

Item 3.**Development Application: 810-812A George Street Haymarket**

File No.: D/2019/120

Summary

| | |
|-----------------------------|---|
| Date of Submission: | 11 February 2019 |
| Applicant/Architect: | MKD Architects |
| Developer: | Bounce Hostel |
| Owner: | Fuqiang Investments Pty Ltd |
| Cost of Works: | \$10,798,240 |
| Zoning: | B8 - Metropolitan Centre zone. The proposed backpackers' accommodation is permissible with consent. |

Proposal Summary: The application proposes partial demolition, renovation of the front facade, excavation and construction of a 16 storey backpackers' accommodation with single level basement. The backpackers would accommodate 291 dorm beds and 10 private rooms with a maximum capacity of 311 guests. Communal facilities including laundry, kitchen, outdoor pool, bar, cafe and living rooms are included.

The application is reported to the Local Planning Panel for determination as it is the subject of more than 25 submissions.

The development, by way of its height, bulk, appearance and proximity, will have an adverse impact on the visual setting and heritage significance of the adjacent Christ Church St Laurence and accompanying buildings, streetscape and Haymarket/Chinatown Special Character Area. The design does not consider passive sun shading and will contribute to adverse wind impacts on the adjoining childcare centre. The development therefore does not exhibit design excellence.

**Proposal Summary
(continued):**

At 52.2 metres tall, the development exceeds the maximum 50 metre building height permitted pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012. A request to vary the standard by 4.4% pursuant to Clause 4.6 accompanies the application. The variation is not in the public interest as the extent of the variation contributes to the cumulative adverse heritage impacts on the adjacent Christ Church St Laurence and Haymarket/Chinatown Special Character Area, contrary to the objectives of the development standard. Furthermore the applicant has failed to identify sufficient environmental planning grounds to justify the variation. It is also noted that the internal floor to ceiling heights are inadequate with regard to Council's controls.

The development is located above an interim rail corridor and requires the concurrence of Transport for NSW in accordance with Clause 88 of the State Environmental Planning Policy (Infrastructure) 2007. Transport for NSW have requested additional information to ensure that excavation and construction will not adversely impact the future construction and operation of the rail corridor. The applicant has failed to provide the information in the requested time.

The development fails to provide a detailed environmental site investigation as recommended by the applicant's environmental consultant regarding potential remediation of the site, contrary to State Environmental Planning Policy 55 - Remediation of Land.

The development does not provide for on-site loading and waste collection, unduly burdening the surrounding streets. The proposed hours of access to outdoor facilities to midnight and inadequate provision of internal communal facilities are contrary to Council's controls for backpackers and may adversely impact the amenity of neighbouring properties. The development also fails to contribute public art, landscaping details and the proposed signage is contrary to the character of the surrounding area.

The application was notified and advertised for 21 days and received 76 unique objections. The concerns raised are summarised below and addressed within the report:

- heritage;
- building height;
- concentration of backpackers' accommodation;
- transport, traffic and servicing;

**Proposal Summary
(continued):**

- waste;
- visual and acoustic privacy;
- internal facilities;
- accessibility;
- construction impacts; and
- overshadowing.

For the reasons listed above, the development is recommended for refusal.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) State Environmental Planning Policy (Infrastructure) 2007
- (ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (iii) State Environmental Planning Policy No 55 - Remediation of Land
- (iv) State Environmental Planning Policy 64 - Advertising and Signage
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012

Attachments:

- A1. Selected Drawings
- A2. Selected Drawings
- B. Clause 4.6 Variation Request

Recommendation

It is resolved that consent be refused for Development Application No. D/2019/120 for the following reasons:

- (A) The development, by way of its height, bulk, form, materials and location will have an adverse impact on the visual setting and heritage significance of the Christ Church St Laurence, associated buildings, streetscape and Haymarket/Chinatown Special Character Area. The development is therefore contrary to the following planning controls:

Sydney Local Environmental Plan 2012

- (i) Clause 1.2(2)(k) - to conserve the environmental heritage of the City of Sydney
- (ii) Clause 5.10(4) - effect of proposed development on heritage significance

Sydney Development Control Plan 2012

- (iii) Section 2.1.3 - Haymarket/Chinatown Special Character Area
- (iv) Section 3.9.5 - Heritage items
- (v) Section 3.9.13 - Excavation in the vicinity of heritage items and in heritage conservation areas

- (B) The development exceeds the maximum 50 metre height of buildings development standard by 2.2 metres (4.4%) pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012. A request to vary the development standard has been made pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012. The requested variation is not supported, as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. The proposed development is not in the public interest under Clause 4.6(4)(ii) because it is inconsistent with objectives (a), (b) and (c) of the height of buildings development standard.

- (C) The development, by way of its height, bulk, form, landscape details, overshadowing and location fails to achieve design excellence. In particular, the development will:

- adversely impact the heritage significance of adjoining properties in this special precinct of the Haymarket/Chinatown Special Character Area;
- result in adverse wind effects and overshadowing on the adjoining childcare centre;
- not provide passive sun shading and passive natural ventilation within the design;
- not ensure the success of the proposed landscaping;
- not include public art; and

- fail to provide adequate floor to floor heights.

The development is therefore contrary to the following planning controls:

Sydney Local Environmental Plan 2012

- (i) Clause 1.2(2)(c) - to promote ecologically sustainable development
- (ii) Clause 1.2(2)(j) - to achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities
- (iii) Clause 6.21(4)(a) - whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved
- (iv) Clause 6.21(4)(b) - whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain
- (v) Clause 6.21(4)(c) - whether the proposed development detrimentally impacts on view corridors
- (vi) Clause 6.21(4)(d)(i) - the suitability of the land for development
- (vii) Clause 6.21(4)(d)(iii) - any heritage issues and streetscape constraints
- (viii) Clause 6.21(4)(d)(v) - the bulk, massing and modulation of buildings
- (ix) Clause 6.21(4)(d)(vii) - environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity
- (x) Clause 6.21(4)(d)(viii) - the achievement of the principles of ecologically sustainable development
- (xi) Clause 6.21(4)(d)(x) - the impact on, and any proposed improvements to, the public domain
- (xii) Clause 6.21(4)(d)(xi) - the impact on any special character area
- (xiii) Clause 6.21(4)(d)(xiii) - excellence and integration of landscape design

Sydney Development Control Plan 2012

- (xiv) Section 2.1.3 - Haymarket/Chinatown Special Character Area
- (xv) Section 3.1.5 - Public art
- (xvi) Section 3.2.6 - Wind effects
- (xvii) Section 4.2.1.2 - