

**ITEM 7. DEVELOPMENT APPLICATION: 148-160 KING STREET SYDNEY****FILE NO: D/2016/1160****DEVELOPMENT APPLICATION NO: D/2016/1160****SUMMARY**

**Date of Submission:** 19 August 2016

**Amended Plans:** 19 December 2016, 16, 21 and 24 February 2017

**Applicant:** Urbis Pty Ltd

**Architect:** FJMT studio

**Developer:** Galileo Phillip Street JV Pty Ltd

**Owner:** Galileo Phillip Street JV Pty Ltd

**Cost of Works:** \$73,377,441

**Proposal Summary:** The subject application is for demolition of the existing building, excavation and construction of a 26 storey, mixed use development. Subject to the recommended conditions the proposed development will comprise:

- gross floor area of 12,082 sqm;
- 105 residential apartments;
- 412 sqm of retail floor space and 633 sqm of commercial floor space on ground to level 2; and
- 5 levels of basement parking for 68 cars.

The application was notified and advertised for a period of 28 days between from 29 August to 28 September 2016. Three (3) submissions were received, raising the following matters:

- impacts from demolition and construction;
- inadequate separation from the northern boundary;
- a request for a covenant to be registered on title to prohibit future residents from complaining about noise from the existing St James church bell;
- a request for consultation on the future pedestrianisation of King and Phillip Streets as depicted in DA documentation;

**Proposal Summary:  
(continued)**

The proposal has been amended during the assessment period to address concerns relating to solar access, natural ventilation, facade treatments, balconies, building separation, ground level interface with the public domain, basement level floor to floor heights, vehicle access, waste collection, and public art requirements. Amended plans and supplementary information has been submitted on 19 December 2016, 16, 21 and 24 February 2017 to address these matters.

The proposed development complies with the maximum height for buildings permitted on the site which is determined by the sun access planes that are taken to extend over the land by clause 6.17 of the Sydney LEP 2012 (the LEP).

The proposal has a gross floor area of 12,082 sqm, and which equates to a FSR of 13.58:1 and which complies with the LEP's applicable floor space provisions, with the maximum permissible FSR for the development being 13.75:1 (12,234.75 sqm GFA).

As the subject application includes floor plates on tower levels 14 to 24 that protrude outside the previously approved building envelope, a concurrent section 96(2) application (D/2015/750/B) has been lodged to vary the Stage 1 building envelope. Modification of the Stage 1 building envelope is required to ensure consistency between the staged applications, as is required pursuant to Section 83D of the Environmental Planning and Assessment Act, 1979.

Conditions have been recommended that require design modifications to provide, adequate building separation, and to provide useable private open space. These conditions are significant in scope and are key to providing adequate amenity for future residents and to achieve design excellence, and are recommended to be satisfied prior to the approval becoming operative as part of a deferred commencement consent.

**Summary Recommendation:**

The development application is recommended for deferred commencement consent.

**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 Environment Planning Policy No. 55 - Remediation of Land
- (v) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
- (vi) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vii) State Environmental Planning Policy (Infrastructure) 2007
- (viii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

**Attachments:**

- A - Conditions
- B - Architectural Drawings
- C - Photomontages
- D - Solar Access Diagrams
- E - Cross Ventilation Diagrams

**RECOMMENDATION**

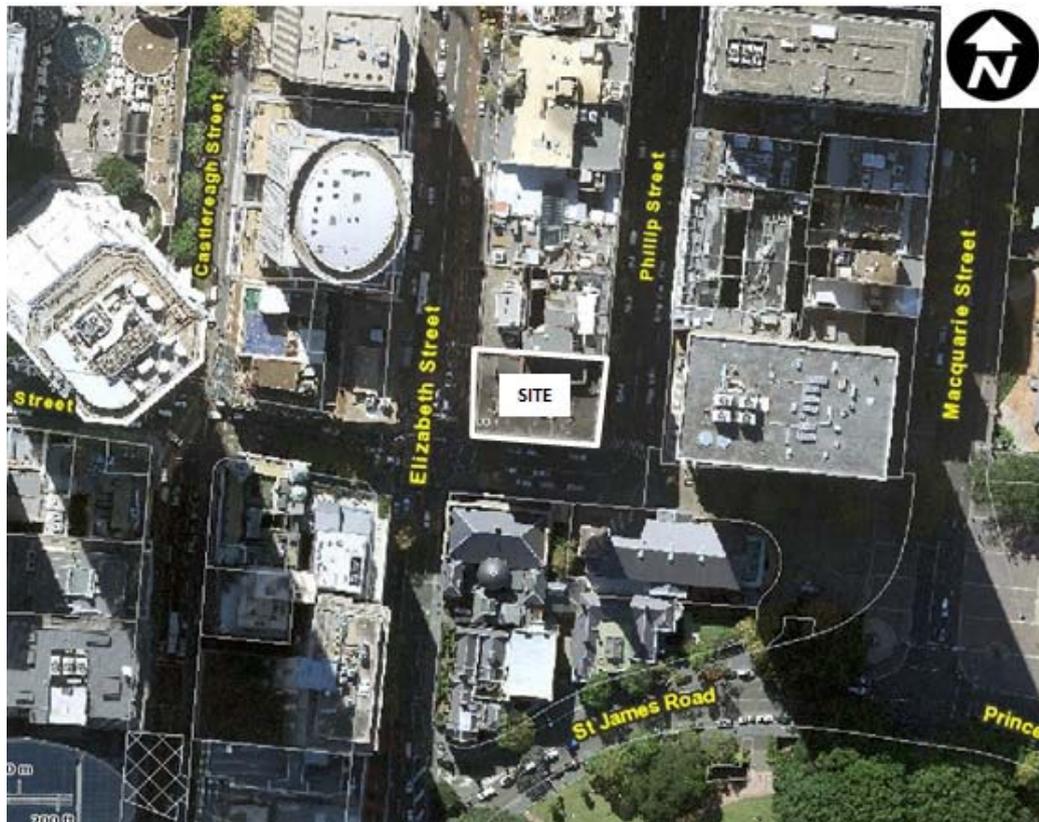
It is resolved that:

- (A) the requirement of Section 51N of the City of Sydney Act 1988 to consult with the Central Sydney Traffic and Transport Committee not apply in this instance as the proposal does not require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD; and
- (B) pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2016/1160, subject to the conditions as detailed in **Attachment A** to the subject report.

## BACKGROUND

### The Site

1. The site has a legal description of Lot 2 in DP 547423 and Lot 1 in DP 524978 and is commonly known as 148-160 King Street, Sydney. The site has three street frontages, Elizabeth Street to the west, King Street to the south and Phillip Street to the east.
2. The site is irregular shape, with Lot 2 in DP 547423 containing a splay at the corner of King and Phillip Streets. The splay is a public road approximately 2 metres below and 5 metres above the level of the footpath. At the corner of King and Elizabeth Streets is a similar splay and which forms Lot 1 in DP 524978 and which is a public road approximately 2.4 metres below and 7 metres above the level of the footpath.
3. The site has an area of 889.8 sqm and contains a 12 storey building with 3 basement levels that was constructed in 1969. This existing building was previously used by the Law Faculty of the University of Sydney as an educational establishment.
4. The site does not contain a heritage item and is not located in a special character area.
5. Photos of the site are provided at **Figures 1 to 3** below.



**Figure 1:** Aerial image of 148-160 King Street, Sydney.



**Figure 2:** Site viewed from corner of Elizabeth and King Streets.



**Figure 3:** Site as viewed from Queen's Square.

### Surrounding Development

6. Development in the vicinity of the site includes retail uses on Elizabeth Street, commercial offices, law courts, St James Church, and public open space in Queen's Square and Hyde Park.
7. The two commercial buildings immediately adjacent to the north are 15 storeys in height. Buildings further to the north are of a similar scale and which create a consistent street wall to Elizabeth Street. The street frontage heights to the western side of Phillip Street are less consistent.
8. There are several heritage items in close proximity of the site including the state heritage items – the Supreme Court and old Registry Office building group including interiors, fences and grounds at 102 Elizabeth Street (I1739) and St James Church including interior, courtyards, perimeter walls and fences (I1847), the local heritage item – Queen's Square (I1882), and the world heritage item – the Former Hyde Park Barracks including forecourt, wall and gatehouses, interiors, grounds, former District Courts and offices and archaeology (I1867).
9. Photos of the site and surrounds are provided at **Figures 4 to 9** below.



**Figure 4:** View north along Phillip Street.



**Figure 5:** View east to Queen's Square along King Street.



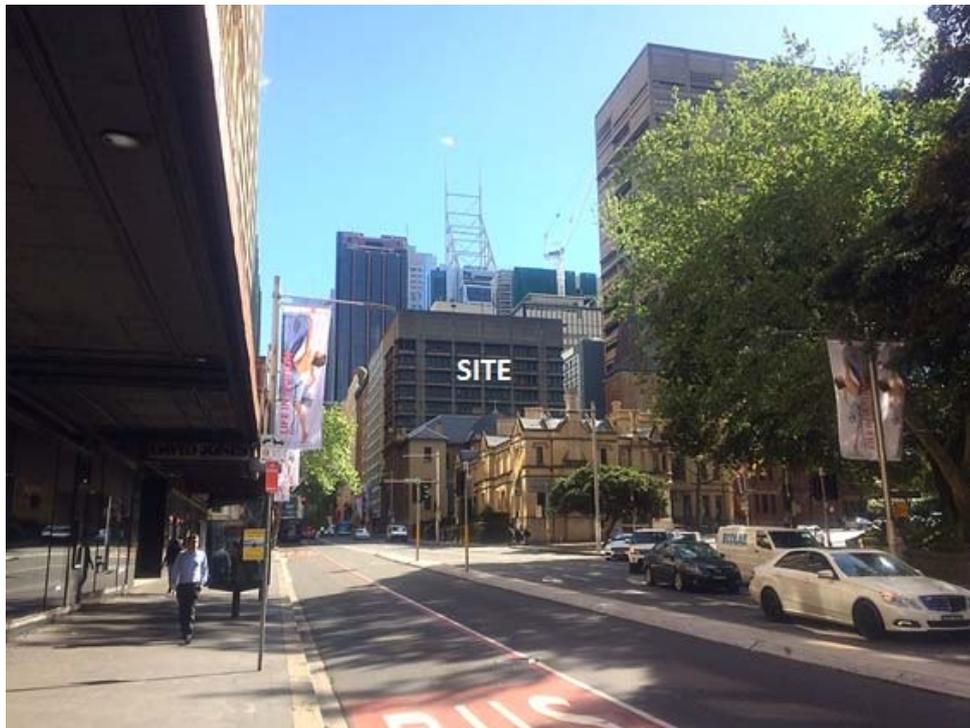
**Figure 6:** View east to site along King Street.



