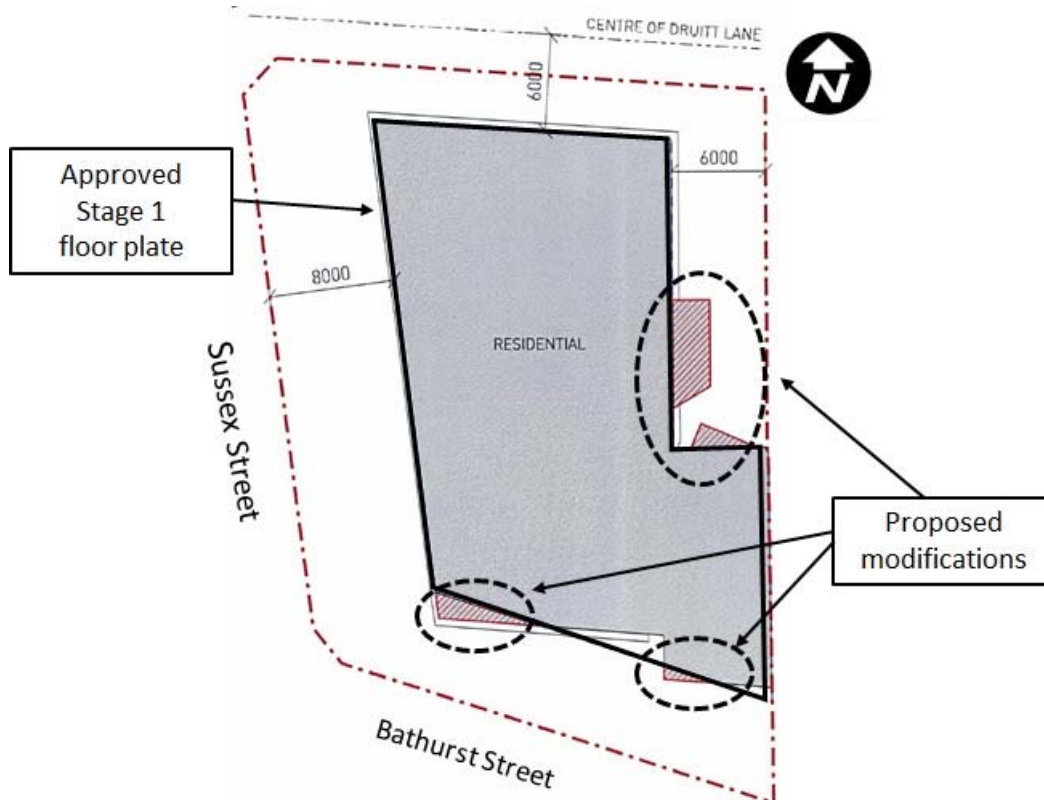


Figure 18: Proposed modifications to floor plates – levels 11 to 24.

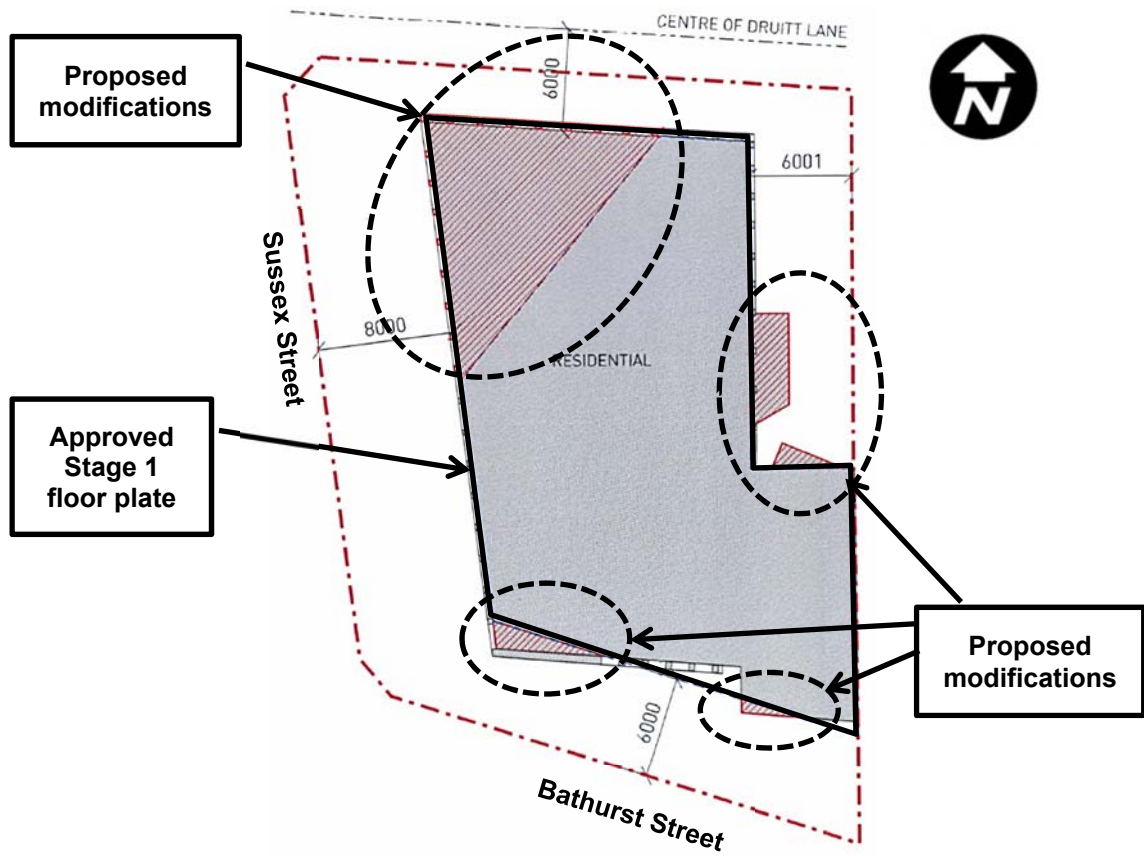


Figure 19: Proposed modifications to floor plate – level 25.

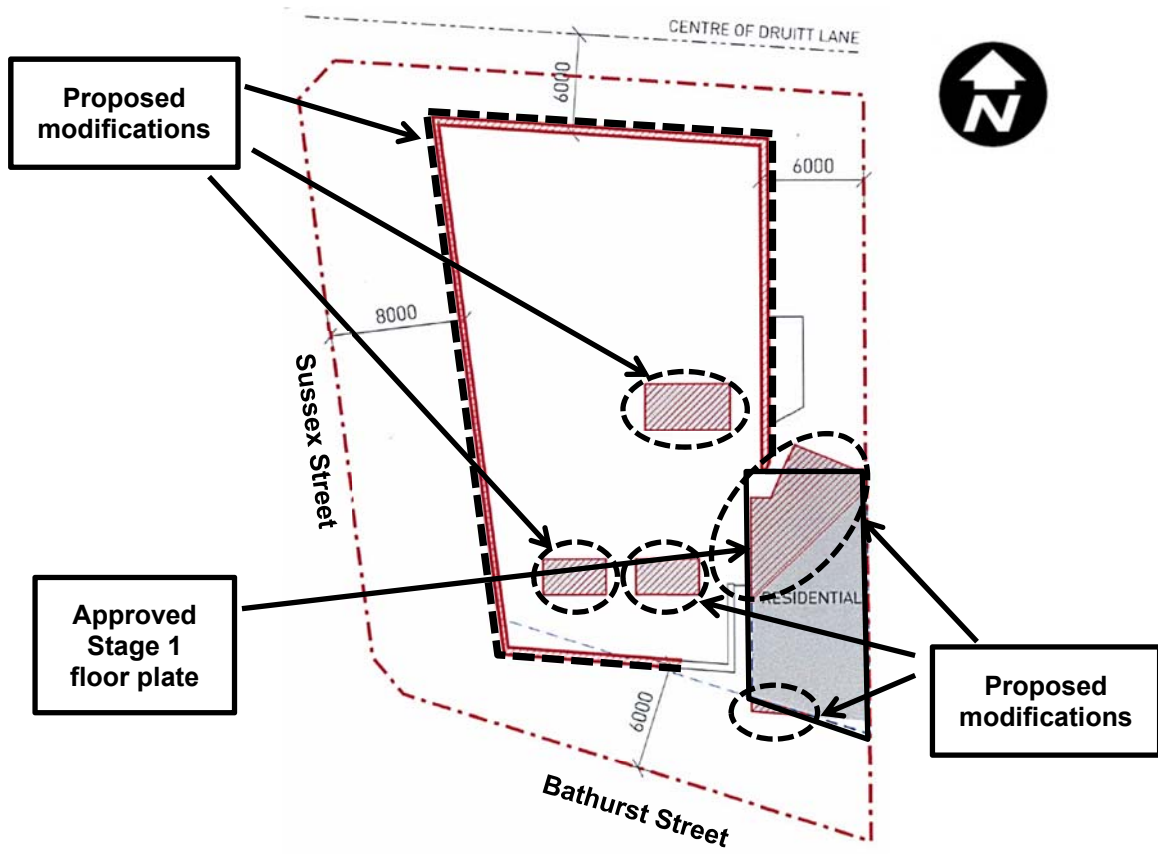


Figure 20: Proposed modifications to roof level.

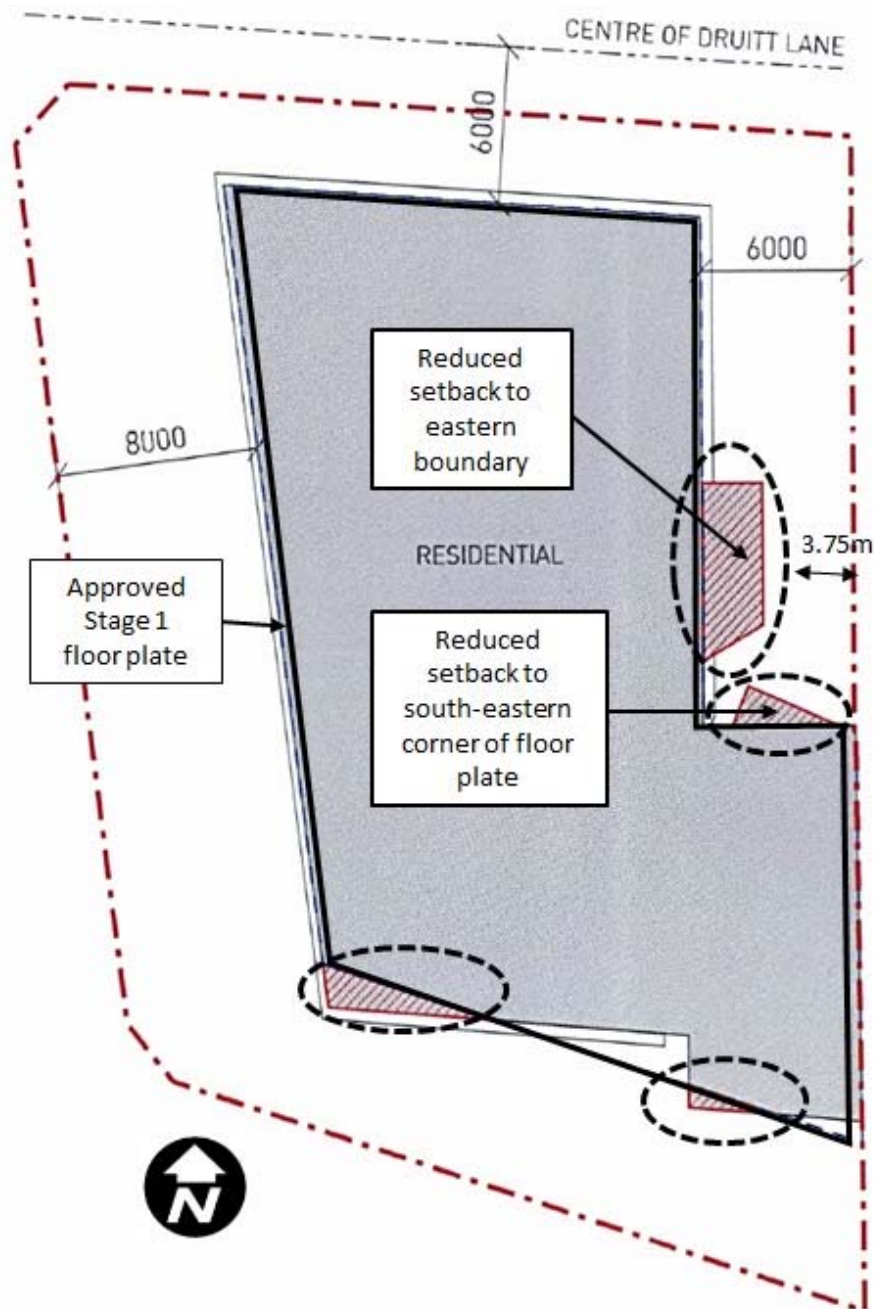


Figure 21: New pop-out plant areas and balconies adjacent to the eastern boundary.

