

ITEM 7. SECTION 96(2) MODIFICATION: LEGION HOUSE - 161-167 CASTLEREAGH STREET AND 232-248 PITT STREET SYDNEY**FILE NO: D/2007/1792/H****DEVELOPMENT APPLICATION NO: D/2007/1792/H****SUMMARY****Date of Submission:** 12 May 2011

Amended plans submitted 15 July, 2 September and 3 November 2011

Applicant: Grocon Developments NSW Pty Ltd**Architect:** FJMT**Developer:** Grocon Developments NSW Pty Ltd

On 6 December 2007, Stage 2 consent was granted for a 43 storey commercial tower, with ground and basement retail, a mid block link from Castlereagh Street to Pitt Street, basement levels for car parking, retention and restoration of the heritage listed Legion House, demolition of all other buildings and site amalgamation into one title. There have been subsequent modifications.

This current Section 96(2) modification is for the construction of two additional contemporary commercial floors and a plant area on top of the rear of Legion House, located on Castlereagh Street and two additional commercial floors and a plant level within the approved envelope of the proposed building located at 167 Castlereagh Street.

The proposal will result in a Floor Space Ratio of 14.51:1 and a total Floor Space Area of 65,103.4m². Although above the maximum this is considered to be acceptable as it will not result in any adverse amenity impacts and, on balance, results in an acceptable heritage outcome for Legion House compared to the previously approved scheme.

Specifically, the proposal will provide for a good urban design outcome and a more dynamic occupation of the building to ensure its longevity. It will also provide for the adaptive reuse of Legion House to a 6 Star Green Star Office Design and 6 Star NABERS Energy Rating and be water balanced (rainwater self-sufficient); the ability to disconnect Legion House and 167 Castlereagh Street from the electricity supply grid; and both buildings are to be 'Zero Energy' buildings. To ensure these environmental benefits are provided they are to form conditions of consent.

Summary continued:

The proposal has been the subject of a Heritage Committee review, which considered the proposal to be too intrusive for the heritage listed building. The proposal has been subsequently amended, which has reduced the impact on the heritage fabric and is supported by the Manager of Heritage and Urban Design.

Two submissions were received, mainly regarding construction impacts and overall built form. These issues can be resolved through recommended conditions of consent.

Summary Recommendation:

Approval, subject to conditions of consent regarding further design development of Legion House to protect the heritage fabric and commitment to the sustainable initiatives proposed.

A further Section 61 Contribution and the purchase of additional Heritage Floor Space is required.

Attachments:

A - Selected Drawings

B - Pre-amendment Heritage Committee Minutes

RECOMMENDATION

It is resolved that consent be granted for the proposed modifications to Legion House and the neighbouring building at 167 Castlereagh Street, Sydney, and that the approved development description as well as Conditions 1, 2, 3, 4, 5, 11, 16, 17, 22 and 79 within (D/2007/1792/G) be modified and Conditions 1A - 1P, 5A - 5J, 16A, 19A and 45E - 45O be inserted and Condition 80 be deleted as follows (with changes shown in ***bold italics*** and ~~strikethrough~~):

Approved Development Description

Stage 2 Development Application for the erection of a 43 storey commercial tower, with ground and basement level retail, a mid block link from Castlereagh Street to Pitt Street, four basement levels for 92 car spaces; a residential apartment; retention, restoration ***and additions to Legion House; new commercial floors within 167 Castlereagh Street including the provision of a cogeneration plant;*** demolition of all other buildings and site amalgamation onto one title.

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

Note: Some conditions in Schedule A 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) The Stage 2 development application must be in accordance with Development Application No. 2002/00748 dated 25 October 2002, the Statement of Environmental Effects prepared by JBA Urban Planning Consultants titled "Proposed CBD Office Development" dated November 2002 as supplemented by the amending DA Statement of Environmental Effects prepared by JBA Planning Consultants dated 30 October 2007, supplementary information prepared by Bovis Lend Lease dated 20 February 2003, and as amended by Development Application No. 2007/1792/A, the Statement of Environmental Effects prepared by JBA Urban Planning Consultants titled "Section 96(2) Application: Commercial Tower Development" dated December 2007" and "Section 96(2) Application: Commercial Tower Development" dated May 2010" and Section 96(1A) applications dated July and 1 November 2010 ***and S96 (2) Application dated May 2011 (amended on 3 November 2011)***, as amended by the following plans:

Drawing Number	Architect	Date
S96 001 – 004	FJMT Architects	20/12/2007
S96 101 – 103	FJMT Architects	20/12/2007
S96 104 A	FJMT Architects	3/4/2008
S96 350	FJMT Architects	20/12/2007
S96 501 – 504	FJMT Architects	20/12/2007

Drawing Number	Architect	Date
S96 605 – 608	FJMT Architects	20/12/2007
S96 641 – 642	FJMT Architects	20/12/2007
S96 651 – 653	FJMT Architects	20/12/2007
S96 661	FJMT Architects	20/12/2007
S96 681 – 684	FJMT Architects	20/12/2007
S96 701 – 710	FJMT Architects	20/12/2007
S96 891 – 893	FJMT Architects	20/12/2007

(Inserted 14 July 2008 - A) (amended 4 January 2011 – F)

and as amended by the following drawings:

Drawing Number	Architect	Date
S96 101 A	FJMT Architects	28/11/2008
S96 102 A	FJMT Architects	28/11/2008
S96 103 A	FJMT Architects	28/11/2008
S96 104 A	FJMT Architects	28/11/2008

(Inserted 13 February 2009 - B) (amended 4 January 2011 – F)

and as amended by the following drawings:

Drawing Number	Architect	Date
S96 000 C	FJMT	30/10/2009

(Inserted 2 December 2009 - C) (amended 4 January 2011 – F)

and as amended by the following drawings:

Drawing Number	Architect	Date
S96 345B	FJMT	13/04/2010
S96 671	FJMT	13/04/2010

(Inserted 10 August 2010 - D) (amended 4 January 2011 – F)

and as amended by the following drawings:

Drawing Number	Architect	Date
S96 101B	FJMT Architects	01/06/2010
S96 102B	FJMT Architects	01/06/2010
S96 103B	FJMT Architects	01/06/2010
S96 104B	FJMT Architects	01/06/2010

Drawing Number	Architect	Date
S96 201B	FJMT Architects	01/06/2010
S96 202B	FJMT Architects	01/06/2010
S96 301B	FJMT Architects	01/06/2010
S96 302B	FJMT Architects	01/06/2010
S96 303B	FJMT Architects	01/06/2010
S96 304B	FJMT Architects	01/06/2010
S96 309A	FJMT Architects	01/06/2010
S96 310B	FJMT Architects	01/06/2010
S96 311B	FJMT Architects	01/06/2010
S96 312B	FJMT Architects	01/06/2010
S96 313B	FJMT Architects	01/06/2010
S96 314B	FJMT Architects	01/06/2010
S96 315B	FJMT Architects	01/06/2010
S96 316B	FJMT Architects	01/06/2010
S96 317B	FJMT Architects	01/06/2010
S96 318B	FJMT Architects	01/06/2010
S96 319A	FJMT Architects	01/06/2010
S96 320A	FJMT Architects	01/06/2010
S96 321A	FJMT Architects	01/06/2010
S96 322A	FJMT Architects	01/06/2010
S96 323A	FJMT Architects	01/06/2010
S96 324A	FJMT Architects	01/06/2010
S96 325A	FJMT Architects	01/06/2010
S96 326B	FJMT Architects	01/06/2010
S96 327B	FJMT Architects	01/06/2010
S96 328B	FJMT Architects	01/06/2010
S96 329B	FJMT Architects	01/06/2010
S96 334B	FJMT Architects	01/06/2010
S96 335B	FJMT Architects	01/06/2010
S96 336B	FJMT Architects	01/06/2010
S96 337B	FJMT Architects	01/06/2010
S96 343C	FJMT Architects	01/06/2010
S96 344B	<i>FJMT Architects</i>	<i>01/06/2010</i>

(Inserted 21 October 2010 - E) (amended 4 January 2011 – F)

and as amended by the following drawings:

Drawing Number	Architect	Date
S96 305C	FJMT	20/10/2010
S96 306C	FJMT	20/10/2010
S96 307C	FJMT	20/10/2010
S96 308C	FJMT	20/10/2010
S96 502B	FJMT	20/10/2010
S96 503B	FJMT	20/10/2010
S96 601C	FJMT	20/10/2010
S96 602C	FJMT	20/10/2010
S96 603C	FJMT	20/10/2010

(Inserted 4 January 2011 – amendment F)

and as amended by the following drawings:

Drawing Number	Architect	Date
S96 101C	FJMT	20/10/2010
S96 102C	FJMT	20/10/2010
S96 103C	FJMT	20/10/2010
S96 104C	FJMT	20/10/2010
S96 502B	FJMT	20/10/2010

(Inserted 31 January 2011 – amendment G)

and as amended by the following drawings:

Drawing Number	Architect	Date
S96 002_D	FJMT	03/11/2011
S96101_E	FJMT	03/11/2011
S96 642_C	FJMT	03/11/2011
S96 701_D	FJMT	03/11/2011
S96 702_D	FJMT	03/11/2011
S96 703_D	FJMT	03/11/2011
S96 704_D	FJMT	03/11/2011
S96 705_D	FJMT	03/11/2011
S96 706_D	FJMT	03/11/2011
S96 707_D	FJMT	03/11/2011
S96 708_D	FJMT	03/11/2011
S96 709_D	FJMT	03/11/2011
S96 710_D	FJMT	03/11/2011
S96 711_C	FJMT	03/11/2011
S96 712_C	FJMT	03/11/2011

Drawing Number	Architect	Date
S96 713_C	FJMT	03/11/2011
S96 714_B	FJMT	03/11/2011
S96 715_B	FJMT	03/11/2011

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.

