

ITEM 5. DEVELOPMENT APPLICATION: 161 CLARENCE STREET, 163-165 CLARENCE STREET AND 304 KENT STREET, SYDNEY**FILE NO: D/2008/150****SUMMARY****Date of Submission:** 5 February 2008

Amended plans submitted 8 April 2008 and 16 June 2008

Applicant: Multiplex Kent and Clarence Pty Ltd**Summary:** Demolition of existing buildings and construction of new 13 storey commercial building with 3 basement levels, incorporating a pedestrian through-site link and street level retail on Clarence and Kent Streets.

The proposal seeks a 10% increase in Floor Space Ratio (FSR) and a reduction in building setback requirements above street wall height to 4m.

A Voluntary Planning Agreement (VPA) has been negotiated with the applicant and exhibited to enable substantial public domain works to be completed. This includes the upgrade of a connecting laneway from King Street. It is also proposed to integrate the laneway into the proposed through site link and upgrade surrounding footpaths within Clarence, Kent and King Streets.

At the time of writing this report, the VPA has not been signed.

Railcorp concurrence has been granted for the proposed development and the deferred commencement conditions are included in the recommended conditions.

Six (6) persons made submissions. Submissions noted concerns with building design, heritage, amenity and construction impacts and the need to prepare a development plan. These concerns have been partly addressed through lodgement of amended plans and it is considered the development satisfies development controls and objectives.

Summary Recommendation: The DA is recommended for deferred commencement consent subject to the applicant entering into a Deed of Agreement with Railcorp and the VPA being executed.

It is recommended that the requirement for a development plan/Stage 1 DA be waived in this instance due to the site being less than 1500sqm, minor exceedence of the 55m height threshold by building plant and services and the constrained infill character of the site.

The 10% increase in FSR and reduction in setbacks to 4m above the street wall height are supported as the building exhibits design excellence and complements the surrounding built form and listed heritage items.

Attachments: A - Selected Drawings

RECOMMENDATION

It is resolved that:-

- (A) the requirement for a development plan under clause 23 of the Sydney LEP 2005 be waived on the following grounds:
- (1) the requirement for a development plan is considered to be unreasonable or unnecessary in accordance with clause 23 (4); and
 - (2) the site is less than 1500sqm (1445.7sqm) and the sections of the building exceeding the 55m height limit are limited to plant room and equipment areas. The building parapet height at Clarence Street is approximately 55.2m, and the same level at Kent Street is approximately 59.3m above street level due to the level difference between Clarence and Kent Streets. The lift overrun and equipment areas are significantly setback from the street and will not be visible from street level; and
 - (3) as an infill site that adjoins heritage buildings, the site has immediate design cues that inform any future built form; and
 - (4) the proposal achieves the objectives of design excellence, as it includes an appropriate standard of architectural design and the form, external appearance and public domain improvements will improve the quality and amenity of the public domain.
- (B) a deferred commencement consent be granted pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, subject to the following conditions:
- (1) The Voluntary Planning Agreement associated with the development application D/2008/150 shall be executed.
 - (2) The design of the building must be modified as follows and submitted to Council for approval:
 - (a) The services located at street level on Kent Street shall be relocated internally within the development and a retail or active tenancy is to be located on Kent Street. This will require reconfiguration of the basement parking.
 - (b) The entrance area to the through-site from Kent Street is to be redesigned to encourage its use and minimise 'dead space'. This shall include widening access stairs to the maximum amount possible and the possible relocation of the lift into the adjoining retail space.
 - (c) The width of the access driveway on Kent Street shall be reduced to 5.4m.
 - (d) An impermeable 1.2m high parapet around the roof and 1.2m high impermeable balustrades on the east and west facing terraces are to be installed in accordance with the Wind Environment Statement prepared by Windtech Consultants, dated 23 January 2007.

(3) RAILCORP CONCURRENCE REQUIREMENTS

This consent does not operate until the applicant satisfies the Council's Chief Executive Officer that the owners have entered into an Agreement with Rail Corporation NSW (RailCorp) as required in the following condition.

The owners of the site of the approved development must enter into an Agreement with RailCorp to address the potential impacts of the approved development on the CBD Rail Link identified in State Environmental Planning Policy (Infrastructure) 2007. The Agreement must provide for the following:

- (a) the design, construction and maintenance of the approved development so as to satisfy the requirements in conditions 3 to 7 below;
 - (b) allowances for the future construction of railway tunnels in the vicinity of the approved development;
 - (c) allowances in the design, construction and maintenance of the approved development for the future operation of railway tunnels in the vicinity of the approved development, especially in relation to noise, vibration, stray currents, electromagnetic fields and fire safety;
 - (d) consultation with RailCorp;
 - (e) access by representatives of RailCorp to the site of the approved development and all structures on that site;
 - (f) provision to RailCorp of drawings, reports and other information related to the design, construction and maintenance of the approved development;
 - (g) such other matters which RailCorp considers are appropriate to give effect to (a) to (f) above; and
 - (h) such other matters as the owners and RailCorp may agree.
- (C) within 12 months of the date of this resolution and upon compliance with the requirements of Clause (B), a full development consent in accordance with Section 80(4) of the Environmental Planning and Assessment Act, 1979 be issued, subject to the following conditions and any other additional conditions reasonably arising from the consideration of the matters specified in Clause (B):

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

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

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No.D/2008/150 dated 5 February 2008 and the following drawings:

| Drawing Number | Architect | Date |
|-----------------------|------------------|-------------|
| PSA7625_A 101-C | Hassell | June 2008 |
| PSA7625_A 102-C | Hassell | June 2008 |
| PSA7625_A 103-C | Hassell | June 2008 |
| PSA7625_A 104-C | Hassell | June 2008 |
| PSA7625_A 105-C | Hassell | June 2008 |
| PSA7625_A 107-C | Hassell | June 2008 |
| PSA7625_A 108-C | Hassell | June 2008 |
| PSA7625_A 109-C | Hassell | June 2008 |
| PSA7625_A 110-C | Hassell | June 2008 |
| PSA7625_A 111-C | Hassell | June 2008 |
| PSA7625_A 113-C | Hassell | June 2008 |
| PSA7625_A 114-C | Hassell | June 2008 |
| PSA7625_A 151-C | Hassell | June 2008 |
| PSA7625_A 152-C | Hassell | June 2008 |
| PSA7625_A 153-C | Hassell | June 2008 |
| PSA7625_A 154-C | Hassell | June 2008 |
| PSA7625_A 155-C | Hassell | June 2008 |
| PSA7625_A 157-C | Hassell | June 2008 |
| PSA7625_A 158-C | Hassell | June 2008 |
| PSA7625_A 159-C | Hassell | June 2008 |
| PSA7625_A 160-C | Hassell | June 2008 |
| PSA7625_A 161-C | Hassell | June 2008 |
| PSA7625_A 200-C | Hassell | June 2008 |
| PSA7625_A 201-C | Hassell | June 2008 |
| PSA7625_A 202-C | Hassell | June 2008 |

| Drawing Number | Architect | Date |
|-----------------|-----------|-----------|
| PSA7625_A 203-C | Hassell | June 2008 |
| PSA7625_A 205-C | Hassell | June 2008 |
| PSA7625_A 300-C | Hassell | June 2008 |
| PSA7625_A 301-C | Hassell | June 2008 |
| PSA7625_A 302-C | Hassell | June 2008 |
| PSA7625_A 303-C | Hassell | June 2008 |
| PSA7625_A 330-C | Hassell | June 2008 |
| PSA7625_A 332-C | Hassell | June 2008 |
| PSA7625_A 333-C | Hassell | June 2008 |
| PSA7625_A 334-C | Hassell | June 2008 |
| PSA7625_L 501-C | Hassell | June 2008 |

and as amended by the conditions of this consent:

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

(2) DESIGN DETAILS (MAJOR DEVELOPMENT)

- (a) A materials sample board detailing all proposed finishes must be submitted for the approval of Council prior to a Construction Certificate being issued. The materials sample board must be generally consistent with the sample board A 901 submitted as additional information with the development application.
- (b) The Low E glass selected for the facades is to be clear and neutral in colour. Manufacturer's details are to be submitted for the approval of Council prior to a Construction Certificate being issued.

(3) FLOOR SPACE RATIO - CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed 11:1 calculated in accordance with the *Sydney Local Environmental Plan 2005*. For the purpose of the calculation of FSR, the Floor Space Area of the development is 15,902sqm.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the total and component Floor Space Areas (by use) in the development, utilising the definition under *Sydney Local Environmental Plan 2005* applicable at the time of development consent, to the satisfaction of the Principal Certifying Authority.

- (c) Prior to a Construction Certificate being issued, Council's written verification must be obtained, confirming that 2,891sqm of heritage floor space was allocated (purchased and transferred) to the development, being that floor space in excess of 8:1 and the additional floor space of 1:1, as specified in the *Sydney Local Environmental Plan 2005*.

(4) BUILDING HEIGHT

- (a) The height of the building must not exceed RL 82.2 (AHD) to the top of the building and RL 77.18 (AHD) to the parapet of the building.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the height of the building, to the satisfaction of the Principal Certifying Authority.