Bathurst Street frontage height

35. As shown in **Figure 17** above, the proposed modifications include an increase to the streetwall height to the Bathurst Street frontage by extending the floor plates of podium levels 9 and 10 to the property boundary with Bathurst Street. Provision 5.1.1(1) of the Sydney DCP 2012 (the DCP) requires a street frontage height of between 20 and 45 metres. This modification raises the Bathurst Street frontage height from 30 metres to about 34 metres, which still complies with the DCP street frontage height requirements.

Setback above the Bathurst Street frontage height

36. DCP provision 5.1.2.1(1) requires a minimum 6 metre setback above street frontage height to Bathurst Street. As shown in **Figures 18 to 21** above, the proposed modifications to the floor plates of tower levels 11 to roof level, encroach upon this minimum 6 metre setback providing a minimum setback of 4.5 metres from the property boundary with Bathurst Street at the tower's south-western corner.
37. The reduced setback to Bathurst Street is as a result of the winning design which sought to better articulate the massing of the building and to avoid a monolithic form that simply occupied the entirety of the approved Stage 1 envelope. The result is a well-integrated podium and tower form that is stepped to respond to the sloping topography of the site, with recesses and openings that provide light and air deep into the building, and which responds to the smaller buildings that characterise the Bathurst Street streetscape. For these reasons a variation to setback requirements contained in DCP provision 5.1.2.1(1) as they pertain to the Bathurst Street frontage are supported.

Setbacks from side (eastern) boundaries

38. DCP provision 5.1.2.2(2) requires that above a height of 45 metres windows and balconies are to be setback a minimum of 6 metres from side and rear boundaries.
39. Level 14 of the proposed tower on the eastern side of the building is at a height of about 45 metres. As shown in **Figures 17 to 21** above, on each floor from Level 14 to the uppermost floor (Level 25), the proposed modification reduces setbacks on the eastern side and at the south-eastern corner of the floor plate and which encroach upon the minimum 6 metre setback zone to the eastern boundary.
40. The adjacent property to the east at 499-501 Kent Street is identified as a local heritage item (I1834), the Former Universal Film Manufacturing Company warehouse and yard. Council's Heritage Specialist has reviewed this aspect of the proposal and has advised that the proposed tower massing adopts an appropriate spatial relationship with the adjacent heritage item. Subsequently the proposal does not compromise the potential of the adjacent heritage item to be further developed and extended along its Druitt Lane frontage.
41. At a height of 45 metres (Level 14 is at RL 53.95) the reduced setbacks to the eastern boundary are well above the highest habitable levels of the building at 499-501 Kent Street (the fourth storey has a floor level of about RL 26.00). It is considered that any adverse impacts arising from reduced separation can be addressed by an appropriate design of the eastern facades and their interface with the adjacent property as part of the Stage 2 detailed design phase, and which is being assessed concurrently under Development Application (D/2015/1700). For these reasons a variation to setback requirements contained in DCP provision 5.1.2.2(2) is supported.

Overshadowing

42. The Stage 1 envelope approved by development consent D/2014/755 resulted in some new overshadowing to the residential towers on the southern side of Bathurst Street at 298-304 Sussex Street and 158-166 Day Street.

43. The approved Stage 1 envelope complied with height, FSR and setback requirements contained in the LEP and DCP. The construction of those adjacent buildings pre-dated the more rigorous solar access requirements of SEPP 65, the Residential Flat Design Code (RFDC) and the DCP. Subsequently, the extent of shadowing was considered to be acceptable as it was shadows cast by a compliant envelope.
44. As noted elsewhere in this report, the proposed modifications of the building envelope arise from the winning scheme to come out of the design competition and further refinements made through the detailed design process of the Stage 2 Development Application. Specifically, to accommodate rooftop plant and equipment and an architectural roof feature to screen those elements.
45. The submitted shadow diagrams at Attachment C to this report, an extract of which is shown in **Figure 22** below, demonstrate that the proposed changes to the building envelope and subsequent breaches of the maximum building height result in negligible net change to overshadowing of the windows of the residential building to the south at 298-304 Sussex Street.

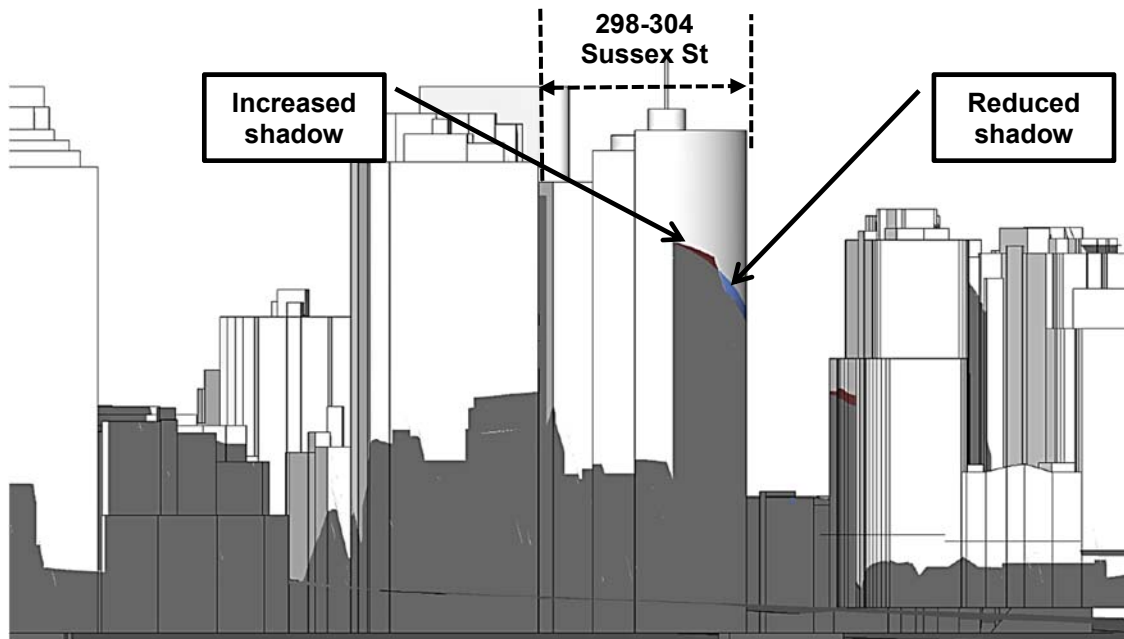


Figure 22: Diagram in elevation showing shadowing of the residential tower at 298-304 Sussex Street at 11am on 21 June.

46. The submitted shadow diagrams at Attachment C to this report, an extract of which is shown in **Figure 23** below, demonstrate that the proposed changes to the building envelope result in negligible net change to overshadowing of the windows of the residential building to the south at 158-166 Day Street.