(1A) ECOLOGICAL SUSTAINABLE DEVELOPMENT PERFORMANCE

(a) 6 Star NABERS Rating

- (i) *The Legion House refurbishment, alteration and additions are to be designed and constructed to be capable of achieving the 6 Star NABERS Commitment Rating to be read in conjunction with Condition 17(B).*
- (ii) *The applicant must provide an Office of Environment and Heritage (OE&H) Performance Rating, which is to be completed for the premises within 13 months from the date of an Occupation Certificate as outlined in the Commitment Agreement with OE&H.*
- (iii) *At the conclusion of the first Performance Rating, if the Premises does not meet the Commitment Rating, the applicant must commence a 12 month Review Period with the OE&H to improve the energy performance of the Premises as per the process outlined in the Commitment Agreement so as to achieve the Commitment Rating.*
- (iv) *A final Performance Certificate (Final Performance Certificate) must then be obtained by the applicant, which achieves the Commitment Rating and then must be maintained until the date which is 10 years after an occupation certificate is Issued in respect of the Premises as Modified (Expiry Date). This will be demonstrated through a re-rating to be obtained from the Office of Environment and Heritage every two years subsequent to the first Performance Rating, as is usual practice for NABERS rated buildings.*
- (b) *The applicant must provide separate annual certification every year for a period of 10 years from a duly qualified consultant acceptable to Council that Legion House and 167 Castlereagh Street meet the Zero Energy Building Standard. The applicant is to notify Council of this annual date.*

- (c) *The applicant must conduct public site tours during the first 2 years of operation (minimum 12 per year) of the Premises as Modified including presentations to members of the public, educational groups and bodies and industry participants, details of which must be submitted to Council every year for 2 years. The applicant is to notify Council of this annual date.*
- (d) *The applicant must conduct industry briefings on the Premises as Modified in conjunction with industry groups such as Property Council of Australia and the Green Building Council for the first 2 years from the date of first occupation of Legion House.*
- (e) *Services information including that which is required to be provided with the OE&H Commitment Agreement dated 16 July 2011 including metering and monitoring data must be made publicly available on the Internet or other communications framework approved by Council.*
- (f) *A detailed 'lessons learnt' document on the project must be produced and disseminated by the applicant so as to promote further application of technologies and systems piloted by the Premises as Modified and provided to Council within 2 years of the date of first occupation of Legion House.*

(1B) COGENERATION PLANT ISNTALLATION

- (a) *The applicant must install the cogeneration plant as described in the report 'Sustainable Design Performance Report – Legion House and 167 Castlereagh St' prepared by Umow Lai and dated 1 September 2011 prior to the issue of an Occupation Certificate for Legion House and 167 Castlereagh Street.*
- (b) *The cogeneration plant must operate in accordance with Conditions 1C to 1O of this consent.*

(1C) EMISSION STANDARDS – COGENERATION PLANT

The concentration of a pollutant discharged from the cogeneration plant must not exceed the following concentration limits.

Table 1. Cogeneration Plant Air Emission Concentration Limits

Column 1 Pollutant	Units of measure	100 percentile limit	Reference Conditions	Averaging Period
Solid Particles	mg/m ³	10	Dry, 273K, 101.3kPa, 5% O ₂	1 hour, or the minimum sampling period specified in the relevant test method, whichever is the greater
Nitrogen dioxide (NO ₂) or Nitric oxides (NO) or both, as NO ₂ equivalent	mg/m ³	60	Dry, 273K, 101.3kPa, 5% O ₂	1 hour
Type 1 substances and Type 2 substances (in aggregate)	mg/m ³	1	Dry, 273K, 101.3 kPa, 5% O ₂	1 hour, or the minimum sampling period specified in the relevant test method, whichever is the greater
Sulfur dioxide	mg/m ³	50	Dry, 273K, 101.3 kPa, 5% O ₂	1 hour
Volatile Organic Compounds, as n-propane equivalent	mg/m ³	40 mg/m ³ VOCs or 125 mg/m ³ CO	Dry, 273K, 101.3 kPa, 5% O ₂	1 hour
Dioxins or Furans	ng/m ³	0.1 (Note 1)	Dry, 273K, 101.3 kPa, 11% O ₂	1 hour, or the minimum sampling period specified in the relevant test method, whichever is the greater

Note 1: Polychlorinated-dibenzo-p-dioxins (PCDD) and polychlorinated-dibenzofurans (PCDF) as 2, 3, 7, 8-tetrachloro-dibenzo-p-dioxin (TCDD) equivalent calculated in accordance with the procedures included in Part 5, Clause 40 of the Protection of the Environment Operations (Clean Air) Regulation 2010.

(1D) COMMISSIONING EMISSION MONITORING – COGENERATION PLANT

- (a) ***Within 1 month of commissioning the cogeneration plant engine and emission control equipment, air emission monitoring and recording by an appropriately qualified consultant shall be conducted on the exhaust stack. Monitoring (by sampling and obtaining results by analysis) must be undertaken of the concentration of each Pollutant specified in Column 1 of the following Table 2.***
- (b) ***The consultant must use the sampling Method, Units of Measure, and sample at the Frequency, specified opposite in the other columns.***

- (c) ***A ‘Cogeneration Plant Post Commissioning Air Emissions Report’ prepared by an appropriately qualified consultant must be submitted to the Council within 2 months of commissioning the cogeneration plant, detailing the results of post commissioning source emissions sampling and analysis undertaken in accordance with the requirements specified in (a) above. The report must assess compliance with the concentration limits specified in Table 1 in Condition 1B.***

Table 2 Cogeneration Plant Air Emission Monitoring Requirements

Column 1 Pollutant	Units of measure	Frequency	Sampling Method¹
Solid Particles	mg/m ³	Post Commissioning	TM-15
Nitrogen dioxide (NO ₂) or Nitric oxides (NO) or both, as NO ₂ equivalent	mg/m ³	Post Commissioning, Quarterly	TM-11
Type 1 substances and Type 2 substances (in aggregate)	mg/m ³	Post Commissioning	TM-12, TM-13 and TM-14
Sulfur dioxide	mg/m ³	Post Commissioning	TM-4
Volatile Organic Compounds, as n-propane equivalent	mg/m ³	Post Commissioning	TM-34
Carbon Monoxide	mg/m ³	Post Commissioning, Quarterly	TM-32
Velocity	m/s	Post commissioning, Quarterly	TM-2
Volumetric flow rate	m ³ /s	Post commissioning, Quarterly	TM-2
Temperature	°C	Post Commissioning, Quarterly	TM-2
Moisture	%	Post Commissioning, Quarterly	TM-22
Dry gas density	Kg/m ³	Post Commissioning, Quarterly	TM-23
Molecular weight of stack gases	g/g.mol	Post Commissioning, Quarterly	TM-23
Oxygen	%	Post Commissioning, Quarterly	TM-25
Carbon dioxide	%	Post Commissioning, Quarterly	TM-24
Temperature	°C	Post Commissioning, Quarterly	TM-2
Selection of sampling positions	-	-	TM-1

1. The sampling methods are contained in the publication “Approved Methods for the Sampling and Analysis of Air Pollutants in NSW”.

(1E) QUARTERLY EMISSION MONITORING

- (a) ***Following the commissioning emission monitoring report, quarterly emission monitoring and recording by an appropriately qualified consultant shall be conducted on the exhaust stack as specified in Table 2 of Condition 1D. The consultant must use the sampling method, units of measure, and sample at the frequency, specified opposite in the other columns***
- (b) ***Upon written request from Council the results of the quarterly monitoring shall be made available to Council within 7 days of the request.***
- (c) ***An annual report containing all details of the quarterly emission monitoring results shall be provided to Council.***

- (d) *The annual report shall be provided to Council for 10 consecutive years after the date of the initial commissioning report.*

(1F) ENGINE AND GENERATOR- COGENERATION PLANT

The power generation system must comply with the following:-

- (a) *Lean burn Low NOx Engine: The generator shall comply with the requirements of Australian Standard for Industrial and Commercial Gas-fired appliances AS3814.2005.*
- (b) *Certification: Evidence of appropriate certification must be provided to Council by a suitably qualified consultant certifying that the engine and generator have been installed in accordance with the above requirements.*
- (c) *Maintenance and Servicing: The generator engine shall be serviced and maintained in accordance with the above requirements (a and b).*
- (d) *Records: Records of all servicing and maintenance to be carried out on the generator engine are to be kept and made available within 7 days of request by Council.*

(1G) EMISSION MONITORING SYSTEM - COGENERATION PLANT

- (a) *A continuous emission monitoring system (CEMS) shall be installed to enable system monitoring and adjustment for optimal emission reduction.*
- (b) *Monitoring and maintenance: The CEMS shall be monitored and maintained by the applicant in accordance with the manufacturer's requirements and specifications.*

(1H) ENGINE SPECIFICATION - COGENERATION PLANT

This approval for power generation is restricted to two natural gas reciprocating co generation engines individually rated at 60kW located within the roof of 167 Castlereagh Street of the approved building as indicated on the approved drawings.

(1I) ATMOSPHERIC DISCHARGE & EMISSION POINTS

Atmospheric discharges and emission points for the cogeneration plant must comply with the following:-

- (a) *Min. Exhaust temperature: 90 degrees Celsius;*
- (b) *Stack diameter: 0.1 metre Min exit velocity: 5.8 metres/sec; and*
- (c) *Stack height: 17m.*

(1J) APPROVED FUEL BURNING – GAS FIRED PLANT

Fuel burnt in the gas fired power generator engine must only be biomass generated by the onsite gasification plant or reticulated natural gas.

(1K) APPROVED FUEL BURNING – GASIFICATION PLANT

- (a) Plantation forestry off-cuts are the only fuel approved for use in the gasification plant.*
- (b) A further development application must be submitted to Council to trial the use of other fuels in the gasification plant. The application must be supported by the information listed in Part 3 of the publication "Guidance Note: Assessment of Non-standard Fuels".*

(1L) SPILLAGE-MATERIALS AND EQUIPMENT TO CONTAIN & CLEAN UP

The applicant shall ensure that appropriate materials and equipment are to be available on site at all times to contain and clean up spills of potentially polluting materials. An inventory of all clean up and containments materials and equipment, and documented emergency response and clean up procedures must be kept on site.

(1M) WASTE LIQUIDS

The applicant shall ensure that all storage areas where spillages may reasonably occur shall be bunded. The capacity of the bunded area shall be calculated as being equal to 110% of the largest vessel or container in the area or 10% of the total volume of vessels/containers accommodated in the area, whichever is greater. All bunded areas shall be graded to a blind sump to facilitate testing of collected wastewater and provide a low point for pump out. Bunded areas shall be suitably treated to prevent the ingress of water.

(1N) SUBMISSION OF OPERATIONAL ENVIRONMENTAL MANAGEMENT PLAN

The applicant must submit an Operational Environmental Management Plan (OEMP) to the Council for review and approval prior to the issue of a Construction Certificate for Stage 4 (167 Castlereagh Street and Legion House). The operational measures should include but not be limited to the following:-

- (a) A maintenance inspection log shall be kept on site at all times documenting the maintenance works and procedures carried out on the gas-fired plant.*
- (b) A log shall be kept on site to document any complaints received in relation to emissions, noise and of any other nature. The logs should also outline the actions undertaken to resolve the complaints.*

- (c) *Details of regular maintenance procedures including leak detection from the plant and its equipment to be undertaken and actions to deal with breakdowns should be documented.*

(10) COMPLAINTS

Should complaints regarding the operation of the cogeneration plant or any other mechanical plant associated with this development be received by Council from a place of different occupancy including commercial premises) and the complaint being substantiated by a Council Officer, the use of the plant concerned must cease operation until "attenuation works" are carried out so as that the premises complies with the relevant conditions of the approval.

(1P) CONSTRUCTION NOISE MANAGEMENT PLAN.

A site specific noise management plan shall be submitted to the Council's Health Compliance Unit for comment and approval prior to a Construction Certificate being issued.

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

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

- (a) *Identification of noise sensitive receivers near to the site.*
- (b) *A prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the City of Sydney Construction Hours /Noise Code of Practice 1992 for the typical construction hours of 07.00am to 7.00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of neighbouring property.*
- (c) *A representative background noise measurement (LA90, 15min) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997.*
- (d) *Confirmation of the level of community consultation that has is and will be undertaken with Building Managers/occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.*

- (e) **Confirmation of noise and dust monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise Code.**
- (f) **What course of action will be undertaken following receipt of a complaint concerning offensive noise?**
- (g) **Details of any noise mitigation measures that have been outlined by an acoustic engineer or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.**
- (h) **What plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available.**

(2) DESIGN DETAILS MAJOR DEVELOPMENT

The design details of the proposed building facade including all external finishes, colours and glazing must be in accordance with the materials schedule and sample boards numbered S96 950 prepared by FJMT Architects as updated by S96 950A dated 20 October 2010, **as updated by the Legion House schedule of finishes prepared by FJMT and dated 29 April 2011.**

Note: Any variation to these approved materials and finishes will require the submission of an application under the S96(2) Environmental Planning and Assessment Act 1979 to modify consent and approval thereto.

(3) STAGED DEVELOPMENT

For the purposes of this consent, implementation of the development may be staged.

Stage 1 involves conservation and restoration works to the facade and mansard roof of Legion House.

Stage 2 demolition, excavation, and construction of basement to Pitt Street level

Stage 3 tower structure, facades and services from ground level to top of building, and public domain and landscaping works.

Stage 4 alterations and additions to Legion House and construction of 167 Castlereagh Street.

(4) APPROVED DESIGN

The architect of the project as approved, **including Legion House and 167 Castlereagh Street**, must not be changed without the prior written notice of Council.

(5) LEGION HOUSE

- (a) Prior to the issue of a Construction Certificate for Stage 2, a Deed of Agreement must be entered into between the applicant and St James Ethics Centre, which provides for the use of ~~the top~~ two floors of Legion House rent free for a minimum of 25 years for the St James Ethics Centre. A Construction Certificate for Stage 2 must not be issued until the Council has approved the terms of the Deed of Agreement for Lease in writing.
- (b) The applicant must also cover the costs of refurbishment of the floors, taxes and council and water rates during the lease period. Evidence of this agreement must be submitted to Council prior to the issue of a Construction Certificate for Stage 2.
- (c) The following requirements apply to works to Legion House:-
- (i) Where walls are being removed a nib ~~and bulkhead~~ of at least **350mm** ~~450mm~~ must be retained **to the side walls and an interpretation strategy devised to show the original plan in the floor or ceiling** to allow the original planning configuration of the building to still be interpreted.
 - (ii) ~~The ground floor entrance including the two sets of original doors and the parquet flooring must be retained and conserved.~~
 - (iii) ~~The existing arched opening being infilled at ground floor level must be carried out in lightweight construction in order that it is reversible.~~
 - (iv) ~~The existing strong room and former board room on Level 1 must be retained and conserved.~~
 - (v) ~~The existing timber wall panelling on Levels 3 and 4 must be retained and conserved.~~
 - (vi) The early timber glazed doors on Levels **1, 2 and 3** ~~and 4~~ must be retained and re-used.
 - (vii) ~~The redundant drainage stackwork at the rear of the building is to be removed.~~
- (d) The applicant is to commission an experienced conservation architect to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The conservation architect is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The conservation architect is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of heritage issues throughout the project.

- (e) The proposed works are to be carried out in a manner that minimises demolition, alterations, new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item. ***As such the proposed works are to be in accordance the Conservation Management Plan prepared by Godden MacKay Logan (April 2011).***
- (f) The applicant is to commission experienced tradespersons (as appropriate) that are skilled in traditional building and engineering trades to carry out the proposed scope of works.
- (g) The following requirements apply to an Interpretation Strategy for the site:-
- (i) Documentation is to be gathered by the appointed heritage architect for the site, throughout all stages of development. This is to be reflected in the background documentation supporting the Heritage Interpretation Strategy submitted prior to the issue of a Stage 3 Construction Certificate.
- (ii) The Interpretation Strategy should include, but is not limited to, the provision of details of public art interpretation through design and/or the display of selected artefacts and/or other material, appropriate to the education of the public in the history and significance of the site. ~~In particular, the plan of the demolished west wing is to be accurately interpreted at full scale in its original location as part of the paving design of the proposed public square. Footings to be accurately surveyed during demolition to ensure accuracy of paving design.~~ Details of interpretation, including the interpretation of any significant archaeological discovery is to be submitted for approval prior to issue of a Construction Certificate for Stage ~~4~~ 3 of the development.
- (iii) The approved Interpretation Strategy must be implemented to the satisfaction of the Director, City ***Planning and Regulatory Services*** ~~Development and Projects~~ prior to the issue of an Occupation Certificate for ***Legion House*** ~~the Ethics Plaza~~.
- (h) The development must be generally in accordance with the Conservation ***Management*** Plan for the Legion House 161-163 Castlereagh Street prepared by Godden MacKay Logan Heritage Consultants dated ~~February 1999~~ ***29 April 2011***.
- (i) ***A commemorative plaque, recording the names of the developer, architect, consent authority and year of completion of construction must be installed on Legion House prior to occupation. The design, location and wording must be submitted to and approved by Council prior to an Occupation Certificate being issued for Legion House.***

- (j) **Salvaged traditional building materials from Legion House surplus to the requirements of this project including stone, bricks, structural timber, staircases, and joinery are to be sold to an established dealer in second hand heritage building materials. Documentation of the salvage methodology must be submitted for the approval of Council prior to the commencement of demolition of any part of Legion House.**
- (k) **The external colour scheme of Legion House is to be sympathetic to the architectural style and period of the building. A schedule of colours is to be submitted to and approved by the Director, City Planning and Regulatory Services prior to the issue of the Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street).**
- (l) **New services are to be surface mounted rather than chased-in to existing walls to minimise impact on heritage fabric.**
- (m) **New windows and doors in the original fabric of the building must use timber joinery except where new alternative details are submitted and approved by the Director, City Planning and Regulatory Services, prior to the issue of a Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street).**
- (n) **The face brickwork/sandstone must not be rendered, painted or coated.**
- (o) **Where internal partitions meet external walls they must abut window mullions, columns or other such building elements and not glazing.**
- (p) **A brass plaque relating to the history of the site must be installed on the facade of the building prior to occupation. The design, location and wording must be submitted for the approval of Council prior to an Occupation Certificate for Legion House being issued.**
- (q) **Representative samples of surviving early fabric displaced by the works including: the existing original timber door in the level 2 west corridor; an intact representative stringer, balustrade run and newel post of the original stair; and the existing south elevation stair well windows on levels 1, 2 and 3 are to be labelled and stored on site to facilitate future reinstatement. An inventory of stored items, the proposed storage location and the proposed method of reinstatement or reuse on the site must be submitted to and approved by Council prior to the issue of a Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street).**

(5A) DESIGN AMENDMENTS REQUIRED FOR LEGION HOUSE

The following elements of the design of Legion House require amendment. Details of the amended design are to be approved by the Director City Planning and Regulatory Services prior to the issue of a Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street):

- (c) **Retention of existing walls;**
 - (i) **Retention of the two existing eastern rooms and related extent of corridor in spaces LH202 and LH302 of Legion House; and**
 - (ii) **Reduction in demolition of south wall of stair well element the extent only necessary to connect to the new external lift/stair tower.**
- (b) **The extent of suspended ceilings within the existing Legion House spaces shown on sectional drawing s96 710 D is not approved. Amend design to reduce the extent of suspended ceilings in significant interiors.**

(5B) ADDITIONAL DETAILS REQUIRED LEGION HOUSE

The following elements of the design require further resolution. Details of the resolved design are to be approved by the Director City Planning and Regulatory Services prior to the issue of a Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street):

- (a) **Internal sections and reflected ceiling plans for all interiors within the existing Legion House envelope;**
- (b) **Structural interventions required by the works;**
- (c) **Services reticulation including reflected ceilings and room sections;**
- (d) **Joinery conservation and re-construction;**
- (e) **Reconstruction of the shop front design at Castlereagh Street level, which is to be informed by documentary and physical evidence of the original shopfront;**
- (f) **Floating floor structure at ground floor;**
- (g) **Interpretation of extent, configuration and design original internal stair.**

(5C) STONE CLADDING OF THE NEW 167 CASTLEREAGH STREET BUILDING

The stone facade cladding to the new 167 Castlereagh Street building is to be Sydney non-banded sandstone to complement the existing stonework at Legion House and the Masonic Club. Samples are to be submitted for approval of the Director City Planning and Regulatory Services prior to the issue of a Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street).