**Figure 7:** View south to site along Elizabeth Street.



**Figure 8:** View south to site along Phillip Street.

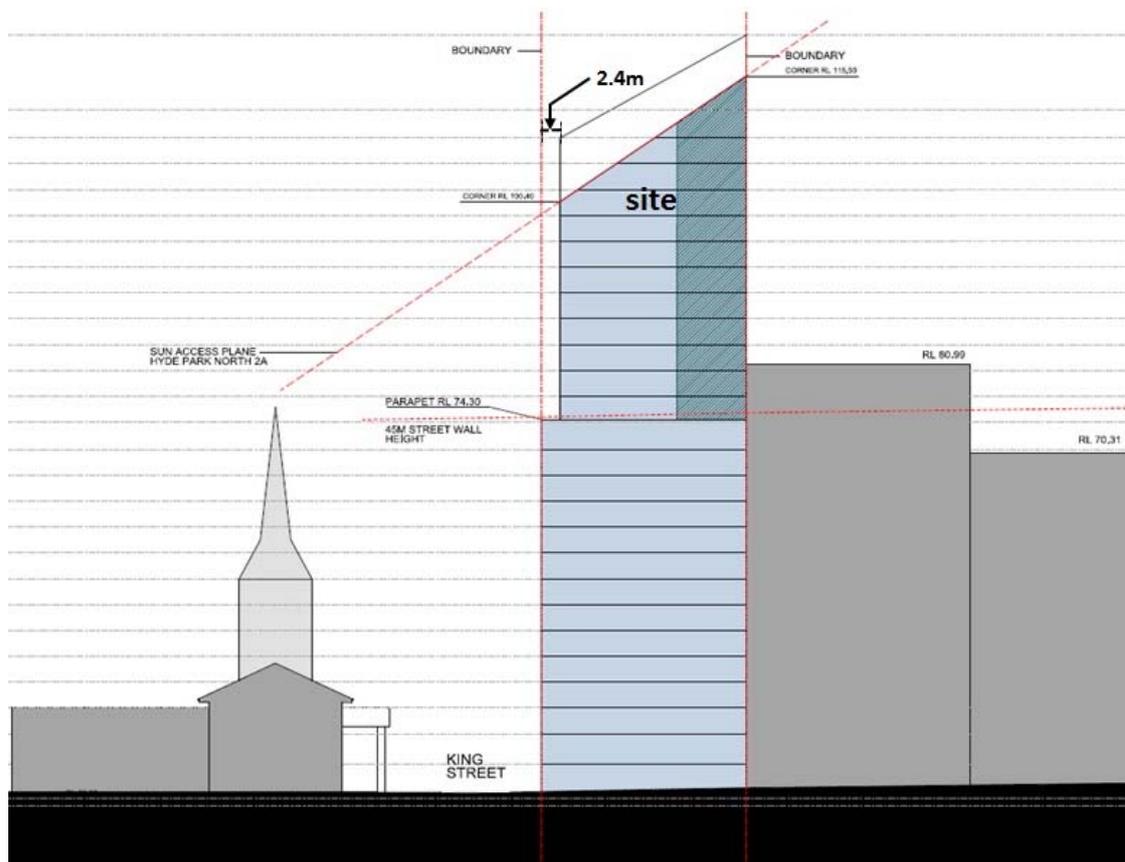


**Figure 9:** View north to site along Elizabeth Street.

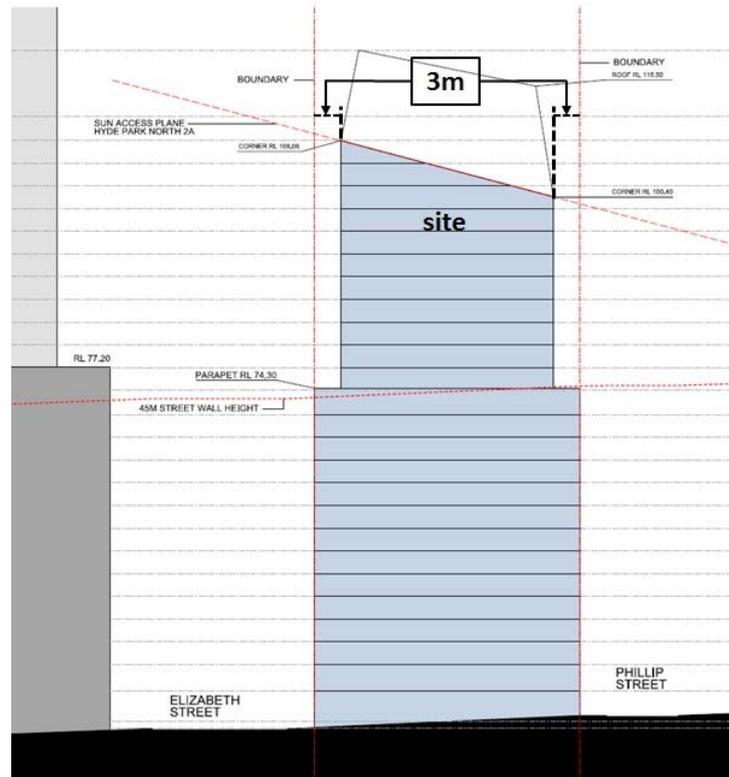
## HISTORY

## Stage 1 Development Application – D/2015/750

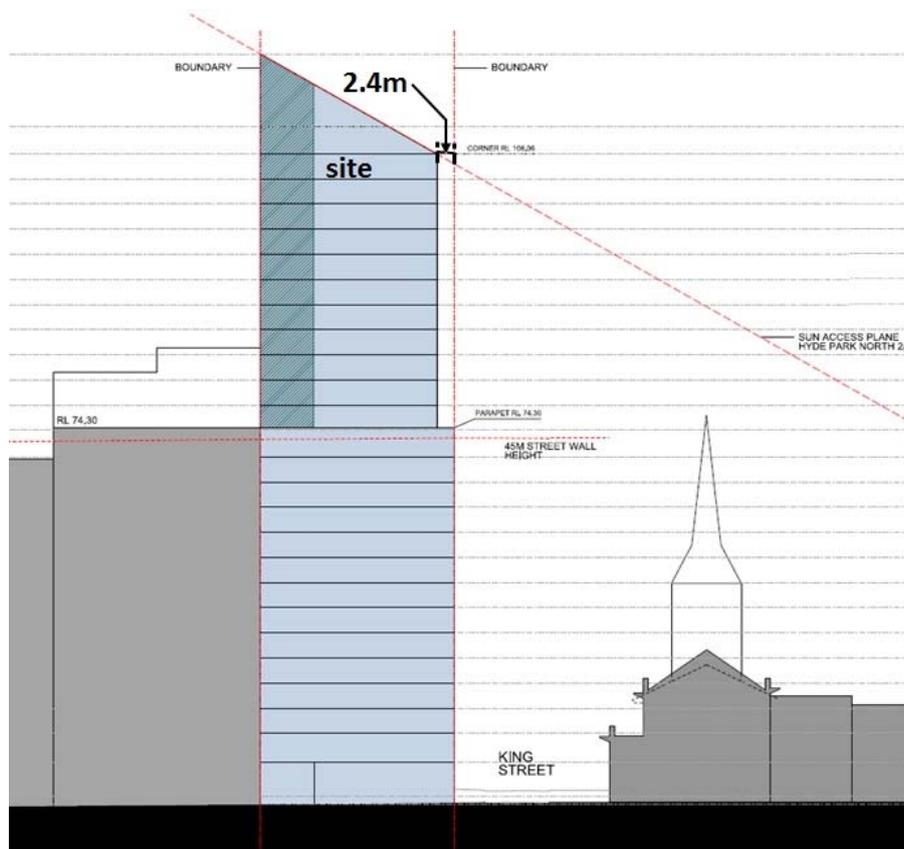
10. A Stage 1 Development Application (D/2015/750) for the subject site was granted consent by the Central Sydney Planning Committee (CSPC) on 10 December 2015.
11. The Stage 1 Development Application was granted consent for the following:
  - (a) in-principle demolition of the existing 12-storey building;
  - (b) a conceptual building envelope to a height datum of RL 120.70 (approximately 92.8m or 27 storeys);
  - (c) indicative future uses of residential accommodation and retail / office premises;
  - (d) indicative car parking, loading docks, service areas and a substation on the basement levels; and
  - (e) vehicular access from Elizabeth Street.
12. **Figures 10 to 12** below, illustrate elevations of the approved Stage 1 building envelope including setbacks from each of its street frontages.



**Figure 10:** Eastern (Phillip Street) elevation of Stage 1 concept approval showing 2.4m approved minimum setback above street wall height to King Street.



**Figure 11:** Southern (King Street) elevation of Stage 1 concept approval showing 3m approved minimum setback above street wall height to Elizabeth and Phillip Streets.



**Figure 12:** Western (Elizabeth Street) elevation of Stage 1 concept approval showing 2.4m approved minimum setback above street wall height to King Street.

**Design Competition Process**

13. Following the Stage 1 development consent, the applicant commissioned a competitive design alternatives process for the site. Six architectural firms participated in the competitive design process, as follows:
  - (a) Candalepas Associates;
  - (b) Cox Architecture;
  - (c) Elenberg Fraser;
  - (d) Francis-Jones Morehen Thorp (FJMT);
  - (e) Urban Possible and Kann Finch; and
  - (f) Smart Design Studio.
14. The competing firms presented their designs to the Selection Panel on 22 April 2016. Shortlisted competitors presented further information requested by the Selection Panel on 10 May 2016. The FJMT design was announced as the winning design on 10 May 2016.
15. The FJMT scheme has been further refined following the competitive design process and has been lodged as the subject Stage 2 Development Application for the site on 19 August 2016, in conjunction with a concurrent Section 96(2) application (D/2015/750/B) to modify the Stage 1 building envelope.
16. The Selection Panel noted that the winning scheme would need to address several matters including how solar access to apartments could be improved beyond the approximate 50% solar access achieved in the winning scheme.

**Amendments to the subject Development Application**

17. Council officers sent a letter outlining concerns with the proposal on 24 November 2016. A meeting was held to discuss the issues raised in the aforementioned letter on 30 November 2016. Issues raised and discussed related to:
  - (a) solar access;
  - (b) natural cross ventilation of apartments and ventilation generally;
  - (c) facade treatments, balconies and wintergardens;
  - (d) building separation;
  - (e) apartment layouts;
  - (f) common circulation and spaces;
  - (g) ground level interface with the public domain;
  - (h) ground and basement level floor to floor heights;
  - (i) retention of street trees;

- (j) vehicle access and footpaths;
  - (k) residential waste collection; and
  - (l) public art.
18. Between 14 and 23 February 2017, additional information and amended plans were submitted to address solar access, common open space, vehicle access for waste collection, and private open space requirements.
19. Amended plans and supporting documents were submitted on 8 and 19 December 2016, amended BASIX certificates and information were submitted on 30 January and 24 February 2017. Final amended plans and supporting documents were submitted 16, 21 and 24 February 2017. Since lodgement of the DA, the final amended proposal has been modified in the following manner:
- (a) solar access – improving solar access to apartments by reducing the number of apartments from 127 to 105 apartments, achieved by amalgamating apartments and replacing residential with commercial uses on level 2;
  - (b) natural cross ventilation of apartments and ventilation generally – apartments have been reconfigured to achieve natural cross ventilation in the first nine storeys and to ensure habitable rooms have access to natural light and air. Apartment layouts have been reconfigured to ensure habitable rooms do not exceed maximum depth requirements;
  - (c) facade treatments, balconies and wintergardens – design amendments, additional drawings and details have been submitted to respond to questions about:
    - (i) adequate provision of private open space;
    - (ii) facade design;
    - (iii) minimum size requirements for balconies; and
    - (iv) access to podium terraces;
  - (d) building separation – amended plans incorporate design modifications to mitigate privacy and amenity impacts arising from proximity to the adjacent property to the north;
  - (e) apartment layouts – plans have been reconfigured so that all apartments achieve or exceed minimum size requirements;
  - (f) ground level interface with the public domain – the ground floor plane has been redesigned so that the King Street colonnade is at grade with the adjoining retail tenancy and the King Street footpath at its eastern end. New stairs have been introduced at the western end of the colonnade to provide improved pedestrian access to Elizabeth Street;
  - (g) wind effects – an amended Wind Report has been provided which is based on wind tunnel testing. The recommendations of the Wind Report have been incorporated into the amended design of the ground level layout, facade design and landscaping of balconies at upper levels;

- (h) ground and basement level floor to floor heights – the floor to ceiling height of the first basement level has been increased to improve flexibility of future use of the basement;
  - (i) vehicle access and footpaths – additional information has been provided demonstrating that adequate vehicle access can be achieved;
  - (j) residential waste collection – a revised waste management plan has been provided, and plans amended to provide bulky waste storage areas; and
  - (k) public art – a revised public art strategy has been provided.
20. An assessment of the final amended proposal is provided in this report.

## PROPOSAL

21. The subject application seeks consent for the following:
- (a) demolition of all existing structures on site;
  - (b) excavation and construction of 5 levels of basement parking, including:
    - (i) 71 car parking spaces;
    - (ii) 2 car share scheme parking spaces;
    - (iii) 128 bicycle parking spaces; and
    - (iv) vehicular access off Elizabeth Street;
  - (c) construction of a 26 storey mixed use development, with a gross floor area (GFA) of 12,082 sqm, that accommodates:
    - (i) 105 residential apartments;
    - (ii) 412 sqm of retail GFA located on the ground and first floors;
    - (iii) 313 sqm of commercial GFA located on the ground and second floors; and
    - (iv) public art.
22. **Figures 13 to 22** below show photomontages, elevations, and sections of the proposed development. It is noted that these drawings and photomontages were submitted on 19 December 2016 as part of the first iteration of amendments, and the design has been further refined since then. Architectural plans and elevations of the proposed development are provided at **Attachment B**.



**Figure 13:** Photomontage – as viewed from the corner of Elizabeth and King Streets.



**Figure 14:** Photomontage – as viewed from Queen's Square to the west along King Street.



**Figure 15:** Photomontage – ground level facade to King Street.



**Figure 16:** Photomontage – ground level facade to Phillip Street.



Figure 17: East elevation.

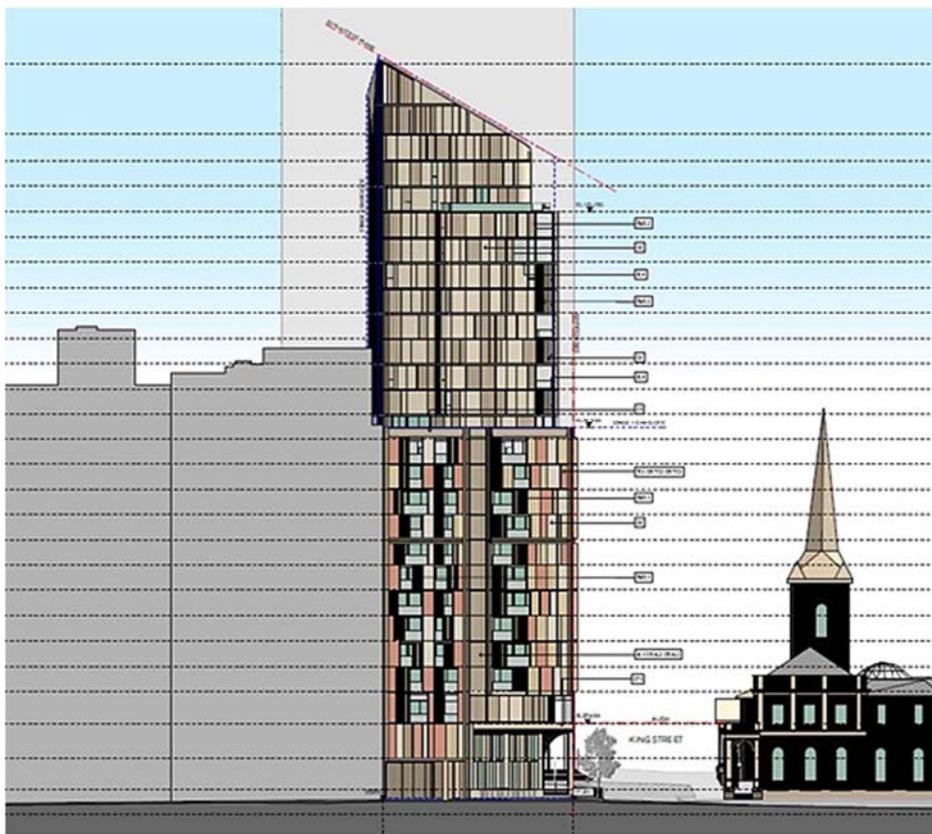


Figure 18: West elevation.

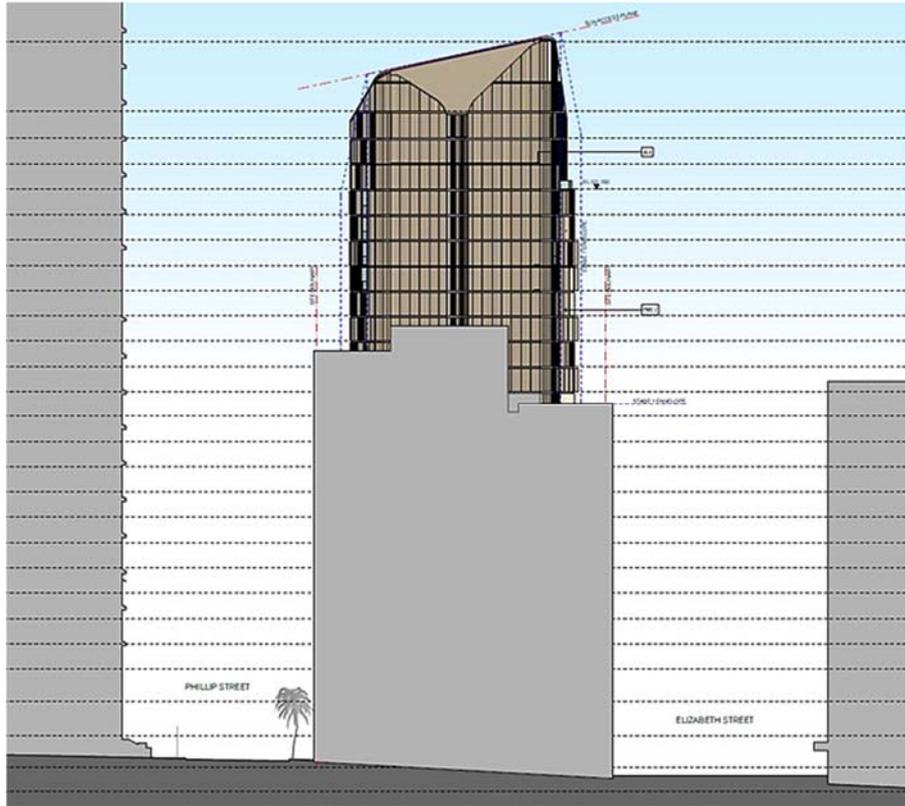


Figure 19: North elevation.



Figure 20: South elevation.

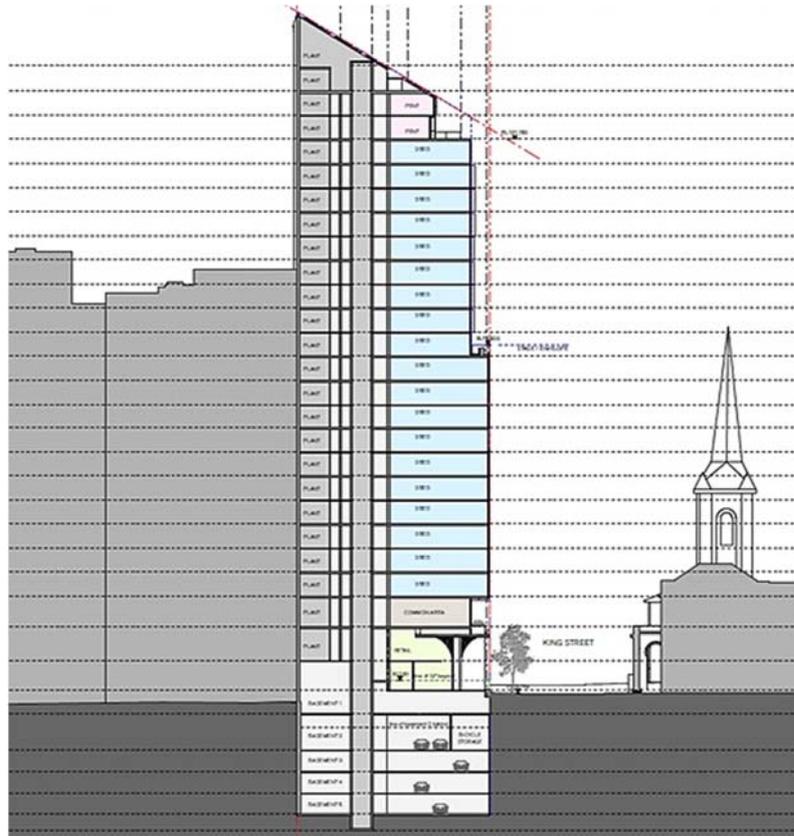


Figure 21: North-south section.

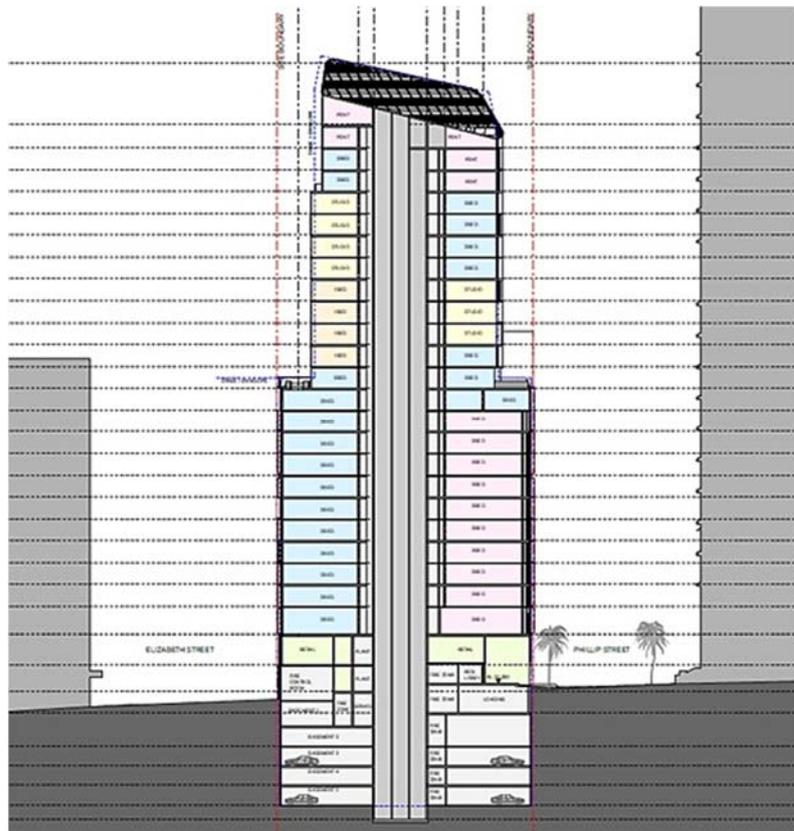


Figure 22: East-west section.

**CITY OF SYDNEY ACT 1988**

23. 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."*
24. The proposed vehicle access from Elizabeth Street will not incur the loss of on-street parking spaces or changes to existing kerbside parking restrictions.
25. Having liaised with the City's Access Unit, in this instance, the proposal is considered by the CSTTC delegate, the Director of City Planning, Development and Transport, to not have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary.

**ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS**

26. 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**

27. 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.

28. A Preliminary Site Investigation (PSI) was submitted with the Stage 1 Development Application. Council's Environmental Health Specialist has reviewed the findings of the PSI and the relevant documentation submitted as part of the subject DA and is satisfied that there is a low risk of contamination from previous land uses on the subject and adjacent sites.
29. Council's Environmental Health Specialist has advised that subject to the recommended conditions, the site can be made suitable for the proposed use.

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

30. In accordance with the requirements of SEPP 65 and the Environmental Planning and Assessment Regulation 2000, a design verification statement has been prepared and submitted by Richard Francis-Jones, registered architect (no. 5301) of Francis-Jones Morehen Thorp (FJMT).
31. 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 take into consideration a number of matters relating to design quality, including 9 design quality principles, being:

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

An assessment of the section 96 application (D/2015/750/B) to modify the Stage 1 concept approval has concluded that the proposed changes to the previously approved envelope provide an acceptable response to its context and potential future redevelopment of the adjacent site to the north.

The detailed design expresses two intersecting irregular forms with curved corners. The lower southern form with a flat roof, the taller northern form extending up to the inclined sun access plane. A conventional, rectilinear podium is split vertically to express a section of the more curvilinear tower form above, bringing the two closely together above the colonnade.

The proportions and modulation of the ground floor colonnade are referential to the colonnade of the Supreme Court building opposite and provide continuity in the architectural rhythm of the street.

The podium enhances views to and from the heritage listed St James Church and Supreme Court building by retaining splays at the intersections of King Street with Elizabeth Street and with Phillip Street.

(b) **Principle 3:** Density

The proposed density of development is consistent with that envisaged under the relevant planning controls and is considered to be appropriate given the CBD context of the site. Particularly given its proximity to established infrastructure, public transport, community and recreational facilities.

(c) **Principle 4: Sustainability**

The proposed development incorporates passive design measures to reduce energy consumption.

Appropriate conditions are recommended to ensure sustainability measures included in the BASIX certificate are implemented at construction.

(d) **Principle 5: Landscape**

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

As described in the Apartment Design Guide (ADG) compliance table below, the proposal provides a common room with an area of 320 sqm, equal to 36% of site area and which exceeds the minimum common open space requirement of 222.45 sqm or 25% of site area, recommended by the ADG.

The common room is located on the third storey and has a balcony atop the arched colonnade, optimising views to St James church and Hyde Park. The common room has a generous floor to ceiling height of approximately 3.6 metres and has a fully operable glazed facade system so that it can be opened or closed to provide all year round amenity.

The proposal is considered to adequately provide for passive recreation as well as opportunities for social interaction of residents and is considered to contribute to residential amenity in a reasonable manner given its dense CBD context.

(e) **Principle 6: Amenity**

The proposed development will provide an adequate level of amenity for future intended occupants as follows:

- (i) adequate floor to floor heights (3.15m) are proposed to ensure 2.7m floor to ceiling heights are achieved in all apartments;
- (ii) 56% or 59 of 105 apartments receive a minimum of 2 hours of direct sunlight in midwinter to living and private open spaces. This is a departure from the minimum 70% contained in the ADG. The following is noted with regard to the extent of the variation sought:
  - a. the CBD context of the site, with direct sunlight access at midwinter constrained by the height and density of surrounding development;
  - b. the orientation of the site, with its most significant views being to the south; and
  - c. provision of a common room on level 2 for use by all residents, which will have a high quality outlook, access to daylight and natural ventilation and which will exceed the minimum area requirements for common space recommended by the ADG;

- (iii) 60% or 18 of 30 apartments in the first nine storeys, are naturally cross ventilated and which complies with the 60% minimum contained in the ADG. Apartments at the tenth storey or higher are deemed to comply with natural ventilation requirements;
- (iv) all apartments satisfy ADG maximum depth requirements;
- (v) all apartments satisfy or exceed ADG minimum internal area requirements; and
- (vi) 94% or 99 of 105 apartments are provided with a private open space in the form of a balcony. All of these satisfy or exceed minimum balcony area requirements. Six (6) of 105 apartments (6%) do not have a private open space. These are studio apartments that exceed the ADG minimum internal area requirements and which will also have access to a large common room.

(f) **Principle 7: Safety**

The proposed development optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose, maximising passive surveillance of public areas to promote safety.

It is considered that the proposed development has been designed in accordance with the SEPP's safety principle and the principles of Crime Prevention through Environmental Design (CPTED).

(g) **Principle 8: Housing Diversity and Social Interaction**

The proposed development provides a good mix of dwelling types and adaptable apartments in accordance with the requirements of the Sydney DCP 2012 (the DCP).

The proposed development provides accessible facilities for passive recreation. The proposed development is considered to respond to the dynamic social context of its CBD location in close proximity to established infrastructure, public transport, community and recreational facilities.

(h) **Principle 9: Aesthetics**

The proposed development has highly varied facades at the upper levels that combine a range of multi-fold screens, sliding screens, bi-fold louvres and stackable louvres.

The proposed development provides a sympathetic response to the materiality of heritage items in the vicinity including the heritage listed St James church and Supreme Court building, through the use of sandstone and timber loggia in the podium.

32. The development is considered to be acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

Apartment Design Guide		
Control	Compliance	Comment
<b>2E Building Depth</b>		
12-18m (glass to glass)	No but assessed as being acceptable	<p>The maximum building depth measured at various levels within the proposed building is as follows:</p> <ul style="list-style-type: none"> <li>• levels 3-11, 32m east-west;</li> <li>• level 12, 34m east-west; and</li> <li>• levels 13-21, 27m east-west.</li> </ul> <p>The submitted plans demonstrate that the proposed apartments can achieve acceptable amenity by limiting room depths and locating all habitable rooms adjacent to external facades.</p>
<b>2F Building Separation</b>		
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul>	Yes	<p>Level 3 (the fourth storey) provides separation of at least:</p> <ul style="list-style-type: none"> <li>• 24m to the court building to the east;</li> <li>• 18m to the boundaries of the properties to the south that contain the church and court buildings. The church and court buildings are 2 to 3 storeys high and contain no openings to habitable rooms at the fourth storey level of the proposed building;</li> <li>• 27m to commercial properties to the west; and</li> <li>• a blank wall containing no openings to the north.</li> </ul> <p>The proposal satisfies minimum separation requirements at this level.</p>

Apartment Design Guide		
Control	Compliance	Comment
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable Rooms</li> </ul>	Yes	<p>Levels 5 to 7 (the fifth to eighth storeys) provides separation of at least:</p> <ul style="list-style-type: none"> <li>• 24m to the court building to the east;</li> <li>• 18m to the boundaries of the properties to the south that contain the church and court buildings. The church and court buildings are 2 to 3 storeys high and contain no openings to habitable rooms at the fifth to eighth storey level of the proposed building;</li> <li>• 27m to commercial properties to the west; and</li> <li>• a blank wall containing no openings to the north.</li> </ul> <p>The proposal satisfies minimum separation requirements at these levels.</p>
<p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> <li>• 24m between habitable rooms / balconies</li> <li>• 18m between habitable and non-habitable rooms</li> <li>• 12m between non-habitable Rooms</li> </ul>	Consistent with Stage 1 envelope	<p>Levels 8 to 12 (the ninth to thirteenth storeys) are contained within the building podium and provide separation of at least:</p> <ul style="list-style-type: none"> <li>• 24m to the court building to the east;</li> <li>• 18m to the boundaries of the properties to the south that contain the church and court buildings. The church and court buildings are 2 to 3 storeys high and contain no openings to habitable rooms at the ninth to thirteenth storey levels of the proposed building;</li> <li>• 27m to commercial properties to the west; and</li> <li>• a blank wall containing no openings to the north.</li> </ul>

<b>Apartment Design Guide</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
		<p>The proposal satisfies minimum separation requirements at these levels.</p> <p>Level 13 (the fourteenth storey) sits atop the podium and contains balconies adjacent to the northern boundary, adjoining apartments A1301 and A1304, and which do not provide adequate separation from the property to the north.</p> <p>Levels 14 to 25 (the fifteenth to twenty-fifth storeys) are contained within the tower and provide separation of at least:</p> <ul style="list-style-type: none"> <li>• 28m to the court building to the east;</li> <li>• 22m to the boundaries of the properties to the south that contain the church and court buildings. The church and court buildings are 2 to 3 storeys high and contain no openings to habitable rooms at the fifteenth to twenty-fifth storey levels of the proposed building; and</li> <li>• 32m to commercial properties to the west.</li> </ul> <p>Refer to the Issues section in this report.</p>
<b>3D Communal and Public Open Space</b>		
Communal open space has a minimum area equal to 25% of the site.	No but assessed as acceptable	<p>An indoor common space is provided with an area of 320 sqm or equal to 36% of site area.</p> <p>Refer to the Issues section in this report.</p>
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	No but assessed as acceptable	<p>The indoor common space will not receive any direct sunlight between 9am and 3pm on 21 June.</p> <p>Refer to the Issues section in this report.</p>

Apartment Design Guide														
Control	Compliance	Comment												
<b>3E Deep Soil Zones</b>														
Deep soil zones are to meet the following minimum requirements:	No but assessed as acceptable	The subject site has an area of 889.8 sqm. Therefore a minimum deep soil area of 7% (62 sqm) is recommended by the ADG. No deep soil is provided.  Due to the CBD context of this site, the basement car parking and DCP setback requirements, there is no opportunity for deep soil planting. This is considered to be consistent with ADG objectives given the context of the site.												
<table border="1"> <thead> <tr> <th>Site area</th> <th>Minimum Dimensions</th> <th>% of site area</th> </tr> </thead> <tbody> <tr> <td>&lt;650m<sup>2</sup></td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> </tr> <tr> <td>&gt;1,500m<sup>2</sup></td> <td>6m</td> </tr> <tr> <td>&gt;1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> </tr> </tbody> </table>			Site area	Minimum Dimensions	% of site area	<650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	>1,500m <sup>2</sup>	6m	>1,500m <sup>2</sup> with significant existing tree cover	6m
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>1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>3F Visual Privacy</b>														
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.  Note: Gallery circulation is treated as habitable space.														
Up to four storeys (12 metres):  <ul style="list-style-type: none"> <li>6m between habitable rooms / balconies</li> <li>3m between non-habitable rooms</li> </ul>	Yes	Refer to assessment against separation requirements of ADG objective 2F above.												
Five to eight storeys (25 metres):  <ul style="list-style-type: none"> <li>9m between habitable rooms / balconies</li> <li>4.5m between non-habitable rooms</li> </ul>	Yes	Refer to assessment against separation requirements of ADG objective 2F above.												
Nine storeys and above (over 25m):  <ul style="list-style-type: none"> <li>12m between habitable rooms / balconies</li> <li>6m between non-habitable rooms</li> </ul>	Consistent with Stage 1 envelope	Refer to assessment against separation requirements of ADG objective 2F above.												

<b>Apartment Design Guide</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
<b>4A Solar and Daylight Access</b>		
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Consistent with Stage 1 envelope	56% or 59 of 105 apartments receive a minimum of 2 hours of direct sunlight in midwinter to living and private open spaces.  Refer to the discussion in regards to SEPP 65 Principle 6: Amenity, above.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Consistent with Stage 1 envelope	21% or 22 of 105 apartments receive no direct sunlight between 9am and 3pm at midwinter.  Refer to the discussion in regards to SEPP 65 Principle 6: Amenity, above.
<b>4B Natural Ventilation</b>		
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.  Note: Apartments 10 storeys or greater are deemed to be naturally cross ventilated only if balconies allow for adequate ventilation and cannot be fully enclosed.	Yes	60% or 18 of 30 apartments in the first nine storeys, are naturally cross ventilated.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	All cross-over apartments have a depth which does not exceed 18m, and satisfy the requirements of this design criteria.

<b>Apartment Design Guide</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
<b>4C Ceiling Heights</b>		
Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows:		
Habitable rooms: 2.7m	Yes	Minimum 2.7m floor to ceiling heights for habitable rooms can be achieved and a condition is recommended to ensure this is achieved at construction.
Non-habitable rooms: 2.4m	Yes	Minimum 2.4m floor to ceiling heights can be achieved for non-habitable rooms.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	The proposal contains duplex apartments that provide adequate floor to floor heights to achieve 2.7m floor to ceiling heights in habitable rooms. A condition is recommended to ensure this is achieved at construction.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Yes	Refer to the assessment against the specific floor to floor requirements for development in Central Sydney, contained at DCP provision 4.2.1.2 in the DCP compliance table below.
<b>4D Apartment Size and Layout</b>		
Minimum unit sizes: <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each.	Yes	All apartments satisfy or exceed minimum internal area requirements.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	The proposed apartment layouts satisfy this design criteria.

Apartment Design Guide		
Control	Compliance	Comment
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	All habitable rooms have a depth of no more than 6.75m (i.e. 2.5m x ceiling height of 2.7m), and satisfy the requirements of this design criteria.
8m maximum depth for open plan layouts.	Yes	All open plan layouts where the living, dining and kitchen areas are combined have a depth of no more than 8m, and satisfy the requirements of this design criteria.
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> <li>• master bedroom: 10m<sup>2</sup></li> <li>• all other bedrooms: 9m<sup>2</sup></li> </ul> Minimum dimension of any bedroom is 3m (excluding wardrobes).	Yes	All bedrooms satisfy the minimum area and dimension requirements of this design criteria.
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>	Yes	All living and dining rooms satisfy the minimum dimension requirements of this design criteria.
4m minimum width for cross over and cross through apartments.	Yes	All duplex (cross-over) apartments satisfy the minimum dimension requirements of this design criteria.

Apartment Design Guide																	
Control	Compliance	Comment															
<b>4E Private Open Space and Balconies</b>																	
<p>All apartments required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type:</th> <th>Min. Area</th> <th>Min. Depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>One bed</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>Two bed</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>Three+ bed</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum depth counting to balcony area is 1m.</p>	Dwelling Type:	Min. Area	Min. Depth	Studio	4m <sup>2</sup>	-	One bed	8m <sup>2</sup>	2m	Two bed	10m <sup>2</sup>	2m	Three+ bed	12m <sup>2</sup>	2.4m	<p>No but assessed as acceptable</p>	<p><u>Minimum area requirements</u></p> <p>94% or 99 of 105 apartments are provided with a private open space in the form of a balcony. All of these satisfy or exceed minimum balcony area requirements.</p> <p>6% or 6 of 105 apartments do not have a private open space. These are studio apartments that exceed the ADG minimum internal size requirements.</p> <p>Those apartments without a private open space will be able to use the common room, and which is considered to achieve an adequate level of amenity due to its outlook to St James and Hyde Park, good daylight and ventilation access, and generous proportions. In this context, a minor variation to ADG private open space requirements is supported.</p> <p><u>Minimum dimension requirements</u></p> <p>Due to the curved and irregular shape of the proposed building and the challenge of configuring balconies within its irregular geometry, forty-nine 49 of the 99 apartments that do have proper balconies, do not satisfy the minimum balcony dimension requirements.</p> <p>Refer to the Issues section in this report.</p>
Dwelling Type:	Min. Area	Min. Depth															
Studio	4m <sup>2</sup>	-															
One bed	8m <sup>2</sup>	2m															
Two bed	10m <sup>2</sup>	2m															
Three+ bed	12m <sup>2</sup>	2.4m															
<p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	<p>Yes</p>	<p>Apartment 1301 is the only apartment that has a genuine podium-top private open space and which complies with the minimum size requirement.</p>															

Apartment Design Guide		
Control	Compliance	Comment
<b>4F Common Circulation and Spaces</b>		
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The maximum number of apartments off a circulation core on a single level is six (6) apartments.
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Yes	The proposed development has 105 apartments to 3 lifts or 35 apartments per lift.
<b>4G Storage</b>		
Minimum storage provision facilities: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> (Minimum 50% storage area located within unit)	Yes	All apartments achieve minimum storage requirements.