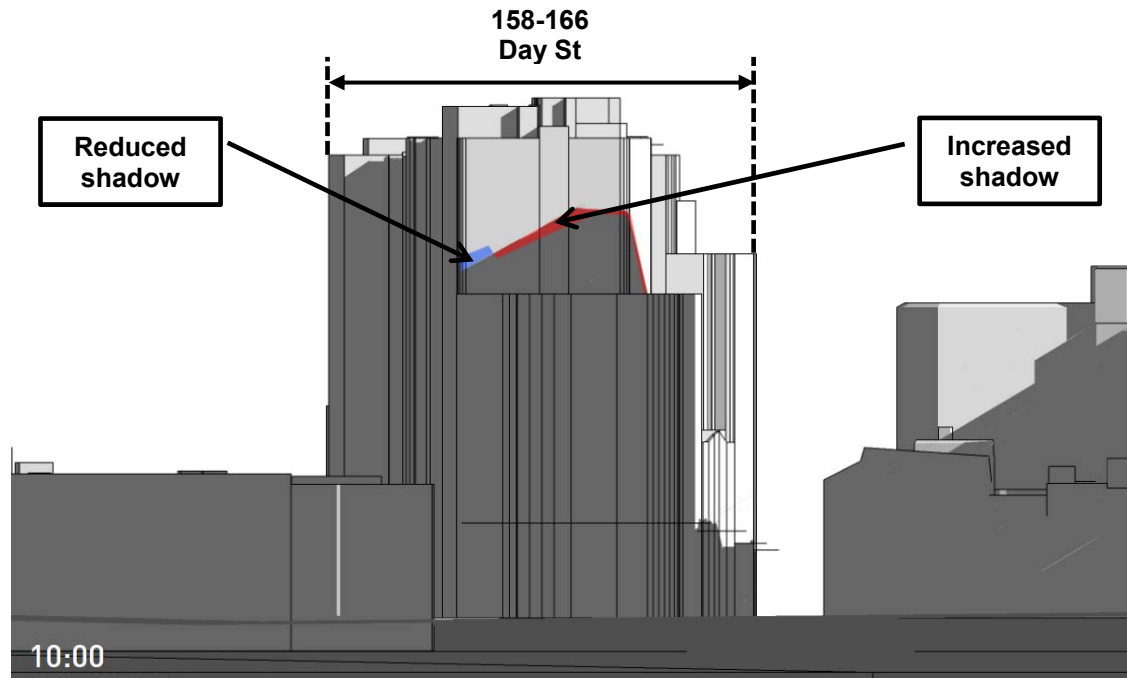


Figure 23: Diagram in elevation illustrating shadowing of the residential tower at 158-166 Day Street at 10am on 21 June.

47. Given that the proposal provides an otherwise compliant development in terms of FSR, street frontage height, and setbacks above street frontage height, the negligible net overshadowing impacts are considered to be minimal and are acceptable in the dense urban context of the CBD.

Other Impacts of the Development

48. 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

49. The proposal is of a nature in keeping with the overall function of the site.

INTERNAL REFERRALS

50. The assessment process and conditions of consent have been informed by advice from Council's:
- (a) Transport Specialist;
 - (b) Heritage Specialist; and
 - (c) Urban Design Specialist.
51. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.

EXTERNAL REFERRALS

Sydney Trains

52. As the development is in the vicinity of an interim rail corridor as identified on the *Interim Rail Corridor CBD Rail Link & CBD Metro Map*, the application was referred to Sydney Trains/Transport for NSW under the provisions of clause 88 of SEPP (Infrastructure) 2007 on 2 December 2015.
53. In correspondence, dated 1 April 2016, Sydney Trains granted their concurrence, subject to the imposition of deferred commencement conditions upon any Stage 2 development consent as detailed in the report for Development Application D/2015/1700, which is being assessed at the same time as the subject proposal.

Roads and Maritime Services

54. As the proposed development involves excavation immediately adjacent to the Cross City Tunnel, and as the proposed development has a frontage to a classified road and is of the specified size and capacity the application was referred to RMS under the provisions of clauses 103 and 104 of the SEPP (Infrastructure) 2007 on 2 December 2015.
55. In correspondence, dated 13 May 2016, RMS granted their concurrence, subject to the imposition of conditions upon any Stage 2 development consent as detailed in the report for Development Application D/2015/1700, which is being assessed at the same time as the subject proposal.

CBD Coordination Office

56. As the development is in close proximity to the Sydney Light Rail Project currently under construction on George Street, the application was referred to the TfNSW CBD Coordination Office on 2 December 2015.
57. In correspondence, dated 21 January 2016, TfNSW CBD Coordination Office provided comments on the proposal raising no objection, subject to the imposition of conditions upon any Stage 2 development consent as detailed in the report for Development Application D/2015/1700, which is being assessed at the same time as the subject proposal.

Notification, Advertising and Delegation

58. In accordance with Schedule 1 of the Sydney DCP 2012, the subject application was notified for a period of 14 days, from 2 to 17 December 2015. One submission was received, with issues raised in that submission summarised and responded to as follows:
 - (a) The proposal does not comply with DCP setback requirements to its southern (Bathurst Street) frontage and to the heritage item to the east. The southern setback of the level 9 gym and plant room should be setback further, eastern setbacks of air conditioning condensers and balconies should be setback further to provide adequate separation for privacy, and to the heritage item.

Response – It is considered that the proposed development provides adequate setbacks to its Bathurst Street frontage and to its eastern boundary with the adjacent heritage item, as discussed elsewhere in this report.

PUBLIC INTEREST

59. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

FINANCIAL IMPLICATIONS/S61 CONTRIBUTION**Section 61 Contribution**

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

RELEVANT LEGISLATION

61. The Environmental Planning and Assessment Act 1979.

CONCLUSION

62. The necessity to modify the approved building envelope will ensure consistency between staged development applications on the site as is required under Section 83D of the EP&A Act, 1979.
63. Since the approval of the Stage 1 building envelope, the project has evolved as a result of the competitive design process, the detailed design of building services, and refinement of the architectural expression of the building. The proposed modifications to the Stage 1 building envelope are minor in scale and do not result in any significant additional impacts and are considered to provide a better design outcome.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Ben Chamie, Senior Planner)