(5D) RETENTION OF INTERNAL FEATURES OF LEGION HOUSE

The original decorative plaster ceilings and walls and existing internal joiners are to be retained unless specifically shown demolished in the approved drawings.

Where internal joinery features are to be conserved, any components replaced or reinstated, are to match the existing in profile and section size.

(5E) HERITAGE ITEMS - WORKS TO BE CONSISTENT WITH CMP

- (a) A strategy for implementation of the recommendations of the Legion House 161-163 Castlereagh Street Sydney Conservation Management Plan (CMP) dated April 2011 and must be submitted to and approved by Council, prior to a Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street) being issued.**
- (b) The Conservation Management Strategy must detail how the recommendations in part 7.3 of the Conservation Management Plan will be undertaken and include detailed drawings and outline specifications of works required to support any schedule of conservation works.**
- (c) The Conservation Management Strategy must be implemented to the satisfaction of Council prior to the issue of the Occupation Certificate for Legion House.**
- (d) A cyclical maintenance strategy for the ongoing conservation of the Legion House to ensure the fabric of Legion House is adequately maintained in the Long Term in accordance with recommendation 8.2.2 of the CMP is to be submitted for the approval of the Director City Planning and Regulatory prior to the issue of an Occupation Certificate for Legion House.**

(5F) ARCHIVAL DOCUMENTATION (MEASURED DRAWINGS)

The archival recording of the Legion House should include accurate measured drawings of the following:

- (a) The building and the site as a whole including:**
 - (i) Location Plan**
 - (ii) Site Plan (1:500 or 1:200)**
 - (iii) Floor Plan/s (1:100 or 1:50)**
 - (iv) Roof Plan/s (1:100 or 1:50)**
 - (v) Elevations and Sections (1:50)**
- (b) Components of the building including original stair, lift motor room, ceiling details, joinery details including stairwell windows and remaining original door in existing level 2 west corridor, skirtings, and other significant details and at 1:10 or 1:5 scale as appropriate.**

Measured drawings should be cross-referenced to each other, clearly titled, indicate scale, orientation and date of execution. The drawings can also be annotated or hatched to reveal more about the heritage significance of the site or object (e.g. to differentiate between dates of construction, materials and finishes and vegetation types). For further guidelines, refer to the NSW Heritage Office Heritage Information Series publication titled 'How to prepare Archival Records of Heritage Items'.

The measured drawings are to be submitted to and approved by Council prior to the issue of a Construction Certificate for Stage 4 (Legion House and 167 Castlereagh Street)..

(5G) PHOTOGRAPHIC ARCHIVAL DOCUMENTATION LEGION HOUSE (MAJOR WORKS)

Prior to a Construction Certificate being issued for Stage 4 (Legion House and 167 Castlereagh Street), an archival photographic recording of the Legion House 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.

Procedure

For buildings or structures with heritage significance, the archival documentation, and the number and type of selected enlarged photographs required will be determined by the significance and quality of the building or structure. For a scope of work, refer to Council's Heritage Specialist to determine the particular architectural/design features of the building/site that may need to be recorded.

For buildings or structures with no heritage significance the archival documentation requirements are less comprehensive, and may just be limited to contextual and exterior photographs only. However, this will depend upon the type, complexity and significance of the building, and should be confirmed with the Area Planning Manager, and if necessary Council's Heritage Specialist.

Because significant fabric may remain concealed and only be exposed during construction works, the archival recording is to be undertaken in stages, prior to the removal of any significant building fabric or furnishings from the site, during the removal of fabric on site that exposes significant building fabric or furnishings, and after work has been completed on site, as considered appropriate by the conservation architect commissioned for the project, and submitted as two parts as follows.

- (A) The first submission of the archival recording of significant building fabric or furnishings is to be prior to the removal of any significant building fabric or furnishings from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.**
- (B) The second submission of the archival recording is of significant building fabric or furnishings that is exposed during demolition or construction and after work has been completed on site, and must be submitted to Council prior to an Occupation Certificate being issued.**

The form of recording is to be a photographic documentation of the site and its context, and the exteriors and interiors of the existing building(s) photographed, where appropriate, using a camera/lens capable of 'perspective correction'. The photographic 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.

- (a) For each of the two submissions listed above in (a) and (b), the form of the recording is to be as follows:**
 - (i) In A4 format, placed in archival plastic sleeves in an appropriate archival folder.**
 - (ii) The Development Application number and the Condition of Consent number must be noted on the front of the folder and in the report.**
 - (iii) Include a summary report detailing the project description, date and authorship of the photographic record, method of documentation and limitations of the photographic record.**
 - (iv) Each negative, slide or digital image is to be cross referenced to a photographic catalogue and photographic base plans.**
 - (v) 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.**
- (b) A digital based recording is to include:**
 - (i) CD or DVD containing the report in PDF format and the electronic images saved as JPEG TIFF or PDF files and cross referenced to the digital catalogue sheets and base plans**

- (c) *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.*

(5H) SITES IN THE VICINITY OF A HERITAGE ITEM

The proposed works are to ensure that both Legion house and the Sydney Masonic Club are to be suitably protected during the construction process. Details of the protection strategy should be submitted to and approved by Council prior to the issue of the Construction Certificate.

(5I) STRUCTURAL INTEGRITY OF RETAINED STRUCTURE

Prior to a commencement of any works on the site for Legion House, a report from a practicing structural engineer experienced in dealing with heritage buildings must be submitted to and approved by Council. The report must explain how the existing structure is to be retained, supported and not undermined by the proposed development and give details of any intervention such works will have on the facade fabric. Details of all temporary supports and hoardings must also to be provided in the report.

(5J) LEGION HOUSE SIGNAGE STRATEGY

A separate development application is to be submitted seeking approval of a signage strategy for Legion House. 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.

(11) SEPARATE DEVELOPMENT APPLICATIONS FOR ALL RETAIL USES AND FIT OUT OF ST JAMES ETHICS CENTRE

- (a) A separate development application must be submitted at the appropriate time for the specific use of all retail/restaurant/café uses proposed within the podium, adjoining pedestrian links and Legion House.
- (b) ~~A separate development application is also required for the fit out of the St James Ethics Centre and associated facilities within Legion House.~~

Note: A separate development application is not required for use of the commercial office space.

(16) FLOOR SPACE RATIO

The following applies to Floor Space Ratio:-

- (c) The Floor Space Ratio of the proposal must not exceed ~~14.2:1~~ **14.51:1** calculated in accordance with the Central Sydney Local Environmental Plan 1996. For the purpose of the calculation of FSR, the Floor Space Area of the development is ~~63,885.5~~ **65,103.4** sqm.

- (d) Prior to issue of an Occupation Certificate under the Environmental Planning and Assessment Act 1979, a Registered Surveyor must provide certification of the total and component Floor Space Areas (by use) in the development, to the satisfaction of the Principal Certifying Authority (PCA) (Council or a private accredited certifier).
- (e) Prior to issue of a Construction Certificate for Stage 2 of the development under the Environmental Planning and Assessment Act 1979, documentary evidence (ie. a Heritage Floor Space Allocation Certificate issued by Council) must be produced and acknowledged by Council that 6,991.5 sqm of heritage floor space was allocated (purchased and transferred) to the development, being that floor space in excess of 8:1 as specified in the Central Sydney Local Environmental Plan 1996.

(16A) HERITAGE FLOOR SPACE

Prior to a Construction Certificate being issued for Stage 4 (Legion House and 167 Castlereagh Street), Council's written verification must be obtained, confirming that 1,218sqm of heritage floor space was allocated (purchased and transferred) to the development, being that floor space in excess of 14.2:1, as specified in the Sydney Local Environmental Plan 2005.

(17) ENERGY EFFICIENCY OF BUILDINGS

(A) Tower

The design of the building and its services must achieve a rating of 5 stars under the Sustainable Energy Development Authority's (SEDA's) "Australian Building Greenhouse Rating Scheme". This can be demonstrated by:

- (a) Entering into a Commitment Agreement⁽ⁱ⁾ with SEDA, 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 for Stage 2 of the development; and
- (b) Providing a copy of the independent energy assessment report submitted to SEDA and submitted as part of the construction certificate application for Stage 2 of the development, that follows the current guidelines in SEDA's "Australian Building Greenhouse Rating Scheme Design Energy Efficiency Review and the Energy Efficiency Design Review.xls". This report should be based on the same documents as submitted with the construction certificate for Stage 2 of the development.

Note: Definitions referred to in clause 27(a) above:-

- (i) "Commitment Agreement" means an agreement that is set out in accordance with SEDA's "Australian Building Greenhouse Rating Commitment Agreement" which is made/signed between SEDA 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 SEDA for measuring the energy efficiency of a building, and known as the "Australian Building Greenhouse Rating Scheme";
- (iii) "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 (Source: SEDA, September 2001);
- (iv) "Base building" means central services and common areas of a building (Source: SEDA, September 2001); and
- (v) "Whole building" means all of the building, being the fabric of the building itself and all services and fit-outs (Source: SEDA, September 2001).

(B) LEGION HOUSE

- (a) ***The design of the building and its services must achieve a rating of 4.5 stars under the NSW Office of Environment and Heritage (OE&H) National Australian Built Environment Rating System (NABERS Energy). This can be demonstrated by:***
- (b) ***Entering into a Commitment Agreement⁽ⁱ⁾ with OE&H, 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***
- (c) ***Providing a copy of the independent energy assessment report to OE&H and submitted with the Construction Certificate application, that follows the current OE&H guidelines. This report must be based on the same documents as those submitted with the Construction Certificate.***

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

- (d) ***Commitment Agreement means an agreement that is set out in accordance with OE&H's Australian Building Greenhouse Rating Commitment Agreement, which is made/signed between OE&H and the applicant/building owner/building manager, to design, build and commission the premises to an agreed star rating.***

- (i) *Star rating refers to the benchmarking system applied by OE&H for measuring the energy efficiency of a building, and known as NABERS the National Australian Built Environment Rating System.*
- (ii) *Base building means central services and common areas of a building.*
- (iii) *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.*
- (e) *Whole building means all of the building, being the fabric of the building itself and all services and fit-outs.*
- (f) *Prior to the issue of an Occupation Certificate for Legion House, documentary evidence shall be provided to Council verifying that the proposed works and fit-out have achieved a 6 Star Green Star-Office Design v3 Certified Rating as defined by the Green Building Council of Australia.*
- (g) *Within 24 months of occupation of Legion House, documentary evidence shall be provided to Council verifying that the proposed works and fit-out have achieved a 6 Star Green Star- Office As Built v3 Certified Rating as defined by the Green Building Council of Australia.*

Note: The Green Building Council of Australia's rating tool provides for two stages of Green Star certification for office buildings: 'Office Design v3' and 'Office As Built v3'. The 'Office Design' rating is awarded based on the final design documentation, however the 'Office As Built' rating is awarded based on the building's actual environmental performance characteristics, and as such is unable to be calculated until the building is fully operational. The Green Building Council of Australia provides for 'As Built' certifications to occur up to 24 months following the practical completion of a project.

(19A) SECTION 61 CONTRIBUTION – LEGION HOUSE AND 167 CASTLEREAGH STREET

A cash contribution comprising 1% of the total cost of the development for Legion House and 167 Castlereagh Street is payable to the City of Sydney pursuant to section 61 of the City of Sydney Act 1988 and the Central Sydney Contribution (Amendment) Plan 2002 in accordance with the following:

- (a) *Prior to a Construction Certificate being issued for the amended design of Legion House and 167 Castlereagh Street, evidence must be provided of Council's written verification of the amount of the contribution as required in (b) below, and then that the levy has been paid to the Council in accordance with this condition. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Direct debit, personal or company cheques will not be accepted.*

- (b) *The contribution must not be paid to the City of Sydney until it is accompanied by separate written verification by the City of Sydney of the specific amount payable. In order to obtain such verification, the “City of Sydney Registered Quantity Surveyor’s Detailed Cost Report” indicating the itemised cost of the development must be completed and submitted to Council by the Certifying Authority (CA), together with copies of the plans the subject of the application for the Construction Certificate. A copy of the required format for the “City of Sydney Registered Quantity Surveyor’s Detailed Cost Report” may be obtained from the City of Sydney One Stop Shop, any of the Neighbourhood Service Centres and the City of Sydney’s website (www.cityofsydney.nsw.gov.au).*
- (c) *The Council will consider the documentation submitted under subclause (b) and determine the cost of the proposed development having regard to the information submitted and to such other matters as it considers appropriate and will notify the CA accordingly.*
- (d) *The items to be included in the calculation of the cost of development are demolition works, site remediation including decontamination, excavation and site preparation, construction costs, fit out, professional fees as part of the design (including design competitions) documentation and implementation process, fixed building machinery, equipment and appliances, kitchens and bar areas, car parking, air conditioning plant and equipment, services (fire, mechanical ventilation, electrical, hydraulic), ceilings, fire protection devices, installation of services (power, water, sewer, telephone), lifts and other essential machinery, floor coverings, Building Code of Australia compliance works, replacement of existing materials, fixtures and fittings, construction related insurance, assessment and construction related fees, charges and GST and any other matter not expressly excluded in (e) below.*
- (e) *The items to be excluded in the calculation of the cost of development are the cost of land, marketing expenses (excluding display suites etc), finance and interest, building insurance after practical completion, drapery, commercial stock inventory, loose furniture, loose equipment, loose electrical appliances, minor maintenance of existing retained fixtures (patching, repainting) and stamp duty.*

(22) BCA UPGRADE LEGION HOUSE

Pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000 the following upgrading works are required to Legion House:

- (a) Compliance with the recommendations of the Building Code of Australia Report dated 11 February 2003 prepared by McKenzie Group Consulting Group, subject to the following requirements –

- (b) The automatic sprinkler system must be upgraded to comply with Specification E1.5 of the Building Code of Australia; and
- (c) Openings in the external walls of the building must be protected to comply with Performance Requirement CP2 of the Building Code of Australia.
- (d) *The alterations and additions to Legion House are to be undertaken in accordance with the City Plan Services BCA Review (dated 1 September 2011).*

SCHEDULE 1B

Conditions to be complied with prior to issue of Construction Certificate to the satisfaction of the Certifying Authority

(45E) RAINWATER TANKS

The installation and use of the rainwater tank(s) must comply with the following:

- (a) *be constructed of a non-reflective, structurally sound and non-corrosive material with a leaching resistant capability;*
- (b) *have all plumbing work carried out by a licensed plumber in accordance with the New South Wales Code of Practice- Plumbing and Drainage and AS3500 and Guidelines for rainwater tanks on residential properties- Plumbing requirements.*
- (c) *be installed by suitably qualified persons and be fixed to structurally adequate base or wall in accordance with manufacturer's specifications or engineer's details;*
- (d) *not be fixed to, or otherwise supported by a bounding common fence, wall or the like, without the prior approval being obtained from the adjoining land owner/s;*
- (e) *be fitted with a first flush device;*
- (f) *have openings suitably sealed to prevent access by children and be fitted with a fine mesh screen to prevent penetration of contaminants and insects such as mosquitoes;*
- (g) *have an overflow device fitted to the rainwater tank which directs water to a complying stormwater drainage system;*
- (h) *have a suitable drainage plug/tap fitted and positioned to allow for easy flushing and cleaning of the tank/s;*
- (i) *where water pumps are installed, be located so as to not cause an offensive noise as defined by the Protection of the Environment Operations Act 1997;*
- (j) *have all taps, outlets and pipes coloured 'mauve' and marked "non-potable water - not for drinking" in accordance with the AS 1345.*

(45F) CONTROL OF LEGIONNAIRES DISEASE

- (a) *The Public Health Act 1991, Public Health (Microbial Control) Regulation 2000 and NSW Health Code of Practice for the Control of Legionnaires Disease include microbial control requirements for the installation, operation and maintenance of air handling, heated water systems and water cooling systems and must be complied with.***
- (b) *The owner or occupier of the building must register and provide particulars of any water cooling, and warm-water systems as required under the provisions of the Public Health Act, 1991 and Regulation. Registration forms are available from Council.***

(45G) MICROBIAL CONTROL

- (a) *All cooling towers and cooling and warm water systems must be operated and maintained in accordance with AS 3666.2:1995, (or AS 3666.3:2000 subject to prior notification to Council) the Public Health Act 1991, and Public Health (Microbial Control) Regulation 2000.***
- (b) *A true copy of the annual certificate as stipulated in clause 9(2) of the Public Health (Microbial) Regulation 2000 which certifies the effectiveness of the process of disinfection used for the water cooling system, must be submitted to Council prior to the period ending 30 June each year.***
- (c) *Prior to commencement of the use the owner or occupier of the premises must apply to Council for the registration of water cooling systems warm water systems installed on the premises in accordance with the Public Health (Microbial Control) Regulation 2000.***

(45H) ASBESTOS REMOVAL

All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission (NOHSC): "Code of Practice for the Safe Removal of Asbestos" and the City of Sydney Asbestos Policy.

(45I) ASBESTOS REMOVAL SIGNAGE

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site.

(45J) CLASSIFICATION OF WASTE

Prior to the exportation of waste (including fill or soil) from the site, the waste materials must be classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (April 2008)'. The classification of the material is essential to determine where the waste may be legally taken. The Protection of the Environment Operations Act 1997 provides for the commission of an offence for both the waste owner and the transporters if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or Group A liquid waste advice should be sought from the EPA.

(45K) DISPOSAL OF ASBESTOS

Asbestos to be disposed of must only be transported to waste facilities licensed to accept asbestos. The names and location of these facilities are listed in Part 6 of the City of Sydney's Asbestos Policy.

(45L) NOTIFICATION OF ASBESTOS REMOVAL

All adjoining properties and those opposite the development must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email address.

(45M) PROHIBITION OF ASBESTOS RE-USE

No asbestos products are to be reused on the site (i.e. packing pieces, spacers, formwork or fill etc).

(45N) SIGNAGE LOCATION AND DETAILS

- (a) A site notice board must be located at the main entrance to the site in a prominent position and must have minimum dimensions of 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size.*
- (b) The site notice board must include the following:*
 - (i) contact person for the site;*
 - (ii) telephone and facsimile numbers and email address; and*
- (c) site activities and time frames.*

(45O) SKIPS AND BINS

No asbestos laden skips or bins are to be left in any public place without the approval of Council.

SCHEULE 1F

Conditions to be complied with during the use of the Premises

(79) NOISE – USE GENERAL

~~The use of the premises including music and other activities must not give rise to any one or more of the following:-~~

- ~~(a) Transmission of vibration to any place of different occupancy greater than specified in AS 2670;~~
- ~~(b) An indoor sound pressure level in any place of different occupancy (and/or public place) greater than 3dB above the L90 background level or greater than 5dB at the boundary of any affected property in any octave band from 31.5 Hz to 8,000 Hz centre frequencies inclusive between the hours of 7.00 a.m. to midnight daily and 0dB above the L90 background between 12 midnight and 7.00 a.m. the following morning. However, when the L90 background levels in frequencies below 63 Hz are equal to or below the threshold of hearing, as specified by the equal loudness contours for octave bands of noise, this sub clause does not apply to any such frequencies;~~
- ~~(c) During the period 12 midnight to 7.00 a.m. the use must be inaudible in any habitable room of any residential premises; and~~
 - ~~(e) The emission of an "offensive noise" as defined under the Protection of the Environment (Operations) Act 1997.~~

~~The method of measurement of vibration in (a) and sound levels in (b), (c) and (d) must be carried out in accordance with AS 2973 for vibration measurements, AS 1055 for outdoor sound level measurements, and AS 2107 for indoor sound level measurements.~~

The emission of noise associated with the use of the premises including the operation of any mechanical plant and equipment shall comply with the following criteria:

- (a) The LAeq, 15minute noise level emitted from the use must not exceed the background noise level LA90, 15minute by more than 5dB when assessed at the boundary of any affected residence.***
- (b) The background noise level shall be measured in the absence of noise emitted from the use in accordance with Australian Standard AS 1055.1-1997-Description and measurement of environmental noise.***
- (c) The LAeq,15minute noise level shall be adjusted to account for any applicable modifying factors in accordance with Part 4 of the EPA NSW Industrial Noise Policy.***
- (d) The use of the premises shall be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any affected residence.***

- (e) *In this clause, the term “noise level emitted from the use” means the contributing noise level from the use in isolation to any other ambient noise and account must therefore be taken of the LAeq, 15minute when the use is not in operation.*
- (f) *In circumstances where this development application refers to a modification or addition to an existing use, the background noise level referred to in this clause pertains to the LA90, 15minute noise level measured in the absence of all noise from the site.*

~~(80) NOISE – MECHANICAL PLANT~~

~~Noise associated with mechanical plant must not give rise to any one or more of the following:-~~

- ~~(a) Transmission of vibration to any place of different occupancy greater than specified in AS 2670;~~
- ~~(b) An indoor sound pressure level in any place of different occupancy (and/or public place) greater than 3dB above the L90 background level or greater than 5dB at the boundary of any affected property in any octave band from 31.5 Hz to 8,000 Hz centre frequencies inclusive between the hours of 7.00 a.m. to 10.00 p.m. daily and 0dB above the L90 background between 10.00 p.m. and 7.00 a.m. the following morning. However, when the L90 background levels in frequencies below 63 Hz are equal to or below the threshold of hearing, as specified by the equal loudness contours for octave bands of noise, this subclause does not apply to any such frequencies; and~~

~~The emission of an "offensive noise" as defined under the Protection of the Environment (Operations) Act 1997.~~

~~The method of measurement of vibration in (a) and sound levels in (b), (c) must be carried out in accordance with AS 2973 for vibration measurements, AS 1055 for outdoor sound level measurements, and AS 2107 for indoor sound level measurements.~~

BACKGROUND

The Site and Surrounding Development

- The site is located at 161-167 Castlereagh Street and 232-248 Pitt Street and has a site area of 4,487m². It is located within the southern portion of the block bounded by Pitt, Market, Castlereagh and Park Streets and has direct frontages to both Castlereagh and Pitt Streets, as is shown in **Figure 1** below.

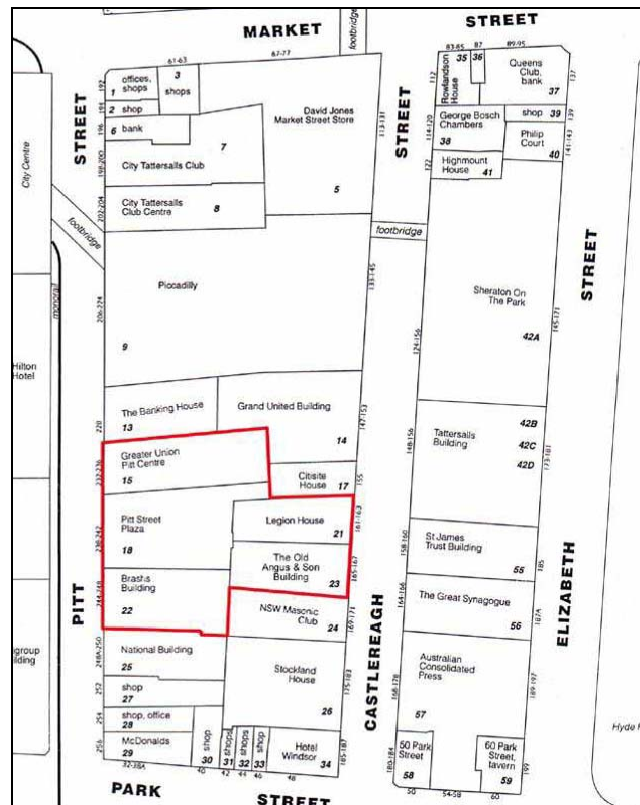


Figure 1: Location Plan

- The site consists of the heritage listed Legion House, which is located in the northern portion of the site facing Castlereagh Street, with the remainder of the site under construction for the approved tower, through site link and the building shell at 167 Castlereagh Street. The subject of the modification is both Legion House and 167 Castlereagh Street.
- Legion House is a four-storey building which was constructed in 1902 and designed in the 'Free Federation Style' by the notable Sydney architect, Harry C Kent. It was one of three buildings constructed during this period in the immediate locality which are of a conspicuously lower scale compared to later buildings in the vicinity (one of which was demolished in 2010 and the other being the four/five storey building erected behind the facade of the former Beadle's residence to the rear of the Great Synagogue). Legion House and the site is shown in **Figure 2** below.
- The area is characterised by a range of commercial and retail buildings, which are diverse in architecture, form, materials and finishes.



Figure 2: Castlereagh Street frontage with Legion House highlighted with Citisite House in the background

History of Development Applications Relevant to this Site

5. On 9 January 2002, the CSPC approved a Stage 1 DA (D/2001/654) for a 40 storey commercial tower development on this site. A design competition was then held, being won by Richard Francis Jones of Mitchell Giurgola Thorp (now Francis Jones Morehen Thorp (FJMT)).
6. On 12 December 2002, the CSPC approved a new Stage 1 DA (D/2002/748) which expanded the site to include the Grand United Building (GUB) site. The approved development comprised a commercial tower to a height of 168m (RL 190.1m) with four levels of basement parking for 116 vehicles.
7. On 27 February 2003 the CSPC approved a Stage 2 DA (D/2002/842) incorporating FJMT's winning design for a 43 storey commercial tower, with ground and basement retail, a mid block link from Castlereagh Street to Pitt Street, three basement levels for 116 car spaces, retention and restoration of Legion House, retention of the GUB, a new pedestrian link into Piccadilly Plaza and staged facade works, demolition of all other buildings and site amalgamation into one title, excluding the GUB site.
8. On 6 December 2007 the CSPC approved a Stage 2 DA (D/2007/1792) that essentially followed the previous approval but removed the GUB from the development site and reduced the parking to 90 car spaces.
9. There have been a number of modifications to this development (A – G), including various amendments to the tower, with the relocation of the core, amendment to levels, facade changes, the addition of a residence within the top levels and an additional basement level.

10. The current approved floor space ratio for the site is 14.2:1 or 63,885.5m².

PROPOSAL

11. This Section 96(2) modification seeks to increase the Floor Space Area (FSA) of the approved development, through the introduction of additional floor space to the heritage listed Legion House and within the new building envelope to be located at 167 Castlereagh Street. The proposal is to achieve 'Zero Energy' buildings for both buildings and a 6 Star Green Star Certified Rating and 6 Star National Australian Built Environment Rating System (NABERS) for Legion House.
12. The applicant initially proposed to construct two contemporary commercial levels on top of Legion House, which were to be setback 2.03m from the front facade. An additional enclosed plant level was also proposed, setback 7.65m from the front facade, which resulted in a total height of the building of 29.78m. The proposal resulted in a total additional floor space of 884.9m² for the entire site.
13. The proposal also included:
- (a) The creation of an external contemporary vertical circulation core to adjoin the south facade of Legion House;
 - (b) Provision of a 'Zero Energy' building, which can be operated independently of the electricity grid, with the potential to supply excess renewable electricity and heat to the main office tower, through the provision of a gasification system (gasifier, fuel storage and briquette press), generators, briquette press and woodchip/briquette storage area within Legion House;
 - (c) 6 Star Green Star rated fit out for the St James Ethics Centre located within Legion House;
 - (d) General restoration of other identified elements of Legion House;
 - (e) Provision of ground floor retail, and commercial uses on the upper levels;
 - (f) Re-interpretation of the front facade more in keeping with the original; and
 - (g) A new awning on Castlereagh Street.

Amended Plans

14. The applicant submitted amended drawings on 15 July 2011, 2 September 2011 and 3 November 2011 in response to issues raised by Council and the Heritage Committee. These amendments have sought to address:
- (a) the impact of the proposal on the heritage listed building, including structural certainty of the building with the additional load;
 - (b) the setback of the additions and the impact on the heritage fabric of the building;
 - (c) the location of the external stair within the public way; and
 - (d) the facade design of 167 Castlereagh Street.

15. Details of the most recent amendments are listed below:
- (a) Front setback to the Legion House upper additions increased from 2.03m metres to 7m;
 - (b) Reduction in height of the additions from 29.78m to 27.9m;
 - (c) Relocation of the majority of the plant area from Legion House to 167 Castlereagh Street, including the chillers, gasification system, generators, briquette press and woodchip/briquette storage area;
 - (d) Minor amendments to front facade treatment of the Legion House upper additions and parapet detail;
 - (e) Provide two new levels of commercial space and a plant level (gasification system) within the existing 167 Castlereagh Street podium with a new lift and stair core;
 - (f) Clarification of design and heritage conservation approach to Legion House's internal ceilings, external porch and shopfront windows;
 - (g) Removal of the awning on Castlereagh Street;
 - (h) External stair has been rounded and a 6m separation provided for the through site link; and
 - (i) Further refinement of the 167 Castlereagh street facade.
16. The current modification will result in the floor space ratio increasing by 0.31:1 from 14.2:1 to 14.51:1 and a total FSA for the site of 65,103.4m².



Figure 3: Photomontage of proposal as viewed from Castlereagh Street



Figure 4: Photomontage of Legion House as viewed from the public plaza.

IMPLICATIONS OF THE PROPOSAL

THRESHOLD TEST

17. The applicant states that in view of the extent of the development approved under the 2007 Stage 2 Consent, being a 43 storey tower, through site link and refurbishment works, the proposed modifications of an addition to Legion House and floor space within 167 Castlereagh Street are '*substantially the same development*' as that approved, for the following reasons:
 - (a) When comparing the physical features and components of the development approved in the 2007 Stage 2 consent, the two additional commercial floors plus plant level and the additional floors within the approved building envelope of 167 Castlereagh Street, together constitute small elements of the total approved development, being a 43 storey commercial tower and public plaza;

- (b) The proposed modification seeks an additional 1,217.9m² for an additional two storeys plus a plant room level on Legion House and floor space within 167 Castlereagh Street. The total approved development area is 63,885.5m², which will increase to 65,103.4m². The proposed modification is therefore a 1.9% increase in the total approved development area. In the context of the total development, the proposed modifications (in conjunction with other approved modifications to date) can be characterised as substantially the same development; and
- (c) The two additional floors and plant area on Legion House have been setback from the street and are sympathetically designed with respect to the heritage item and the streetscape.

SECTION 79C ASSESSMENT

18. The current consent for the site was caught by the savings provisions of Clause 14 of Sydney LEP 2005, meaning that the applicable environmental planning instrument was Central Sydney LEP 1996. It is noted that Clause 14 of Sydney LEP 2005 refers to the saving of certain 'development applications' and 'development plans' but does not refer to modification applications. Therefore, the provisions of Sydney LEP 2005 represent the principal planning instrument for the purpose of this modification application.
19. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 79C of the Environment Planning and Assessment Act are still relevant.

Sydney LEP 2005

20. 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
Zoning	City Centre Zone	City Centre Zone
Floor Space Area	56,125m ²	65,103.4m ²
Floor Space Ratio (Site area = 4,487m ²)	12.5 : 1	14.51 : 1

Development Controls	Permissible under Sydney LEP 2005	Proposal as assessed under Sydney LEP 2005
Floor space to be Allocated	Clause 26(6) provides for a reduction in the amount of HFS that is required to be allocated under Clause 62, if the development exhibits design excellence and is the result of a design competition.	<p>The design of the approved tower resulted from a design competition and is considered to exhibit design excellence.</p> <p>The modification has a FSR of 14.51:1, which equates to a gross floor area of 65,103.4m². The Heritage Floor Space allocation therefore increases by 1,218m² to 8,209.4, which the applicant will be required to pay in full.</p>
Height of Legion House	Hyde Park West Sun Plan Access Plane	Legion House 27.9m above street level (RL 51.1).
Design Excellence Clause 26	Consent must not be granted unless consideration has been given to whether the proposal achieves design excellence	<p>The design of the alterations is consistent in character with the approved development is by the same architect (FJMT).</p> <p>Refer to issues section regarding heritage issues.</p>

Development Controls	Permissible under Sydney LEP 2005	Proposal as assessed under Sydney LEP 2005
<p>Environmental Design Clause 27</p>	<p>Consent Authority must have regard to the principles of ecologically sustainable development based on “whole of building” approach.</p>	<p>The construction of 167 Castlereagh Street and the refurbishment of Legion House will result in ‘Zero Energy’ buildings and set new benchmarks in sustainable design, particularly for refurbished buildings.</p> <p>The proposed key sustainable design performance targets for both buildings (Legion House and 167 Castlereagh St) include:</p> <ul style="list-style-type: none"> - being ‘Zero Energy’ buildings; and - operate independently of electricity grid. <p>In addition, Legion House will have a 6 Star Office Design and 6 Star NABERS Energy commitment and be water balanced (rainwater self sufficient). These commitments to sustainable design are recommended to form conditions of consent.</p> <p>Refer to issues section.</p>

LEP PART 6 - HERITAGE PROVISIONS

21. Legion House is a designated heritage item (No 2049) pursuant to Schedule 8 of the LEP. As the proposal will materially affect Legion House, a heritage committee was required to be established under clause 73(2) of the LEP.
22. The Committee comprised of two members, being Peter McKenzie (Jackson Teece) and Don Truman (Truman, Zaniol and Associates Pty Ltd), who convened on 2 June 2011 regarding the pre-amendment (original) proposal.
23. The Committee commented generally that the existing building fabric substantially shows the early phases of the building except for the ground floor, where much of the fabric relates to a significant restaurant established in 1937/8. They noted that the building is highly intact with original fabric, which is often obscured by readily reversible linings and that other original fabric that has been modified, could be easily conserved by reference to original details surviving on and within the building.

24. The Committee noted that the Conservation Management Plan (CMP) indicates that this “is certainly one of the earliest” purpose-built buildings of its type and therefore the Committee considers that this aspect requires further investigation for State Significance.
25. The Committee raised a number of concerns regarding the original Section 96 application, particularly concerning the significant loss of original fabric and its substantial impact on the understanding of the original function and use of the place; encapsulation of a substantial portion of the north elevation for new plant and stair; partially disguising the south elevation with a new freestanding glass lift, stair and bridge structure; removal of most of the original roofs; encapsulation of the top of the building with a new three storey high building that extends almost to the street frontage; and the general extensive removal of original and/or significant fabric.
26. These concerns were conveyed to the applicant and subsequent amendments have been submitted, which are discussed further in the issues section below. The Heritage Committee reviewed the amended plans and maintains its position.

Draft Sydney LEP 2011

27. The Draft Sydney LEP 2011 was placed on public exhibition in February 2011. The provisions of the Draft LEP have been taken into consideration in the assessment of the proposal.
28. The site is located within the Metropolitan zone. The proposal is permissible with consent.
29. The proposed modification does not comply with the draft floor space ratio of 8:1 plus bonus (total of 56,088m²), which is discussed in the issues section below. The proposed modification does comply with the draft height control.

Central Sydney DCP 1996

COMPLIANCE WITH THE CENTRAL SYDNEY DCP 1996

Matter to be Considered	Complies	Comment
Building Setbacks Cl 2.3.5	✘	Does Not comply: The proposed addition above the heritage listed Legion House will be setback 7m and not the 10m required. Refer to issues section.
Street frontage activities Cl 2.5	✔	Complies: The proposal provides retail shops fronting Castlereagh Street within both Legion House and 167 Castlereagh Street.

Matter to be Considered	Complies	Comment
Building exteriors CI 2.7	✓	Complies: The proposal is consistent with the objectives as they relate to building exteriors. The proposal contributes to the streetscape by means of high quality architecture, providing detail and architectural interest, while retaining the heritage listed Legion House.
Awnings & colonnades CI 3.5	✘	Does Not comply: An awning is proposed to be provided to the 167 Castlereagh Street building, which will align with the adjacent Masonic Club. However, the awning that was originally approved for Legion House is to be deleted. This is considered acceptable as it was considered to be a detracting feature from the heritage listed building. In its place, a canopy is to be provided over the location of the original.
Easy access CI 3.8	✓	Complies: The proposal has been designed in accordance with Australian Standards.
Sunlight to public spaces CI 4.1	✓	Complies: The proposal will not result in any significant additional overshadowing of public spaces.
Energy efficiency of buildings CI 4.3	✓	Complies: The proposal will result in Legion House achieving a 6 Star Green Star score and a 6 Star NABERS commitment. In addition, 167 and Legion House will be 'Zero Energy' buildings and be capable of operating off the energy grid. ESD measures are discussed further in the issues section.

Issues

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

Floor Space Ratio

31. The approved consent (D/2007/1792) was caught by the savings provisions of Clause 14 of the Sydney LEP 2005, resulting in the applicable planning instrument being the Central Sydney LEP 1996. This LEP allowed for the consideration of a FSR greater than 12.5:1 subject to the lodgement of a SEPP 1 Objection. This original development consent approved a FSR of 14.2:1 or FSA of 63,885.5m²
32. The applicant is seeking the additional floor space in both Legion House and 167 Castlereagh Street to assist achieving the sustainable initiatives proposed for both buildings. This will therefore increase the FSR of the approved development to 14.51:1, based on the modified overall FSA for the site being 65,103.5m².
33. As Clause 14 of the Sydney LEP 2005 refers to the saving of certain 'development applications' and 'development plans' and does not refer to modifications, the provisions of Sydney LEP 2005 apply to this application. The applicant's legal advice, which has been reviewed and agreed by Council's Legal unit, therefore indicates that the modification can be achieved without requiring a SEPP 1 objection or subject to a 10% cap under Clause 10 of the Sydney LEP 2005.
34. The proposed additional 1,217.9m² of floor space is considered to be acceptable within this development, as it will not result in any adverse amenity impacts and will result in substantial sustainable design outcomes. In addition, while the proposed additional floor space on top of Legion House will have some negative impacts, it is considered acceptable in this instance. Refer to Heritage section below.

Legion House Heritage and Urban Design

35. The proposal for Legion House is to provide for two additional levels and a plant space; construct an external stairwell and lift, which will be connected to the south of the building within the through-site link; internal room reconfiguration through demolition; and new facades to south and west.
36. Clause 72 of the LEP 'Development that would materially affect a heritage item' states that "*the consent authority must not grant consent for development that will materially affect a heritage item unless it is satisfied that:*
- (a) *the item, or the part of the item, affected is not of such heritage significance or landmark value that the proposed development would diminish the heritage of the City of Sydney, and*
 - (b) *the proposed development exhibits design excellence and is superior in quality to the existing heritage item, and*
 - (c) *the proposed development would make a contribution to the quality of the public domain of the City of Sydney superior to that made by the existing heritage item, and*

(d) *in the case of partial demolition, the proposed development would conserve the heritage significance (and would not prejudice the continued heritage item status) of the item, would facilitate its continued use or adaptive reuse, and would contribute to the ongoing conservation of the heritage item, or the affected part of the item that will be retained.”*

37. The proposal generally meets these tests and it is noted that they are not carried forward to the draft LEP.
38. In addition, the CMP notes that *‘the architectural language, scale and setback of any external addition should be designed to ensure that it does not overwhelm the integrity of the overall external form of Legion House, especially the Castlereagh Street facade’* and that *‘the architectural language of any external addition should be of a contemporary style but compatible with the overall external form and Castlereagh Street facade of Legion House.’*
39. These considerations are discussed in more detail below, but of particular note, is that the proposed works to Legion House will result in a better heritage outcome than that proposed by the approved scheme.

Roof addition

40. The two commercial floors and plant level proposed for Legion House have been setback 7m, and while not complying with the 10m setback required by the DCP over heritage items, it is considered that the additions relate logically to the structural elements of Legion House, particularly in regards to access requirements.
41. While a 10m setback of the additions would be preferable, the proposed upper floors and plant level will generally not be viewed when looking south along Pitt Street, due to the presence of Citisite House, and very limited views of the addition will be seen when looking north, due to the presence of the Masonic Club. It should also be noted, that in context, the proposed additions will partially screen the large blank brick wall of Citisite House and will therefore provide a positive contribution to the streetscape.
42. The Heritage Committee raised concern regarding the structural integrity of the Legion House with the addition of the proposed floors. The applicant has undertaken a further physical structural analysis and maintains that the existing structure can support the additional load proposed.

External stairwell and lift

43. The proposed new external stair and lift element, which is to extend into the through-site link, has been amended to an curved plan and glazing system. These modifications are considered to soften the visual dominance of the structure against Legion House and increase its transparency and visual simplicity. In addition, the amended design improves access to the recess between the new element and Legion House for cleaning and maintenance, while maintaining the 6m separation distance for the through-site link required as part of the original consent.

44. The structure is considered to be acceptable in principle, as it does not damage the principal architectural elevation of Legion House and sits within the footprint of the now-demolished Angus House. In addition, it improves access to Legion House outside the envelope of the heritage fabric. However, it is considered that its functional connections at levels 1 to 3 could be improved, as these connections do not require the total demolition of the original south wall of the stair element shown on levels 1 to 3. A condition is therefore recommended that the connections be punched through and demolition minimised to improve the structural integrity of the upper walls and allow interpretation of the original window joinery and stairs of this element.
45. It is noted that a BCA complying lift could not fit within the existing internal Legion House lift shaft as it would result in an unacceptable level of internal demolition.

Facade

46. The CMP provides good documentary evidence of the original facade at ground floor level, including original drawings and a photo. The proposed contemporary shopfront as proposed is not considered to be appropriate for this site and a suitable condition is recommended requiring further modification.
47. The proposed works to the southern and western facades will provide a better relationship to the approved public plaza and through-site link, to which they face. The side (southern) elevation of Legion House was not originally designed to be viewed from Castlereagh Street. As proposed, the building may be approached from the three elevations and will therefore provide a complete building in the round, rather than the original single aspect building as originally approved.

Internal Works

48. The existing approved development grants consent for the demolition of a number of important rooms on Levels 1 to 3, which have been given high to moderate heritage significance in the CMP. The proposal, as modified, will result in the retention of these rooms, importantly the ballroom on Level 1 and the rooms adjacent to the Castlereagh Street facade on Levels 1 to 3. A condition is recommended to further retain other rooms considered to be important for the original interpretation of the function of Legion House.
49. A number of conditions are recommended regarding internal detailing including new fenestration, and a reduction in the proposed demolition resulting in an increase in retention and interpretation, particularly of the internal stair.

Summary

50. Although the Heritage Committee has not supported the proposed additions and intrusion into Legion House and that the heritage significance of the building will be affected by the proposed development, Council's Heritage and Urban Design Manager considers that, on balance, the works are acceptable and improve aspects of the existing approval. The proposal will result in a better heritage outcome for the most significant interiors of Legion House than those approved by the original consent and the proposal encourages the sustainable adaptive reuse of the heritage item.
51. The applicant is required to purchase an additional 1,218m² of additional Heritage Floor Space due to the increase in FSA above the approved maximum. A suitable condition of consent is recommended.

167 Castlereagh Street Urban Design

52. The proposed elevation for 167 Castlereagh Street is considered to be a key infill to the existing Castlereagh Street street wall and the modified design has resulted in an appropriate stone and glass ratio to the facade. However, a condition requiring that the stone cladding be of characteristic Sydney non-branded sandstone to fit with the Masonic Club and Legion House stonework is recommended.
53. The additional floor space proposed within the approved building envelope will not result in any adverse amenity impacts.

Design Excellence

54. Although the proposal will have an impact on the heritage significance of Legion House, it is considered, on balance, that the modification as amended achieves a high quality design through a considered design response and a high standard of materials and detailing developed through extensive consultation with Council.

Sustainability

55. Through the proposed modification, the applicant proposes to establish four key environmental outcomes, which are consistent with clause 27 of the Sydney Local Environment Plan 2005, being:
 - (a) 6 Star NABERS Rating for Legion House;
 - (b) High-end 6 Star Green Star Certified Rating;
 - (c) Legion House and 167 Castlereagh Street being 'Zero Energy' buildings; and
 - (d) Produce base-load renewable energy in order to go 'off-grid'.

NABERS and Green Star

56. The proposal to redevelop Legion House will result in Australia's first 6 Star NABERS Energy refurbished building. The NABERS Energy tool is an award as to how an office building 'performs', with 6 Stars currently being the highest rating. The applicant has entered into a pre-commitment with Office of Environment and Heritage (OE&H) regarding achievement of this standard and will seek to enter into agreement following construction and operation. This is an accepted benchmark standard for ensuring compliance with the sustainability aspects of the proposal.
57. In addition, the proposed 6 Star Green Star Certified Rating for Legion House, as defined by the Green Building Council of Australia, signifies 'World Leadership' in environmentally sustainable design and construction.

Zero Energy

58. Legion House and 167 Castlereagh Street are proposed to be 'Zero Energy' buildings, in accordance with a definition for Australia currently being developed by the Australian Sustainable Built Environment Council. These are buildings which are an attempt to reduce their impact on the environment in regards to their lifecycle, from base building through to the operation of the building.

59. The previous design for Legion House located all of the major plant including mechanical services and a renewable energy plant on Legion House itself. It was considered that this compromised Legion House and lead to a larger roof plant space.
60. The majority of the plant and the cogeneration plant were then relocated to 167 Castlereagh St and the basement B1 level. This has resulted in the environmental performance of 167 Castlereagh St being lifted. With this arrangement, Legion House and 167 Castlereagh St will effectively work together under the same off-grid renewable electricity and thermal energy supply.
61. At this stage, the Legion House and 167 Castlereagh St project is assuming the use of recycled wood chips as the primary fuel source supplemented by briquetted waste for the generation of renewable energy. This has been approved and conditioned by OE&H on a trial basis to ensure that there are no adverse air emissions.

Water

62. Legion House has been designed to be water balanced, with rainwater supplying all amenities.

Commitments

63. In addition to these other sustainable initiatives, the applicant has made a number of commitments to Council regarding tours of Legion House and public education regarding the sustainable outcomes proposed. These are to form conditions of consent.

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

64. The impacts of the development are described above and the proposal is recommended for approval subject to conditions.

BCA Matters

65. The BCA Classification of the buildings for the whole development are Class 4, 5, 6 and 7.

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

66. The site is suitable, on balance, for the proposed development as discussed above.

Section 79C(1)(e) Public Interest

67. The proposal is in the public interest, as it will provide an environmentally sustainable outcome for a refurbished heritage building.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

68. The approved development required the applicant to pay a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003. A new condition is recommended to reflect the modified development.

PUBLIC CONSULTATION**Section 79C(1)(d)****EXTERNAL REFERRALS****Office of Environment and Heritage**

69. The OE&H have provided recommended conditions regarding the proposed use of the cogeneration plant, including air quality concentration limits and monitoring requirements, which are to be included within this recommendation.

RailCorp

70. The site is located proximity of the CBD Rail Link. RailCorp has provided its concurrence to the proposed modification subject to the retention of the Railcorp condition (Condition 22A) as part of the original consent.

Notification

71. Adjoining and nearby owners and occupiers of residential and commercial buildings were notified of the original proposal and invited to comment. 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.

72. Two submissions were received, raising the following issues:-

- (a) The proposed lift to adjoin Legion House may result in noise issues to the adjoining Masonic Club Hotel.

Comment: The Masonic Club had initially thought the lift was not enclosed. This is not the case, with the lift being fully enclosed in glass, which will minimise any potential noise impacts.

The development is subject to a noise condition.

- (b) Access is required to be maintained from Citisite House to the public plaza.

Comment: This issue is outside of the scope of this application. However, as a separate application access is maintained between Citisite House and the public plaza.

- (c) The new lift to Legion House will reduce the width of the pedestrian access

Comment: While the external stairwell and lift does protrude into the through-site link, the 6 metre separation distance is maintained as required by the original condition of consent.

- (d) The proposed additions to Legion House are inconsistent and not sympathetic to the heritage building or streetscape and will detract from its heritage value.

Comment: The proposed additions are considered appropriate in the context of the site and are discussed above.

- (e) The additional floor space is not justified

Comment: The additional floor space has been discussed above.

INTERNAL REFERRALS

73. The application was referred to Council's Specialist Health Surveyor and Council's Heritage and Urban Design Manager, who have recommended appropriate conditions of consent.

RELEVANT LEGISLATION

74. The Environmental Planning and Assessment Act 1979.

CONCLUSION

75. On balance, the proposed development to Legion House (two additional commercial levels and plant on the top and rear of the heritage listed building, an external stairwell and lift adjoining the buildings southern facade and internal reconfiguration and works) are considered to be acceptable, as they will, subject to conditions, result in a good urban design outcome and an improved heritage outcome than that approved by the original consent.
76. The two additional commercial floors and plant level within the approved building envelope of 167 Castlereagh Street will not result in any adverse amenity impacts and are considered to be acceptable.
77. The proposed sustainable initiatives, including the first 6 Star NABERS Rated refurbished building in Australia and both buildings being 'Zero Energy' buildings are considered to be a good sustainable outcome for the development.
78. The proposed development is therefore recommended for approval subject to conditions.

GRAHAM JAHN

Director City Planning and Regulatory Services