(5) APPROVED DESIGN ROOF-TOP PLANT

(6) RAILCORP

The applicant must ensure that:

- (a) All structures which are proposed for construction or installation, or which are constructed or installed, in connection with the approved development which have a potential impact on the CBD Rail Link must be designed, constructed and maintained in accordance with design criteria specified by RailCorp.
- (b) The design and construction of the basement levels, foundations and ground anchors for the approved development are to be completed to the satisfaction of RailCorp.
- (c) No modifications may be made to that approved design without the consent of RailCorp.
- (d) RailCorp, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.
- (e) A detailed regime is to be prepared for consultation with, and approval by, RailCorp for the excavation of the site and the construction of the building foundations (including ground anchors) for the approved development, which may include geotechnical and structural certification in the form required by RailCorp.
- (f) All requirements contained in the Agreement between RailCorp and the owners of the site must be satisfied during construction and, where appropriate, the operation of the approved development.
- (g) Copies of any certificates, drawings or approvals given to or issued by RailCorp must be delivered to the City for its records.

- (h) Prior to the commencement of any excavation below existing ground level, a restrictive covenant is to be created upon each of the titles which comprise the approved development pursuant to Section 88E of the Conveyancing Act 1919, restricting any alterations or additions to any part of the approved development which are reasonably likely to adversely affect, or which otherwise are likely to interfere with the design, construction and operation of the proposed CBD Rail Link without the prior written consent of RailCorp.

(7) SEPARATE DAs REQUIRED FOR FITOUTS

A separate development application/s for any proposed retail fitouts must be submitted for the approval of Council.

(8) SIGNS - SEPARATE DA REQUIRED

(9) SIGNAGE STRATEGY

A separate development application is to be submitted seeking approval of a signage strategy for the building. The signage strategy development application must include information and scale drawings of the location, type, construction, materials and total number of signs appropriate for the building.

The signage strategy is to include any signage proposed for the laneway.

(10) EXTERNAL LIGHTING STRATEGY

A separate development application is to be submitted seeking approval of an external lighting strategy for the building, site landscaping and the laneway. The external lighting strategy development application must include information and scale drawings of the location, type, construction, materials and total number of lights proposed.

(11) CARE OF BUILDING SURROUNDS

(12) NOISE - MECHANICAL PLANT

(13) BOUNDARY WINDOWS COVENANT

All windows adjacent to the northern and southern boundaries of the site must be sealed, bricked up or otherwise enclosed, prior to the construction of any building abutting, adjoining or adjacent to such windows. Prior to a Construction Certificate being issued, a documentary restrictive covenant is to be registered on the Title of all units/tenancies facing the affected boundaries. The covenant is to be created appurtenant to Council and at no cost to Council.

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

(15) CAR PARKING SPACES AND DIMENSIONS

A maximum of 29 off-street car parking spaces are to be provided. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan. The details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

(16) SEALING OF CAR PARK**(17) SECURITY GATES****(18) SIGNS AT EGRESS****(19) VEHICLES ENTER/LEAVE IN FORWARD DIRECTION****(20) ALLOCATION FOR VISITOR PARKING****(21) LOCATION OF VISITOR PARKING****(22) INTERCOM FOR VISITORS****(23) SIGN FOR VISITOR PARKING****(24) ACCESSIBLE CAR PARKING SPACES**

Of the required car parking spaces, at least one must be 3.2m x 5.5m minimum (with a minimum headroom of 2.5m) and must be clearly marked and appropriately located as accessible parking for people with mobility impairment. The design and layout of accessible car parking for people with mobility impairment is to be provided in accordance with Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and the *'City of Sydney Access Development Control Plan 2004*. The details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

(25) LOCATION OF ACCESSIBLE CAR PARKING SPACES**(26) BICYCLE PARKING****(27) LOADING WITHIN SITE****(28) SERVICE VEHICLES**

Courier spaces and loading docks must be located close to the service entrance and away from other parking areas, as detailed below:

- (a) A minimum of 3 courier space(s) with minimum dimensions 2.6m x 5.4m and a minimum head clearance of 2.5 metres.
- (b) A minimum of 2 loading dock(s) with minimum dimensions 3.5m x 7.5m with minimum head clearance 3.6m and 4.0m for residential developments.

Adequate space must be provided to allow manoeuvring and turning of the different sized vehicles. The design, layout, signage, line marking, lighting and physical controls for all service vehicles must comply with the minimum requirements of Australian Standard AS 2890.2 – 2002 Off-Street Parking Part 2: Commercial vehicle facilities. Details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

- (29) LOADING VIA THE ENTRANCE**
- (30) LOADING/PARKING KEPT CLEAR**
- (31) ARTICULATED VEHICLES**
- (32) TRAFFIC WORKS**
- (33) ASSOCIATED ROADWAY COSTS**
- (34) COST OF SIGNPOSTING**
- (35) CONSTRUCTION TRAFFIC MANAGEMENT PLAN**
- (36) REFLECTIVITY**
- (37) TREATMENT OF PROPOSED EXTERNAL WALLS**

Details of the treatment of the northern walls on the northern boundary and southern walls on the southern boundary must be submitted for the approval of Council prior to the Construction Certificate being issued. Any work is required to be completed prior to the Occupation Certificate being issued.

- (38) AWNINGS**
- (39) AWNING MAINTENANCE**
- (40) ENCROACHMENTS**
- (41) TRACHYTE KERBING**

SCHEDULE 1B

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

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

- (42) ARCHAEOLOGICAL ASSESSMENT**
- (43) ARCHAEOLOGICAL INVESTIGATION**

(44) PHOTOGRAPHIC ARCHIVAL DOCUMENTATION - DIGITAL OPTION

Prior to a Construction Certificate being issued, an archival photographic recording of the of the existing Kent Street and Clarence Street streetscapes in the vicinity of the site, and of the interior and exterior of the existing buildings at No 296 to 304 Kent Street inclusive, is to be prepared to Council's satisfaction. The recording may be in either digital or film-based form, or a combination of both, prepared in accordance with the NSW Heritage Office guidelines titled 'Photographic Recording of Heritage Items using Film or Digital Capture'. One copy of the record is to be submitted to Council to be lodged with Council's Archives.

The form of the recording is to be as follows:

- (a) In A4 format, placed in archival plastic sleeves in an appropriate archival folder.
- (b) The Development Application number must be noted on the front of the folder and in the report.
- (c) Include a summary report detailing the project description, date and authorship of the photographic record, method of documentation and limitations of the photographic record.
- (d) Each negative, slide or digital image is to be cross referenced to a photographic catalogue and photographic base plans.
- (e) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.

A digital based recording is to include:

- (a) Thumbnail image sheets and a selection of A5 or A4 size images, all labelled and cross-referenced to the catalogue sheets and base plans, and processed on A4 size archival photographic paper using archival stable inks.
- (b) CD or DVD containing the report in PDF format and the electronic images saved as JPEG or TIFF files and cross referenced to the catalogue sheets.

A film based recording is to include:

- (a) 35mm film images submitted as contact sheets with equivalent negatives, a selection of black and white prints 200 x 250mm, and 35mm colour transparencies, all labelled and cross-referenced to the catalogue sheets and base plans.

(45) SITES IN THE VICINITY OF A HERITAGE ITEM

The proposed works are to ensure that the adjacent heritage items including Red Cross Houses at 153-159 Clarence Street and the former Andrews Bros. Warehouse at 306 Kent Street are to be suitably protected during the construction process. Details of the protection strategy together with a suitably qualified structural engineer's report should be submitted to the satisfaction of Council prior to the issue of the Construction Certificate.

(46) SALVAGED MATERIALS TO BE RETAINED ON SITE

The laneway cobblestones are to be labelled and stored on site to facilitate their reinstatement in the laneway.

(47) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL**(48) NO DEMOLITION PRIOR TO A CONSTRUCTION CERTIFICATE****(49) DEMOLITION, EXCAVATION AND CONSTRUCTION MANAGEMENT****(50) EROSION AND SEDIMENT CONTROL - BETWEEN 250 AND 2,500SQM****(51) DILAPIDATION REPORT - MAJOR EXCAVATION/DEMOLITION**

- (a) Subject to the receipt of permission of the affected landowner, dilapidation report/s, including a photographic survey of 153-159 Clarence Street (Red Cross House), 171 Clarence Street and 306 Kent Street (Andrew Brothers Warehouse) are to be prepared by an appropriately qualified structural engineer prior to commencement of demolition/excavation works. A copy of the dilapidation report/s together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Principal Certifying Authority and the Council prior to the issue of a Construction Certificate.

UPON COMPLETION OF EXCAVATION/DEMOLITION

- (b) A **second** Dilapidation Report/s, including a photographic survey shall then be submitted at least one month after the completion of demolition/excavation works. A copy of the second dilapidation report/s, together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Principal Certifying Authority and the Council prior to the issue of an Occupation Certificate.
- (c) Any damage to buildings, structures, lawns, trees, sheds, gardens and the like must be fully rectified by the applicant or owner, at no cost to the affected property owner.