### State Environmental Planning Policy (Infrastructure) 2007

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

### **Clause 45 - Development Likely To Affect an Electricity Transmission or Distribution Network**

34. As the development site is within the vicinity of existing underground power lines, the application was referred to Ausgrid under the provisions of SEPP clause 45 on 30 August 2016.
35. In correspondence, dated 24 January 2017, Ausgrid made a submission recommending conditions to ensure the protection of underground cables and electricity network assets during construction and the ongoing operation of the new building.
36. A condition is recommended in accordance with Ausgrid's advice to be imposed on any consent granted.

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

37. On 3 March 2017, Council officers received correspondence from Sydney Trains to advise that since the Minister for Planning approved the Chatswood to Sydenham section of the Sydney Metro on 9 January 2017, the metro corridor is now within 25m of the subject site.

38. As the site is within 25m of the Sydney Metro corridor, the application was referred to Sydney Trains under the provisions of SEPP clause 86 on 6 March 2017.
39. On 22 March 2017, Sydney Trains' concurrence was granted subject to the conditions (refer to **Attachment A**) that are recommended to be imposed upon any consent granted.

***Clause 101 – Development with Frontage to Classified Road***

40. The proposal is subject to Clause 101 of the SEPP as the site is adjacent to the intersection of Elizabeth and King Streets which is part of a classified road.
41. The proposal is considered to satisfy SEPP requirements as it does not provide vehicular access to the site from the classified road and it will not adversely affect the safety, efficiency and ongoing operation of the classified road.
42. Conditions have been recommended for the development to achieve appropriate internal noise levels and to ameliorate the adverse impacts of road noise, pollution and vibration from surrounding streets.

***Clause 104 – Traffic-Generating Development***

43. As the proposed development has frontages to King and Elizabeth Streets and is of the specified size and capacity, the proposal was referred to RMS under the provisions of SEPP clause 104 on 30 August 2016.
44. In correspondence, dated 27 September 2016, RMS responded to state that no objection was raised to the proposal.

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

45. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the SREP.
46. 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.
47. The development is consistent with the relevant controls contained within the deemed SEPP.

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

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

**Sydney LEP 2012**

49. The site is zoned B8 – Metropolitan Centre under the Sydney Local Environmental Plan 2012 (the LEP). The proposed development is for a mixed use building comprising a residential flat building, retail premises and commercial premises, and which are permissible uses within the B8 – Metropolitan Centre zone pursuant to LEP clause 2.3.
50. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

<b>Compliance Table</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of buildings 6.17 Sun access planes 6.18 Exceptions to sun access planes	Yes	<p>The subject site is identified as being within Area 3 on the LEP Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by LEP clause 6.17.</p> <p>There are two sun access planes that extend over the subject site, these being Hyde Park North 2A and Hyde Park North 2B. The 2A sun access plane is positioned higher and above the 2B plane.</p> <p>LEP clause 6.18(1) provides that where there are two sun access planes extending over a site, consent may be granted to a development which will result in a building that does not project above the higher of those two planes.</p> <p>Council's 3D CAD and Physical Modeller has reviewed the proposal and has confirmed that the proposal projects above the Hyde Park North 2B sun access plane, but is lower than the Hyde Park North 2A sun access plane and therefore complies with LEP clause 6.17.</p>

Compliance Table		
Development Control	Compliance	Comment
4.4 Floor space ratio and 6.4 Accommodation floor space	Yes	<p>LEP clause 4.4 specifies a base floor space ratio (FSR) of 8:1, with LEP clause 6.4 providing an opportunity for additional FSR of 4.5:1 where commercial or residential accommodation uses are provided. This equates to a maximum permissible FSR of 12.5:1.</p> <p>The proposal also seeks to utilise the design excellence provisions pursuant to LEP clause 6.21, where the development may be eligible for up to a further 10% of FSR where the proposed design scheme is the winner of a competitive design process and is considered by the consent authority to exhibit design excellence.</p> <p>The proposal has won a competitive design alternatives process as defined by the City of Sydney Competitive Design Policy and is eligible for the award of up to 10% design excellence bonus, calculated on the combined total of permissible base and accommodation floor space as described above. This equates to an additional FSR of up to 1.25:1.</p> <p>Considering all of the LEP's applicable floor space provisions, the maximum permissible FSR for the development would be 13.75:1 (12,234.75 sqm GFA).</p> <p>The proposal has a gross floor area of 12,082 sqm, and which equates to a FSR of 13.58:1.</p>
4.5A Balconies on certain residential buildings	Able to comply	<p>Subject to the recommended conditions the proposed development is able to satisfy the requirements of this control.</p> <p>Refer to the Issues section in this report.</p>
5.9 Preservation of trees or vegetation	Able to comply	<p>The proposal is able to satisfy the requirements of this control, subject to the recommended conditions to protect the existing street trees on Phillip and King Streets during construction.</p>

Compliance Table		
Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The subject site does not contain a heritage item and is not located in a special character area. However, it is adjacent to the Hyde Park and Macquarie Street Special Character Areas, which have been established due to the number of world, national, state and locally listed heritage items within their boundaries.</p> <p>Council's Heritage Specialist has reviewed the proposal and has advised that the proposal provides a sympathetic response to the nearby special character areas and heritage items contained therein. The existing building has a basement level, so any additional excavation is unlikely to yield any archaeological relics.</p> <p>Council's Heritage Specialist supports the proposal subject to recommended conditions including conditions for archival documentation of the existing building, and to ensure the site is investigated should there be any archaeological finds during excavation.</p>
6.11 Allocation of heritage floor space	Yes	<p>A total of 2,558.175 sqm of HFS is applicable to the development, based on the HFS requirements under LEP clause 6.11(1)(a), (d) and (e), and has been calculated on the following basis:</p> <ul style="list-style-type: none"> <li>• 50% of accommodation floor space = 2,002.05 sqm; and</li> <li>• 50% of design excellence floor space = 556.125 sqm.</li> </ul> <p>LEP clause 6.11(2)(a) permits a further reduction of HFS by 50% or 1,000sqm (whichever is the lesser) where the scheme is the winner of an architectural design competition.</p> <p>As the subject scheme is the winner of a competitive design alternatives process, and not an architectural design competition as defined in the City of Sydney Competitive Design Policy, the subject proposal is not eligible for a further reduction in the HFS allocation for the development.</p>

Compliance Table		
Development Control	Compliance	Comment
6.16 Erection of tall buildings in Central Sydney	Yes	<p>As the proposed development has a height that exceeds 55 metres, the provisions of this clause are applicable.</p> <p>The proposal has been assessed as meeting the objectives for tower developments within Central Sydney as it:</p> <ul style="list-style-type: none"> <li>• occupies a site with an area greater than 800sq.m</li> <li>• is contextually appropriate;</li> <li>• creates residential apartments with good amenity;</li> <li>• does not have unacceptable adverse impacts upon the amenity of adjacent buildings; and</li> <li>• encourages active uses at ground level.</li> </ul>
6.21 Design excellence	Able to comply	<p>As discussed in the Issues section of this report there are several deferred commencement design modification conditions that are key to providing adequate amenity for the development's future intended occupants.</p> <p>Only subject to these recommended conditions is the proposal considered to achieve design excellence and is it recommended that the proposal be awarded the design excellence floor space.</p>
7.5-7.7 Car parking ancillary to other development	Able to comply	<p>Subject to the recommended conditions reconfiguring unit numbers and layouts, a maximum of 69 car parking spaces is permitted.</p> <p>71 car parking spaces are proposed and which does not comply with the control.</p> <p>A condition is recommended to limit car parking in accordance with the LEP parking rates.</p> <p>Refer to the Issues section in this report.</p> <p><u>Note:</u> Other car parking spaces such as car share spaces and service vehicles spaces are not included in the calculation of proposed car parking spaces.</p>

Compliance Table		
Development Control	Compliance	Comment
7.14 Acid Sulphate Soils	Yes	The site is identified as containing Class 5 Acid Sulphate Soil and is 575m from Class 2 Acid Sulphate Soil.  As the site is more than 500m from Class 2 Acid Sulphate Soil areas it is not subject to further acid sulphate soil management requirements under this control.
7.15 Flood planning	Yes	The subject site is not flood affected.  Conditions have been recommended to ensure the proposed development achieves minimum clearance above adjacent gutter invert levels and for a stormwater management plan to be submitted and approved prior to issue of a Construction Certificate.
7.16 Airspace operations	Yes	The proposal will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport.
7.19 Demolition must not result in long term adverse visual impact	Yes	The proposal seeks consent for demolition and redevelopment of the site as part of the subject application, and is therefore considered to adequately address the requirements of this control.
7.20 Development requiring preparation of a development control plan	Yes	The site has a valid Stage 1 consent (being D/2015/750). This Stage 1 consent is the equivalent of a site specific development control plan and details the allowable building envelope and land uses. It is considered that the current Stage 1 consent for the site addresses the requirements of LEP clause 7.20.  Refer to the Issues section in this report for further details about consistency of the proposal with the Stage 1 development consent.

### Sydney DCP 2012

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

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.1.5 Public art	Able to comply	<p>An amended Public Art Strategy was submitted as part of the several amendments submitted during the assessment process.</p> <p>Council's Public Art Specialists have reviewed the proposal and have recommended further refinement of the Public Art Strategy. These recommendations have been incorporated into conditions to be imposed on any consent granted.</p>
3.2.1 Improving the public domain	Yes (consistent with Stage 1 approval)	<p>The proposed detailed design scheme minimises overshadowing to Hyde Park by casting less shadow than that which would be cast by the approved Stage 1 envelope. That assessment is detailed in the assessment report for the proposed section 96 modification application (D/2015/750) under concurrent assessment.</p> <p>The splayed corners retain existing views from Elizabeth and Phillip Streets to heritage items: St James church and the Supreme Court and Old Registry Office. The new colonnade enhances views along King Street to Queen's Square.</p>
3.2.2 Addressing the street and public domain	Yes	<p>The proposed building positively addresses the street by minimising lobby areas, maximising visible internal uses at ground level, and providing public art opportunities to the vaulted ceilings within the generously proportioned residential and commercial lobbies.</p> <p>The ground floor plane has large areas of glazing that will greatly enhance passive surveillance of the public domain in comparison to the blank walls of the existing building.</p>

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.2.3 Active frontages	Yes	While the subject site is not identified as requiring active frontages, the proposal provides an outdoor cafe area and a retail tenancy to activate its Phillip, King, and Elizabeth Street frontages.
3.2.5 Colonnades	Yes	<p>The subject provision allows for colonnades in exceptional circumstances.</p> <p>The Competitive Design Alternatives Report submitted as part of the subject application notes that the selection panel identified the colonnade as one of the defining features of the winning design in that it responds to and interprets the colonnades of the Supreme Court building on the opposite, southern side of King Street.</p> <p>The amended proposal has improved accessibility to the colonnade and the entrance to the adjoining retail tenancy by providing stairs to its King and Elizabeth Street frontages. Level access is provided at its eastern end where King Street rises to meet the level of the colonnade and adjoining internal spaces.</p>
3.2.6 Wind effects	Yes	The amended Wind Report is based on wind tunnel testing and confirms that the proposal provides sufficient shelter and wind conditions at ground level for pedestrians in the adjoining public domain, for riders using the bike racks on Elizabeth Street, shoppers walking under the colonnade and for alfresco dining on the Phillip Street terrace.
3.2.7 Reflectivity	Yes	The proposed facade design has been assessed by a reflectivity consultant to eliminate glare and reflected sunlight to surrounding areas in accordance with DCP requirements.
3.2.8 External lighting	Able to comply	An appropriate condition is recommended.

3. General Provisions		
Development Control	Compliance	Comment
3.3 Design Excellence and Competitive Design Processes	Yes	As noted in the History section of this report, the subject design scheme is the winner of a competitive design process as defined by the City of Sydney Competitive Design Policy conducted in accordance with a competitive design brief endorsed by Council officers, and in accordance with LEP clause 6.21 Design excellence and DCP provision 3.3.
3.5 Urban Ecology	Yes	The proposal will not have adverse impacts upon the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal will not have unacceptable impacts on the environment and satisfies BASIX requirements.
3.7 Water and Flood Management	Yes	Conditions have been recommended to ensure the proposed development achieves minimum clearance above adjacent gutter invert levels and for a stormwater management plan to be submitted and approved prior to issue of a Construction Certificate.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Appropriate conditions have been recommended for any future strata subdivision of the development.
3.9 Heritage	Yes	Refer to the assessment against LEP clause 5.10 in the LEP compliance table above.
3.11 Transport and Parking	Able to comply	<p>As noted in the assessment against parking controls contained at LEP clauses 7.5-7.7 in the LEP compliance table above, a condition is recommended to limit car parking in accordance with LEP rates to:</p> <ul style="list-style-type: none"> <li>• 50 residential spaces;</li> <li>• 16 accessible residential spaces; and</li> <li>• 1 commercial/retail staff space.</li> </ul> <p>Other spaces are to be provided in accordance with DCP requirements, as follows:</p> <ul style="list-style-type: none"> <li>• 1 car wash bay;</li> <li>• 1 service vehicle space;</li> <li>• 2 motorcycle spaces; and</li> <li>• 2 car share scheme spaces.</li> </ul>

3. General Provisions		
Development Control	Compliance	Comment
		Other conditions are recommended in accordance with DCP requirements to ensure access for a Council waste collection vehicle, for management of the loading dock, to manage the car lift operations, for provision of adequate bicycle parking facilities and for the layout of bicycle parking within the basement and at street level.
3.12 Accessible Design	Yes	The proposal incorporates 16 adaptable apartments. This equates to 15.2% of all apartments within the development, which exceeds the 15% requirement contained at DCP provision 3.12.2.  A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the Sydney DCP 2012 and the BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Able to comply	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
3.15 Late Night Trading Management	Able to comply	The proposed retail, commercial and outdoor cafe tenancies are subject to a separate DA for the future fit-out and use of those tenancies at which time appropriate conditions can be imposed to regulate trading hours.
3.16 Signage and Advertising	Able to comply	No signage is proposed as part of the subject application.  A condition is recommended for a separate DA to be submitted for a signage strategy and any future signage.

4. Development Types		
4.2 Residential flat, commercial and mixed use developments		
Development Control	Compliance	Comment
4.2.1.2 Floor to ceiling height	No but assessed as acceptable	<p>The proposal complies with DCP minimum floor to floor and floor to ceiling height requirements for the first and second commercial floors and for the residential floors at levels 3 to 25.</p> <p>The proposal seeks approval of variations to DCP requirements for floor to floor heights at the first basement and ground levels.</p> <p>Refer to the Issues section in this report.</p>
4.2.3 Amenity	<p>No but assessed as acceptable</p> <p>No but assessed as acceptable</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Able to comply</p>	<p><u>Deep soil</u></p> <p>Refer to the ADG compliance table in this report.</p> <p><u>Common open space</u></p> <p>Refer to the Issues section in this report.</p> <p><u>Outlook</u></p> <p>All apartments are provided with a satisfactory outlook from habitable rooms.</p> <p><u>Acoustic privacy</u></p> <p>The proposed residential apartments are able to achieve adequate internal noise levels subject to the noise attenuation measures recommended in the submitted Acoustic Assessment Report.</p> <p><u>Flexible housing and dwelling mix</u></p> <p>Subject to the design modifications recommended elsewhere in this report:</p> <ul style="list-style-type: none"> <li>• 25% of proposed dwellings are studio or 1 bedroom units;</li> <li>• 51% of proposed dwellings are 2 bedroom units; and</li> <li>• 25% of proposed dwellings are 3 or more bedroom units.</li> </ul> <p>The proposal complies with DCP dwelling mix requirements.</p> <p><u>Wind affected balconies</u></p> <p>Refer to the Issues section in this report.</p>

4. Development Types		
4.2 Residential flat, commercial and mixed use developments		
Development Control	Compliance	Comment
	Yes	<p><u>Apartments with setback bedrooms</u></p> <p>No apartments contain setback bedrooms.</p> <p><u>Note:</u> Other amenity issues not addressed here are matters to which clause (6A) of SEPP 65 applies and which renders those DCP provisions to be of no effect.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	Each of the proposed building's street frontages comply with the DCP's maximum street frontage length.
4.2.8 Letterboxes	Yes	The proposal satisfies the requirements of this provision.

5. Specific Areas - Central Sydney		
Development Control	Compliance	Comment
5.1.1 Street frontage heights	Yes (consistent with Stage 1 envelope)	<p>The proposed street frontage height is RL 74.30, which is equivalent to 44.79m above Phillip Street, 46.31m above King Street and 46.43m above Elizabeth Street, as is consistent with the Stage 1 concept approval.</p> <p>The street frontage heights approved by the Stage 1 consent marginally exceed the 45m maximum street frontage height control by 1.3m to 1.4m on the King and Elizabeth Street elevations.</p> <p>The variation is attributed to the slope of the site and the adjoining streets and is minor in nature. The podium height relates to the uppermost point of the steeple of St. James Church, and is considered to be contextually appropriate having regard to the height and scale of the adjoining buildings to the north.</p>

<b>5. Specific Areas - Central Sydney</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
5.1.2.1 Front setbacks	Complies with Stage 1 envelope	<p>The DCP requires a minimum weighted average of 8m and a minimum of 6m setback above street frontage height to Elizabeth and Phillip Streets, and a minimum of 6m setback above street frontage height to King Street.</p> <p>The approved Stage 1 concept provided setbacks above street frontage height of between 3m and 6m to its Elizabeth and Phillip Street frontages, and 2.4m setback above street frontage height to its King Street frontage.</p> <p>The proposed setbacks above street frontage height are consistent with the Stage 1 envelope as modified by D/2015/750/B, which is being concurrently assessed.</p> <p>Refer to the Issues section of this report.</p>
5.1.2.2 Side and rear setbacks	Complies with Stage 1 envelope	<p>The proposed development contains some balconies that do not satisfy DCP minimum side and rear setback requirements, as is consistent with the Stage 1 concept approval.</p> <p>Refer to the Issues section of this report.</p>
5.1.5.2 Building bulk	Yes	<p>The proposed development provides a maximum floor plate size of 577.20 sqm GFA for floors above street frontage height and which comply with the DCP's 1,000 sqm GFA maximum.</p> <p>The maximum horizontal dimension of the building facade parallel to any of its street frontages is 26m and complies with the DCP's 40m maximum.</p>

<b>5. Specific Areas - Central Sydney</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
5.1.6 Building exteriors	Yes	<p>Both adjacent heritage items, the St James Church and the Supreme Courts were designed by Francis Greenway.</p> <p>The proposed development provides a sympathetic response to the materiality of the Greenway buildings through the use of sandstone and timber loggia in the podium.</p> <p>The proportions and modulation of the ground floor colonnade are referential to the colonnade of the Supreme Court building opposite and provide continuity in the architectural rhythm of the street.</p> <p>The podium enhances views to and from the Greenway buildings by retaining splays at the intersections of King Street with Elizabeth Street and with Phillip Street.</p>
5.1.9 Award and allocation of heritage floor space	Yes	Refer to the assessment against the provisions of LEP clause 6.11 elsewhere in this report.

## ISSUES

### Consistency with Stage 1 Approval

52. The provisions of Section 83D of the Environmental Planning & Assessment Act 1979, state that where a Stage 1 development consent for a site remains in force, that the determination of any further development application in respect to that site cannot be inconsistent with the Stage 1 consent.
53. The table below provides an assessment of the proposed development against the key conditions imposed on the Stage 1 development consent, being D/2015/750.

Stage 1 consent requirement	Comment
(1) Staged Development Application	The subject application is a Stage 2 DA for substantive works to take place on the site and is in accordance with the requirements of the condition.
(2) Approved Stage 1 Development	<p>A modification of the originally approved Stage 1 envelope was required to accommodate the subject DA for the detailed design of the building.</p> <p>That modification application (D/2015/750/B) has been assessed concurrently with the subject DA and which proposes changes to reconfigure floor plates on tower levels 14 to 24 that protrude outside the previously approved building envelope.</p> <p>The proposed changes are to improve solar access to apartments and are to accommodate architectural features of the winning design scheme selected through the competitive design process. As detailed in the assessment report for D/2015/750/B, it is considered that no additional adverse impacts arise from the proposed modifications.</p>
(3) Matters Not Approved In Stage 1 Development Consent	The subject application is a Stage 2 DA for substantive works and addresses matters not approved in the Stage 1 development consent.
(4) Stage 2 Design to Be Contained Within Approved Envelope	The subject application is wholly contained within the envelope as modified by the Section 96 application (D/2015/750/B) assessed concurrently with the subject DA.
(5) Design Excellence and Competitive Design Process	The proposed development is the design scheme selected as the winner of the competitive design process carried out in accordance with the approved Design Excellence Strategy and the relevant LEP and DCP provisions.
(6) Building Height	The proposed development is in accordance with this condition.
(7) Floor Space Ratio – Central Sydney	The proposed development is in accordance with this condition.
(8) Residential Land Use	<p>A BASIX Certificate has been submitted with the subject application.</p> <p>The proposed development is consistent with the objectives of the ADG and the SEPP 65 design quality principles. Refer to the Issues section in this report.</p>

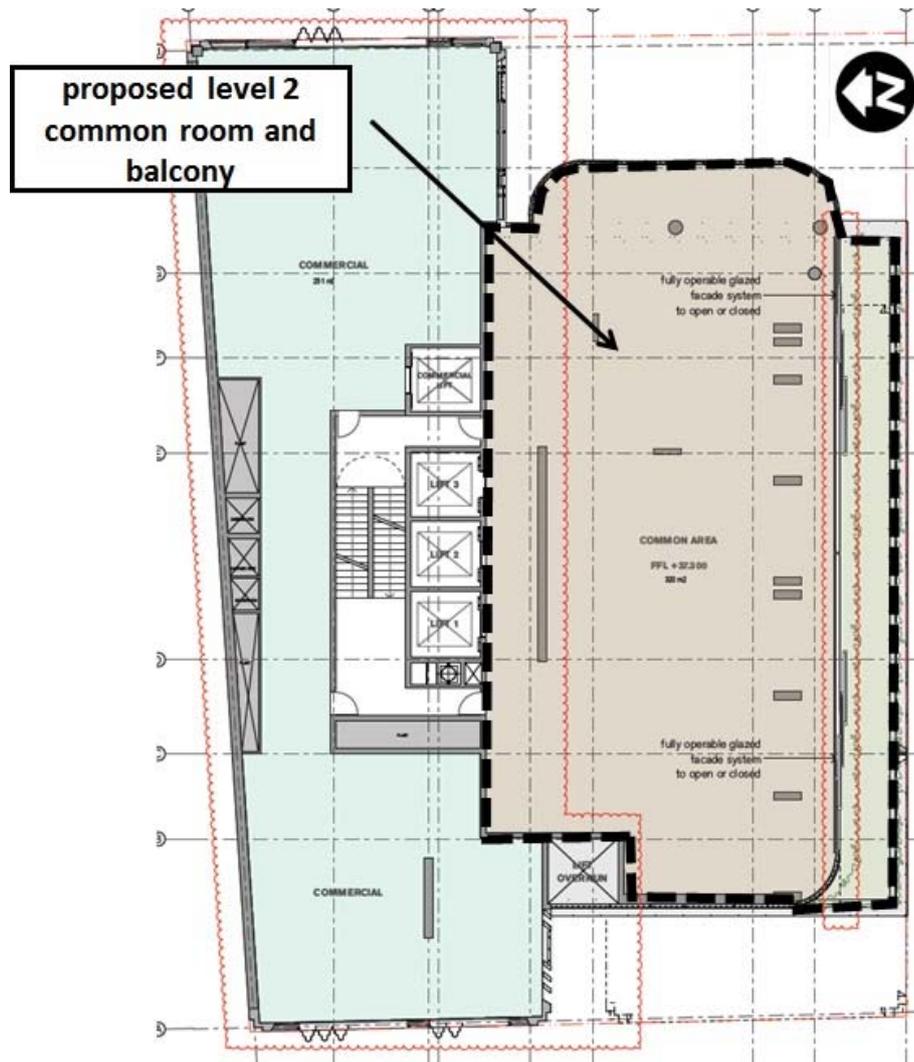
Stage 1 consent requirement	Comment
(9) Detailed Design of Building	The Design Brief for the competitive design process was prepared in accordance with the requirements of this condition.
(10) Heritage Interpretation Strategy	<p>The Design Brief incorporated historical information on the history of the site and was prepared in accordance with the requirements of this condition.</p> <p>A Heritage Interpretation Strategy was submitted as part of the subject application, in accordance with this condition.</p>
(11) Public Art	<p>A Public Art Strategy was submitted as part of the subject application, in accordance with the requirements of this condition.</p> <p>Conditions have been recommended for further refinement of the Public Art Strategy to be submitted and approved prior to issue of a Construction Certificate.</p>
(12) Wind	A Wind Report based on wind tunnel testing was submitted as part of the subject application, in accordance with this condition.
(13) Lot Consolidation	The proposed development is in accordance with this condition.
(14) Construction Noise Management Plan	A Construction Noise Management Plan was submitted as part of the subject application, in accordance with this condition.
(15) Construction Traffic Management Plan	<p>Information pertaining to construction traffic was submitted as part of the subject application, in accordance with this condition.</p> <p>A condition has been recommended for a Construction Traffic Management Plan to be submitted and approved prior to issue of a Construction Certificate.</p>
(16) Residential Acoustic Amenity – Acoustic Report	An Acoustic Report was submitted as part of the subject application, in accordance with this condition.
(17) Transport Impact Assessment	A Transport Impact Assessment was submitted as part of the subject application, in accordance with this condition.

Stage 1 consent requirement	Comment
(18) Car Parking Spaces and Dimensions	<p>The permissible number of car parking spaces has been established as part of the Stage 2 DA.</p> <p>Conditions have been recommended for provision of car parking spaces in accordance with the relevant LEP and DCP requirements.</p>
(19) Accessible Parking Space	The proposed development is in accordance with this condition.
(20) Location of Accessible Car Parking Spaces	The proposed development is in accordance with this condition.
(21) Bicycle Parking and End Of Trip Facilities	Details of the location, number and class of bicycle parking has been established as part of the Stage 2 DA.
(22) Car Share Spaces	The proposed development is in accordance with this condition.
(23) Vehicle Access	The proposed development is in accordance with this condition.
(24) Loading Within Site	The proposed development is in accordance with this condition.
(25) Service Vehicle Size Limit	The proposed development is in accordance with this condition.
(26) Loading Dock Management Plan	<p>Information about how the loading operations will be managed within the site was submitted as part of the subject application.</p> <p>Conditions have been recommended for a Loading Dock Management Plan to be submitted and approved prior to issue of a Construction Certificate.</p>
(27) Traffic Works	The proposed development is in accordance with this condition.
(28) Access and Facilities For Persons With Disabilities	An Access Report was submitted as part of the subject application, in accordance with this condition.
(29) Waste Facilities	<p>Details of waste facilities and waste management were submitted as part of the subject application, in accordance with this condition.</p> <p>Conditions have been recommended for further refinement of the Waste Management Plan to be submitted and approved prior to issue of a Construction Certificate.</p>

Stage 1 consent requirement	Comment
(30) Notification – New Contamination Evidence	The proposed development is to be carried out in accordance with this condition.
(31) Ausgrid	The proposed development is in accordance with this condition.

### Common Open Space

54. The design guidance that supports ADG Objective 3D states that where developments are unable to achieve the design criteria, such as sites in business zones or in dense urban areas, they should provide communal spaces elsewhere such as a landscaped rooftop terrace or a common room.
55. As shown in **Figure 23** below, the proposed development provides a common room on level 2 with an area equal to 36% (320 sqm) of site area, in lieu of a common open space.
56. As described in the ADG compliance table elsewhere in this report, the proposed development provides a common room with an area of 320 sqm, equal to 36% of site area and which exceeds the minimum common open space requirement of 222.45 sqm or 25% of site area, recommended by the ADG.
57. The common room is located on the third storey and has a balcony atop the arched colonnade, optimising views to St James church and Hyde Park. The common room has a generous floor to ceiling height of approximately 3.6 metres and has a fully operable glazed facade system so that it can be opened or closed to provide all year round amenity.
58. The proposal is considered to adequately provide for passive recreation as well as opportunities for social interaction of residents and is considered to contribute to residential amenity in a reasonable manner given its dense CBD context.



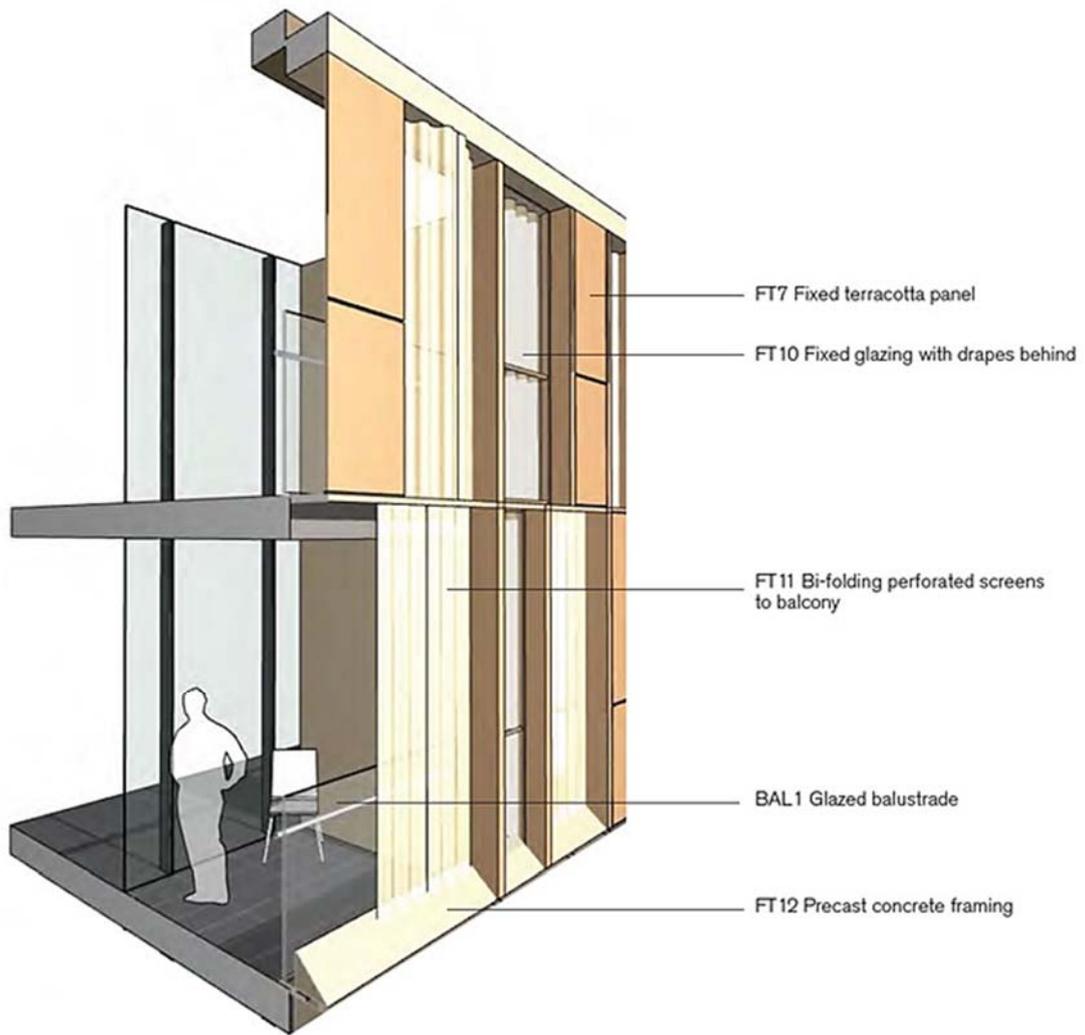
**Figure 23:** Proposed level 2 common room and balcony marked in dotted black line.

### Enclosed Balconies and Facade Systems

59. As shown in **Figures 24 to 27** below, the proposed facade system comprises a range of multi-fold screens, sliding screens, bi-fold louvres and stackable louvres that according to Urbis' correspondence titled *Amendments and Further Information To D/2016/1160* dated 19 November 2016, maintain openings of not less than 25% of the area of the balcony facade.

