

**Item 5.****Development Application: 47 and 49-53 Wentworth Avenue, Sydney****File No.: D/2018/600****Summary**

<b>Date of Submission:</b>	1 June 2018 Amended plans received 9 October 2018
<b>Applicant:</b>	GA Wentworth Ave Pty Ltd c/o Urbis
<b>Architect/Designer:</b>	Bates Smart
<b>Developer:</b>	GA Wentworth Ave Pty Ltd / 1 Hotels
<b>Owner:</b>	GA Wentworth Ave Pty Ltd
<b>Cost of Works:</b>	\$76,120,000
<b>Zoning:</b>	The site is located within the B8 - Metropolitan Centre zone under the Sydney LEP 2012. The proposal is for hotel accommodation and retail uses, and is permissible within the zone with consent.
<b>Proposal Summary:</b>	<p>Development consent is sought for the detailed design relating to the redevelopment of the site. The application proposes the demolition of the existing commercial building at 47 Wentworth Avenue, the adaptive reuse of the existing 9 storey building at 49-53 Wentworth Avenue and construction of a 19 storey mixed use building comprising:</p> <ul style="list-style-type: none"><li>(a) 287 hotel accommodation rooms;</li><li>(b) Ground floor restaurant/cafe (capacity of 196 patrons), bar (capacity of 252 patrons) and lobby areas;</li><li>(c) Rooftop bar (capacity of 317 patrons); and</li><li>(d) 1 basement level with plant and service areas.</li></ul>

**Proposal Summary:**  
**(continued)**

The ground floor restaurant/cafe is to operate between 6.00am and 12 midnight Mondays to Sundays inclusive. The ground floor bar is to operate between 7.00am and 1.00am the following day Mondays to Sundays inclusive. The rooftop bar is to operate between 7.00am and 2.00am the following day Mondays to Sundays inclusive.

It is also proposed to stage construction works consisting of:

- (a) Demolition;
- (b) Retention, Remediation and Bulk Excavation;
- (c) Structure; and
- (d) Fit-out.

A competitive design alternatives process was undertaken for the development over the period May to July 2016, with Bates Smart being selected as the preferred design. The proposal is generally consistent with the design competition and in its final form is considered to achieve design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan (LEP) 2012.

A request has been submitted pursuant to Clause 4.6 of the Sydney LEP 2012 to vary the 'Height of buildings' development standard of 66m (60m + 10% awarded for design excellence). The additional 3.68m in height (or 5.5%) is confined to the middle portion of the rooftop, in the form of a lift overrun and plant area, in order to facilitate access to the rooftop for the bar. The lift overrun and plant areas are not readily visible from the public domain, and the height non-compliance does not result in any adverse environmental impacts. The variation to the height development standard is supported in this instance.

The variation to the height of the development, and the proposed use of the site as hotel accommodation requires an amendment to be made to the concept approval for the building envelope relating to the site (D/2015/920/B). The section 4.55 application to modify the concept approval is to be assessed concurrently with this application.

- Proposal Summary:**  
**(continued)**
- The development application was advertised and notified for a period of 28 days from 7 June to 6 July 2018. One submission was received raising concerns with the operation of the licensed food and drink premises within the development. The operation of the licensed food and drink premises / bars have been assessed and addressed via conditions.
- Amended plans have been submitted throughout the course of the assessment however the amended plans were not required to be renotified as no new environmental impacts resulted from the amendments.
- The proposal has been designed to respect the retained building which is older than 50 years, and is generally consistent with the relevant planning controls.
- Summary Recommendation:** The development application is recommended for approval, subject to conditions.
- Development Controls:**
- (i) State Environmental Planning Policy No. 55 - Remediation of Land
  - (ii) State Environmental Planning Policy (Infrastructure) 2007
  - (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment (deemed SEPP)
  - (iv) Sydney Local Environmental Plan 2012
  - (v) Sydney Development Control Plan 2012
- Attachments:**
- A. Recommended Conditions of Consent
  - B. Selected Drawings
  - C. Clause 4.6 Variation to Height of Buildings Development Standard Request

**Recommendation**

It is resolved that:

- (A) the variation requested to the 'Height of buildings' development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2018/600, subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

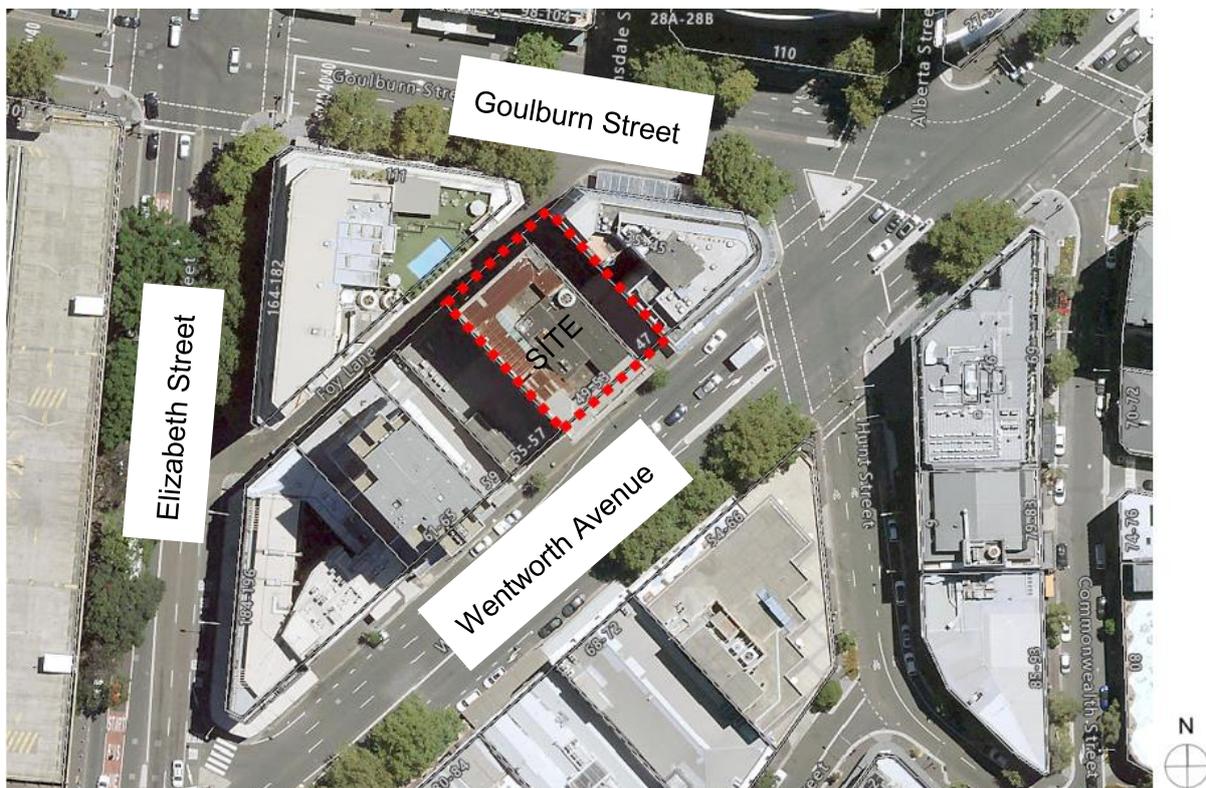
The application is recommended for approval for the following reasons:

- (A) The development that is the subject of the application is consistent with the objectives of the B8 - Metropolitan Centre zone for the reasons set out within the report.
- (B) The proposal is consistent with the concept application D/2015/920/B (as modified).
- (C) The proposal, subject to conditions, will not adversely impact upon the amenity of neighbouring properties.
- (D) The requested variation to the 'Height of buildings' development standard is upheld because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of 'Height of buildings' development standard and the B8 - Metropolitan Centre zone.

## Background

### The Site and Surrounding Development

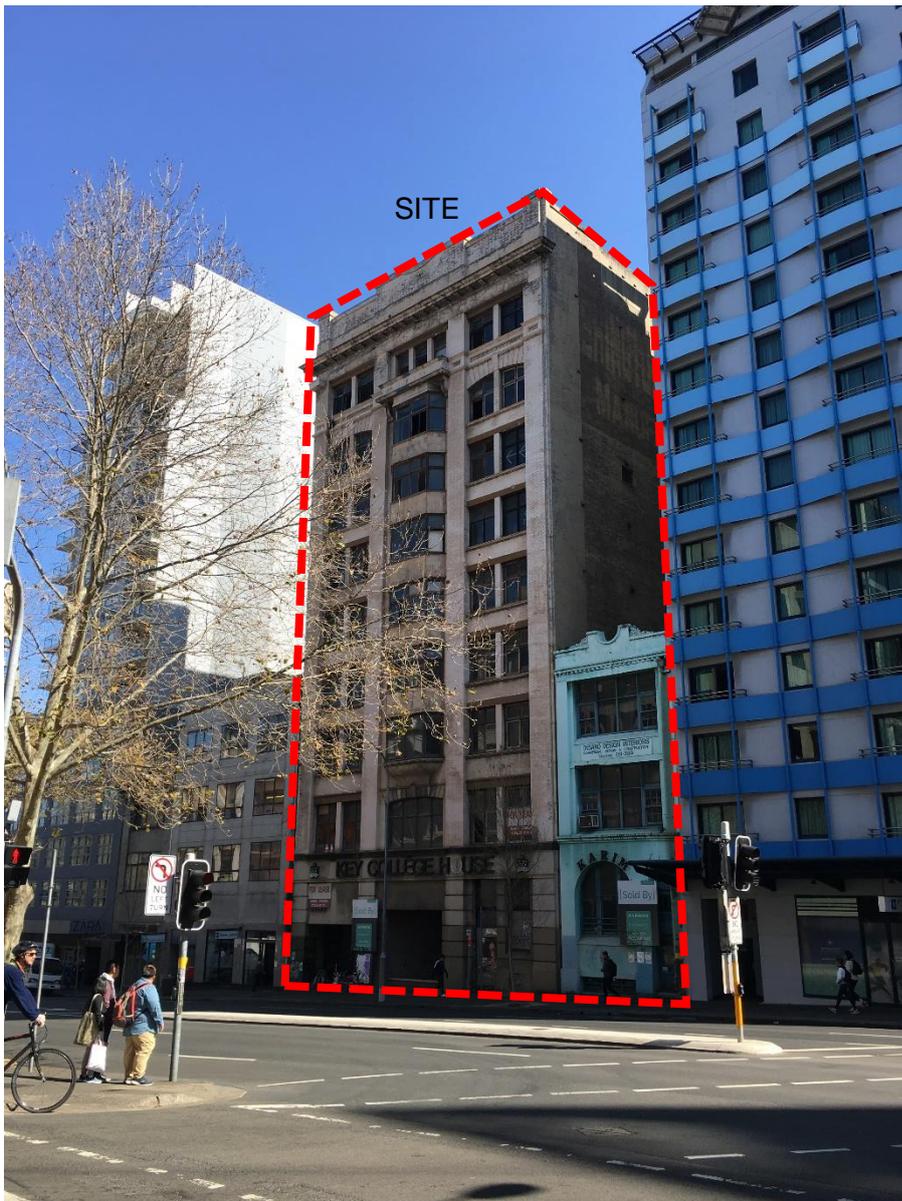
1. A site visit was carried out by staff on 21 August 2018.
2. The site comprises several parcels of land being Lot 13 in DP 6380, commonly known as 47 Wentworth Avenue, and Lot 10, Lot 11, and Lot 12 in DP 6380, commonly known as 49-53 Wentworth Avenue, Sydney.
3. The site is rectangular in shape and has an area of 743.7sqm. It is located on the north-western side of Wentworth Avenue, between Goulburn and Elizabeth Streets. It has frontages to Wentworth Avenue to the south-east, and Foy Lane to the north-west. There is a fall across the site from its north-eastern boundary to its south-western boundary of up to 0.98m.
4. The site is situated above existing Sydney Water structures. The structures consist of 300mm stormwater pipes, and an oviform stormwater channel 1240mm wide x 1830mm high. The stormwater channel is 143 years in age.
5. An aerial view of the subject site and surrounding area is provided below.



**Figure 1:** Aerial image of subject site and surrounding area

6. The property at 47 Wentworth Avenue contains a 3 storey Federation commercial building known as 'Karim House', constructed shortly after 1911. The rear portion of the property contains an open hard stand area used for car parking.

7. The property at 49-53 Wentworth Avenue contains a Federation Free Style warehouse known as 'Tyne House', constructed in 1915-1916. The warehouse is 9 storeys in height plus lift overrun, motor room and additions on the roof. Although 'Tyne House' is not identified as a heritage item, it has been assessed as being of sufficient historic and aesthetic significance, with a high level of intactness, to warrant local heritage listing. Indicative adaptive reuse of this building was approved as part of D/2015/920.
8. The site is not located within a special character area, but is in the vicinity of several heritage items on the opposite side of Wentworth Avenue (40-44, 46-52, 68-72, 74-78 and 80-84 Wentworth Avenue), and 184-196 Elizabeth Street.
9. Photos of the site and surrounds are provided below:



**Figure 2:** Subject site viewed from Wentworth Avenue, looking west (site outlined)



Figure 3: Wentworth Avenue streetscape looking west



Figure 4: 47 Wentworth Avenue viewed from Foy Lane (looking south)



**Figure 5:** 49-53 Wentworth Avenue viewed from Foy Lane (looking east)



**Figure 6:** Foy Lane streetscape looking west

10. To the north-east at 35-45 Wentworth Avenue is a 15 storey hotel with ground floor retail uses known as the 'Wyndham Sydney Suites'.
11. The property immediately adjacent to the south-west at 55-57 Wentworth Avenue contains a 4 storey commercial building and the property at 59 Wentworth Avenue contains a 3 storey commercial building. Both of these sites are the subject of a court approved development consent for the demolition of the existing buildings, and the construction of a 20 storey hotel and retail development.
12. Further to the south-west at 61-65 Wentworth Avenue is an 18 storey mixed-use development with ground level retail suites and serviced apartments above known as the 'Zara' development.
13. On the opposite side of Foy Lane at 111 Goulburn Street and 164-182 Elizabeth Street, is a 10 storey building known as the 'Vibe Hotel Sydney'.
14. The south-eastern side of Wentworth Avenue is within the suburb of Surry Hills and contains a mixture of commercial buildings ranging from 2 to 9 storeys in height.

## Proposal

15. The application seeks consent for the detailed design for the redevelopment of the site, proposing the demolition of the existing commercial building at 47 Wentworth Avenue, the adaptive reuse of the existing 9 storey building at 49-53 Wentworth Avenue, and construction of a 19 storey mixed use building comprising:
  - (a) 287 hotel accommodation rooms;
  - (b) Ground floor restaurant/cafe (capacity of 196 patrons) and bar (capacity of 252 patrons); and
  - (c) Rooftop bar (capacity of 317 patrons).
16. Construction consists of:
  - (a) **49-53 Wentworth Avenue**
    - (i) Existing floor slabs, beams, and other internal structures to be demolished at each level (basement to level 10);
    - (ii) Retention of some fire doors, western fire stair up underside of level 2, internal face brickwork, heritage lift shaft and cage at ground and basement, strong room walls and door as well as heritage tracks at ground floor; and
    - (iii) External facades of Tyne House to be retained (with the use of a temporary steel bracing system) and incorporated into new development.
  - (b) **Basement level**
    - (i) Services, plant areas;
    - (ii) Bin, dry and cold store rooms;
    - (iii) Back of house relating to the hotel accommodation, and food and drink tenancies; and
    - (iv) Bicycle parking for 20 spaces.
  - (c) **Ground floor**
    - (i) Ground floor restaurant/cafe and bar areas;
    - (ii) Lobby area associated with the hotel accommodation development;
    - (iii) 3x lifts and goods lift;
    - (iv) Combined loading space/dining area to Foy Lane;
    - (v) Holding bay/collection point for garbage bins; and
    - (vi) Substation to Foy Lane.

- (d) **Levels 1-17**
    - (i) Hotel accommodation rooms within Tyne House and addition above.
  - (e) **Level 18**
    - (i) Rooftop bar, lift overruns, and service areas.
  - (f) **Roof level**
    - (i) Condenser deck, hot water plant and exhaust openings.
17. It is also proposed to stage construction works as follows:
- (a) Demolition;
  - (b) Retention, Remediation and Bulk Excavation;
  - (c) Structure; and
  - (d) Fit-out.
18. The proposed development has a height of 69.68m / RL 86.63, and a floor space ratio (FSR) of 13.75:1 (10,227sqm).
19. Plans of the proposed development are provided below.



Figure 7: Proposed basement plan



Figure 8: Proposed ground floor plan



Figure 9: Proposed Level 1 floor plan (within Tyne House). Levels 2-9 similar



Figure 10: Proposed Level 10 floor plan (within Tyne House)



Figure 11: Proposed Level 11 floor plan (new addition). Levels 12-17 similar

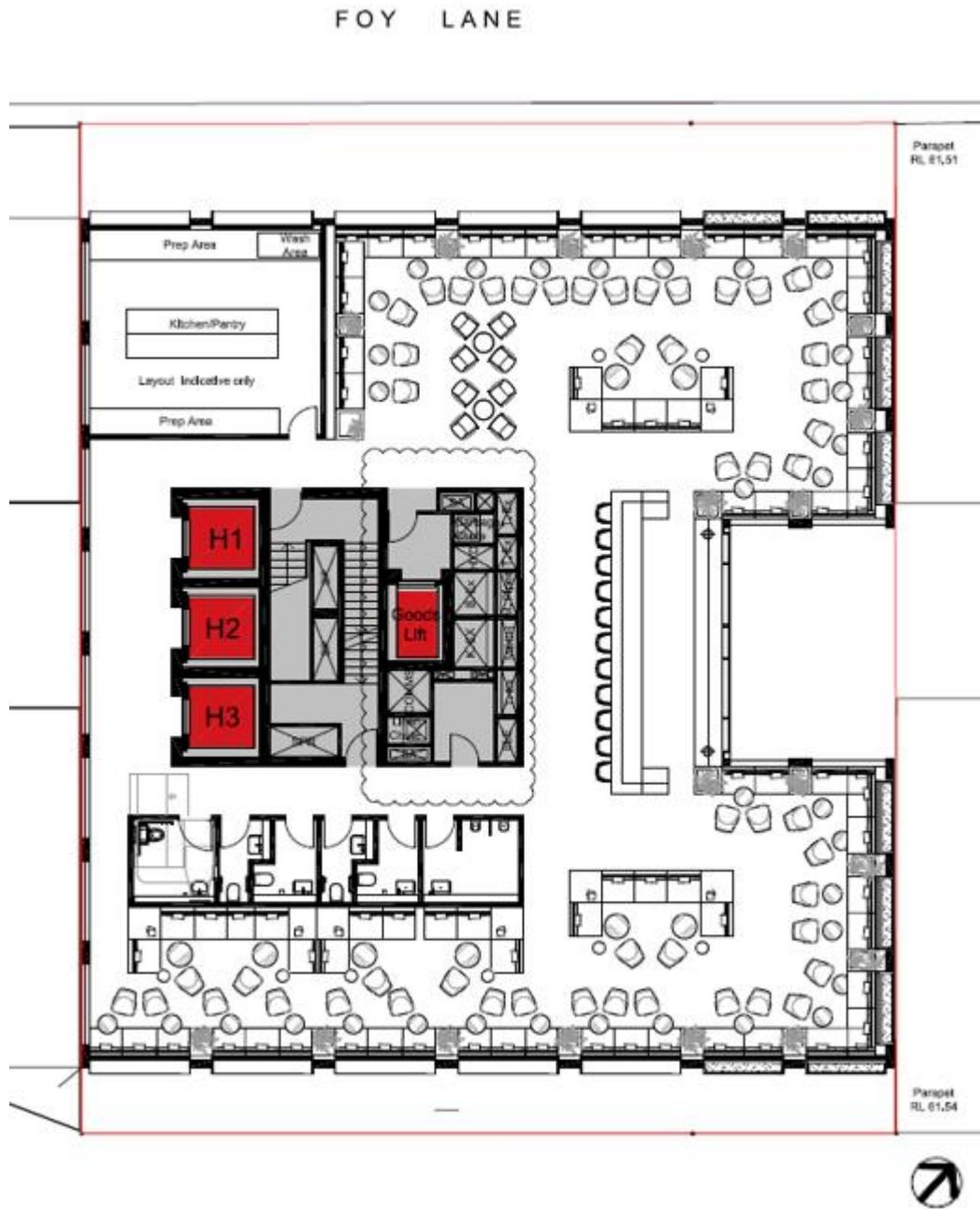


Figure 12: Proposed Level 18 floor plan

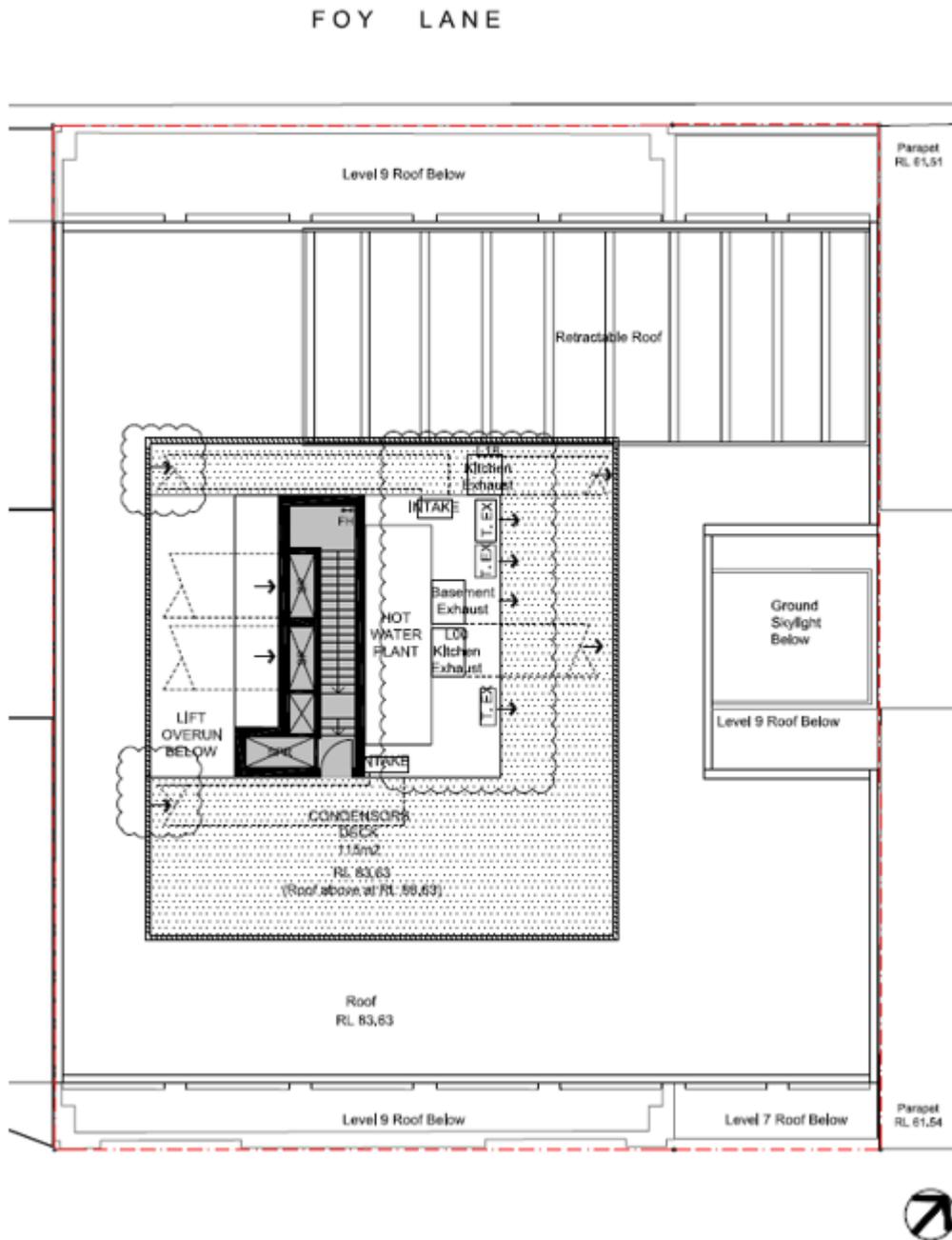


Figure 13: Proposed rooftop plan



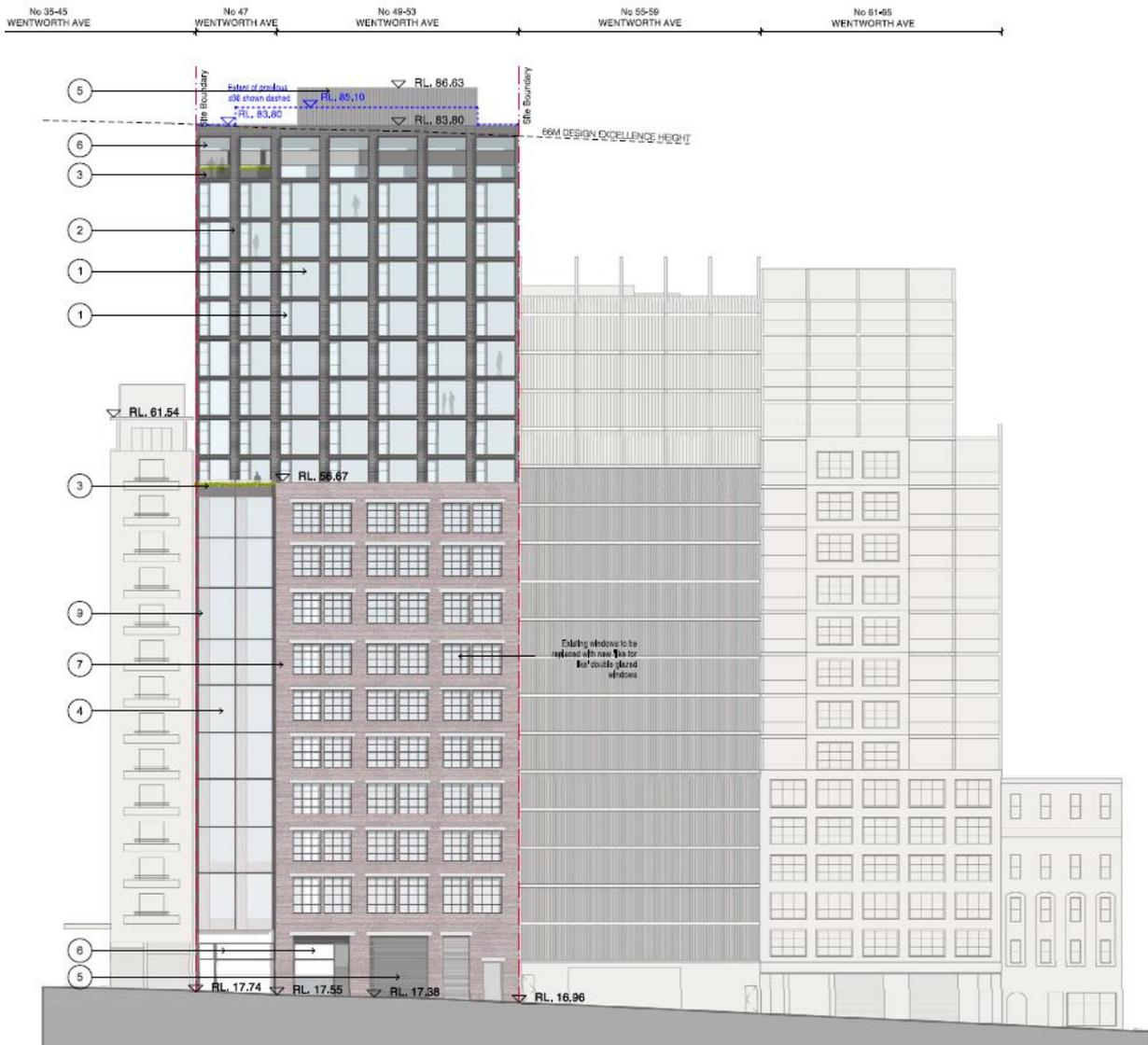


Figure 15: Foy Lane elevation

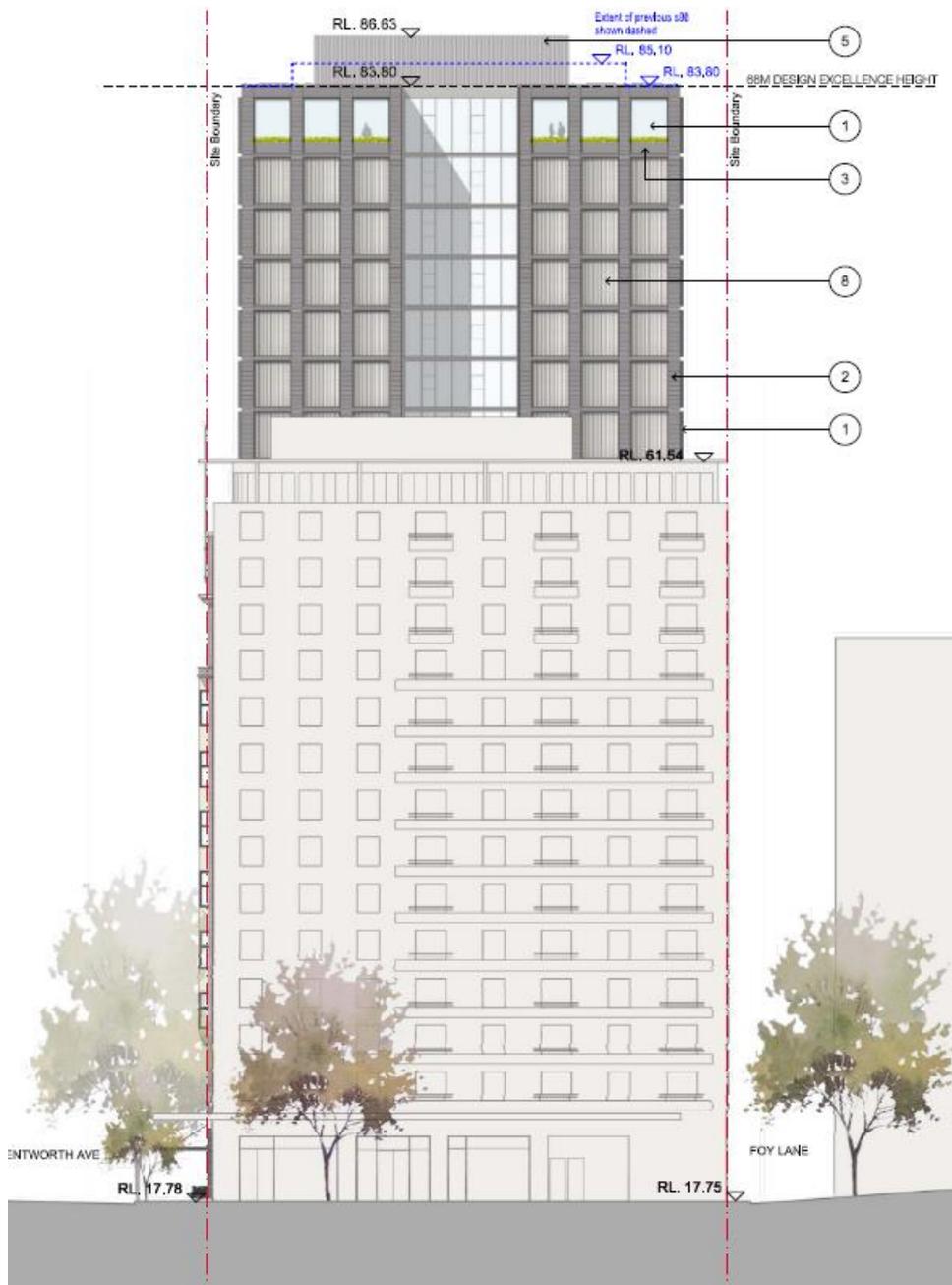


Figure 16: Goulburn Street elevation

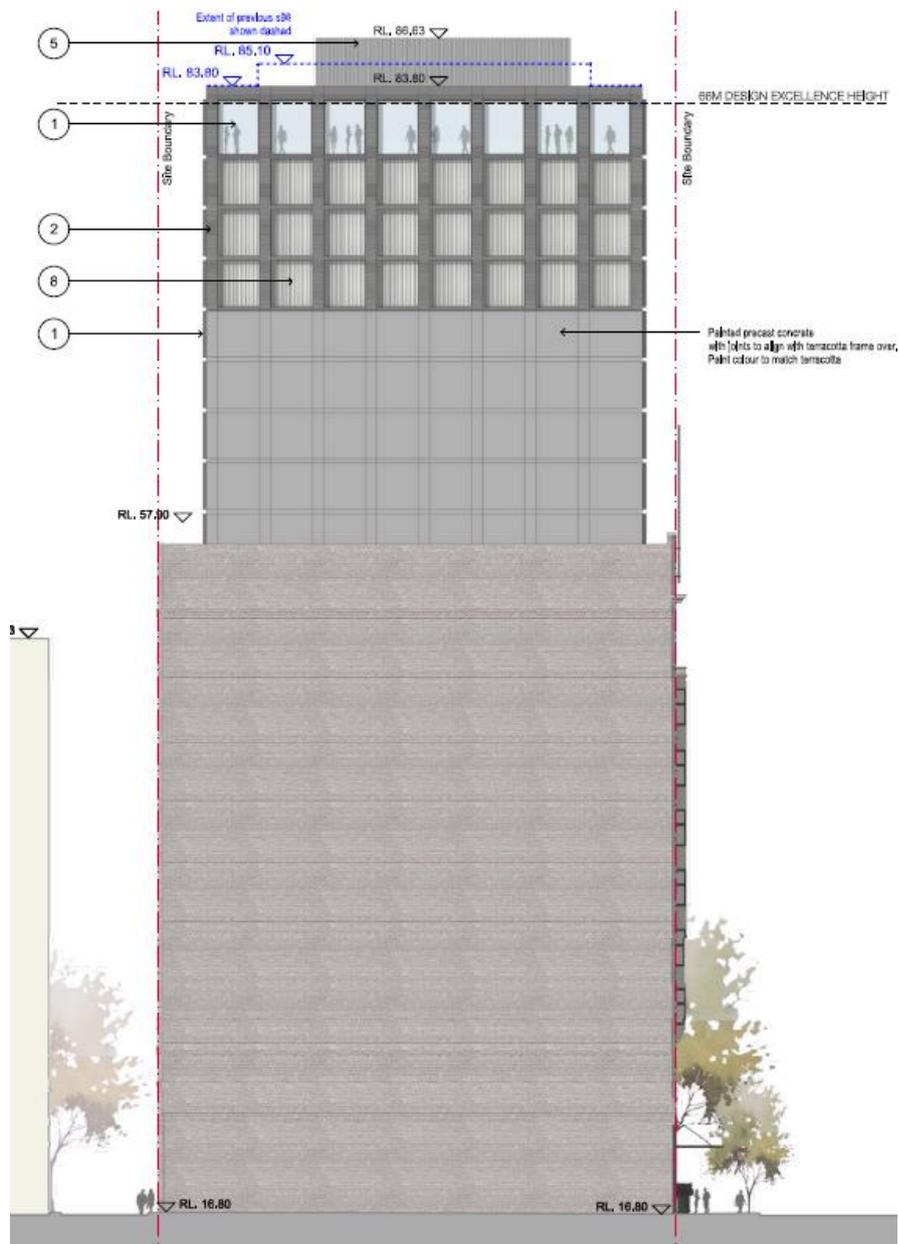
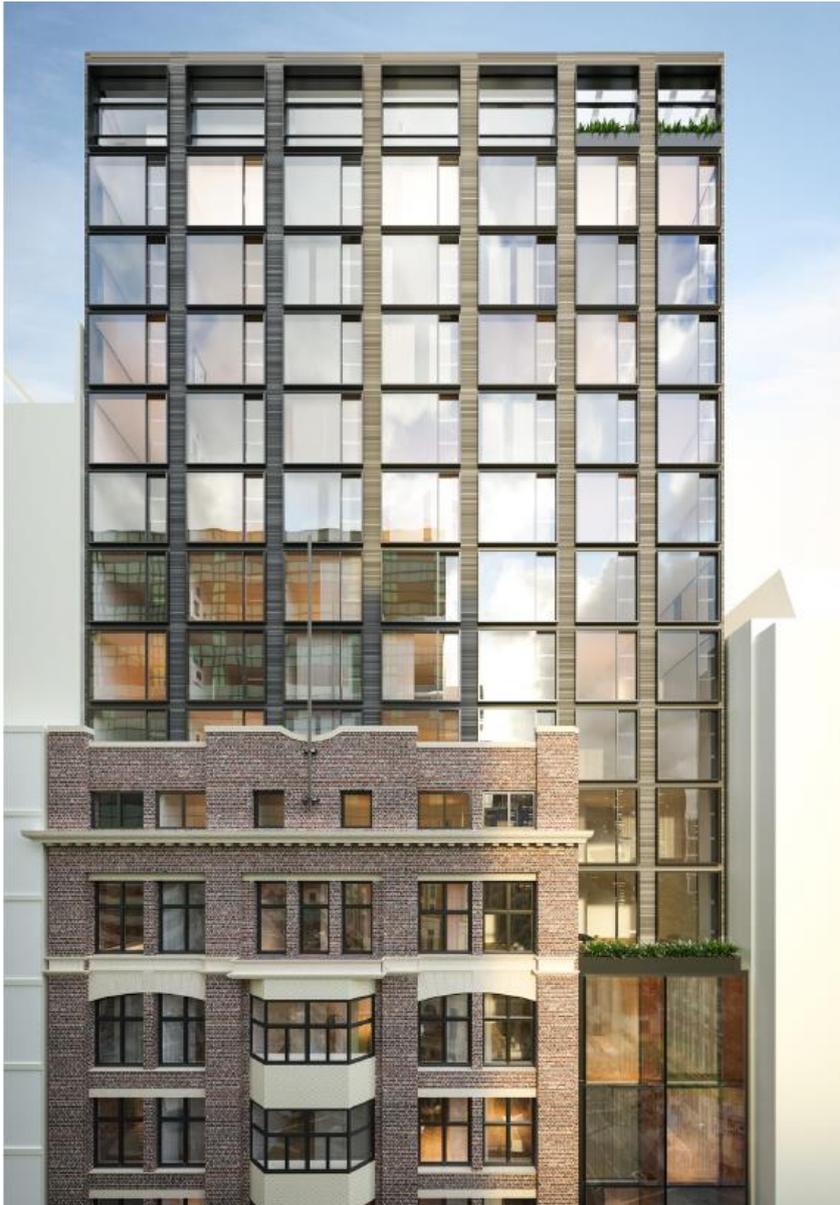


Figure 17: South elevation



**Figure 18:** Photomontage of the proposal - Wentworth Avenue elevation



**Figure 19:** Proposed photomontage of upper levels of Wentworth Avenue façade.

## History Relevant to the Development Application

### D/2015/920 - Stage 1/Concept Development Application

20. On 23 November 2015, Council granted deferred commencement consent for a Stage 1/Concept Development Application for a conceptual building envelope to a height of 60m. The development included the in-principle retention and adaptive reuse of the 9 storey Federation warehouse at 49-53 Wentworth Avenue; in-principle demolition of the existing 3 storey commercial building at 47 Wentworth Avenue; and indicative future uses of hotel accommodation and residential accommodation. The deferred commencement consent condition required a Design Excellence Strategy to be submitted to Council.
21. On 8 March 2016, the deferred commencement consent condition was satisfied and the consent became operative.

## Competitive Design Alternatives Process

22. On 11 May 2016, Council endorsed the Competitive Design Brief, which was prepared in accordance with the City of Sydney Competitive Design Policy.
23. In May-July 2016, four architectural firms participated in the Competitive Design Alternatives Process, as follows:
  - (a) SJB Architecture;
  - (b) Bates Smart;
  - (c) Tribe Studio; and
  - (d) Koichi Takada Architecture.
24. On 6 July 2016, the Selection Panel chose the Bates Smart as the winning scheme. A photomontage of the winning scheme is provided below:



**Figure 20:** Photomontage of winning design competition scheme by Bates Smart

25. The Competitive Alternatives Report, dated July 2016 and prepared by Mersonn Pty Ltd, noted aspects of the preferred design scheme to be resolved through the design development process and prior to lodgement of the detailed design Development Application:
26. The 3m floor to floor height reduces the quality of the internal architecture and amenity and is unacceptable. The floor to floor dimension is recommended to be increased to 3.1m.
27. The upper level residential apartments and general floor layout require reconfiguration to eliminate reliance on the light well with a likely outcome that the overall number of apartments will be reduced as a consequence.
28. All of the amenity criteria and guidance of the Apartment Design Guide must be addressed prior to DA with particular attention to:
  - (a) All habitable rooms having windows and their primary outlook not being to a light well (nb: also setback bedrooms and studies with no windows).
  - (b) 70% of apartments receiving 2 hours of sun mid-winter.
  - (c) The southernmost slot setback to Wentworth Avenue providing light to a bedroom may be inappropriate if a similar setback is not provided on the site to the south west.
  - (d) The hotel light well rooms are acceptable but may change as the levels above change.
  - (e) Further development of the proposed structural transfers is required to confirm that the structural design requirements do not compromise the proposal.
  - (f) Confirmation that design of the through-site link has natural daylight access through the light well.
  - (g) Confirmation that the dual use of the loading dock/cafe is designed with materials and details to function effectively in both modes and as an indoor/outdoor space.
  - (h) The use of rising flood gates and timed loading access are supported to maximise activation of the laneway.

D/2014/1637 - 49-53 Wentworth Avenue, Sydney

29. On 24 October 2014, a Development Application was lodged seeking development consent for the conversion of the existing building known as Tyne House to hotel use and construction of a 6 storey addition for residential use comprising a basement with shared gym facilities, ground floor lobbies and indicative restaurant/bar, 98 hotel rooms on levels 1-7 and 35 residential apartments on levels 8-14.
30. On 17 December 2014, a Class 1 Appeal (case no. 11070 of 2014) was lodged with the NSW Land and Environment Court for the deemed refusal of D/2014/1637.

31. On 24 March 2015, Council granted deferred commencement development consent, subject to conditions pertaining to:
  - (a) Conservation of Tyne House;
  - (b) Design modifications to provide common open space;
  - (c) Design modifications to provide a setback from Foy Lane;
  - (d) Information to be provided to Sydney Water to ensure the protection of Sydney Water assets;
  - (e) Amended ground floor levels to address flooding;
  - (f) Design modifications to provide adequate waste facilities;
  - (g) An engineer's report with information about proposed alterations to the existing structure; and
  - (h) Amended drawings that address drafting errors.
32. On 19 May 2015, the NSW Land and Environment Court issued orders to note that the parties reached agreement after a Section 34 conciliation conference (under the Land and Environment Court Act 1979).
33. A photomontage of the development approved by D/2014/1637 is provided below:



**Figure 21:** Photomontage of development approved by consent D/2014/1637

D/2016/1463 - Stage 2/Detailed Design Development Application for 47 and 49-53 Wentworth Avenue, Sydney

34. On 20 October 2016, a Development Application was lodged seeking development consent for the adaptive reuse of Tyne House, demolition of 47 Wentworth Avenue, and construction of a 19 storey mixed use building, including 7 levels of hotel accommodation, 11 levels of residential accommodation, ground floor bar, cafe and lobbies, and 1 basement level with ancillary gymnasium, plant and service areas. The proposed development had a height of 68m.
35. D/2015/920/A to modify the previously approved concept building envelope, increasing the height of the building envelope by 2.3m from RL 82.80 to RL 85.10 to accommodate lifts, services and core structures, to a maximum height of approximately 68.23m was lodged concurrently with D/2016/1463.
36. On 21 April 2017, a Class 1 Appeal (case no. 17/120129) was lodged with the NSW Land and Environment Court for the deemed refusal of Development Application D/2016/1463 and Section 4.55 modification D/2015/920/A.
37. On 5 June 2018, the NSW Land and Environment Court upheld the appeal, granting consent to D/2015/920/A to modify the concept development consent and Development Application D/2016/1463. Photomontages and elevations of the development approved by D/2015/920/A and D/2016/1463 are provided below:

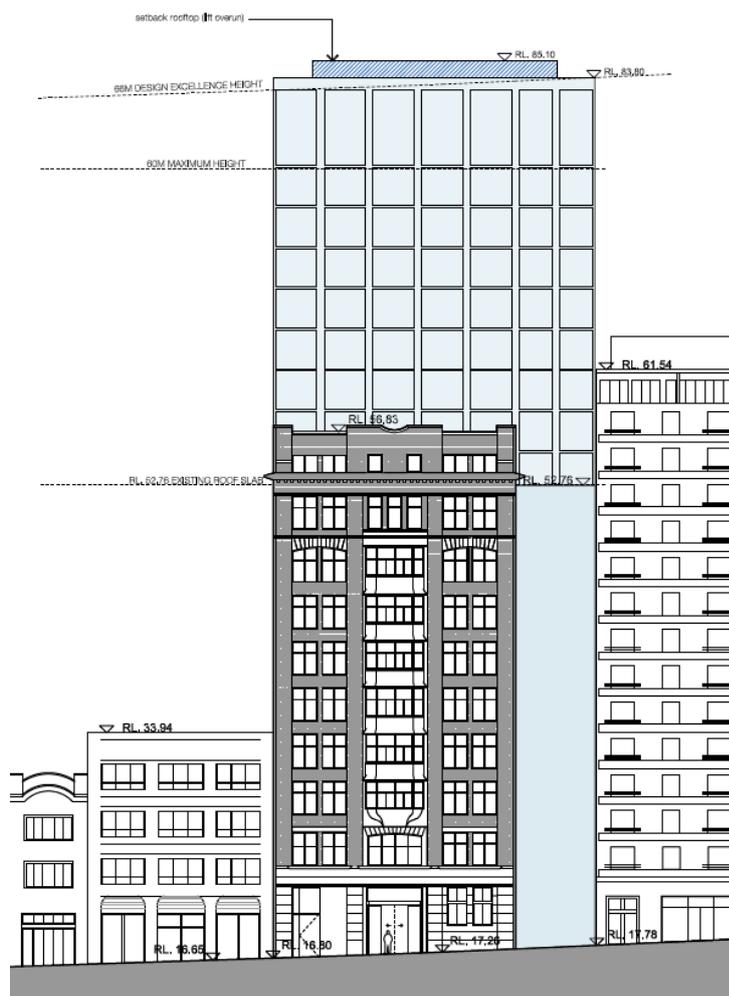


Figure 22: Wentworth Avenue elevation of approved Concept building envelope D/2015/920/A

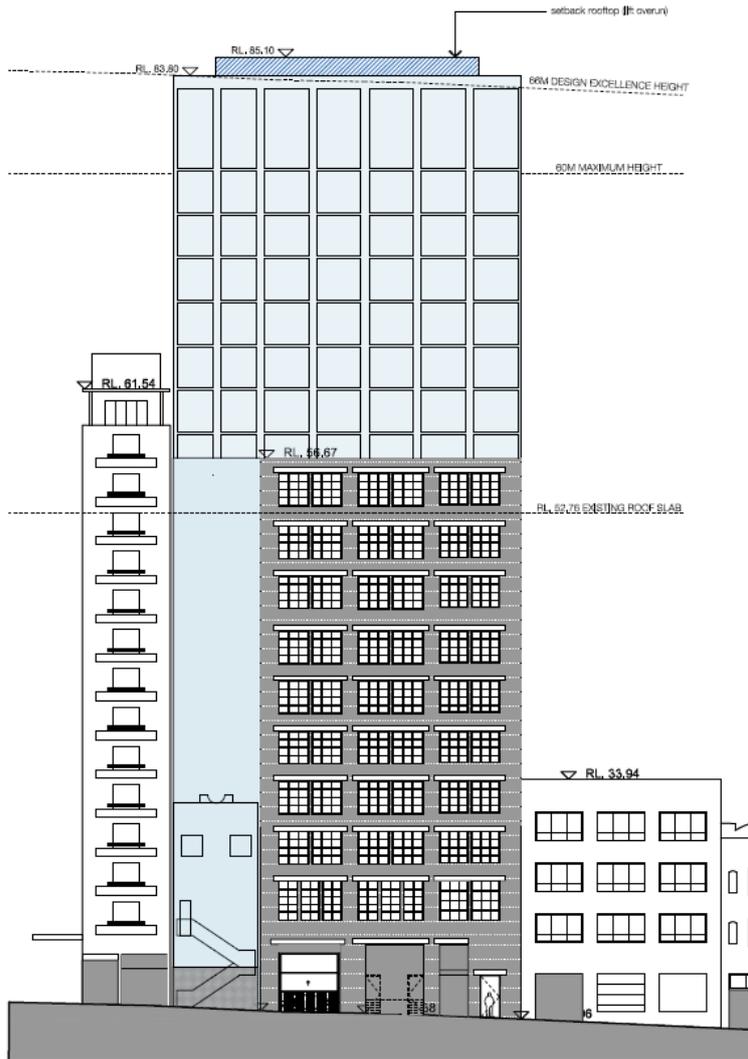


Figure 23: Foy Lane elevation of approved Concept building envelope



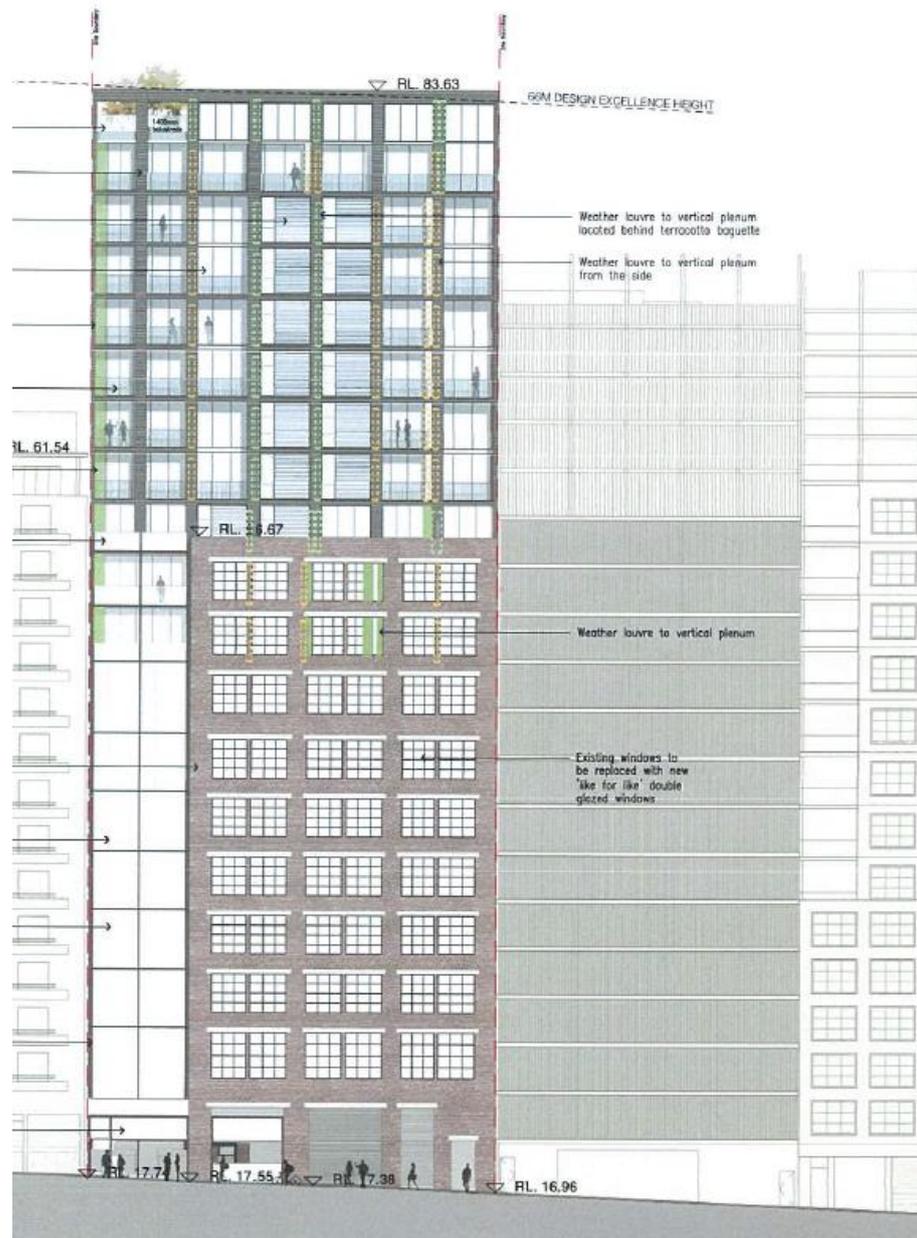
**Figure 24:** Photomontage of development approved by consent D/2016/1463



**Figure 25:** Photomontage of upper levels of Wentworth Avenue facade approved by consent D/2016/1463



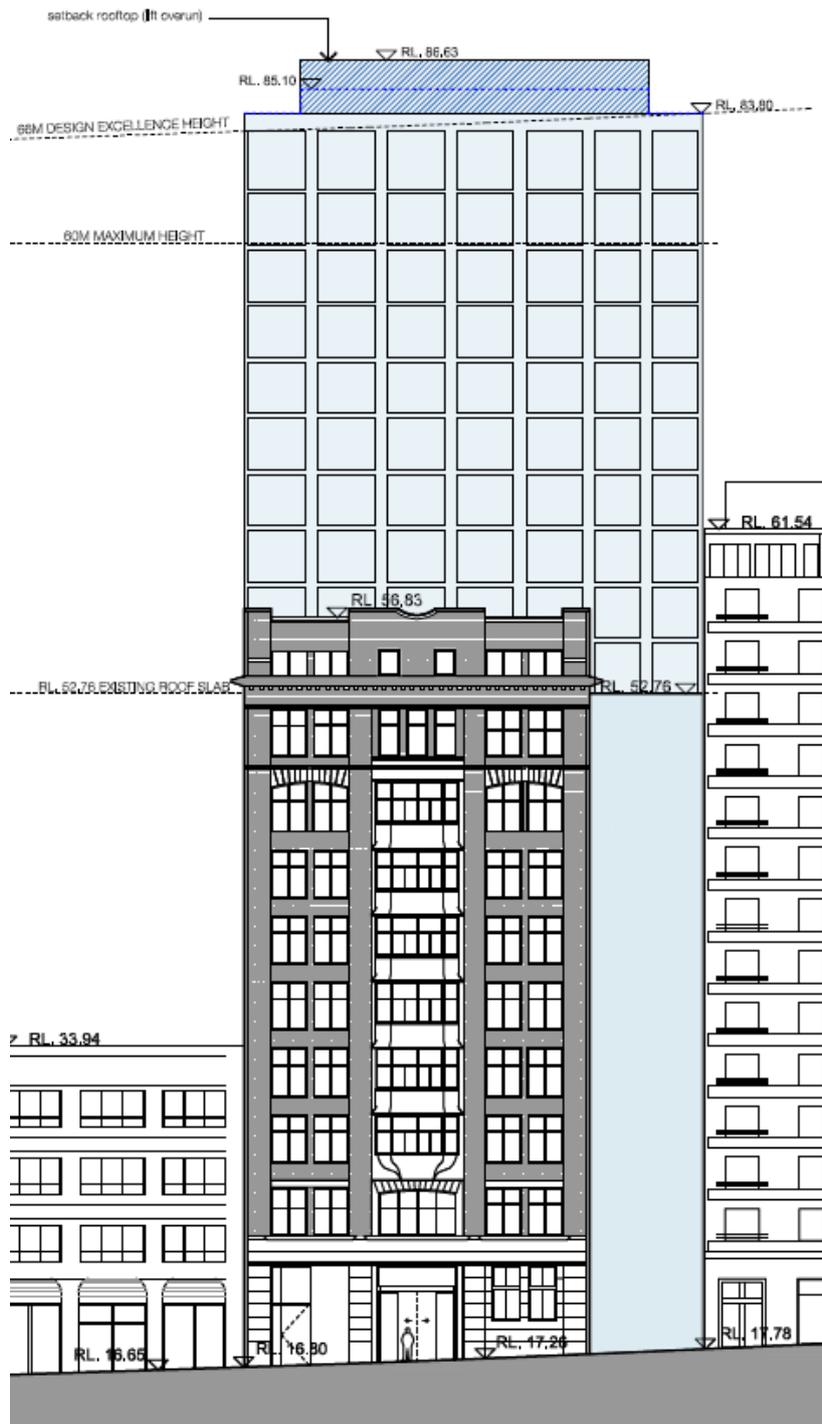
Figure 26: Approved Wentworth Avenue elevation D/2016/1463



**Figure 27:** Approved Foy Lane elevation D/2016/1463

D/2015/920/B - Stage 1/Concept Modification of Consent

38. On 1 June 2018, a modification of the Stage 1/Concept approval for 47 and 49-53 Wentworth Avenue was lodged, seeking consent to increase the maximum height of the building envelope from 68.23m (RL 85.10) to 69.68 (RL86.63), change the land use to hotel accommodation, and remove/amend conditions referencing residential uses. The application has been assessed concurrently with the subject detailed design proposal D/2018/600.
39. Elevations of the proposed building envelope are provided as follows:



**Figure 28:** Proposed Wentworth Avenue elevation of building envelope D/2015/920/B

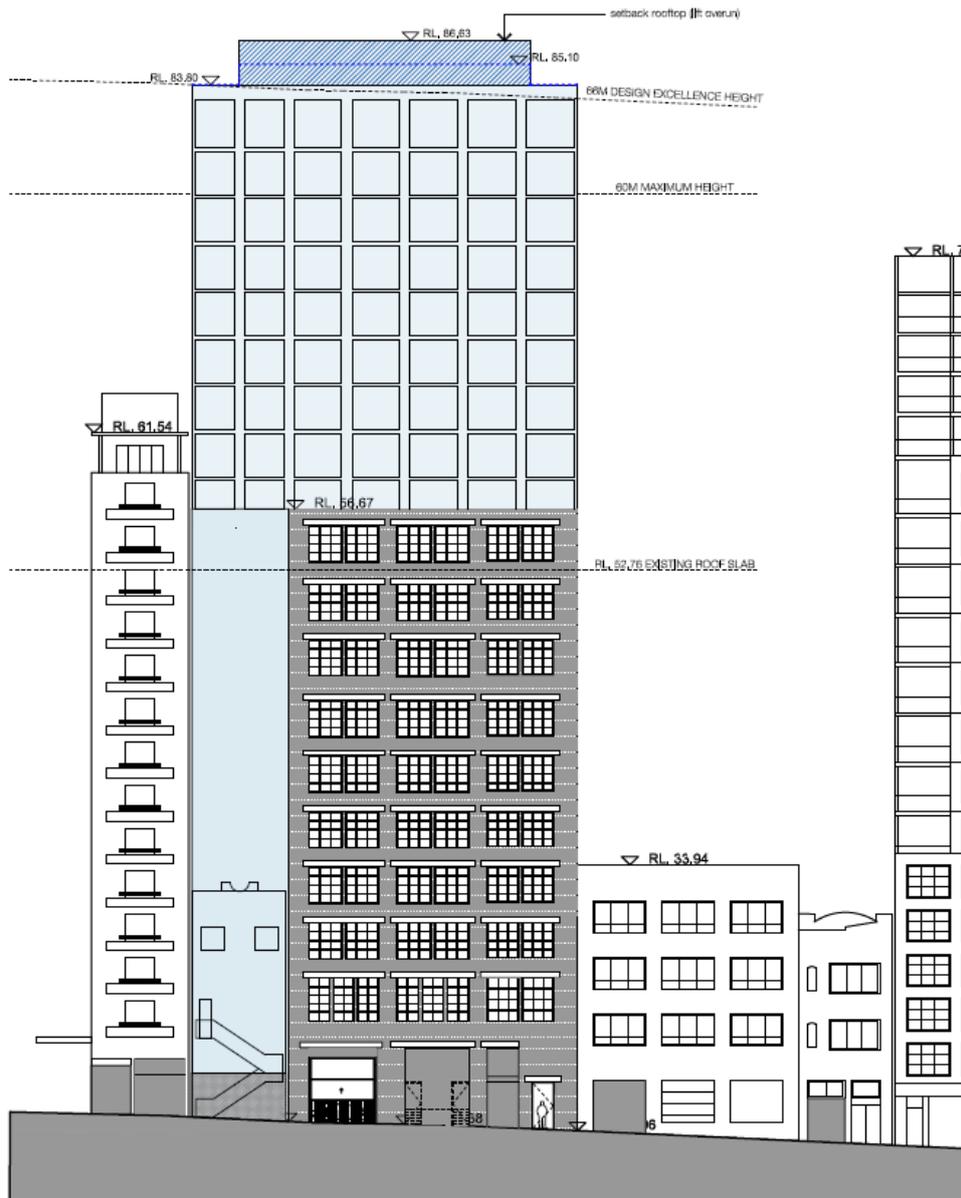
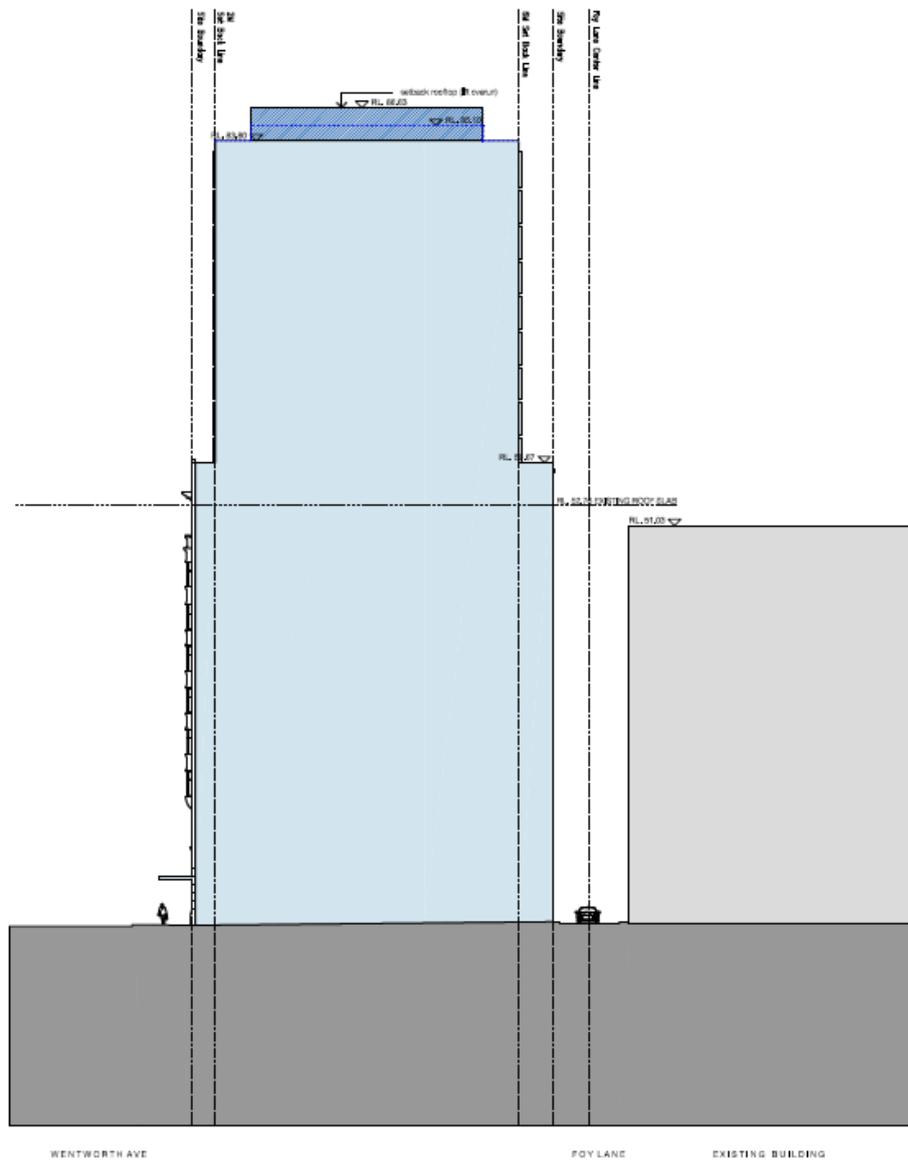


Figure 29: Proposed Foy Lane elevation of building envelope D/2015/920/B



**Figure 30:** Proposed west elevation D/2015/920/B

D/2018/639 - Early Works Development Application

40. On 30 October 2018, a Development Application was approved for early works, including site establishment, carrying out of dilapidation inspections and preparation of reports, demolition of 47 Wentworth Avenue, structural remediation and archaeological investigation works.

## City of Sydney Act 1988

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

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

(1) The Planning Committee must consult the CSTTC before it exercises a function under Part 4 that will result in the making of a decision that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD.

(2) The Planning Committee must take into consideration any representations made by the CSTTC within the period of 21 days (or such other period as is agreed to by the CSTTC and the Planning Committee in a particular case) after consultation takes place."

42. Having liaised with the Sydney Coordination Office (within Transport for NSW) and City's Access Unit, additional information was requested with regard to the management of coaches and pick-up/drop-off (in light of surrounding hotel accommodation in the area). The applicant has addressed these matters as part of their updated traffic impact statement, and this is discussed in further detail within this report. The information has been reviewed by City Transport and Access, and in this instance, the proposal is not considered to have a significant impact on traffic and transport in the CBD. Appropriate conditions relating to coach parking have been recommended, as per Attachment A of this report.

## Economic/Social/Environmental Impacts

43. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

### **WATER MANAGEMENT ACT 2000**

44. The application was referred to Water NSW in accordance with Section 91 of the Water Management Act 2000 as the proposal involves excavation in close proximity to a watercourse.
45. In a response dated 4 September 2018, Water NSW advised that a 'Controlled Activity Approval' is not required for the proposed works, and no further assessment is required.

### **SYDNEY WATER ACT 1994**

46. The application was referred to Sydney Water in accordance with Section 78 of the Sydney Water Act 1994 as the proposal may increase both the demand for water and amount of waste water removed by Sydney Water.

47. In a response dated 18 July 2018, Sydney Water advised that there is adequate capacity in trunk water and wastewater network systems to service the proposed development, however amplification or extensions to the network systems may be required. As such, a condition requiring the applicant to obtain a Section 73 certificate from Sydney Water is to be imposed, where detailed requirements, including the potential amplifications or extensions will be assessed.
48. It is also noted that the Concept approval for the site (D/2015/920/A) requires a number of details relating to the brick oviform stormwater pipe located underneath the existing building on the site to be submitted to Sydney Water. These requirements (such as a pre and post dilapidation assessment of the stormwater pipe) are to be replicated in a condition to be imposed as part of this application. Refer to Attachment A.

### **Liquor Act 2007**

49. The subject site is located within the Sydney CBD Entertainment Precinct, and proposes licensed restaurant, cafe and bar uses associated with the hotel accommodation that can be accessed by guests and members of the public.
50. An exemption applies as the licensed premises are associated with tourist accommodation. The proposal therefore complies with the requirements of the Liquor Act 2007.
  - (a) Environmental Planning Instruments and DCPs.

### **State Environmental Planning Policy No 55—Remediation of Land**

51. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
52. A Detailed Environmental Site Investigation (DESI) has been prepared for the site, detailing soil sampling and analysis which was conducted at six targeted test bore locations to a depth of 9.88m below ground level. The testing identified contamination (carcinogenic polycyclic aromatic hydrocarbons/PAHS) and the presence of an underground storage tank. In light of this, the DESI provided a list of recommendations, including the preparation of a Remedial Action Plan (RAP) outlining the excavation and removal of the underground storage tank, the undertaking of supplementary investigations, subsequent remediation, and preparation of a final site validation report.
53. A RAP has also been submitted with the proposal, which was analysed by a site auditor and found to be satisfactory. The Auditor concluded that the site "can be rendered suitable for the proposed use and that it is unlikely that there will be an unacceptable risk to human health or the environment arising from the soil conditions remaining after the proposed remediation has been carried out".
54. The City's Health and Building Unit has reviewed the submitted information and is satisfied that, subject to the successful implementation of the measures proposed in the RAP, the site can be made suitable for the proposed development. Appropriate conditions are recommended, contained in Attachment A.

### **State Environmental Planning Policy (Infrastructure) 2007**

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

## Clause 45

56. The application is subject to Clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development involves the penetration of ground.
57. In accordance with the Clause, the application was referred to Ausgrid for a period of 21 days. Ausgrid has recommended a number of conditions relating to the proximity of underground cables, and the substation.

## Clause 104

58. The application was referred to Roads and Maritime Services as the application proposes traffic generating development (Clause 104 of the SEPP).
59. Roads and Maritime Services advised on 28 June 2018 that they had concerns with the proposed reversing movements of service vehicles accessing the service bay on Foy Lane, and sight lines for drivers exiting the service bay. These concerns have been addressed by the applicant in the form of a traffic impact statement that has been reviewed by the City's Access and Transport Unit. Whilst the issues raised by RMS are noted, the width of Foy Lane, and heritage constraints relating to the footprint of the existing building mean that the service vehicles can only reverse in and out of the building. In this regard, appropriate conditions have been recommended by the City's Access and Transport Unit to minimise these issues, whilst ensuring appropriate access to the site.

## Sydney Light Rail Project

60. The proposal was referred to Transport for NSW (TfNSW) as the site is in close proximity to the Sydney Light Rail Project and may have an impact on traffic within the immediate road network.
61. TfNSW advised in a response dated 26 June 2018 that there were concerns about the development relying on kerb side restrictions to conduct their business activities. All new developments are to cater for all loading and servicing, and pick-up/drop-off is to be conducted on-site, and this is discussed in further detail within this report.
62. Conditions are recommended with regard to the preparation of a Coach Parking, Passenger Pick-up and Drop-off Management Plan, a Loading and Servicing Management Plan, and for a Construction Pedestrian and Traffic Management Plan for the development to be prepared in consultation with the CBD Coordination Office within TfNSW. The conditions have been included in the proposed conditions of consent at Attachment A.

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

63. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
64. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
  - (a) protect and improve hydrological, ecological and geomorphologic processes;
  - (b) consider cumulative impacts of development within the catchment;

- (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
- (d) protect and rehabilitate riparian corridors and remnant vegetation.

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

**Sydney LEP 2012**

- 66. The site is located within the B8 - Metropolitan Centre zone. The proposed uses within the development are defined as 'food and drink premises' and 'hotel accommodation' and is permissible with consent.
- 67. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	<p>Clause 4.3 of the Sydney LEP 2012 permits a maximum height of 60m.</p> <p>The proposed development seeks to utilise the design excellence provisions pursuant to Clause 6.21, where up to a further 10% height is possible where the proposed design scheme has won a competitive design process and is considered by the consent authority to exhibit design excellence.</p> <p>The proposal is therefore eligible for up to an additional 10% design excellence bonus of 6m. The permissible maximum height for this development is 66m.</p> <p>The proposed development has a height of 69.68m / RL 86.63, resulting in a variation of 5.5%.</p> <p>See discussion under the heading Issues.</p>

Development Control	Compliance	Comment
4.4 Floor Space Ratio 6.4 Accommodation Floor Space	Yes	<p>Clause 4.4 of the Sydney LEP 2012 stipulates a base FSR of 8:1 for the site, with Clause 6.4 providing an opportunity for a further 5.87:1 of floor space where accommodation floor space uses (in this instance retail and hotel accommodation) are provided. This equates to a maximum permissible FSR of 13.87:1.</p> <p>The proposed development has an FSR of 13.75:1 (10,227sqm) which complies.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the development standard prescribed under Clause 4.3 - Height of Buildings, which is supported in this instance.</p> <p>See discussion under the heading Issues.</p>
5.10 Heritage conservation	Yes	<p>The subject site is not a heritage item or located within a heritage conservation area. However, the site contains two buildings that are greater than 50 years in age.</p> <p>The proposed alterations to the original Tyne House, and the proposed contemporary infill building / addition are an acceptable design response.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.4 Accommodation floor space	Yes	<p>The site is located in 'Area 2', and as such, is eligible for additional accommodation floor space of up to 5.87:1 based on the land use mix proposed. This accommodation floor space has been included in the collective permissible FSR for the development, as discussed elsewhere in this report.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.11 Allocation of heritage floor space (HFS)	Yes	A total of 2183sqm of HFS is applicable to the development, based on the HFS requirements under Clause 6.11(1)(a) of the Sydney LEP 2012.
6.16 Erection of tall buildings	Yes	<p>The development meets the provisions of this clause as it:</p> <ul style="list-style-type: none"> <li>• is contextually appropriate;</li> <li>• does not adversely affect the amenity of public places or neighbouring development; and</li> <li>• provides uses with active street frontages at ground floor.</li> </ul>
6.21 Design excellence	Yes	<p>Clause 6.21(5) of the Sydney LEP 2012 requires a competitive design process to be carried out for the site as the proposed development has a height greater than 55m (in Central Sydney).</p> <p>As detailed in the relevant history section of this report, a competitive design alternatives process was held over May to July 2016. Bates Smart was named the winning scheme on 6 July 2016, however the selection panel noted aspects of the design scheme to be resolved through the design development process.</p> <p>Pursuant to the provisions of Clause 6.21(7) of the Sydney LEP 2012, where a proposal has been the winning entry of a competitive design process and is considered to exhibit design excellence, up to a further 10% height may be awarded.</p>

<b>Part 6 Local Provisions - Height and Floor Space</b>	<b>Compliance</b>	<b>Comment</b>
6.21 Design excellence (continued)		<p>The proposed development is considered to satisfy the requirements of this provision. The selection panel, in the architectural design competition report for the development dated July 2016, concluded that they were of the opinion the scheme exhibited design excellence and was worthy of being awarded the additional height.</p> <p>The overall materiality, articulation and architectural contribution of the proposed development is considered to be on par with the winning scheme, and achieves design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.</p>

<b>Part 7 Local Provisions - General</b>	<b>Compliance</b>	<b>Comment</b>
7.7 and 7.9 Car parking ancillary to other development	Yes	<p>A maximum of 58 car parking spaces are permitted based on the proposed land uses.</p> <p>No car parking spaces are proposed, which is consistent with the clause.</p>
7.14 Acid Sulphate Soils	Yes	<p>The detailed site assessment undertaken for the site has concluded that the proposed development will not disturb, expose or drain any Acid Sulphate Soils. As such, there is no requirement for any investigation or management plan to be prepared.</p>
7.15 Flood planning	Yes	<p>The site is identified as being potentially flood affected.</p> <p>The applicant has provided a flood assessment report, and has incorporated the appropriate flood planning levels into the basement and ground floor layout of the development in order to address flood planning concerns.</p>

Part 7 Local Provisions - General	Compliance	Comment
		<p>A condition requiring alignment levels to be provided to and approved by Council prior to construction works being carried out will be imposed to ensure that affected floor levels will be constructed in accordance with the flood report.</p> <p>The proposal therefore meets the requirements of Clause 7.15 of the Sydney LEP 2012, Section 3.7 of the Sydney DCP 2012 and the City of Sydney Interim Floodplain Management Policy.</p>
7.16 Airspace operations	Yes	The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport.
7.19 Demolition must not result in long term adverse visual impact	Yes	The subject application seeks consent for demolition and redevelopment of the site as part of the subject application, and therefore adequately addresses the requirements of this clause.
7.20 Development requiring preparation of a development control plan	Yes	<p>The site has a valid Concept Approval (being D/2015/920 as amended). This Concept Approval is the equivalent of a development control plan and details allowable building envelopes and land uses.</p> <p>Further discussion is provided within the Issues section of this report with regard to the consistency of the proposal with the Concept Approval.</p>
7.24 Development near Cross City Tunnel ventilation stack	Yes	The site is located outside the area identified as being affected by the Cross City Tunnel Ventilation Stack. No further assessment is required.

### Sydney DCP 2012

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

3. General Provisions	Compliance	Comment
3.1.5 Public Art	Yes	<p>A Public Art Strategy has been submitted with the application, and has identified Foy Lane (both paving and walls, and suspended above the laneway) as being appropriate locations for the integration of public art in the development.</p> <p>An appropriate condition has been recommended for imposition.</p>
3.2 Defining the Public Domain	Yes	<p>The proposed development will enhance the public domain by ensuring adequate sun access to publicly accessible spaces, and by providing an active street frontage in accordance with Section 3.2.</p> <p>All relevant sections are addressed below.</p>
3.2.1.1 Sunlight to publicly accessible spaces	Yes	<p>Shadow diagrams have been submitted for hourly intervals between 9am and 3pm at the winter solstice (21 June).</p> <p>The proposed shadow diagrams show that the majority of overshadowing falls across roofs of development, with no impact on Belmore Park or other publicly accessible areas in close proximity to the site.</p>
3.2.2 Addressing the street and public domain	Yes	<p>The proposal has been designed to positively address the street, with the lobby areas of the hotel, as well as bar/restaurant seating areas to both Wentworth Avenue and Foy Lane.</p>
3.2.3 Active frontages	Yes	<p>The DCP does not require the provision of an active street frontage or awning to Wentworth Avenue.</p> <p>Notwithstanding, the retail areas of the development have been located so that they face Wentworth Avenue, allowing for unobstructed views from the footpath.</p>

3. General Provisions	Compliance	Comment
3.2.6 Wind effects	Yes	The wind assessment submitted with the development application confirms that wind conditions for the development, particularly the level 18 rooftop bar area are expected to be acceptable due to the use of impermeable balustrades and full height impermeable facades along the building perimeter.
3.2.7 Reflectivity	Yes	<p>A reflectivity report has been submitted with the development application that analyses potential solar glare from the proposed building design.</p> <p>The report confirms that light reflectivity will not exceed 20%. An appropriate condition confirming this is recommended for imposition.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>The proposed development has been the subject of a competitive design process.</p> <p>The proposed development is seeking to utilise an additional 10% height as the design is considered to achieve design excellence, and was the winning scheme of a design competition. Refer to Issues section for further discussion.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The proposed hotel accommodation has been designed to meet and exceed Section J of the BCA and the ESD initiatives of the Design Excellence Strategy.</p> <p>In particular, the proposal will:</p> <ul style="list-style-type: none"> <li>• Provide water efficient fittings and fixtures;</li> <li>• Select materials with a low embodied energy and high recycled content where possible;</li> <li>• Reuse existing building structure and materials;</li> <li>• Minimise stormwater runoff and reduce pollutants in accordance with the specified targets; and</li> <li>• Use solar heating.</li> </ul>

3. General Provisions	Compliance	Comment
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land, and is addressed in the LEP table contained in this report.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Appropriate conditions of consent have been recommended for imposition.
3.9 Heritage  3.10 Significant Architectural Building Types	Yes	<p>The site contains two buildings that are greater than 50 years in age.</p> <p>The proposal is accompanied by a structural report in accordance with Section 3.10.1(1) of the DCP, which is discussed in greater detail under the heading Issues.</p> <p>Overall, the proposal has been carefully designed to minimise impact on significant fabric and building elements of Tyne House. Appropriate conditions are recommended to limit adverse impacts to adjoining development as a result of any excavation and structural works.</p>
3.11 Transport and Parking	Partial compliance	<p>The application proposes a service bay at ground floor to Foy Lane that can accommodate a B99 vehicle, and 35sqm of bicycle facilities accessed via the basement level.</p> <p>Refer to the DCP discussion below.</p>

3. General Provisions	Compliance	Comment
3.11.3 Bike parking and associated facilities	Partial compliance	<p>The DCP requires the development to provide a minimum of 16 bicycle spaces for staff, and 21 spaces for visitors (for the hotel and retail areas combined).</p> <p>The application proposes 20 bicycle spaces in total, accessed by staff and visitors. Additionally, provision is made for 66 lockers and change facilities for staff.</p> <p>Although the proposal does not provide the minimum number of bicycle storage spaces for staff and visitors, the site's proximity to a number of public transport options provides adequate justification in meeting transport demands generated as a result of the development.</p> <p>A number of public transport options including bus services, trains, light rail and future metro rail services are located within walking distance to the site.</p> <p>A condition is recommended that the bicycle storage spaces provided on site be designed and installed in accordance with the relevant Australian Standards for bicycle parking facilities.</p>
3.11.6 Service vehicle parking	Partial compliance	<p>In addition to Section 3.11.6, Schedule 7.8.1 of the DCP sets out the requirements for service vehicles.</p> <p>The proposed development is required to provide at least 5 service vehicle spaces/loading bays for the hotel and restaurant/bar uses.</p> <p>The retention of the Tyne House warehouse building means that the service vehicle space can only be located in the north-eastern corner of the site (where 47 Wentworth Avenue is being demolished). The space is located at ground floor and is accessible from Foy Lane.</p>

3. General Provisions	Compliance	Comment
		<p>The provision of a single service vehicle space is acceptable in this instance as the design of the building and servicing areas allow garbage services and delivery of goods to be efficient.</p> <p>The application is accompanied by a draft Loading Dock Management Plan addressing the operation of the service vehicle area.</p> <p>The City's Transport Unit has reviewed the submitted documents, and has recommended conditions relating to the service area.</p>
3.11.8 Bus parking	Yes	<p>The Traffic Impact Statement submitted with the application has identified that the hotel is unlikely to have coach drop-offs given the lack of meeting or convention spaces within the development. It is noted however, that directly in front of 184-196 Elizabeth Street (50m from the subject site, facing Wentworth Avenue) is a 15 minute bus parking area which can be utilised by the development should coach parking be required.</p>
3.11.13 Design and location of waste collection points and loading areas	Partial compliance	<p>Section 3.11.13 of the Sydney DCP 2012 requires waste collection and loading to be accommodated within new development either in the building's basement or at grade within the building in a dedicated collection or loading bay.</p> <p>The draft Loading Bay Management Plan identifies that waste collection is to be undertaken by a private waste contractor using a medium rigid vehicle (or smaller) one per day. Waste collection will occur on Foy Lane, with a garbage room that has direct access to the laneway to facilitate this arrangement.</p>

3. General Provisions	Compliance	Comment
		<p>A condition is recommended ensuring that all waste and recycling receptacles and any bulky waste are stored on the property at all times and are not to be placed on kerbside for collection. When waste collection takes place, bins must be quickly moved out and returned to the site to reduce the impact on through-traffic in Foy Lane.</p>
3.12 Accessible Design	Yes	<p>The development provides an accessible entry to Wentworth Avenue, and 6 accessible hotel rooms as required by D3.1 of the Building Code of Australia (BCA).</p> <p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
3.14 Waste	Yes	<p>The development provides a bin store room at basement level, a collection room at ground floor to Foy Lane, and garbage chutes for guest use at all hotel accommodation levels.</p> <p>A waste management plan has been submitted with the development application outlining the processes for storage and collection of waste given the constraints of the site and is supported by the City's Waste Access Unit, subject to conditions.</p> <p>A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.</p>

3. General Provisions	Compliance	Comment
3.15 Late Night Trading Management	Yes	<p>The hotel development includes a rooftop bar with a retractable awning, and ground floor restaurant, cafe and bar uses.</p> <p>Refer to Issues section for further discussion.</p>
3.16.1 Signage Strategy	Yes	<p>The application does not propose any signage and is not accompanied by a signage strategy. Any proposal for signage will require a signage strategy in place as per Section 3.16.1 of the DCP. An appropriate condition is to be imposed.</p>
3.17 Contamination	Yes	<p>As discussed under the heading "SEPP No. 55 Remediation of Land", the City's Health and Building Unit has reviewed the information submitted to satisfy both the SEPP and Section 3.17 of the DCP and is satisfied that, subject to the successful implementation of the measures proposed in the RAP, the site can be made suitable for the proposed development.</p>

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.1.2 Floor to ceiling heights	Yes	<p>The application proposes a floor to floor height of 4.56m at ground floor and 4.21, at first floor in accordance with DCP requirements.</p>

4. Development Types  4.4 Other development types and uses  4.4.8 Visitor accommodation	Compliance	Comment
4.4.8.1 General	Yes	<p>The application is accompanied by a Plan of Management outlining general management practices for the hotel development.</p> <p>Hotel Management and security are to be available on-site 24/7 during the operation of the hotel. No sleeping room contains triple-tier bunks or cooking facilities, and all toilets and shower facilities are partitioned off within each room.</p>
4.4.8.3 Additional provisions for hotels, private hotels and motels	Yes	<p>The additional provisions for hotels have been addressed as follows:</p> <ul style="list-style-type: none"> <li>• The Plan of Management submitted with the application details the capacity of each room. All rooms have an area of at least 11sqm for two adults staying a maximum of 3 months as per DCP requirements.</li> <li>• Adequate storage is provide within each room.</li> <li>• Kitchenettes are proposed in all rooms, with adequate cupboards provided.</li> </ul> <p>It is recommended that a condition be imposed requiring guests to stay for a maximum of 3 months only.</p>

5. Specific Areas 5.1 Central Sydney	Compliance	Comment
5.1.1 Street frontage heights	Yes	The street frontage height for the development is set by the existing warehouse building to be retained, known as 'Tyne House' which is 39.63m in height. The proposal complies with the control.
5.1.2.1 Front setbacks	Partial compliance	<p>The proposed addition is setback 2m from the podium of Tyne House. Section 5.1.2.1 of the Sydney DCP 2012 requires a setback of a minimum weighted average of 8m above the street frontage height. This setback may be reduced in part to 6m provided that the weighted average remains at 8m.</p> <p>Notwithstanding, the proposed setback is consistent with the approved Stage 1 / Concept envelope, which allows for a 2m setback above the podium height.</p> <p>The proposed 2m setback above the podium is considered appropriate within the surrounding streetscape context.</p>
5.1.2.2 Side and rear setbacks	Yes	<p>Above a height of 45m, windows or balconies of commercial buildings are to be setback at least 3m from the side and rear property boundary.</p> <p>A separation of at least 9m is to be provided between principal windows and balconies of residential buildings and the windows and balconies of commercial buildings. This to be achieved by a setback from the side property boundary of at least 6m for hotel buildings. Walls without windows are not required to be setback.</p> <p>The proposed addition contains windows within a light well at the northern side boundary which are setback at least 6m in accordance with Section 5.1.2.2 of the DCP.</p>

5. Specific Areas 5.1 Central Sydney	Compliance	Comment
		<p>All other bay windows above 45m to each side boundary are clad in metal panels, are not operable and do not provide outlook, with the exception of level 18. The windows on level 18 (associated with the rooftop bar) sit on each side boundary, and face other hotel developments (Wyndham Suites at 35-45 Wentworth Avenue, and the recently approved hotel at 55-57 &amp; 59 Wentworth Avenue). These adjoining sites do not contain windows that will face level 18 of the subject site.</p>
5.1.2.3 Setbacks for buildings adjoining or fronting lanes	Yes	<p>The development is setback 6m from the centreline of Foy Lane above the podium height in accordance with DCP requirements.</p>
5.1.6 Building exteriors	Yes	<p>Overall, the proposal is considered to positively contribute to the streetscape with high quality architecture that is consistent with the winning design competition scheme.</p> <p>The proposal retains and conserves the existing warehouse building 'Tyne House', ensuring that the predominant masonry character and articulation of the Wentworth Avenue precinct is retained.</p> <p>The new addition to the building comprises blended terracotta cladding with a mix of metal framed bay windows and large vision glass glazing with a woven wire mesh interlayer, as well as the use of metal louvres and panels to provide sun shading and privacy.</p>

Issues

Height

- 69. Clause 4.3 'Height of buildings' of the Sydney LEP 2012 permits a maximum height of 60m. The proposed development seeks to utilise the design excellence provisions pursuant to Clause 6.21, where up to a further 10% height is possible where the proposed design scheme has won a competitive design process and is considered by the consent authority to exhibit design excellence.
- 70. A competitive design alternatives process has been carried out for the development as per Clause 6.21(5) over May to July 2016. The proposal is therefore eligible for up to an additional 10% design excellence bonus of 6m. The permissible maximum height for this development is 66m.
- 71. The proposed development has a height of 69.68m / RL 86.63, resulting in a variation of 5.5% as demonstrated below.

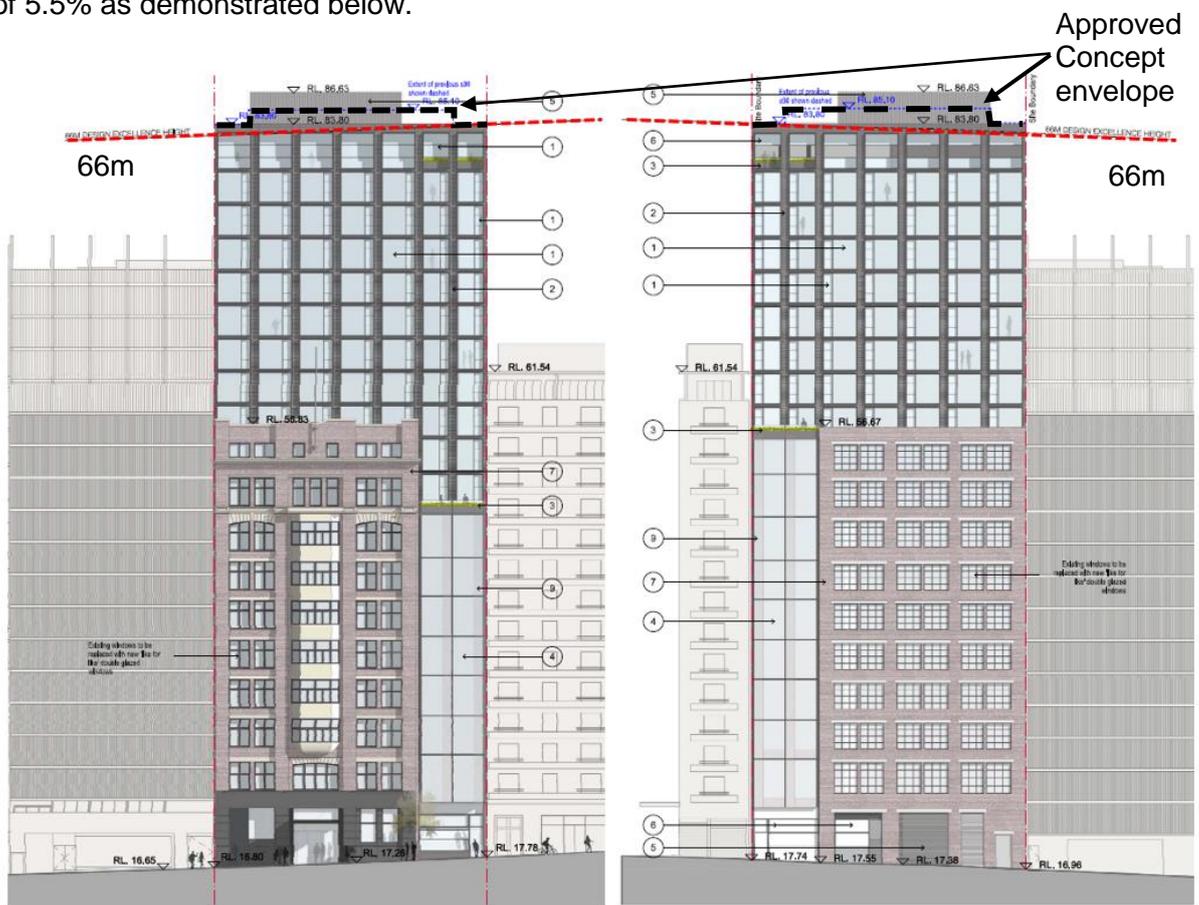


Figure 31: Proposed Wentworth Avenue and Foy Lane elevations depicting the 66m design excellence height limit and approved Concept envelope



**Figure 32:** Section through the proposed development, depicting the 66m design excellence height limit, and the approved Concept envelope

72. The non-compliant height relates to the lift overrun and plant areas as demonstrated in figures 31 and 32 above.
73. In accordance with Clause 4.6 of the Sydney LEP 2012, the applicant has submitted a written justification seeking exception to the 'Height of buildings' development standard.

#### Clause 4.6 request to vary a development standard

74. The site is subject to a maximum height of 66m. The proposed development has a height of 69.68m.
75. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard.
76. A copy of the applicant's written request is provided at Attachment C.

#### Applicants Written Request - Clause 4.6(3)(a) and (b)

77. The applicant seeks to justify the contravention of the 'Height of Buildings' development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - (i) The proposal is consistent with the objectives of the development standard as provided in Clause 4.3 of the Sydney LEP 2012;

- (ii) The proposal is compliant with the maximum FSR that applies to the site. Therefore the height variation does not seek to provide any additional density or gross floor area;
- (iii) The extent of non-compliance (i.e. additional 3.68m) does not result in consequential environmental impacts, as summarised below:
  - a. The height difference has an inconsequential shadowing impact at mid-winter:
    - i. The proposal will overshadow adjoining roofscapes (to the south) between approximately 9am and 2pm. These roofs are largely covered and include plant equipment - i.e. are not communal open spaces for residential apartments. This impact is considered inconsequential.
    - ii. The proposal will overshadow adjoining roofscapes on the south-eastern side of Wentworth Avenue between approximately 11am and 2pm. These are existing commercial buildings which do not rely on rooftop solar access for amenity. This impact is considered inconsequential.
    - iii. The proposal will cause additional overshadowing at various points in the day to Wentworth Avenue and Hunt Street. These impacts are considered inconsequential.
  - (iv) The rooftop plant required for kitchen exhaust will be appropriately screened and will not result in any visual impacts.
  - (v) No other amenity impacts (privacy, views or outlook) will arise from the additional height proposed.
  - (vi) Having regard to the changing nature of the locality, the proposal represents an appropriate transition and follows the form set by the surrounding buildings.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
  - (i) The proposal is compliant with the maximum FSR control for the site.
  - (ii) The proposal will provide high quality visitor accommodation in Central Sydney. The breach (in building height) enables the rooftop bar assist in attracting visitors, achieving strong strategic alignment with Council's Visitor Accommodation Action Plan (June 2015), and the B8 zone.
  - (iii) The rooftop bar level is a unique design response and will set the proposal apart from other hotel developments in Sydney (and nationally).
  - (iv) The proposal has undergone a competitive design process and through amendment exhibits design excellence.
  - (v) The site falls approximately 1m from north-east to south-west. Providing a chamfered building design for height compliance would not achieve the design excellence objectives of the Sydney LEP 2012.

- (vi) A 3.9m floor to floor height at the rooftop bar level will celebrate the building and provide a superior design and amenity outcome. The height could be lowered by 3.68 to match the Sydney LEP 2012 standard, however this would diminish its design integrity. The proposal is a strong statement, reaffirming Sydney's global position as a tourist destination.
- (vii) While the existing 9-storey warehouse building (Tyne House) is not listed as an item of environmental heritage, it has been assessed as being of sufficient historic and aesthetic significance, with a high level of intactness, to warrant adaptive reuse:
  - a. The warehouse has varying floor to floor heights, well in excess of BCA requirements. This presents a constraint to the realisation of floor space at the site and contributes to the height breach.
  - b. To demolish, or otherwise interfere with the fabric of the warehouse (to alter floor to floor heights) would be inconsistent with the heritage provisions contained within the Sydney LEP 2012.
  - c. The warehouse makes a positive contribution to the streetscape and its adaptive reuse provides a better planning outcome.
- (viii) Notwithstanding the *Bettar v The Council of the City of Sydney* [2018] NSWLEC 1233 Land and Environment Court judgement, a 69.98m maximum building height is appropriate for the site. The addition of an extra 3.68m (from the Sydney LEP 2012 control of 66m) does not give rise to any consequential environmental impacts (e.g. shadowing, view loss or visual impacts).

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

78. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
  - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

79. The applicant's written request has adequately demonstrated that compliance with the development standard for height is unreasonable and unnecessary in the circumstances of this case. The proposed development satisfies the objectives of 'Height of buildings', notwithstanding non-compliance with the standard. The height of the new development has been designed so that it is appropriate in the context of the site.

80. The proposed development is consistent with the objectives of the B8 Metropolitan Centre zone, the 'Height of buildings' development standard under the Sydney LEP 2012, and is in the public interest as the new development provides opportunities for street activation, and provides hotel accommodation in an area of Central Sydney that is appropriate, and therefore commensurate with Sydney's global status. The new development will generally present in the streetscape at 66m, with the additional height (confined to a lift overrun and plant area) setback from both Wentworth Avenue and Foy Lane. The non-compliant areas at rooftop do not result in any adverse environmental impacts to surrounding properties. As such, compliance with the development standard is considered unreasonable and unnecessary.

Does the written request adequately address those issues at clause 4.6(3)(b)?

81. The applicant's written request has adequately addressed that there are sufficient environmental planning grounds to justify contravening the 'Height of buildings' development standard as the proposed development responds appropriately to height transitions within the Wentworth Avenue streetscape, Central Sydney and to surrounding areas.
82. The areas of the development that breach the 'Height of buildings' development standard are confined to non-habitable structures that allow the building (which, for the most part, is contained within the 66m height limit) to function effectively and efficiently.
83. The plant areas and lift overrun are setback 6.2m from Wentworth Avenue, and 9.3m from Foy Lane and are not readily apparent in the streetscape. Given their siting in the development, the non-compliant areas above the height limit do not result in any unreasonably adverse environmental or amenity impacts, and will have minimal impact on the sharing of views.
84. The breach of the 'Height of buildings' development standard largely results from the retention and adaptive re-use of Tyne House, which comprises generous floor to floor heights. The integration of Tyne House into the new development creates an appropriate urban design and heritage outcome for the site and the streetscape as a whole.

Is the development in the public interest?

85. The proposed development will be in the public interest as it is consistent with the objectives of the 'Height of buildings' development standard and the B8 Metropolitan Centre zone. The proposed development is of an appropriate height that does not result in any unreasonably adverse amenity impacts on surrounding properties or the streetscape, and will contribute to the supply and quality of hotel accommodation in Central Sydney as per Council's Visitor Accommodation Action Plan. The proposed development achieves the objectives for the B8 Metropolitan Centre zone, in particular:

To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.

To provide opportunities for an intensity of land uses commensurate with Sydney's global status.

To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.

86. The proposed development provides food and drink tenancies addressing Wentworth Avenue and Foy Lane, contributing to the activation of the public domain. In this regard, the proposed development is consistent with the objective "to promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises".
87. Notwithstanding the non-compliance with the 'Height of buildings' development standard, in the context of the site and the surrounding developments, the new development is of a height, bulk and scale that is appropriate, and does not detract from the character or amenity of the Central Sydney locality.

#### Conclusion

88. For the reasons provided above the requested variation to the 'Height of buildings' development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of 'Height of buildings' and the B8 Metropolitan Centre zone.

#### Compliance with Stage 1 / Concept Approval

89. The Sydney LEP 2012 requires the preparation of a site specific development control plan before any development is carried out on the subject site. Pursuant to Section 4.23 of the Environmental Planning and Assessment Act 1979, that obligation can be satisfied by the making and approval of a Concept development application in respect of that land.
90. The Concept approval relating to this proposal is D/2015/920/A.
91. The provisions of Section 4.24 of the Environmental Planning and Assessment Act 1979 state that where a Concept development application for a site remains in force, that the determination of any further development application in respect to that site cannot be inconsistent with the Concept development consent.
92. The table below, provides an assessment of the proposed development against the key conditions imposed on the Concept development consent, D/2015/920/A.

No.	Condition	Comment
<b>Part A - Deferred Commencement Conditions</b>		
1	Design Excellence Strategy	A Design Excellence Strategy was submitted by the applicant, and endorsed by Council on 8 March 2016.

No.	Condition	Comment
<b>Part B - Conditions of Consent</b>		
2  5  7	Approved Stage 1 Development  Stage 2 Design to be contained within approved envelope  Building Height	<p>The proposal seeks variation to the overall height of the approved building envelope and a change in land use mix, from hotel and permanent residential accommodation to hotel accommodation only.</p> <p>In order to ensure consistency of the proposal with the Concept approval, a concurrent Section 4.55(2) application has been lodged to D/2015/920 to vary the approved envelope and land use mix.</p> <p>Further discussion is provided on the extent of the height variation and the change in land use mix within this report, as well as within the planning assessment report for the Section 4.55 application to the Concept approval (D/2015/920/B).</p>
4	Location of Residential Land Uses	As detailed above, the application proposes hotel accommodation only, and this condition is no longer relevant.
6	Design Excellence and Competitive Design Process	<p>In accordance with part (a) of this condition, following determination of the Concept approval, the applicant undertook a competitive design alternatives process over May to July 2016.</p> <p>Bates Smart was named the winning scheme on 6 July 2016.</p> <p>Part (b) of this condition requires that the proposal must exhibit design excellence. The Selection Panel were of the opinion that the design was capable of achieving design excellence and worthy of being awarded the additional height, however noted aspects of the preferred design scheme to be resolved through the design development process and prior to lodgement of the detailed design Development Application. These aspects of the scheme are discussed in further detail below.</p> <p>The overall materiality, articulation and architectural contribution of the development is considered to achieve design excellence.</p>

No.	Condition	Comment
		The competitive design process held for the proposal has satisfied the requirements of Condition 6 of the Concept approval.
8	Floor Space Ratio - Central Sydney	The proposal does not exceed the maximum FSR for the site, and will be required to purchase HFS in accordance with Clause 6.10 of the Sydney LEP 2012.
9	Residential Land Use	As detailed above, the application proposes hotel accommodation only, and this condition is no longer relevant.
10	Hotel Use	The proposal is accompanied by documentation confirming that the hotel accommodation use can comply with the requirements of Section 4.4.8 of the Sydney DCP 2012. Refer to discussion in the DCP compliance table.
11	Detailed Design of Building	<p>Condition 11(a) requires the detailed design proposal to provide an appropriate design response to address the built form, facade alignment and upper level setback of the approved development scheme for the adjoining site at 55-59 Wentworth Avenue.</p> <p>The proposal has been designed to provide a 2m setback above the podium (levels 10-18) along the entire Wentworth Avenue frontage that matches the upper level setback of the Court approval (D/2017/1720) for 55-59 Wentworth Avenue. It is noted that the subject site differs from 55-59 Wentworth Avenue in that the Federation warehouse building is being retained as part of this proposal, therefore requiring the adjoining site to instead provide an appropriate design response to Tyne House.</p> <p>Nonetheless, the podium of 55-59 Wentworth Avenue is of a similar height to Tyne House, providing consistency within the streetscape.</p>

No.	Condition	Comment
11	Detailed Design of Building  (continued)	<p>Part (b) states that consideration of the built form and facade treatment should be given to achieve an appropriate relationship with Tyne House. The application proposes to clad the infill building and addition above with terracotta, and accentuates the window openings with metal framed bay windows and woven wire mesh glass interlayers that provide visual interest and sun shading. Overall, the infill development and addition above Tyne House present to the street as lightweight in construction, carrying through the vertical cues of the Federation building whilst providing a balanced contrast with its masonry character.</p> <p>Part (c) requests the provision of an aesthetically and visually interesting treatment to the side elevations of the building (north-east and south-west boundaries). The proposal addresses this requirement with punched out framing (similar to the proposed bay windows, but without a glazed opening) that are clad in metal panels to provide visual interest and depth to the facade.</p> <p>The new infill building at 47 Wentworth Avenue has a street frontage height that is less than the projecting cornice of Tyne House, maintaining the prominence of the Federation warehouse building in accordance with part (d) of the condition.</p> <p>The loading bay to Foy Lane doubles as a dining area associated with the restaurant/bar, providing further activation of the laneway as per part (e) of the condition.</p> <p>As the application proposes hotel accommodation only, separate lobbies and waste storage for hotel and residential accommodation are no longer required as specified by part (f) of the condition.</p> <p>Bicycle parking and end of trip facilities are provided in accordance with part (g) of the condition.</p>

No.	Condition	Comment
12	Heritage Conservation	<p>Condition 12 requires the competitive design process, and the detailed design proposal to comply with a number of heritage conservation measures relating to Tyne House.</p> <p>As part of the adaptive reuse of Tyne House as hotel accommodation, the application proposes to conserve the rear cart dock space, the western fire stairs, the ground floor strong room walls and door. Fire doors at various levels are to be salvaged and reused, brickwork is to be retained and will remain unpainted, door and window joinery and all other external heritage features (stonework crossings, gutters, pavement lights, pressed metal and cement render) are to be retained in accordance with the condition.</p> <p>It is noted however, that the reinforced concrete slabs and concrete encased steel structural framing of Tyne House cannot be retained as specified by part (b)(vii) and (viii) of the condition. The structural integrity of the building is discussed in further detail within the report.</p>
13	Heritage Interpretation Strategy	Appropriate conditions are to be imposed requiring the preparation of a comprehensive strategy prior to the issue of a Construction Certificate.
14	Public Art	A Public Art Strategy has been submitted with the application, and has identified Foy Lane (both paving and walls, and suspended above the laneway) as being appropriate locations for the integration of public art in the development.
15	Wind	A wind assessment has been submitted with the application in accordance with this condition. As noted elsewhere in this report, the wind assessment confirms that wind conditions for the development are expected to be acceptable.
16	Lot Consolidation	An appropriate condition is to be imposed to ensure that the lot consolidation of all land titles within the site to be consolidated into one lot occurs.
17	Construction Noise Management Plan	A condition is recommended to address the need for a Construction Noise Management Plan.

No.	Condition	Comment
19	Transport Impact Assessment	A Transport Impact Assessment has been submitted with the application and is discussed in further detail within this report.
20 21	Car Parking Spaces and Dimensions Bicycle Parking and End of Trip Facilities	The application does not propose any car parking spaces, however does provide a service vehicle area and bicycle parking / end of trip facilities. Appropriate conditions are to be imposed to ensure that the proposed bicycle parking and service vehicle areas comply with the relevant Australian Standards.
23	Service Vehicle Size Limit	The application demonstrates that a B99 vehicle is able to service the site from Foy Lane.
24 25	Loading Dock Management Plan Coach Parking Management Plan	The application is accompanied by a draft Loading Dock Management Plan. The proposal indicates that the hotel accommodation is unlikely to be serviced by coaches, however conditions are recommended to address any coach deliveries, and for the Loading Dock Management Plan to be developed further.
31	Detailed Environmental Site Investigation	A DESI has been prepared for the site, and is accompanied by a RAP that has been reviewed by the City's Health and Building Unit. As discussed elsewhere in this report, the City's Health and Building Unit is satisfied that the site can be made suitable for the proposed use, subject to conditions.
32	Waste Facilities	Waste facilities have been provided in accordance with the <i>City's Guidelines for Waste Management in New Developments</i> .
33	Sydney Water	It is recommended that conditions be imposed as part of this application in relation to the brick oviform stormwater pipe, and vitrified clay pipe that passes through (below) the subject site.
34	Ausgrid	A substation is provided at ground floor to Foy Lane. Ausgrid has recommended a number of conditions for imposition in relation to the substation and any potential impacts on the surrounding electricity network.

**Variations to the Stage 1 building envelope and land use mix**

93. The proposal results in a variation to the approved height of the Concept approval, and the approved land use mix, outlined as follows:
- (a) The proposal has a height of 69.68m (RL 86.63), whereas the Court approved Concept building envelope has a height of 68.16m (RL 85.10); and
  - (b) The proposal seeks to remove permanent residential accommodation from the approved land use mix, resulting in a development for hotel accommodation only.
94. The extent of these variations is not considered to be minor in nature, therefore to ensure consistency between the Concept approval and the detailed design proposal, and as required by Section 4.24 of the Environmental Planning and Assessment Act 1979, a concurrent Section 4.55 application has been lodged to the Concept approval (being D/2015/920/B).
95. The full assessment of the acceptability of each variation is addressed in detail in the planning assessment report for the Section 4.55 application D/2015/920/B and the Clause 4.6 request to vary a development standard above. In summary, the extent of variations proposed has been supported in this instance as:
- (a) The modified envelope has been assessed as not resulting in any greater environmental or amenity impacts to surrounding development or the public domain, beyond that agreed to as being acceptable under the Court approval D/2015/920/A; and
  - (b) The change in land use from hotel/permanent residential accommodation to hotel accommodation only removes the amenity issues to occupants within the site resulting from site constraints, particularly relating to solar access and natural cross ventilation. A change of use to hotel accommodation is more desirable outcome for the site compared to permanent residential accommodation.
96. The change in land use however, will result in the deletion of conditions relating to permanent residential accommodation (such as Apartment Design Guide compliance, restrictions on the location of residential apartments etc.) that will make D/2016/1463 for hotel and residential accommodation inconsistent with the Concept consent D/2015/920/B. It is therefore recommended that a condition be imposed as part of this application requiring the surrender of development consent D/2016/1463.

**Design Competition Process - Selection Panel Comments**

97. Following the Concept approval, the applicant commissioned a competitive design alternatives process for the site.
98. In May-July 2016, four architectural firms participated in the Competitive Design Alternatives Process, and on 6 July 2016, the Selection Panel chose the Bates Smart as the winning scheme.
99. The Competitive Alternatives Report, dated July 2016 and prepared by Mersonn Pty Ltd, noted aspects of the preferred design scheme to be resolved through the design development process and prior to lodgement of the detailed design Development Application. As discussed elsewhere in this assessment report, comments relating to the residential accommodation land use are no longer relevant.

100. The matters to be addressed by the subject development application (with a response following) consist of:

- (a) Further development of the proposed structural transfers is required to confirm that the structural design requirements do not compromise the proposal.

The structural design requirements are addressed below under the heading "Heritage".

- (b) Confirmation that design of the through-site link has natural daylight access through the light well.

A void area at the north-eastern boundary of the site is carried through from level 2 to 18, with a skylight on level 1 that provides day light access to the ground floor below. The informal through-site link has been replaced with dining and function areas for the hotel.

- (c) Confirmation that the dual use of the loading dock/cafe is designed with materials and details to function effectively in both modes and as an indoor/outdoor space.

The loading dock/cafe is provided with paving to demarcate the servicing nature of the space, whilst allowing for it to be used for dining purposes. The Loading Dock Management Plan submitted with the application details how the space will be able to function effectively in both modes (with the dining space being used in the mornings, and deliveries occurring in the afternoon).

- (d) The use of rising flood gates and timed loading access are supported to maximise activation of the laneway.

Flood requirements have been addressed as part of this application and have been assessed by the City's Public Domain Unit as satisfactory.

### Heritage

101. The subject site comprises two late Federation period warehouse buildings known as the Roffs Building (47 Wentworth Avenue) and Tyne House (49-53 Wentworth Avenue).

102. The Roffs Building is a three storey commercial building containing one basement level. The front facade retains its general form with a large arched window at ground level, some original timber framing, and a mix of Federation Queen Anne styling with Victorian Classical cast cement decoration, and neo-Georgian windows. There are no other original decorative fixtures, fittings or finishes in the building. In-principle demolition of this building has been approved as part of D/2015/920 and is supported as part of this application due to the poor structural condition of the facade, and lack of heritage value within the warehouse.

103. Tyne House (also known as the Washington H Soul Pattinson & Co Building) at 49-53 Wentworth Avenue, is a partly intact Federation warehouse of twelve levels, including basement. The building has high historic significance as an early high-rise contribution to the warehouse precinct of Wentworth Avenue, and is the second tallest concrete encased steel frame building in Sydney. The building has aesthetic significance for its early use of a 'modern' glazed facade which is largely intact above first floor and includes many innovative elements such as the large spandrel fenestration.

### Conservation Works

104. The Development Application is accompanied by a Conservation Management Strategy that sets out policies for the Tyne House building (similar to a Conservation Management Plan). In particular, the policies highlight the possibility of a vertical extension (1.15(3)) that reflects the structure of the three bays of the Tyne House facade, and for a representative sample of the structural system of brick perimeter walls, rolled steel joists and reinforced concrete to be retained (1.15(4)). The overall facade of Tyne House should be retained, repaired and conserved (1.15(5)), and the rooftop structures (original lift overrun and motor room) can be demolished after a photographic record.
105. The proposal closely aligns with the policies by providing an infill building to 47 Wentworth Avenue that replicates the bays of Tyne House (albeit in a contemporary form), and a vertically proportioned addition above. The Tyne House facade is to be retained and conserved, and a condition is recommended to ensure that the original rooftop structures are part of a photographic record for the site. The structural system of the development is discussed in further detail below.
106. In addition to the strategy, a Schedule of Conservation Works has been prepared by NBRIS & Partners. The schedule outlines works to the external brick walls, the repair of concrete and cement, the existing windows and doors and other decorative elements of Tyne House. Council's Heritage Specialist has recommended that important elements of Tyne House, such as the rear car dock space and goods lift shaft, the western fire stair between the ground floor and underside of the level 2 slab, and the ground floor strong room walls and door be retained, as well as the fire doors from various levels of the building be salvaged. A condition reflecting these requirements is recommended, and is detailed in Attachment A.

### Structural works

107. The proposal is accompanied by a structural report for Tyne House in accordance with Section 3.10.1(1) of the Sydney DCP 2012. The report, prepared by Robert Bird Group, has been peer reviewed by Mott Macdonald.
108. Tyne House consists of load-bearing brick walls, with the internal structure comprising reinforced concrete slabs supported by steel beams at each floor and steel columns running up the full height of the building. The steel beams and steel columns are concrete encased.
109. Inspections undertaken as part of the structural report indicate that the perimeter facade brickwork, where visible, is in reasonably sound condition. The interior slabs and beams however, have deteriorated, particularly in the upper levels of the building. The report concludes that this is likely to relate to water ingress to the building from above, as waterproofing membranes, roof structures and stormwater drainage have deteriorated.
110. The peer review of the structural report suggests that the internal structure is not suitable for retention without major structural intervention which, in itself, would have a substantial impact on heritage fabric.
111. In order to support the new hotel addition, it is proposed to carry down a new structural core within Tyne House to cater for the vertical and lateral loads, and to carry the new lifts, stairs and services risers. Two rows of new blade columns are proposed, existing internal columns are to be removed and all floor structures are to be removed and replaced with new reinforced concrete slabs.

112. The removal of the internal columns and concrete slabs will require internal temporary steel bracing to the facade is to occur, simultaneously allowing the construction of the proposed tower form without compromising the structural integrity of the existing building.
113. The structural report, peer review and construction methodology have been reviewed by the City's Heritage Specialist who advises that the proposed stabilisation of the existing external masonry walls, demolition of the primary internal structure is acceptable. The proposed new structural frame and floors will require the slight realignment of the east-west column grids 2-4 inclusive, however the relationship between the structural grid and the primary structural elements of the external brick walls are retained overall.

#### Excavation

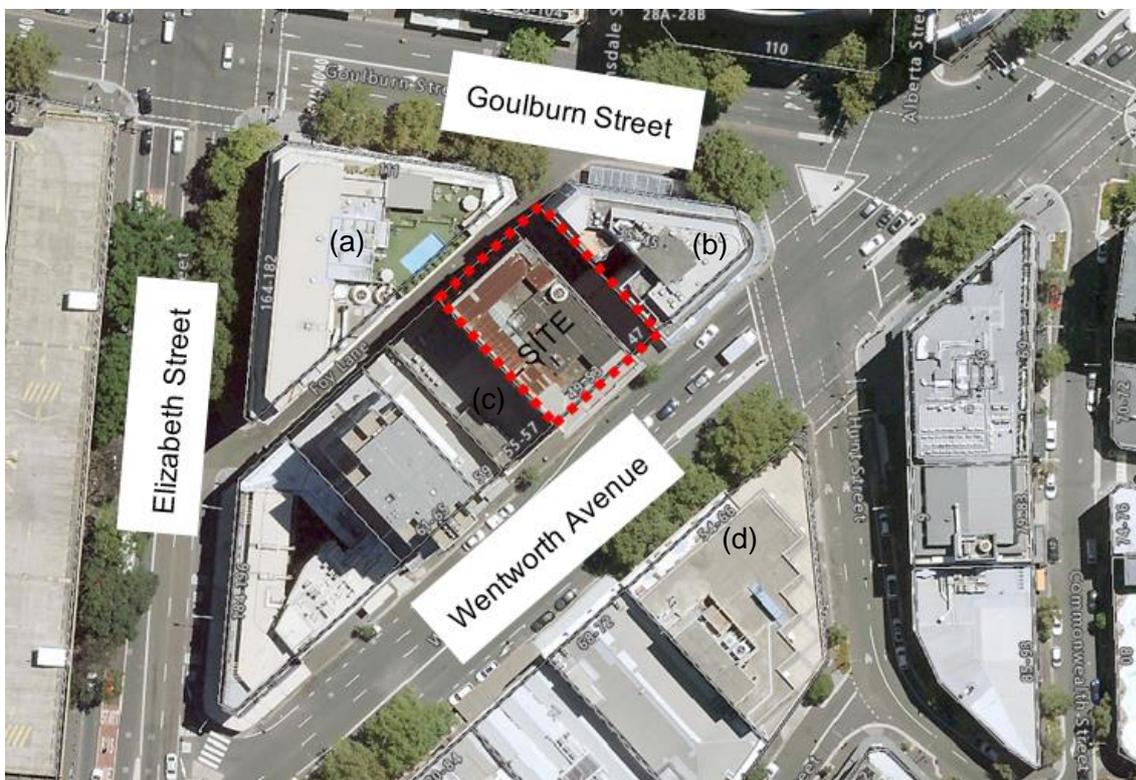
114. Some excavation is proposed as part of the works, and an archaeological assessment has been submitted with the application that identifies areas of low, moderate and moderate/high archaeological potential within the site. An appropriate condition is recommended to obtain approval from the Heritage Division of the Department of Environment and Heritage for an excavation permit in accordance with Section 140 of the Heritage Act 1977.

#### Operation of the Licensed Premises within the Development

##### Hours of Operation

115. Approval is sought for 24 hour operation of the hotel to allow appropriate check-in/check-out services. The proposal also includes a restaurant/cafe (capacity of 196 patrons), and bar (capacity of 252 patrons) at ground floor, and a rooftop bar (capacity of 317 patrons) to be accessed by public patrons in addition to hotel guests. The proposed hours of operation of the restaurant/cafe and bar areas are as follows:
  - (a) Ground floor restaurant/cafe: 6.00am to 12 midnight, Mondays to Sundays inclusive;
  - (b) Ground floor bar: 7.00am to 1.00am the following day, Mondays to Sundays inclusive; and
  - (c) Rooftop bar with outdoor terrace area facing Foy Lane (operating with a retractable roof): 7.00am to 2.00am the following day, Mondays to Sundays inclusive.
116. All three uses are proposed to operate with an on-premises licence, where food and drinking water are to be provided at all times during trading hours.
117. The licensed premises are each classified as Category B premises, located within a City Living Area under Section 3.15 of the Sydney DCP 2012. The recommended hours of operation for a Category B premises within a City Living Area are the internal base hours of 7.00am to 1.00am the following day, with an extension until 5.00am for a trial period. External areas are limited to the base hours of 9.00am to 8.00pm, extended until 12 midnight for a trial period. Section 3.15.4 of the Sydney DCP 2012 allows for an extension beyond the base of up to 2 hours per trial period if Council determines that the premises will be well managed.

118. The ground floor restaurant/cafe is consistent with the recommended internal base trading hours for a Category B premises, with the exception of the morning opening hours. It is recommended that the hours of 6.00am to 7.00am be subject to a 12 month trial period to ensure that the early morning trade will have minimal impact on surrounding development.
119. In determining whether the proposed extended indoor and outdoor hours of operation of the rooftop bar are acceptable, the plan of management has been reviewed by the City's Licensed Premises Unit, and the acoustic report has been assessed by the City's Health and Building Unit.
120. The plan of management meets the requirements of Schedule 7 of the Sydney DCP 2012, and as such, the City's Licensed Premises Unit has recommended conditions relating to the use of CCTV, neighbourhood amenity conditions and for the plan of management to be kept on the premises at all times.
121. The acoustic report identifies a number of affected sites as a result of the proposed use of the ground floor and rooftop areas as follows:
- Vibe Hotel Sydney at 111 Goulburn Street, Sydney (opposite the site across Foy Lane);
  - Wyndham Sydney Suites (hotel accommodation) at 35-45 Wentworth Avenue (adjacent to the subject site);
  - Approved hotel development at 55-59 Wentworth Avenue (currently commercial buildings adjoining the subject site); and
  - Commercial building at 54-66 Wentworth Avenue (directly opposite the subject site).



**Figure 33:** Map of affected sites as identified by the acoustic report

122. The City's Health and Building Unit has advised that the acoustic report is acceptable, subject to a condition requiring the implementation of the following recommendations as part of the construction of the development and general operation of the licensed areas:
- (a) The ground level is to be limited to a maximum of 200 patrons;
  - (b) Level 18 is to be limited to a maximum of 300 patrons;
  - (c) A maximum of 30 patrons are allowed in each outdoor terrace space at any time;
  - (d) Various construction recommendations relating to glazing, acoustic treatments (particularly to walls and the use of self-closing doors);
  - (e) Windows at ground floor (both to Wentworth Avenue and Foy Lane) to be open only between the hours of 7.00am and 6.00pm Mondays to Sundays;
  - (f) Facade glazing within the light well at rooftop to be closed between 7.00am and 6.00pm, and then all windows to the north-eastern boundary are to be closed between 6.00pm and closing; and
  - (g) All speakers and amplification equipment to be mounted using vibration isolators, with no speakers permitted within the outdoor terrace areas at rooftop.
123. In light of the above acoustic provisions, it has been assessed that the rooftop area will be able to operate with minimal impact on surrounding development. It is recommended that the hours of operation for the rooftop bar be conditioned as follows:
- (a) Internal hours: base hours of 7.00am to 1.00am the following day, Mondays to Sundays inclusive, with an extension until 2.00am Mondays to Sundays inclusive for a trial period of 12 months; and
  - (b) External hours: base hours of 9.00am to 8.00pm, Mondays to Sundays inclusive, with an extension until 10.00pm, Mondays to Sundays inclusive for the outdoor terrace areas, for a trial period of 12 months.

#### Patron Capacity

124. The application proposes a patron capacity within the ground floor and rooftop areas (level 18) for the licensed areas as follows:
- (a) Ground floor restaurant/cafe (capacity of 196 patrons) and bar (capacity of 252 patrons); and
  - (b) Rooftop bar (capacity of 317 patrons).
125. The ground floor plans depict seating for 96 patrons, and an area of approximately 230sqm. The rooftop bar plans provide seating for 143 patrons in an area of 300sqm. Sanitary facilities are located at basement and level 18 to service each area. Basement facilities are available via the lift.
126. It is noted that the Noise Impact Assessment provided with the application recommends that the ground floor be restricted to 200 patrons, and the rooftop bar be restricted to 300 patrons.

127. Clause D1.13 of the Building Code of Australia (BCA) calculates seating for restaurants and bars at a rate of 1sqm per person. In this instance, given the inconsistencies in the documentation provided, it is recommended that patron capacity be limited to 200 patrons at ground floor (in total), and 300 patrons at rooftop level as per the BCA and the Noise Impact Assessment. This is subject to compliance with the BCA with regard to sanitary facilities.

### **Staged Construction**

128. The application seeks approval for the staged construction of the proposed development. The proposed staging is as follows:
- (a) Demolition;
  - (b) Retention, Remediation and Bulk Excavation;
  - (c) Structure; and
  - (d) Fit-out.
129. The proposed conditions have been formulated having regard to the proposed staging.

### **Other Impacts of the Development**

130. The proposed development is capable of complying with the BCA. It is Class 3.
131. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

### **Suitability of the site for the Development**

132. The proposal is of a nature in keeping with the overall function of the site. The premises are in a mixed use commercial and residential surrounding and amongst similar uses to that proposed.

### **Internal Referrals**

133. The conditions of other sections of Council have been included in the proposed conditions.
134. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Licenced Premises; Public Domain; Safe City; Surveyors; Transport and Access; and Waste Management who advised that the proposal is acceptable subject to the recommended conditions.

### **External Referrals**

#### **Notification, Advertising and Delegation**

135. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such, the application was notified and advertised for a period of 28 days between 7 June 2018 and 6 July 2018. As a result of this notification, there was one submission received.

- (a) It is presumed that the development will require several liquor licences (including on-premises for the restaurant, hotel licences for the bar areas), each of which have standard trading hours that apply. Further information is required about the type of licenses being sought, security requirements for 765 persons (across the three venues), the ability to host live music/entertainment as a licence condition, arrangements to be put into place for the movement of patrons exiting the venues, and why the rooftop bar is seeking a licence that does not conform with the requirement for a daily 6 hour closing period.

**Response** - The applicant has indicated in their plan of management that the venues will be seeking an on-premises licence for each area. The plan of management submitted with the application details the use of security for active crowd control, as well as CCTV, and staff and/or security patrolling the entrances to control excessive noise.

The acoustic report submitted with the application outlines the use of noise limiters associated with any amplification equipment at ground floor and at rooftop, with the exception of the area to Foy Lane covered by the retractable roof, where no speakers or amplification equipment will be permitted. Conditions are recommended to ensure strict compliance with the acoustic report and noise criteria to limit any adverse impacts to surrounding development.

It is noted that the daily 6 hour closing period relates to the on-premises licence and is a separate matter to the hours of operation proposed as part of this application. As discussed within this report, the proposed hours of operation are consistent with DCP requirements, subject to conditions relating to trial periods.

### **Public Interest**

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

### **S61 Contribution**

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

### **Relevant Legislation**

138. Environmental Planning and Assessment Act 1979.
139. City of Sydney Act 1988.
140. Sydney Water Act 1994.
141. Water Management Act 2000.
142. Liquor Act 2007.

## Conclusion

143. The proposal for the detailed design relating to the demolition of the existing commercial building at 47 Wentworth Avenue, the adaptive re-use of the existing 9 storey commercial building at 49-53 Wentworth Avenue, and the construction of a 19 storey mixed use building comprising hotel accommodation and restaurant/cafe and bar areas associated with the development has been assessed in accordance with the relevant planning controls.
144. The detailed design is the result of a competitive design alternatives process, which was undertaken for the development over May to July 2016, with Bates Smart being awarded the winning scheme.
145. The development has an FSR of 13.75:1 (10,227sqm) which is consistent with the maximum permitted FSR for the site, being 13.87:1.
146. The development has an overall height of 69.98m / RL 86.63, which, is non-compliant with the 'Height of buildings' development standard of 66m (including 10% for design excellence).
147. The applicant's request to vary the 'Height of buildings' development standard pursuant to Clause 4.6 of the Sydney LEP 2012 has been considered and is supported in this instance. The non-compliant structures are appropriately setback from each street frontage, and do not result in any adverse environmental or amenity impacts to surrounding development.
148. The proposal has been designed to respect the retained building which is older than 50 years, and is generally consistent with the relevant planning controls.
149. The overall materiality, articulation and architectural contribution of the new development is considered to achieve design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
150. Accordingly, the DA is recommended for approval, subject to conditions.

## **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Jessica Symons, Senior Planner