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

- (52) TEMPORARY GROUND ANCHORS, TEMPORARY SHORING AND PERMANENT BASEMENT/RETAINING WALLS AFFECTING THE ROAD RESERVE**
- (53) ASBESTOS REMOVAL**
- (54) PROHIBITION OF ASBESTOS RE-USE**
- (55) CLASSIFICATION OF WASTE**
- (56) DISPOSAL OF ASBESTOS**
- (57) ASBESTOS REMOVAL SIGNAGE**
- (58) SIGNAGE LOCATION AND DETAILS**
- (59) SKIPS AND BINS**
- (60) NOTIFICATION OF ASBESTOS REMOVAL**
- (61) STREET TREE PLANTING & MAINTENANCE**
- (62) ELECTRICITY SUBSTATION**
- (63) UTILITY SERVICES**
- (64) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES**
- (65) ENERGY EFFICIENCY OF BUILDINGS**

The design of the building and its services must achieve a rating of 5 stars under the Department of Energy, Utilities and Sustainability's (DEUS) Australian Building Greenhouse Rating (ABGR) scheme. This can be demonstrated by:

- (a) Entering into a Commitment Agreement⁽ⁱ⁾ with DEUS, to deliver this star rating⁽ⁱⁱ⁾ for the base building⁽ⁱⁱⁱ⁾, being services traditionally supplied as 'common' to tenants^(iv), such as air conditioning, lifts and common area lighting) or for the whole building^(v) where there is to be one tenant to occupy the whole building. The applicant must provide a copy of the completed Commitment Agreement with their Construction Certificate application; and
- (b) Providing a copy of the independent energy assessment report to DEUS and submitted with the Construction Certificate application, that follows the current guidelines in DEUS's Australian Building Greenhouse Rating Scheme Design Energy Efficiency Review and the Energy Efficiency Design Review. This report should be based on the same documents as those submitted with the Construction Certificate.

Note: Definitions referred to in clause 1(a) above:

- (i) *Commitment Agreement* means an agreement that is set out in accordance with DEUS's Australian Building Greenhouse Rating Commitment Agreement, which is made/signed between DEUS and the applicant/building owner/building manager, to design, build and commission the premises to an agreed star rating.
- (ii) *Star rating* refers to the benchmarking system applied by DEUS for measuring the energy efficiency of a building, and known as the *Australian Building Greenhouse Rating Scheme*.
- (iii) *Base building* means central services and common areas of a building.
- (iv) *Tenancies* means office space within a building covering tenant light and power. This may include tenancy air conditioning if this has been installed to service particular tenant loads, but does not include central services.
- (v) *Whole building* means all of the building, being the fabric of the building itself and all services and fit-outs.

(66) INSTALLATION OF DUAL-FLUSH TOILETS

(67) INSTALLATION OF WATER EFFICIENT TAPS

(68) INTERNAL LIGHTING SYSTEM

(69) PHYSICAL MODELS

(70) SUBMISSION OF ELECTRONIC MODELS PRIOR TO CONSTRUCTION CERTIFICATE AND PRIOR TO OCCUPATION CERTIFICATE

(71) DEMOLITION/SITE RECTIFICATION (if cost is over \$50m)

The following conditions apply to the development:

- (a) Demolition or excavation must not commence until a Construction Certificate has been issued for construction of the substantive building.
- (b) Prior to the Construction Certificate being issued, documentary evidence must be provided to Council that the owner of the site has entered into a Deed with Council, the cost of preparation and execution of such Deed (including stamp duty and registration fees) to be borne by the applicant, which contains such conditions as the Council reasonably requires to ensure the matters set out in this condition are adequately provided for.
- (c) Without limiting the generality of paragraph (b), the Deed must provide for:
 - (i) a bank guarantee to be provided in the sum of \$361,425 dollars as security for the costs of such works provided that:

- a. the maximum liability under the Deed must not exceed \$361,425 dollars; and
 - b. the Council may accept a lesser amount as security if substantiated by detailed design and Quantity Surveyor costing for works which meet the objectives of the condition.
- (ii) Council to be given sufficient contractual rights to be able to ensure that in any of the following events namely:
- a. demolition of the existing building has commenced but not been completed;
 - b. the existing building has been demolished; or
 - c. the site has been excavated; or
 - d. the structure has commenced to be erected;

that it, or any person authorised by it, may enter the site and carry out such works at the cost of the applicant (or such other person as the consent authority may approve) as may be then appropriate in the circumstances in each of the abovementioned events, to:

- e. make the building safe and attractive at ground level;
- f. allow the ground level to be landscaped and made attractive from any public vantage point; or
- g. for the hole to be covered to allow it to be landscaped and made attractive from any public vantage point; or
- h. in the event that the new building is constructed beyond the ground floor, to allow any hoardings to be removed and the ground floor development to be completed to a tenatable stage;

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

- (d) If the site is commenced to be developed and there is suspension in activity for 6 months (or suspensions of activity which in the aggregate exceed 6 months), resulting in an unattractive building site appearance, then the Council will have the readily enforceable rights to:
- (i) require certain works including but not limited to those works necessary to achieve the results referred to in sub-clause (c) (ii)e - h to take place on the site; and
 - (ii) in the event of default, must have the right to enter and carry out these works and to call upon security in the nature of a bank guarantee to cover the cost of the works.

- (e) The Deed may, if the Director City Planning is satisfied, provide for an adjustment of the guarantee amount during the course of construction to reflect that, as the development progresses, the likelihood and nature of the appropriate site rectification works may change. The stages of reduction will be:-
 - (i) Stage 1 - Completion of the site excavation and all construction works necessary to complete all parts of the Development to street level, including sealing of the slab at that level.
 - (ii) Stage 2 - Completion of all construction works necessary to complete the structure of the Development to the roof level.
 - (iii) Stage 3 - Release of the Final Occupation Certificate.
- (f) If a claim for an adjustment is made, the Deed must also provide that any such claim is to be supported by the following:-
 - (i) Certification (from the Private Certifier or Council) that the relevant stage is complete;
 - (ii) Detailed schedule of completed works carried out in the relevant stage;
 - (iii) Quantity Surveyors costing of the likely site rectification works required at each remaining stage.

(72) FOOTPATH DAMAGE BANK GUARANTEE

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

(74) BARRICADE PERMIT

(75) LOT CONSOLIDATION

(76) PUBLIC DOMAIN PLAN

(77) PUBLIC ART

The following shall be submitted to and be approved by Council prior to the issue of a Construction Certificate:

- (i) Detailed concepts for the provision of high quality art work within the development in publicly accessible locations eg. near main entrances, laneway and through-site link, in accordance with the *Central Sydney DCP 1996* and the *Public Art Policy*; and
- (ii) Detailed concepts for the design and treatment of the construction hoardings to be used to incorporate artworks so as to make a positive contribution to the public domain during construction.

The public art concepts shall be prepared by a person with expertise in public art.

With regard to the construction hoardings the concepts shall incorporate the provision of existing recognised art works and/or the provision of specifically commissioned artworks and shall not just consist of the provision of commercial retail images. Artwork on the construction hoardings is to be implemented on erection of the hoardings.

Funding of the public art shall be in additions to Section 61 contributions and public domain upgrades.

The approved public art shall be implemented on site prior to the issue of an Occupation Certificate.

(78) ALIGNMENT LEVELS

(79) PAVING MATERIALS

(80) SOLAR LIGHT REFLECTIVITY ANALYSIS

(81) NOISE IMPACT ASSESSMENT

The development shall be in accordance with the Noise Impact Assessment prepared by Acoustic Logic Consultancy, dated 9 December 2008 (sic), in particular a full assessment shall be carried out to determine the window and roof constructions required to achieve compliance with AS2107:2000. The assessment must be completed submitted to the certifier prior to issue of a Construction Certificate.

(82) ASSESSMENT OF TRAFFIC AND PARKING IMPLICATIONS

The development shall be in accordance with the Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates, dated January 2008.

(83) ACCESS REPORT

The development shall be in accordance with the Access Report prepared by Accessibility Solutions, dated 23 January 2008.

(84) ENERGY PERFORMANCE REPORT

The development shall be in accordance with the Energy Performance Report prepared by Advanced Environmental, dated 25 January 2008.

(85) GEOTECHNICAL REPORT

The development shall be in accordance with the revised report on Geotechnical Investigation prepared by Douglas Partners, dated 21 January 2008.