#### Balconies within the podium

60. As proposed, the balconies within the podium currently comprise GFA. If the balconies within the podium (levels 3 to 12) were to be retained as proposed and their area attributed to GFA, they would add 735 sqm of floor area to the development. This would increase the proposed FSR from 13.58:1 (12,082 sqm GFA) to 14.40:1 (12,817 sqm GFA) and would result in a breach of the maximum permitted FSR of 13.75:1 (12,234.75 sqm GFA).



**Figure 24:** Typical podium facade detail.



**Figure 25:** Typical podium facade elevation.

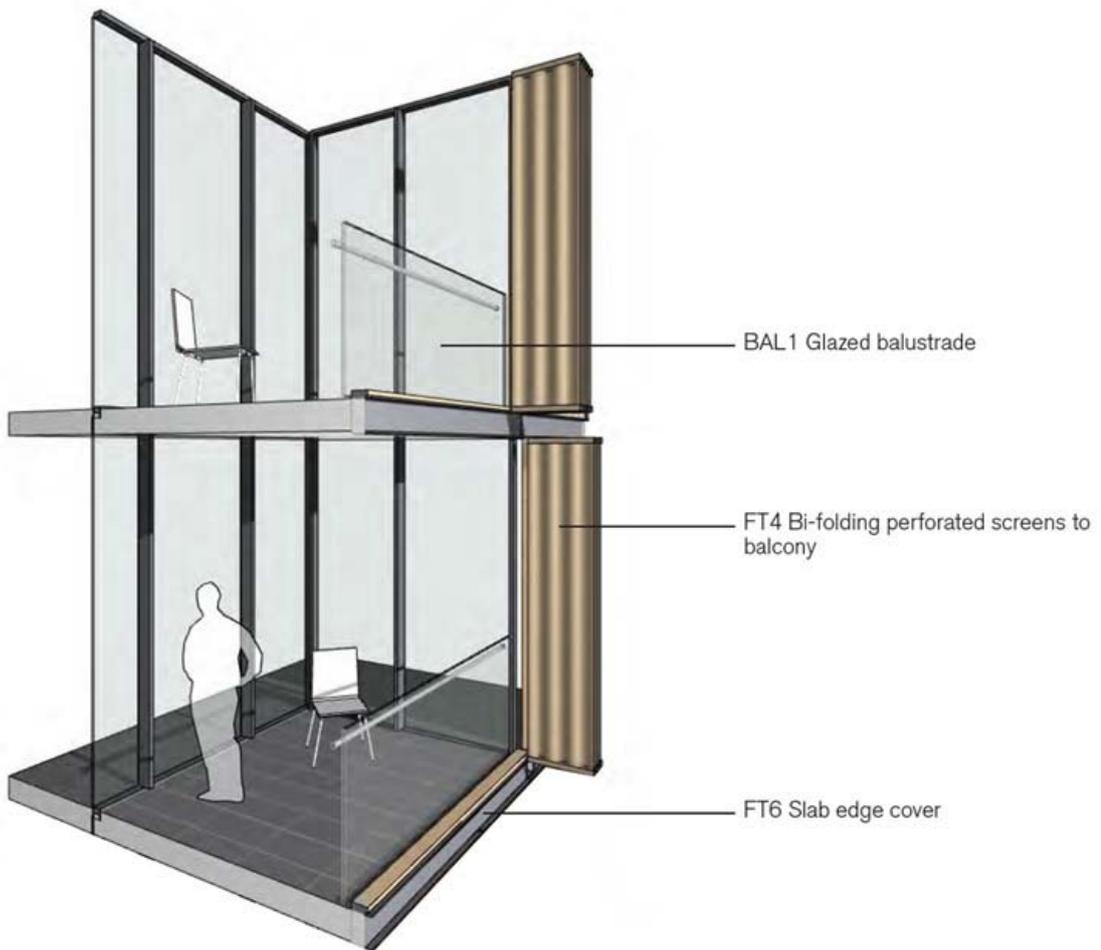


Figure 26: Typical tower facade detail.



Figure 27: Typical tower facade elevation.

61. As a justification for variation of the FSR development standard has not been submitted, a variation cannot be considered in this instance. A deferred commencement design modification condition is recommended so that the proposed gauze clad multi-fold screens are redesigned for all the balconies within the podium (levels 3 to 12) to:
- (a) ensure that the balconies are not partly enclosed and the area of these balconies is not included in GFA;
  - (b) ensure the redesigned balconies still provide an adequate response to environmental conditions to ensure the balconies can still be used by future intended occupants; and
  - (c) which also aims to maintain the integrity of the facade design as a positive feature of the winning design scheme commented upon by the Selection Panel and noted in the report of the competitive design alternatives process.

#### Balconies above podium height

62. At present the balconies proposed at level 13 and above have not been designed in accordance with DCP provision 4.2.3.13. This provision requires balconies' wind screens to have openings that are at least 25 per cent of the external face of the balcony, to include an opening at the top of the enclosure which is permanently open, is the width of the balcony, and has a minimum height that is the greater of 300mm or 10 per cent of the distance between the balcony floor and the finished balcony ceiling. A condition is recommended for balconies at level 13 and above, to be redesigned to satisfy these DCP requirements.
63. Subject to these conditions, there are no balconies on tower levels (level 13 and above) that exceed 15% of the GFA of the apartment to which the balcony is attached. Therefore no GFA contained within these balconies is attributable to FSR.

#### **Side and Rear Setbacks and Separation**

64. DCP provision 5.1.2.2 requires windows and balconies of residential buildings to be separated from the windows and balconies of commercial buildings by at least 9m.
65. DCP provision 5.1.2.2 also requires:
- (a) up to a height of 45m, a minimum setback of 6m from the side or rear property boundary for principal windows or balconies of residential buildings; and
  - (b) above a height of 45m, a setback of 12m from the side or rear boundary for residential buildings to ensure visual privacy is achieved between dwellings.
66. DCP provision 5.1.2.2(8) states that side and rear setback distances to the property boundary can be reduced with architectural features such as bay windows, or splayed windows with oblique outlooks provided that a minimum separation of 6m between the main walls of each building is maintained, separation is between sections of building walls that include service room windows, and oblique views are available to site boundaries with the street.
67. Concerns were raised by Council officers about inadequate setbacks and separation from the existing commercial buildings adjacent to the north at 169-171 Phillip Street and 82-88 Elizabeth Street and any potential residential/mixed use redevelopment of those sites in future.

68. The applicant’s submission in response is generally considered to be acceptable in addressing those concerns about providing adequate measures to mitigate any privacy conflicts, except for the level 13 podium-top balconies located at the north-east and north-west corners of the site as described below.

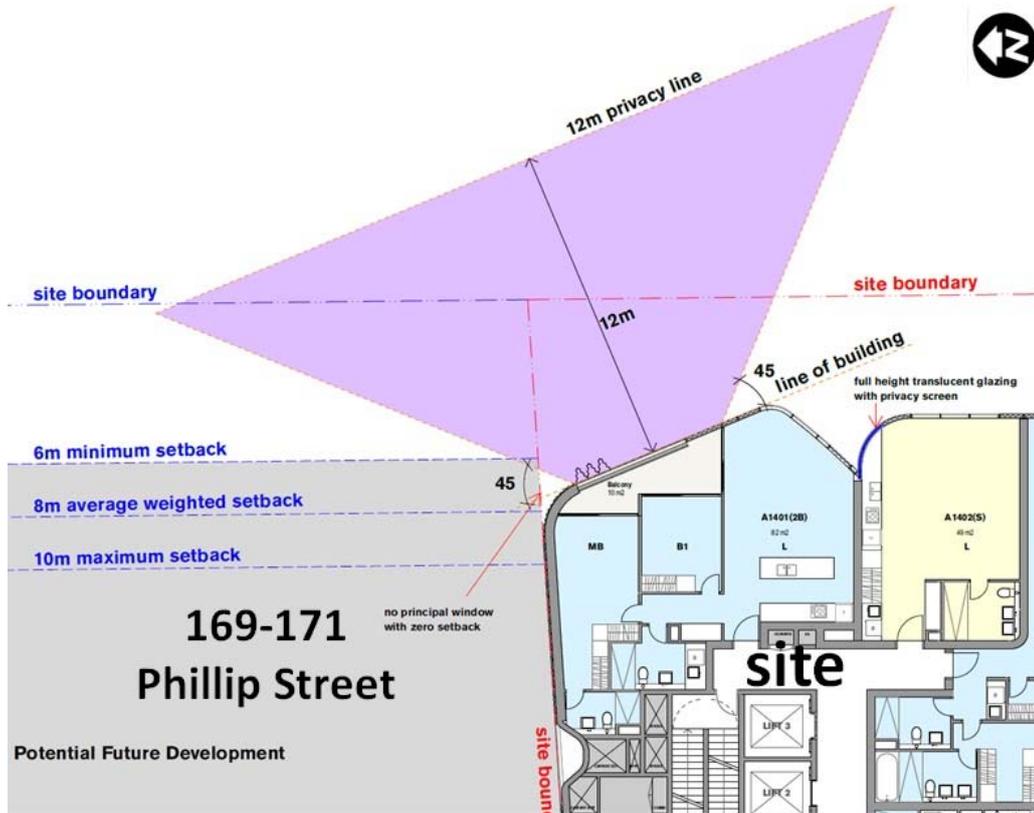
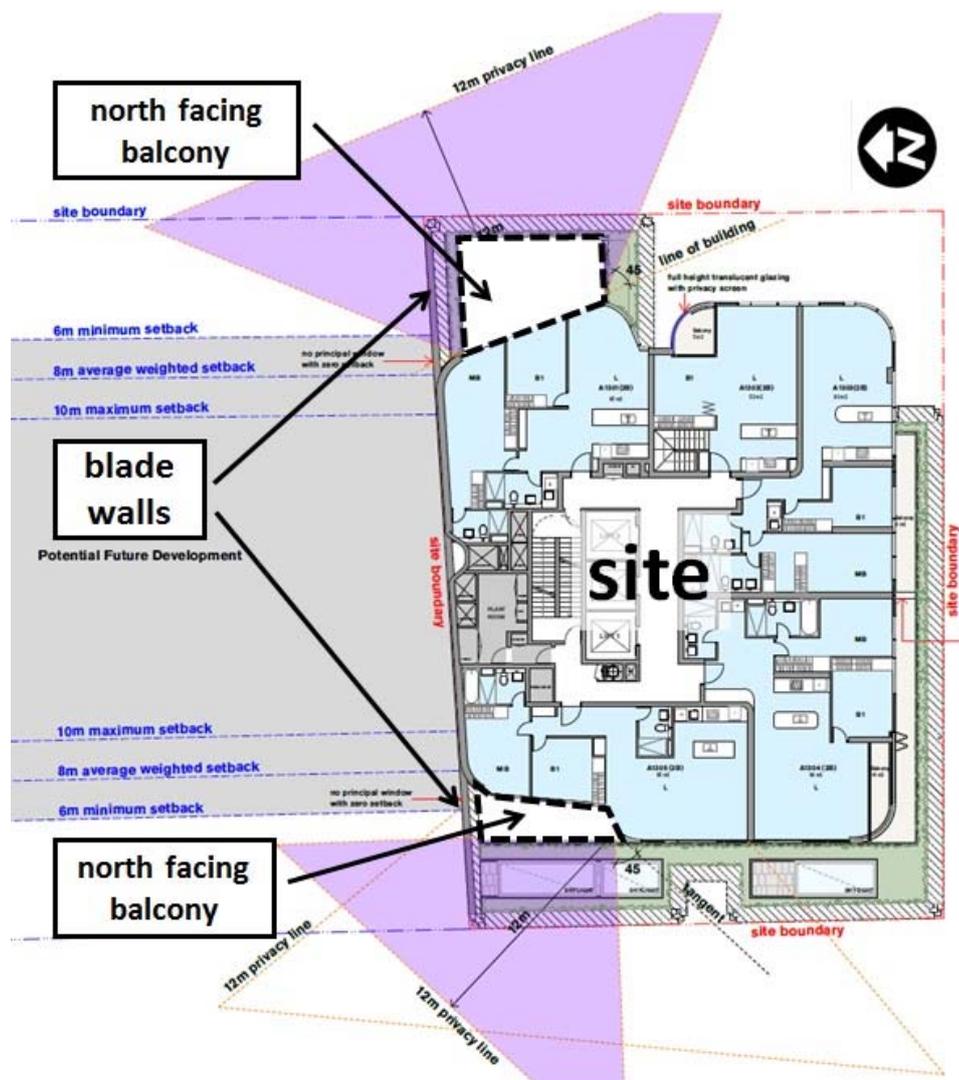


Figure 28: Illustration of adequate separation at eastern facade of tower level 14.

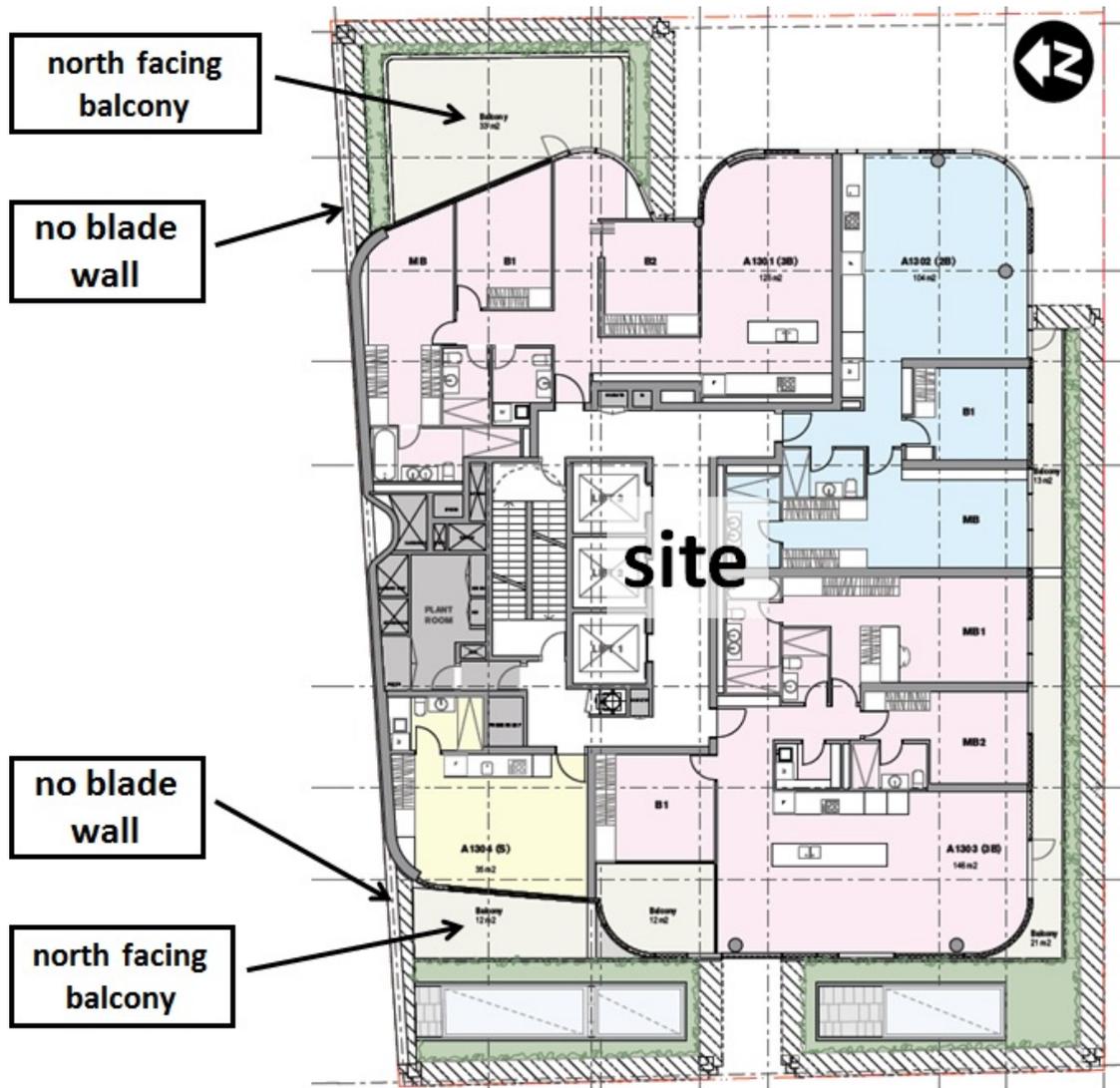


Figure 29: Illustration of adequate separation at western facade of tower level 14.