(86) RECEPTACLES FOR CIGARETTE BUTTS

(87) STORMWATER AND DRAINAGE - MAJOR DEVELOPMENT

(88) EMISSIONS

(89) MECHANICAL VENTILATION

- (90) CONTINUED PERFORMANCE OF MECHANICAL VENTILATION
- (91) CAR PARK VENTILATION
- (92) MICROBIAL CONTROL
- (93) AIR HANDLING
- (94) CONTROL OF LEGIONNAIRES DISEASE
- (95) CERTIFICATION OF GEOTECHNICAL INSPECTION
- (96) GEOTECHNICAL REPORT AND CERTIFICATION
- (97) BCA - NEW BUILDINGS WORKS - CLASS 2-9 BUILDINGS
- (98) ANNUAL FIRE SAFETY STATEMENT FORM
- (99) FIRE SAFETY CERTIFICATE TO BE SUBMITTED
- (100) SPRINKLER SYSTEM

SCHEDULE 1C

During Construction/Prior to Occupation/Completion

- (101) OCCUPATION CERTIFICATE TO BE SUBMITTED
- (102) CONSTRUCTION LIAISON COMMITTEE

- (a) Prior to the commencement of **ANY WORK**, a Construction Liaison Committee is to be established by the developer, to ensure that demolition and construction related impacts (including construction noise and vibration, loading, issues associated with construction workers and vehicles, traffic issues, management of the construction site) from the site can be dealt with expeditiously and co-operatively. The committee is to comprise nominated representatives of all adjacent properties and all properties opposite the subject site.
- (b) The committee shall meet prior to the commencement of works on the site and at monthly intervals or as considered appropriate by the Committee throughout the construction process. Details of the consultation with the adjoining sites must be submitted to and approved by Council prior to the commencement of work.
- (c) The meetings are to be recorded/minuted and such records/minutes are to be provided to Council within 7 days of the meeting(s). The following plans are to be tabled at a meeting of the Construction Liaison Committee prior to being provided to Council:
 - (i) Geotechnical Report
 - (ii) Demolition Report
 - (iii) Demolition and Traffic Management Plan
 - (iv) Construction Management Plan

- (v) Construction Program (A rough forward estimate of the construction timetable shall be tabled and discussed at the first meeting)
 - (vi) Construction Traffic Management Plan
 - (vii) Dilapidation Reports
 - (viii) Reports on Noise and Vibration
 - (ix) Plans to apply for temporary road or footpath closure or use of mobile cranes
 - (x) Complaints register
- (d) Prior to the commencement of work, the Site Manager is to provide the members of the construction liaison committee and Council, with 24 hour contact details (including location of site office and 24 hour phone number), to ensure that any matters which arise during the construction period are addressed immediately. The site manager shall be available during normal business hours to provide information to the public about activities on site and to bring any complaints to the attention of the applicant.

(103) HOURS OF WORK AND NOISE - CBD

(104) SITE NOTICE OF PROJECTS DETAILS AND APPROVALS

(105) USE OF APPLIANCE OF A HIGHLY INTRUSIVE NATURE

(106) ROCK CUTTING INTO BLOCKS

(107) LIGHTING OF SITE OUTSIDE OF STANDARD CONSTRUCTION HOURS

(108) NOTIFICATION OF EXCAVATION WORKS

(109) PERFORMANCE BOND

(110) DEED OF AGREEMENT

(111) SYDNEY WATER CERTIFICATE

(112) EROSION AND SEDIMENT CONTROL

(113) PROTECTION OF STREET TREES DURING CONSTRUCTION

(114) HAZARDOUS AND INDUSTRIAL WASTE

(115) COVERING OF LOADS

(116) VEHICLE CLEANSING

(117) LOADING AND UNLOADING DURING CONSTRUCTION

(118) NO OBSTRUCTION OF PUBLIC WAY

(119) ACCESS DRIVEWAYS TO BE CONSTRUCTED

(120) USE OF MOBILE CRANES

(121) SURVEY CERTIFICATE AT COMPLETION**(122) RIGHT OF PUBLIC ACCESS****(123) POSITIVE COVENANT**

Prior to the issue of an Occupation Certificate for the development, a documentary Positive Covenant is to be registered on Title of the subject land. Such Positive Covenant is to be created appurtenant to Council, in terms indemnifying Council against any claims and damages arising from the public use of the Through Site Link, is to require the maintenance of a \$10,000,000 public indemnity insurance policy and the maintenance, upkeep, repair and lighting of the Through Site Link in accordance with the requirements and to the satisfaction of Council.

(124) STREET NUMBERING - MAJOR DEVELOPMENT**SCHEDULE 2**

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

BACKGROUND

The Site and Surrounding Development

1. The site has a double frontage to Clarence Street and Kent Street, Sydney and is located in the western area of the CBD.
2. The site comprises 3 lots with a total area of 1445.7m². The site is legally described as Lot 1, DP 1087419 (161 Clarence Street), Lot 2, DP 1087419 (163-165 Clarence Street) and Lot 21, DP 58957 (304 Kent Street). The three lots are currently occupied by five multi storey office buildings. There are currently three existing vehicular crossings accessing buildings to the site in Kent Street.

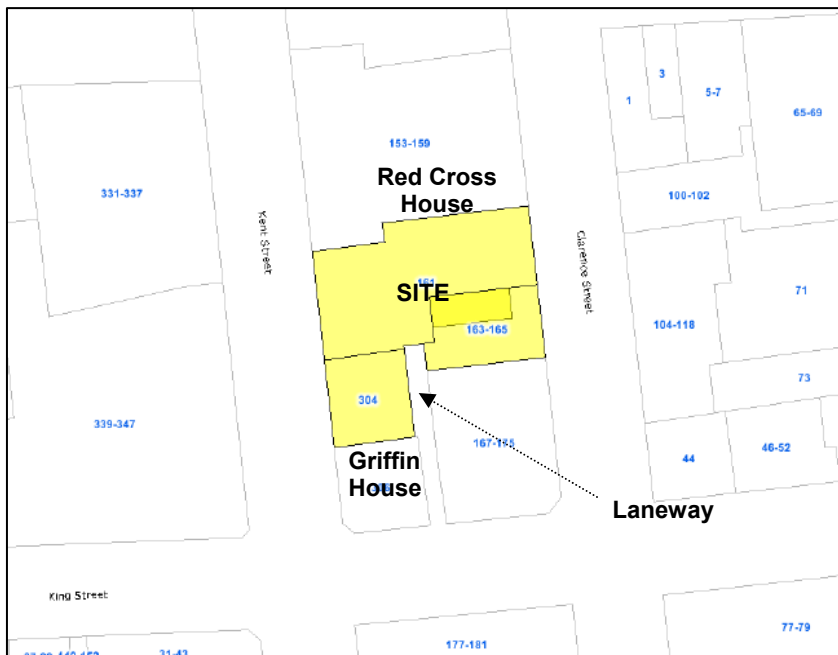


Figure 1: Location plan including the adjoining heritage items and the existing laneway from King Street.

3. The site is located west of the City's north/south 'ridge' that generally follows George Street. The site slopes from east to west with a fall of approximately 3.8m or one building level across the site from Clarence Street to Kent Street.
4. There are currently five buildings of varying heights across the development site. Buildings range in height from 4 to 8 storeys resulting in stepped parapet heights within the streetscape.
5. Clarence and Kent streets are characterised by varying parapet heights and a range of setbacks above street wall height. Examples include the ING building to the west of the site on the corner of Kent and King Streets that has a maximum setback of 1-1.5m and a commercial building opposite the site to the north of the ING building, with a setback approximately 4m. This is illustrated in photos below.
6. An existing lane accessed from King Street terminates at the southern end of the site. This lane is considered to have some heritage significance, particularly the cobblestones which are located in the laneway, although not a heritage item. It is currently a service lane and does not contain any active uses.

7. There are no heritage items on the site, although a number of significant heritage buildings are located in the vicinity and adjoin the site. This includes the 'Red Cross House' to the immediate north and 'Griffin House' (former Andrew Brother's Warehouse) to the immediate south. The Grace Hotel and Broughton House are located near the site, on the southern side of King Street.
8. Photos of the site are included below:



Figure 2: Kent Street view of the site looking North



Figure 3: Clarence Street view of the site looking South



Figure 4: Existing laneway off King Street.



Figure 5: Eastern side of Clarence Street, opposite the site, demonstrating existing street wall heights and setbacks.



Figure 6: West side of Kent Street, opposite the site, illustrating existing street wall and setbacks.



Figure 7: ING building on corner of Kent and King Streets.

History of Development Applications Relevant to this Site

9. A development application (D/2002/794) was approved on 7 April 2003 for the construction of a new 27 storey residential building with basement carparking at 161 Clarence Street. This consent was not activated and lapsed on 7 April 2006, after being extended by one year in accordance with section 95 of the EPA Act.

PROPOSAL

10. The proposal seeks approval for the following:
 - (a) Demolition of existing buildings on the site;
 - (b) Construction of a new 13 storey commercial office building with a maximum height of 61.6m to the lift overrun and 58.8m to the building parapet;
 - (c) Additional FSR of 10% under clause 10 of the LEP;
 - (d) Parapet heights to match adjoining buildings and reflect the existing variation of parapet heights on the site;
 - (e) Setbacks of 4m above the street frontage heights on Clarence and Kent Streets (increased from 2m through the lodgement of amended plans after concerns raised by Council);
 - (f) Three basement levels with 26 basement car parking spaces;
 - (g) Street level retail located on Clarence and Kent Streets;
 - (h) Through-site link between Clarence and Kent Streets and integrated with the existing laneway from King Street;
11. The proposal seeks to achieve a 5 star ABGR rating and a 5 star Green Star Office Design rating (Australian Excellence rating by Green Building Council of Australia). Initiatives include chilled beam air conditioning, 'low E' glass with whole building louvre system, the use of natural daylight and extensive bike parking with shower and changing facilities.
12. The built form has been amended in response to concerns and includes an increased setback of 4m above street wall height and alteration of elevational treatment to emphasise both vertical and horizontal themes within the streetscape and an amendment of material selection for the upper most levels to decrease their visibility within the streetscape.
13. A Voluntary Planning Agreement (VPA) has been prepared in consultation with Council officers and has been exhibited and is ready for execution. The VPA proposes substantial improvements to the public domain including:
 - (a) upgrade of the King Street laneway including the relaying of the cobblestones and the integration of the laneway with the proposed through site link. The cobblestones have been identified as having heritage significance and are being relaid along the western edge of the lane. The eastern edge will be paved according to Council's policy to allow for disabled access.
 - (b) upgrade of the footpaths to the south of the site in Clarence and Kent Streets to Council's standards, including the installation of smart poles.
 - (c) monetary contribution towards Council's upgrade of that part of King Street between Clarence and Kent Streets.
14. Photomontages and plans of the proposal are included on the following pages.



Figure 8 – Photomontage of proposal looking north up Clarence Street



Figure 9 – Photomontage of proposal looking south down Clarence Street



Figure 10 – Photomontage of proposal looking north up Kent Street

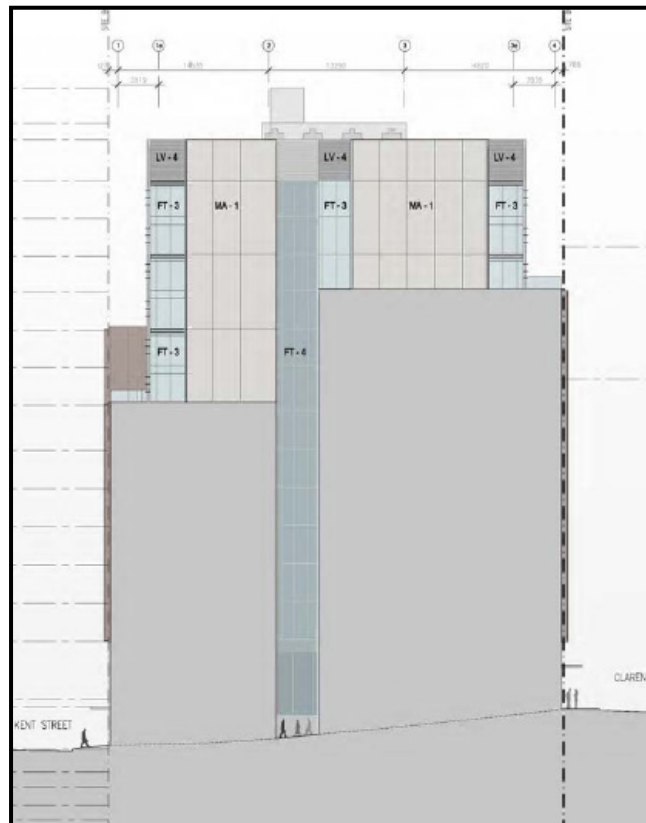


Figure 11: Southern elevation of the proposal illustrating 4m setbacks

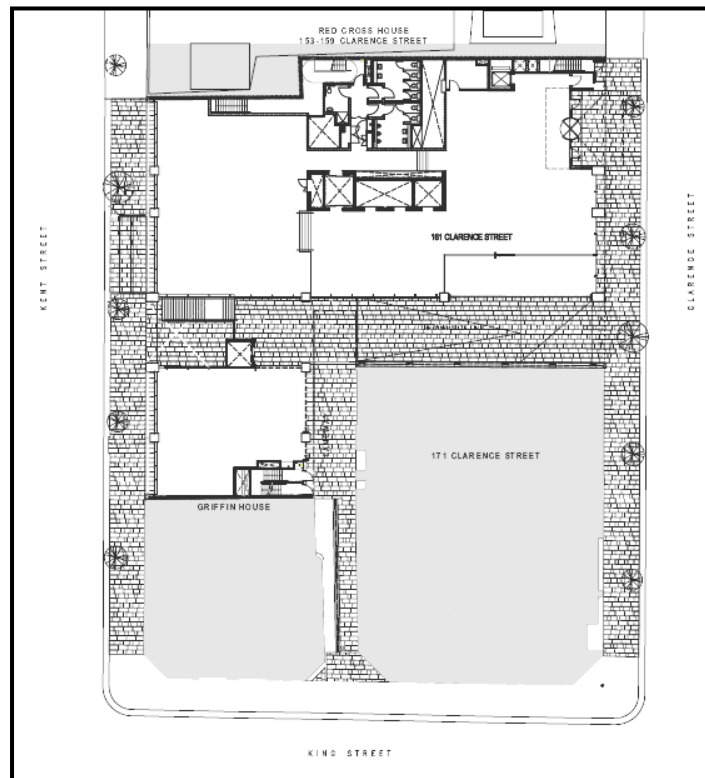


Figure 12: Plan illustrating the proposed through-site link connection with the existing laneway

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

15. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:-

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments

STATE ENVIRONMENT PLANNING POLICIES (SEPPs)

16. The following State Environmental Planning Policy/Policies are relevant to the proposed development:

SEPP (Infrastructure) 2007

Railcorp

17. The application was required to be referred to Railcorp for concurrence, in accordance with the provisions of the SEPP.
18. Railcorp gave concurrence to the development application, subject to conditions and deferred commencement of the consent requiring the applicant to enter into a Deed with Railcorp. This is to ensure that the design and construction of the development application does not adversely impact on future construction of the CBD Rail Link, which runs partially under the site. The requirements of Railcorp are included within the recommendation.

RTA

- 19. The application was required to be referred to the RTA for comment, in accordance with the provisions of the SEPP.
- 20. The RTA does not object to the proposal, subject to standard conditions that have been included in the recommendation.

State Environmental Planning Policy No 55 Remediation of Land and City of Sydney Contaminated Land Development Control Plan 2004

- 21. SEPP 55 provides State wide planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated.
- 22. The site has been used for commercial activities for many years and is unlikely to be contaminated. Council's building and health section raise no objection subject to conditions.

Draft SEPP 66 – Integration of Land Use and Transport

- 23. Draft SEPP 66 aims to ensure that urban structures, building forms, land use locations, development design subdivision and street layouts achieve improved accessibility and choice of public transport modes. The policy aims to encourage people to travel shorter distances, make fewer trips and to reduce car dependency. This policy applies to development which has a FSA of more than 1000 sqm.
- 24. Clause 12 of the Draft SEPP states that the transport implications of the development should be considered when determining DA's. Specifically, the wider transport context, including managing the demand of travel by car, and the achievement of the policy's aims and planning objectives, are required to be considered.
- 25. The proposal complies with Council's maximum car parking controls and the site is well serviced by public transport.

Sydney LEP 2005

- 26. Compliance of the proposal with the LEP controls is summarised below:

COMPLIANCE WITH SYDNEY LEP 2005

| Development Controls | Permissible under Sydney LEP 2005 | Proposal as assessed under Sydney LEP 2005 |
|--|--|---|
| Consistency with Development Plan | Development Plan required, unless considered unnecessary | Considered unnecessary as the site is under 1500sqm and the extent of the proposal over 55m is minimal. Refer to issues section of report. |

| Development Controls | Permissible under Sydney LEP 2005 | Proposal as assessed under Sydney LEP 2005 |
|---|--|---|
| Zoning | City Centre | Consistent with zone objectives |
| Floor Space Area | 14,457Sqm | 15,902 Sqm |
| Floor Space Ratio (Site area = 1445.7m ²) | 10 : 1 | 11 : 1 10% increase sought under Clause 10 Refer to issues section of report |
| Floor space to be Allocated | HFS is required to be purchased for development over 8:1 subject to general LEP controls | Site area = 1445.7sqm The 1:1 additional floor space achieved under clause 10 is also required to be allocated as HFS. $50\% \times 10:1 - 8:1 = 1445.7$ $+ 1:1 = 2891.4$ The required HFS allocation is 2,891sqm |
| Height | 80m above street level (RL 101.93 maximum) subject to general LEP controls | 64.93m (lift overrun) (RL 82.2) 58.8m above street level (main building) |
| Parking | Max 29 | 27 |
| Special Areas | York Street Special Area – except north west corner. | The proposal is consistent with the character of the special area and reflects the variation of parapet heights within the existing streetscape. |
| MetroWest | Metrowest investigation area | Concurrence granted from Railcorp |

| Matters to be Considered | Complies | Comment |
|--|----------|---|
| Development Plans / Design Excellence | ✓ | Complies – requirement for development plan / stage 1 DA considered unnecessary as the site is less than 1500sqm, minor exceedence of the 55m height threshold by building plant and services and the constrained infill character of the site. Refer to issues section of report. |
| High standard of architectural design, materials & detailing | ✓ | Complies – Materials are consistent with the masonry character of adjoining buildings and are lighter at the upper setback levels to encourage a recessive appearance. |
| Form & external appearance of the building improves quality & amenity of the public domain | ✓ | Complies – The amended design including an increased setback of 4m above street wall height provides streetscape consistency. The proposed parapet heights and materials complement adjoining heritage buildings. The proposal improves the public domain by increasing streetscape activation and a greater level of pedestrian connectivity. Refer to issues section of report. |
| Principles of ecologically sustainable development | ✓ | Complies – Intended to achieve a 5 star ABGR rating and a 5 star Green Star Office Design rating. |

LEP PART 6 – HERITAGE PROVISIONS

27. The site is not listed as a heritage item. The site is adjacent to two heritage items, being the Red Cross House to the north at 153-159 Clarence Street and Griffin House to the south at 306 Kent Street. Refer to issues section of report.