69. As shown in **Figures 28 and 29** above, by modelling a reasonably likely development footprint on the adjacent properties to the north and incorporating appropriate screening measures, it is considered that the amended proposal and supporting information has demonstrated compliance with the objectives of DCP provision 5.1.2.2 and ADG Objective 3F-1 to achieve reasonable levels of privacy for the proposed apartments and surrounding development.
70. As noted above, the supporting information which seeks to demonstrate that adequate visual privacy is provided for the podium top balconies on level 13 is not found to be adequate in the same way.
71. **Figure 30** below was provided as part of the applicant's supporting documentation to address separation and privacy concerns. It indicates a blade wall on the northern boundary of the podium-top balcony to apartments A1301 and A1305, which are located in the north-east and north-west corners of the subject site. Whereas **Figure 31** below, which shows the actual amended plans that are before the consent authority, does not provide a blade wall.



**Figure 30:** Illustration from applicant's supporting documentation proposing blade walls to northern boundary to ameliorate inadequate separation and privacy impacts at tower level 13.



**Figure 31:** Level 13 of amended plans before the CSPC, showing no blade wall or adequate separation of podium-top balconies from northern boundary.

72. This assessment has contemplated imposing a design modification condition for a blade wall to be provided adjacent to the northern boundary, however it is not recommended for the following reasons:
- (a) a blade wall would project outside the Stage 1 approved envelope; and
  - (b) the blade wall would reduce solar access to the level 13 apartments and the podium-top skylights to the apartments on level 12.
73. As adequate separation cannot be provided between level 13 podium-top balconies and the boundary adjacent to the north, a deferred commencement design modification condition is recommended for these podium-top areas to be non-trafficable and for maintenance access only, and for the level 13 floor plan to replicate that of tower level 14 above and is as follows:

**DESIGN MODIFICATIONS**

*The design of the building must be modified as follows:*

- (a) *the podium-top balconies adjacent to the northern boundary, adjoining apartments A1301 and A1304 are to be deleted, are to be non-trafficable and are to provide maintenance access only;*
  - (b) *the level 13 floor plan is to be reconfigured in the same way as that of level 14 above, to accommodate 1 x studio apartment, 1 x one bedroom apartment, and 3 x two bedroom apartments. Level 13 apartments reconfigured in accordance with A1401, A1402 and A1405 are to have a balcony recessed behind the tower's outer facade. Level 13 apartments reconfigured in accordance with A1403 can utilise the long balcony that adjoins the living room, MB and B1. Level 13 apartments reconfigured in accordance with A1404 should consolidate the long balcony adjacent to rooms MB1, MB2 and the balcony in the south-western corner;*
74. The recommended deferred commencement design modification condition for the level 13 floor plan to replicate that of tower level 14 above (refer to **Figure 32** below) is considered to be a better solution, for the following reasons:
- (a) the floor plan of tower level 14 provides apartments all of which satisfy or exceed ADG minimum internal and private open space area requirements;
  - (b) the floor plan of tower level 14 adequately mitigates separation and privacy conflicts described above; and
  - (c) the flow on effects of the recommended modifications do not change GFA and FSR, and does not reduce compliance with unit mix and accessible apartment requirements.



Figure 32: Level 14 layout to be used as a template to reconfigure level 13.

75. Changes to unit mix and overall numbers of apartments, arising from the design modification condition described above, are summarised in the table below.

Dwelling Type	Number of Units	
	As Proposed	Subject to Design Modifications
Studio	20	20
1 bed	5	6
2 bed	52	54
3+ bed	28	26
Total	105	106

### Implications of Design Modifications on Parking Requirements

76. Changes to the development resulting from the recommended deferred commencement design modification conditions described above, are described in the table below.

Tenancy or Dwelling Type	GFA/Number of Units		Permissible Car Parking	
	As Proposed	Subject to Design Modifications	As Proposed	Subject to Design Modifications
Commercial	313 sqm	313 sqm	0.46	0.46
Retail	412 sqm	412 sqm	0.61	0.61
Studio	20	20	2	2
1 bed	5	6	1.5	1.8
2 bed	52	54	36.4	37.8
3+ bed	28	26	28	26
		Total	68.97	68.67

77. As noted in the assessment against the relevant parking controls in the LEP and DCP compliance tables in this report, a condition is recommended to limit car parking in accordance with LEP rates to 50 residential spaces, 16 accessible residential spaces, and 1 commercial/retail staff space (67 car parking spaces in total).
78. Conditions are recommended for other spaces are to be provided in accordance with DCP requirements, as follows: 1 car wash bay, 1 service vehicle space, 2 motorcycle spaces, and 2 car share scheme spaces.

### Private Open Space – Minimum Dimension Requirements

79. Due to the curved and irregular shape of the proposed building and the challenge of configuring balconies within its irregular geometry, 49 of the 99 apartments that do have private open space in the form of balconies, do not satisfy the minimum balcony dimension requirements.
80. Twenty of those fail to achieve the minimum dimension by 0.25m or less and are generally considered to provide a useable balcony space for residents' passive recreation and is acceptable.
81. As shown in **Figure 33** below, 10 of these apartments' balconies (A301-A1201) contain an area of 9.3 sqm with a minimum dimension of 2.9m and which is considered to provide adequate useable space for outdoor seating and passive recreation and is acceptable.



Figure 33: Apartments A301-A1201 useable open space.

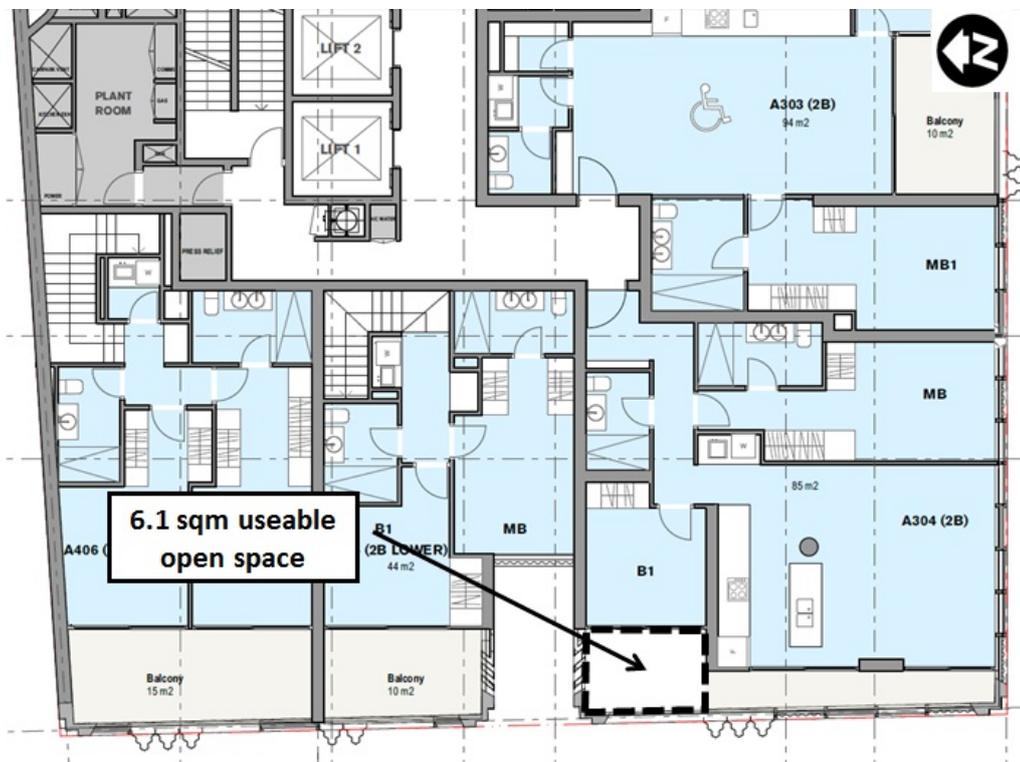
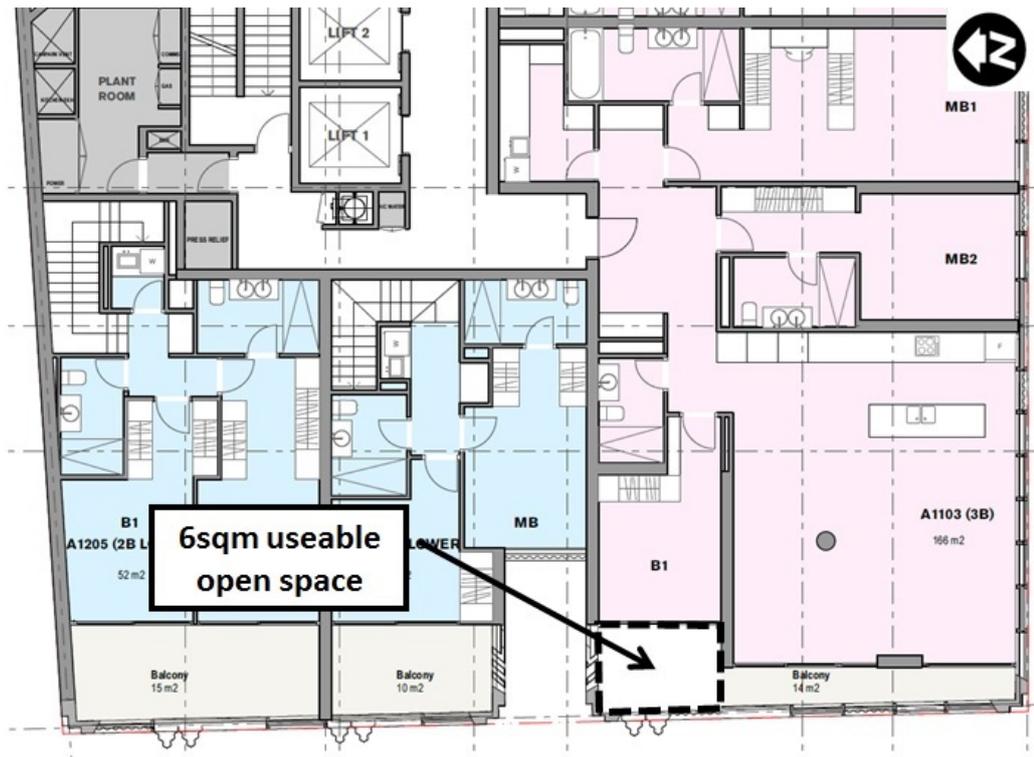


Figure 34: Apartments A304-A1004 useable open space.

82. As shown in **Figure 34** above, 8 of these apartments' balconies (A304-A1004) contain an area of 6.1 sqm with a minimum dimension of 2m and which is considered to provide adequate useable space for outdoor seating and passive recreation and is acceptable.
83. As shown in **Figure 35** below, two (2) apartments' (A1103 and A1203) balconies contain an area of 6 sqm with a minimum dimension of 2m and which is considered to provide adequate useable space for outdoor seating and passive recreation and is acceptable.



**Figure 35:** Apartments A1103 and A1203 useable open space.

84. As noted above, apartments on level 13 are to be reconfigured to provide adequate separation and privacy. Apartment A1302 will be reconfigured in a similar fashion to A1403, only it will not incorporate a balcony recessed behind the outer facade. Despite it being reconfigured apartment A1302 will remain generously sized being 29 sqm over the ADG minimum internal size requirement and it will utilise the 8.1m long balcony adjoining its southern facade that will provide a sense of openness, light and air within the apartment. For this reason a variation to the ADG balcony minimum dimension requirements is considered to be acceptable in this instance and is supported.
85. As shown in **Figure 36** below, apartment A1401 has a balcony that contains an area of 5.9 sqm with a minimum dimension of 2.4m and which provides adequate useable space for outdoor seating and passive recreation and is acceptable.

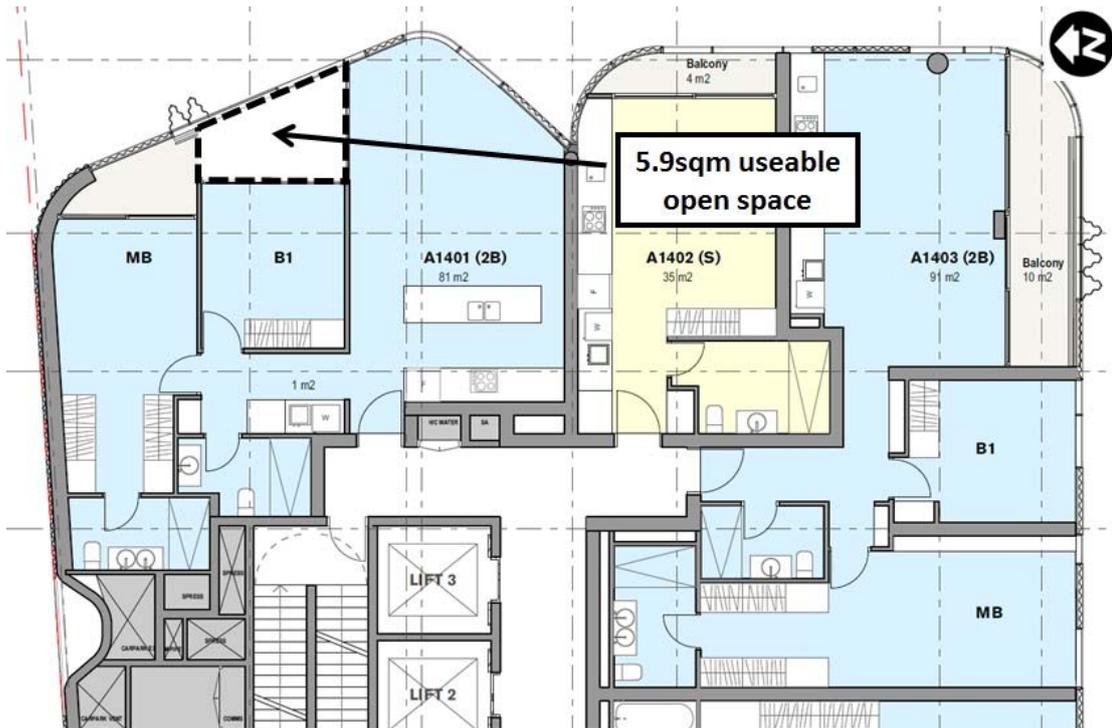


Figure 36: Apartment A1401 useable open space.

86. As shown in **Figure 37** below, 5 apartments' (A1403, and A1504-A1804) balconies are 1.5m wide and fail to achieve the minimum dimension of 2m required by ADG Objective 4E-1. If a condition to widen these balconies was imposed, it would reduce the width of the kitchen/living room. It is considered that such a condition would reduce the amenity of the kitchen/living room and would not result in the optimal configuration of indoor and outdoor spaces for these apartments. Such a condition is not recommended and a variation to the ADG minimum dimension requirements for the aforementioned apartments' balconies is supported in this instance.