Central Sydney DCP 1996

COMPLIANCE WITH THE CENTRAL SYDNEY DCP 1996

| Matter to be Considered | Complies | Comment |
|--|----------|---|
| Building to the street alignment CI 2.1 | ✓ | Complies – the building is built to the street alignment on both Clarence and Kent Streets. |
| Street frontage heights CI 2.2 Street frontage heights for special areas CI 2.4 | ✓ | Complies – The street frontage heights are generally consistent with the surrounding buildings, including the two adjoining heritage items. Refer to the issues section of the report. |
| Building setbacks – front; side and rear CI 2.3 | ✘ | Does Not comply – Setbacks have been increased from 2m to 4m. The increased setback to 4m combined with lighter materials will help the upper levels appear as a recessive element. Refer to the issues section of the report. |
| Street frontage activities CI 2.5 | ✓ | Complies – activation of street frontages through retail uses at ground level and in through-site link. A condition has been included to relocate the services within the Kent Street elevation and allow increased activation through the inclusion of a retail tenancy. |
| Building exteriors CI 2.7 | ✓ | Complies – materials and design contribute positively to the streetscape. The amendments are considered to achieve sufficient vertical emphasis and visual interest on the side facades to satisfy heritage comments without requiring further amendments. |

| Matter to be Considered | Complies | Comment |
|---|----------|---|
| Lanes CI 3.1 | ✓ | <p>Complies – extensive upgrade works proposed.</p> <p>A recommended condition requiring a lighting strategy to be submitted has been included.</p> |
| Midblock connections CI 3.2 | ✓ | <p>Complies – effective through site link proposed, connecting to existing laneway.</p> <p>A recommended condition requires the reconfiguration of the through-site link at Kent Street to allow for wider stairs, following a suggestion from the internal design panel.</p> |
| Vehicle access and footpath crossings CI 3.3 | ✗ | <p>Does Not comply – recommend reduction in driveway width to 5.4m, consistent with the DCP.</p> |
| Awnings & colonnades CI 3.5 | ✓ | <p>Complies – no awnings are proposed and is consistent with the existing streetscape.</p> |
| Artworks CI 3.6 | ✓ | <p>Able to comply – recommended condition requiring the provision of public art.</p> |
| Paving for street footpaths and public spaces CI 3.7 | ✓ | <p>Able to comply – recommended condition requires paving to be in accordance with Council's policy.</p> |
| Easy access CI 3.8 | ✓ | <p>Complies – Easy access provided to public areas of the development and to the commercial offices.</p> |
| Wind standards CI 4.2 | ✓ | <p>Able to comply – wind impacts considered satisfactory, subject to conditions.</p> <p>The recommendations from the Windtech report have been included in the recommended conditions, being a 1.2m impermeable balustrade on the terraces above the street frontage heights and on the parapet.</p> |

| Matter to be Considered | Complies | Comment |
|---|----------|---|
| Reflectivity CI 4.5 | ✓ | Able to comply – reflectivity of building considered satisfactory, subject to conditions. |
| Parking for people with mobility impairment CI 5.3 | ✓ | Complies – 2 spaces provided in accordance with DCP. |
| Delivery & service vehicles CI 5.4 | ✓ | Complies – 5 spaces provided (2 loading docks, 3 courier spaces) in accordance with DCP. |
| Bicycle parking CI 5.5 | ✓ | Complies – substantial bicycle parking space and shower and change room facilities provided. |
| Motor cycle parking CI 5.6 | ✓ | Complies – motorcycle parking provided in accordance with DCP. |

Issues

28. The issues identified in the above instruments/policies as non-complying or requiring further discussion in the abovementioned tables are discussed in detail below:-

Waiving of Stage 1 / Development Plan

29. The application does not include the adoption of a development plan for the site. Clause 23 (4) of the LEP allows the consent authority to waive this requirement in certain circumstances, including minor alterations and additions, changes of use, strata subdivision and *“for any other development for which the consent authority considers it would be unreasonable or unnecessary to require compliance with those requirements”*. Waiving of the requirement for a development plan is considered appropriate in this instance for the following reasons:
- The site is less than 1500sqm (1445.7sqm) and the sections of the building exceeding the 55m height limit are limited to plant room and equipment areas. The building parapet height at Clarence Street is approximately 55.2m, and the same level at Kent Street is approximately 59.3m above street level due to the level difference between Clarence and Kent Streets. The lift overrun and equipment areas up to a maximum height of 61.6m above street level are significantly setback from the street and will not be visible from street level. Refer to figure 13 below;
 - As an infill site that adjoins heritage buildings, the site has immediate design cues that inform any future built form; and

- (c) The proposal achieves the objectives of design excellence, as it includes an appropriate standard of architectural design and the form, external appearance and public domain improvements will improve the quality and amenity of the public domain.

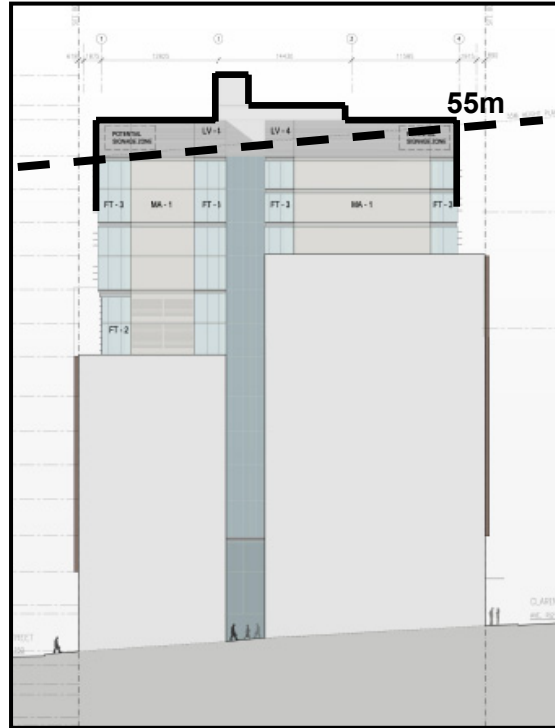


Figure 13 – Section illustrating extent of building over 55m and setbacks at roof level

Urban Design

The application seeks a 10% increase in FSR and a reduction in setback requirements above street wall height. The variation of these standards is supported as outlined below:

Setbacks

30. The DCP recommends a setback with a weighted average of 8m above the street frontage height, with no part of the building setback less than 6m. Amended plans include a setback of 4m to Clarence and Kent Streets and increase from the original proposal of 2m.
31. The existing streetscape includes a significant level of variation in setbacks above street wall height. This is particularly visible on the western side of Kent Street and to the north of the site within Clarence Street as illustrated within the 'site and surrounds' section of this report.

32. The upper levels of the building will be visible within the public domain with the proposed 4m setbacks; however, when combined with the proposed design elements including light weight materials will adopt a recessive appearance. The proposal will also have the added benefit of screening rooftop plant on the adjoining 'Red Cross House' from public view.

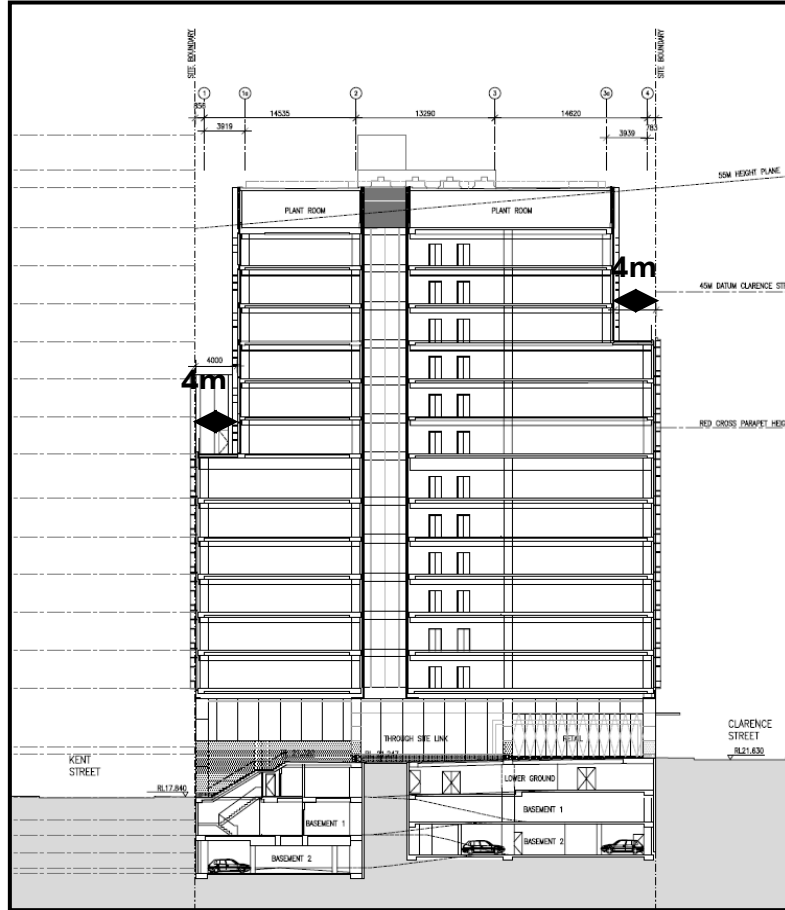


Figure 14 – Section illustrating setbacks

33. The setback of the upper levels will not significantly alter the existing level of sun access within the public domain and will result a negligible increase in overshadowing of building elevations on the eastern side of Clarence Street as illustrated in Figures 15 and 16 below. The building falls significantly below maximum height controls. The minor increase in overshadowing is considered acceptable.



Figure 15 – Shadow diagram demonstrating impact of existing development on buildings to the east.



Figure 16 – Shadow diagram illustrating negligible changes in existing shadow conditions.

Street Wall Height

34. The site, with the exception of the north-west corner, is located within the York Street Special Area. The special area requires the street frontage height to be consistent with the street frontage height of the nearest heritage building. In this instance, Red Cross House and Griffin House are the nearest heritage buildings.

35. The proposed street frontage height is consistent with the street frontage height of both heritage buildings as illustrated in the figures below.
36. The street frontage heights are stepped between adjoining buildings. The parapet heights and strong vertical articulation in the middle of the site also reflects the existing variation of built form and heights on the site.

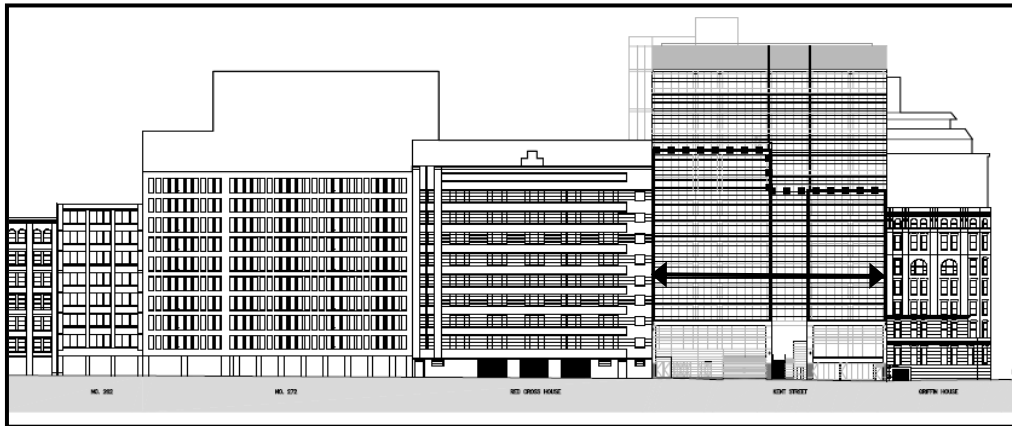


Figure 17 – Street elevation of Kent Street

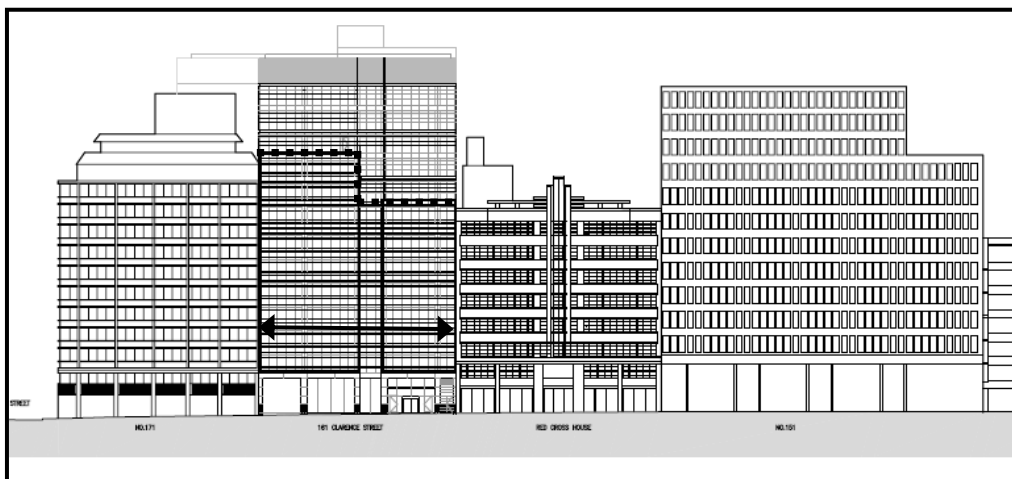


Figure 18 – Street elevation of Clarence Street

10% increase in FSR

37. The maximum permissible FSR for the site is 10:1. The proposed development has an FSR of 11:1. The applicant seeks to achieve 10% additional floor space as enabled under the provisions of Clause 10 of the LEP. Clause 10 permits the waiver of certain development standards if all the objectives of the development standard are fulfilled, the contravention will not create an undesirable precedent or diminish the development standard for other development, the particular physical attributes of the site and the proposed development will render the strict application of the development standard unreasonable or unnecessary and the proposed development will improve or contribute positively to the public domain and would achieve design excellence.
38. The proposal satisfies the provisions of Clause 10 as follows:

- (a) The development fulfils the objectives of the floor space controls and does not weaken their application as the proposal contributes positively to the streetscape and public domain.
- (b) The design responds to the site and its context such that the strict application of FSR controls is not warranted in this instance. The proposal is consistent with the surrounding built form and with the parapet heights of adjoining buildings within Kent and York Streets. Materials and setbacks result in the upper levels having a recessive appearance in the streetscape.
- (c) As discussed previously, the applicant proposes to enter into a VPA to enable substantial public domain works to be completed. This includes the upgrade of a connecting laneway from King Street, integration of the laneway into the proposed through site link and upgrade of surrounding footpaths within Clarence, Kent and King Streets. The public domain upgrades will significantly improve pedestrian experiences in the area. The compliance of the proposal with design excellence requirements has been discussed previously.

Design Advisory Panel

- 39. The proposal was reviewed by Council's internal Design Advisory Panel. The Panel was supportive of the proposal, subject to some minor amendments.
- 40. This included the internal relocation of the services at ground level on Kent Street to allow the area to be replaced by a retail tenancy and widening the stairs in the through-site link. These design changes will increase visibility of the through-site link and encourage its use, and increase street activation on Kent Street. This feedback is reflected in the recommendation.
- 41. The Panel had no objections to the non-compliance of the setbacks above street frontage height.

ESD

- 42. The proposal seeks to achieve a 5 star ABGR rating and a 5 star Green Star Office Design rating. A 5 star Green Star rating reflects 'Australian Excellence' in accordance with the Green Building Council of Australia's guidelines. A recommended condition requires the proposal to achieve a 5 star ABGR rating.
- 43. The proposed ESD initiatives include chilled beam air conditioning, 'low E' glass with whole building louvre system, low rate sanitary fixtures, the use of natural daylight and extensive bike parking with shower and changing facilities.

Commercial windows on side boundary

- 44. The proposed development will build over the windows located on the side boundary of 171 Clarence Street. The adjoining owner has raised concerns that the reduced setbacks and the street wall height have a material impact in relation to the loss of amenity and sun access from the side windows.

45. Commercial windows on a side boundary cannot be relied on for amenity as neighbouring sites can build with a 0m setback. Although the parapet height steps up from the boundary where the site adjoins Red Cross House, this step up is considered to achieve a good urban design outcome for the street. There is no easement for light and air over the adjacent windows and the tenancies are able to utilise artificial light and ventilation for BCA compliance and the blocking of the windows should not unreasonably influence the design of the building. Refer to figure 19 below.

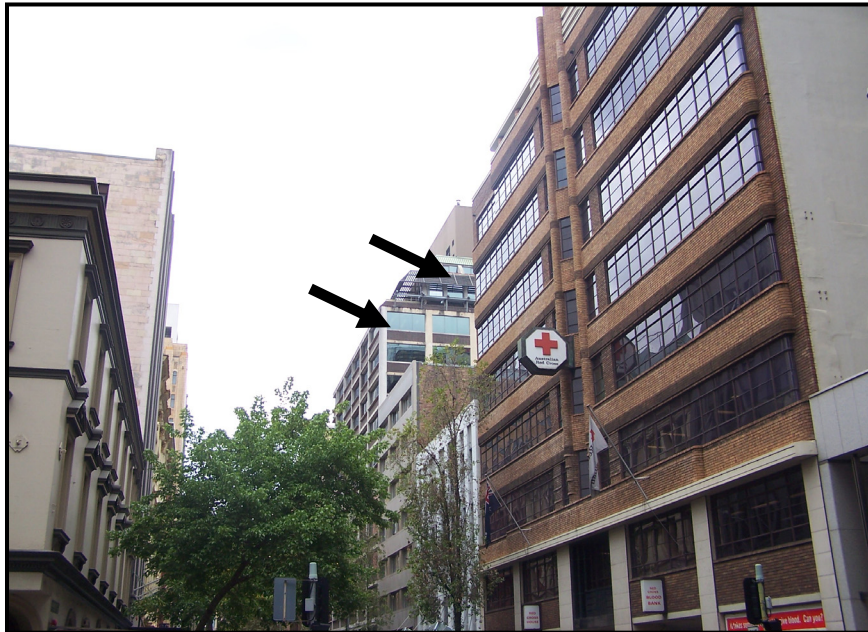


Figure 19 – Side boundary windows of 171 Clarence Street

Section 79C(1)(b) Other Impacts of the Development

46. All relevant matters have been discussed in detail in the report.

BCA Matters

47. The building is generally able to comply with the deemed to satisfy requirements of the BCA. Where the development can not comply with the deemed to satisfy provisions, alternative solutions will be required. The Fire Safety Review prepared by Defire and the BCA Report prepared by City Plan Services indicate that the alternative solutions are achievable and will not impact on the design of the building.
48. The BCA Classification of the building is as follows:
- (a) Basements – Class 7a carpark;
 - (b) Lower Ground floor – Class 6 Retail and Class 7b loading dock;
 - (c) Upper Ground floor – Class 6 Retail and Class 5 Office; and
 - (d) Levels 1 to 13 – Class 5 Offices and plant.

Section 79C(1)(c) Suitability of the site for the development

49. The site is located in the commercial centre of the City and surrounded by similar uses and as discussed in detail is well suited to the proposed area.

Section 79C(1)(e) Public Interest

50. The proposed development, subject to appropriate conditions, is considered to be in the public interest as the building design improves the public domain, satisfactorily complies with the aims and objectives of the controls and is consistent with the character of the area.

POLICY IMPLICATIONS

51. Not applicable to this report.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

52. 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.

PUBLIC CONSULTATION**Section 79C(1)(d)****EXTERNAL REFERRALS**

53. Adjoining and nearby owners and occupiers of residential buildings were notified of the proposal and invited to comment on the initial application. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications DCP 2005.
54. The amended plans submitted on 8 April 2008 were renotified to the adjoining and nearby owners for comment. The amended plans received 16 June 2008 were considered to reduce impacts on surrounding properties and therefore it was considered unnecessary to renotify the amendments.
55. 9 submissions from a total of 6 people were received in relation to the development application, including one letter of support. The issues raised are summarised as follows:-

(a) Setbacks/Street Wall Height

- (i) Proposed setbacks above street frontage heights do not comply.

Comment: As discussed in the issues section of this report the setbacks, notwithstanding the non compliance, are considered to be appropriate for the site and have been increased to 4m. The street frontage heights have been designed to generally match the surrounding buildings and the existing variation within the streetscape. The proportion and scale of the street frontage heights is considered to respect the adjoining heritage items.

(b) Amenity / Sun Access

- (i) The reduced setbacks and the street wall height have a material impact on 171 Clarence Street's outlook and solar access that includes side boundary windows that overlook the site, shown on figure 21 on the next page.

Comment: Refer to the issues section of this report.

- (ii) Proposal will create "canyon effect" along Kent Street and reduction of natural light to east facing facades on Kent Street.

Comment: This objection was received in relation to the initial application, which proposed setback above street frontage heights of 2m. The subsequent design amendments have led to setbacks of 4m and this is considered to make the upper building element more recessive from the street and to avoid creating a "canyon effect".

The proposal will not result in a substantial reduction of natural light to the east facing facades on Kent Street and the additional overshadowing is considered to be acceptable.

- (iii) Height of the building will detract from the access to natural light on the level 7 roof top balcony and eastern elevation of Griffin House.

Comment: The height of the building at a maximum of 61.6m is well within the permissible height limit for the site at 80m and is considered appropriate.

(c) FSR

- (i) Insufficient justification for 10% additional floor space

Comment: As discussed above, the proposal is considered to achieve the requirements of clause 10.

(d) Development Plan Requirement

- (i) Requirement for development plan should not be waived

Comment: As discussed above, it is considered appropriate to waive the requirement for a development plan in accordance with clause 23 (4).

(e) Windows on Side Boundary

- (i) Windows are located on side boundary walls. This may compromise future development potential for Red Cross House.

Comment: The applicant has indicated that these windows are not necessary to achieve amenity or energy efficiency requirements within the proposed development. The returns of the windows are considered to add visual interest to the otherwise relatively blank side facades.

A condition has been recommended requiring a covenant to be placed on the site which will ensure that these windows will be enclosed if any building is to be constructed abutting, adjoining or adjacent to these windows.

(f) Heritage

- (i) Street frontage heights do not match adjoining heritage items. Does not respect the heritage significance of nearby heritage items including Red Cross House and Andrew Brothers Warehouse

Comment: The proposal has been designed to reflect the scale of the adjoining heritage items by the stepping of the street frontage heights. The proposed materials used, such as heavier masonry at street level and darker façade colours on the podium, respects the predominantly masonry character of the adjoining heritage items.

(g) Construction

- (i) Demolition and construction phases impacts on surrounding sites. This may impact on blood donation and testing activities that occur within Red Cross House. Also may impact on structure and services of 171 Clarence Street.

Comment: A recommended condition has been included which requires the applicant to arrange a construction steering committee for the development. This provides the opportunity for surrounding land owners to be made aware of the construction timeline and work with the applicant where any potential conflicts may occur throughout the construction process. Dust, noise and vibration will be controlled by the relevant recommended conditions and by the construction management plan which is required prior to a construction certificate being issued.

A condition has been recommended that requires the preparation of dilapidation reports for surrounding buildings before and after demolition/excavation, ensuring any damage caused is made good by the developer.

INTERNAL REFERRALS

56. The application was referred to Council's Specialist Surveyor, Heritage Architect, Urban Designer, Building Services Unit, Health Unit, City Projects, Transport and Access Unit, Waste Management Unit and Public Domain. No objection to the proposed development was raised, subject to the imposition of appropriate conditions.
57. Appropriate conditions have been included in the recommendation of this report to reflect these requirements.

Internal Design Review Panel

58. Council's internal Design Advisory Panel reviewed the proposal. The panel suggested that the proposal was supportable, subject to some minor amendments. Refer to the issues section of the report.

Heritage and Urban Design comments

59. The Urban Design referral states that the proposed building envelope is supported as the setback has been increased to 4m and *"the top part of the building will be hardly visible from the public domain and the podium height will dominate the streetscape, as it should"*. The urban designer also supports the ground floor treatment.

60. The heritage referral indicates that the amended design represents an improved design response to the site. Further recommendations have been made in regard to materials and design treatments. The heritage comments are discussed in the body of this report and have generally been reflected in the recommended conditions.

RELEVANT LEGISLATION

61. The Environmental Planning and Assessment Act 1979.

CONCLUSION

62. The proposal is considered to be consistent with the provisions and objectives of planning controls and objectives. Where the proposal deviates from the controls, it is considered that sufficient justification or design amendments have been provided to achieve an acceptable development as defined below:
- (a) The proposal compliments the adjoining heritage items and the Special Area through the use of appropriate materials, parapet heights and setbacks. The amended design is in character with the area and uses heavier masonry at the lower levels and is similar in proportions to the surrounding buildings. The stepped street wall frontages respond to the parapet heights of the surrounding buildings, particularly the heritage items and effectively integrate the proposal as infill development.
 - (b) The proposal is considered to achieve the provisions of clause 26, as the proposal demonstrates an appropriate standard of architectural design and the form, external appearance and public domain improvements will improve the quality and amenity of the public domain.
 - (c) Substantial public domain works are proposed as part of the development including footpath upgrades to the south of the site, an upgrade of the existing laneway and its integration into the proposed through site link, and a monetary contribution towards the future King Street cycle path.
 - (d) The development intends to achieve a 5 star ABGR rating and a 5 star Green Star rating (Australian Excellence rating by Green Building Council of Australia).
63. It is recommended that the need for a Development Plan/Stage 1 application be waived and that deferred commencement consent be issued to ensure the applicant enters into a Deed with Railcorp in regard to future works, the Voluntary Planning Agreement is executed and relevant design modifications are made.

GIOVANNI CIRILLO

Director - City Planning and Regulatory Services

(Aras Labutis, Planner)