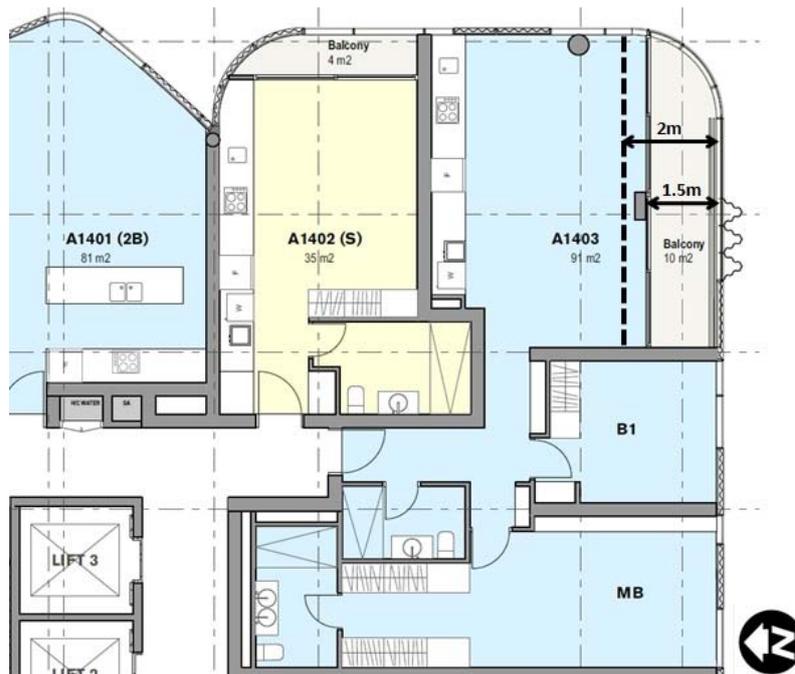
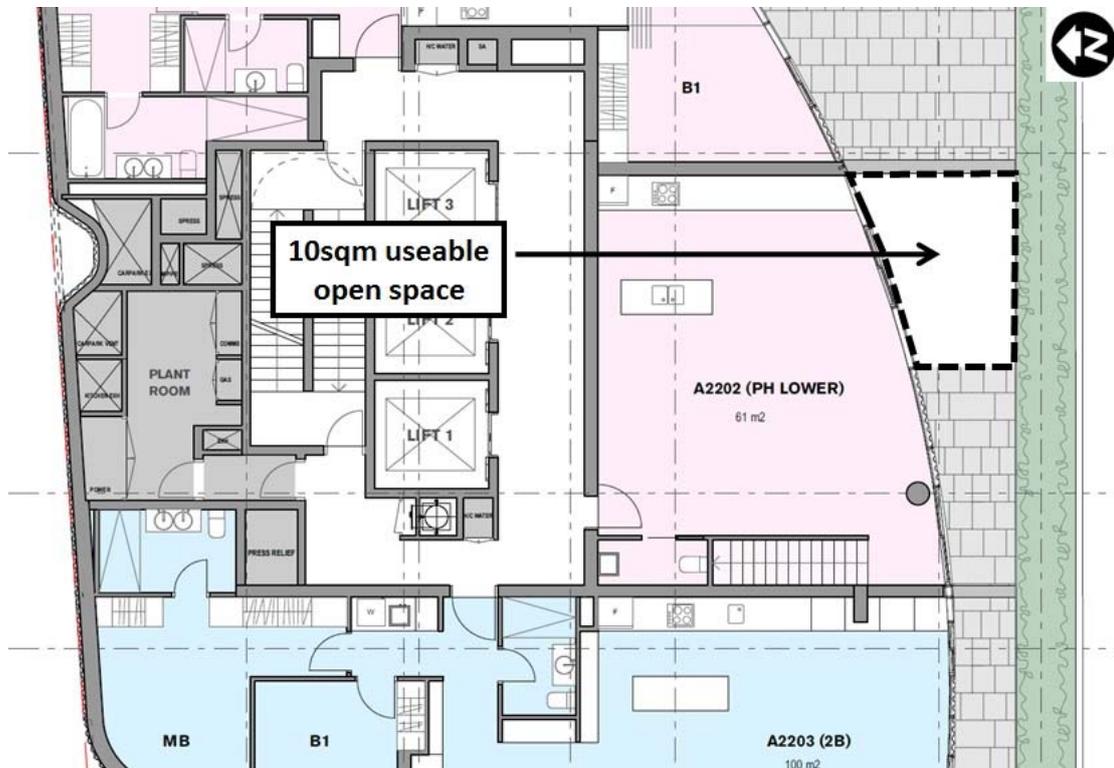


Figure 37: Balconies to apartments A1403, and A1504-A1804.

87. As shown in **Figure 38** below, apartment A2202 has a large balcony configured in a long tapered shape which at its widest end contains an area of 10 sqm with a minimum dimension of 2.4m and which is considered to provide adequate useable space for outdoor seating and passive recreation and is acceptable.

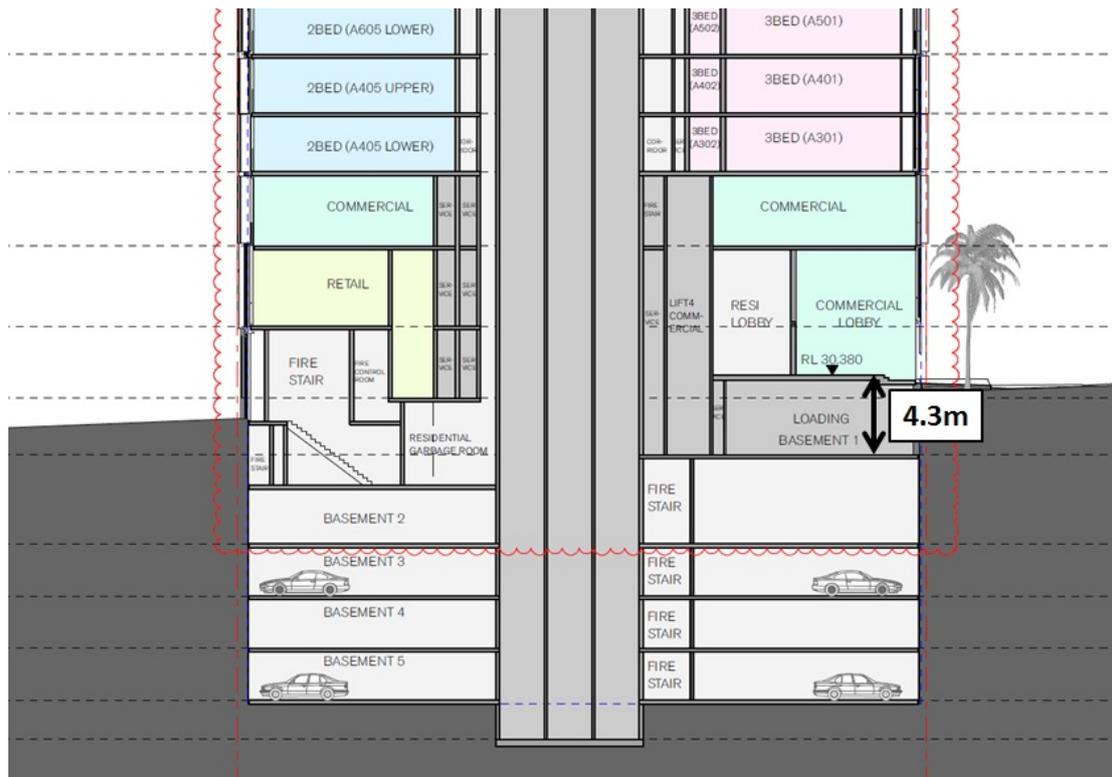


**Figure 38:** Apartment A2202 useable open space.

88. Apartment A2203 is generously sized being 24 sqm over the minimum internal size requirement. It has a balcony that wraps around 15m of its facade that will provide a sense of openness, light and air within the apartment. For this reason a variation to the ADG balcony minimum dimension requirements is considered to be acceptable in this instance and is supported.

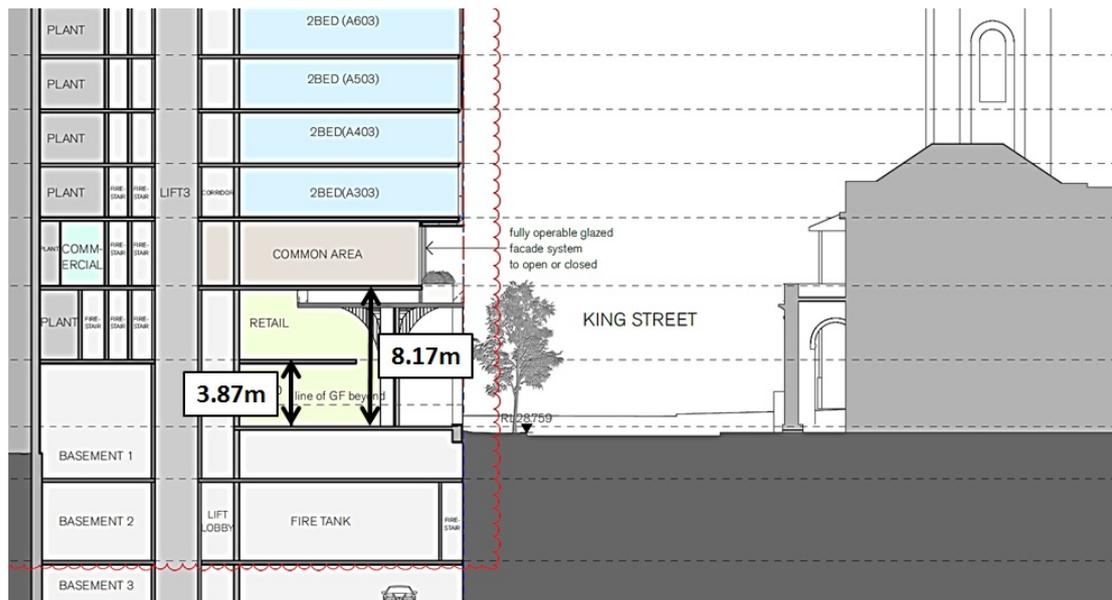
### Floor to ceiling heights and floor to floor heights

89. DCP provision 4.2.1.2(1) requires buildings that contain commercial uses in Central Sydney, to have a minimum floor to floor height of 4.5m on the first basement floor to provide flexibility for future conversion to retail uses.
90. As shown in **Figure 39** below, the eastern half of the first basement floor provides a floor to floor height of 4.3m.
91. A minor variation to the DCP's minimum 4.5m basement floor to floor height requirement is supported for the following reasons:
- the applicant has submitted information to demonstrate that due to the size of the site it is not possible for the basement ramp to attain sufficient depth to provide a basement floor level 4.5 metres below ground level;
  - a 4.5 metre floor to floor height in the basement level would require the ground level to be raised above existing grade at the property boundary and would be detrimental to its ground level public domain interface; and



**Figure 39:** First basement floor height of 4.3m.

- (c) the western half of the first basement floor contains fire stairs, lifts, plant and waste storage areas to serve the predominantly residential uses contained within the building. These areas would be the least likely to be converted to some other use in future.
92. DCP provision 4.2.1.2(1) requires buildings that contain commercial uses, to have a minimum floor to floor height of 4.5m on the ground floor and 3.6m on the first commercial floor and any commercial floor above.
93. The first and second floors contain commercial uses and provide floor to floor heights of 4.3m and 4m respectively, to the levels above, and which exceed the DCP's 3.6m minimum requirement.
94. The double height void above the commercial lobby on the eastern end of the ground floor has a floor to floor height of 6.92m and complies with DCP floor to floor height requirements.
95. As shown in **Figure 40** below, the floor to floor height of the ground floor retail tenancy is 3.87m to the level 1/mezzanine, and 8.17m to the floor above (level 2) where there is a double height void for about a third of its floor area adjacent to and for the length of the King Street facade. It is considered that the proposed ground level floor to floor heights support DCP objectives to promote daylight access into and to contribute to the flexible use of buildings. For these reasons a variation to the minimum 4.5m floor to floor height requirement is supported.



**Figure 40:** Ground and first level commercial floor to floor heights.

### Design Excellence

96. The Stage 1 proposal that preceded the subject Development Application met the thresholds of LEP clause 6.21(5) and was required to undertake a competitive design process prior to lodging a Stage 2 development application.
97. As detailed in the relevant history section of this report, this process was conducted in mid-2016 and in accordance with the City of Sydney Competitive Design Policy. The FJMT design was named the winning scheme in May 2016.
98. Pursuant to the provisions of LEP clause 6.21(7), where a proposal has been the winning entry of a competitive design process and the consent authority is satisfied that the building exhibits design excellence, up to a further 10% of height or FSR may be awarded.
99. The deferred commencement design modification conditions detailed above are considered to be key to providing adequate amenity for the development's future intended occupants and those of adjacent properties. Only subject to these recommended conditions is the proposal considered to achieve design excellence and is it recommended that design excellence floor space be awarded.

### Other Impacts of the Development

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

102. The proposal is suitable for the site.

**INTERNAL REFERRALS**

103. The assessment process and conditions of consent have been informed by advice from Council's Building Surveyor; Specialist Surveyor; Quantity Surveyor; Environmental Health Specialist; Heritage Specialist; Urban Design Specialist; Landscape Design Specialist; Public Domain and Infrastructure Specialist; Safe City Specialist; Transport Planner; Tree Management Specialist; Waste Management Specialist; and Public Art Specialist.
104. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.

**EXTERNAL REFERRALS****CBD Coordination Office**

105. 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 29 August 2016.
106. In correspondence, dated 14 October 2016, TfNSW CBD Coordination Office provided comments on the proposal raising no objection, subject to the imposition of conditions.

**Heritage Office of NSW**

107. As the development is in close proximity to several state heritage items, the application was referred to the Heritage Office of NSW on 29 August 2016.
108. In correspondence, dated 27 January 2017, the Heritage Office of NSW recommended that a Baseline Historical Archaeological Assessment be carried out and submitted prior to determination of the application.
109. Based on the advice of Council's Heritage Specialist a condition is recommended requiring a Baseline Historical Archaeological Assessment be carried out and submitted to the Heritage Office of NSW prior to issue for a construction certificate for demolition or excavation of basements.

**Notification, Advertising and Delegation**

110. In accordance with Schedule 1 of the Sydney DCP 2012, the subject development application was notified and advertised for a period of 28 days from 29 August to 28 September 2016. As a result of this notification there were 3 submissions received. Issues raised in submissions are summarised and responded to as follows:

- (a) Objection is raised to the unacceptable noise and vibration associated with demolition, excavation and construction upon the adjacent barristers chambers building at 169 Phillip Street. Furthermore, the use of noisy plant and equipment during demolition and construction and then during the ongoing operation of the development should be restricted to outside business hours.

**Response** – Council’s Environmental Health Specialists have reviewed the proposal and have recommended robust deferred commencement and regular conditions be imposed to manage adverse environmental impacts during demolition, excavation, construction and then during the ongoing operation of the development. The recommended conditions aim to prevent impacts where avoidable and to minimise impacts where they are unavoidable.

- (b) Objection is raised to the proposal as it does not provide adequate setbacks or separation to the northern boundary in accordance with ADG and DCP requirements.

**Response** – As discussed elsewhere in this report, the proposal is considered to provide adequate separation in most instances and adequate measures to prevent privacy conflicts with existing buildings and into the future. However, the level 13 podium-top balconies adjacent to the northern boundary are considered to provide inadequate separation and inadequate measures to mitigate any impacts from their proximity to the property adjacent to the north. Subsequently a condition is recommended for the podium-top balconies to be deleted and for those apartments to have balconies recessed within the facade as per level 14 above.

- (c) It is requested that if approved the consent authority impose a condition of consent requiring a covenant to be registered on title which prohibits residents from complaining about noise from the existing church i.e. bell ringing.

**Response** – It is considered that the imposition of the suggested condition is unnecessary given the submitted Acoustic Report confirms that the proposed apartments can achieve suitable internal noise levels as recommended by the DCP through the appropriate treatment of windows and external facades.

- (d) The exhibited DA documentation suggests pedestrianisation of King Street and Phillip Street in the future. It is requested that St James Church is consulted on this matter.

**Response** – It has been confirmed by Council’s Traffic Operations, City Projects and Public Domain officers that there are no plans for the pedestrianisation of King and Phillip Streets.

- (e) Objection is raised to the proposal due to other impacts of the demolition and construction phases such as dilapidation of adjacent buildings, road closures and reduction in parking on Phillip Street.

**Response** – A condition has been recommended for a dilapidation report to be prepared for the adjacent property to the north prior to demolition commencing. Any proposals for temporary road closures or other temporary disruptions to local traffic and parking arrangements must be submitted and determined by Council’s construction regulation and building compliance officers.

**PUBLIC INTEREST**

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

**FINANCIAL IMPLICATIONS****S61 CONTRIBUTION**

112. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003. An appropriate condition has been included in the recommendation of this report.

**RELEVANT LEGISLATION**

113. The Environmental Planning and Assessment Act 1979.

**CONCLUSION**

114. The subject application is for demolition of the existing building, excavation and construction of a 26 storey, mixed use development. Subject to the recommended conditions the building will comprise gross floor area of 12,082 sqm, accommodating 106 residential apartments above 412 sqm of retail floor space and 313 sqm of commercial floor space on ground to level 2, and 5 levels of basement parking for 67 cars.
115. The proposal has been amended during the assessment period to address concerns relating to solar access, natural ventilation, facade treatments, balconies, building separation, ground level interface with the public domain, basement level floor to floor heights, vehicle access, waste collection, and public art requirements. Amended plans and supplementary information has been submitted on 19 December 2016, 16, 21 and 24 February 2017 to address these matters.
116. As the subject application includes floor plates on tower levels 14 to 24 that protrude outside the previously approved building envelope, a concurrent section 96(2) application (D/2015/750/B) has been lodged to vary the Stage 1 building envelope. Modification of the Stage 1 building envelope is required to ensure consistency between the staged applications, as is required pursuant to Section 83D of the Environmental Planning and Assessment Act, 1979.
117. Conditions have been recommended that require design modifications to provide adequate building separation, and to ensure balconies are designed so to not constitute gross floor area and to satisfy LEP requirements for wind affected balconies. These conditions are significant in scope and are key to providing adequate amenity for future residents, to achieve design excellence, and to satisfy the relevant planning controls and are recommended to be satisfied prior to the approval becoming operative as part of a deferred commencement consent.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport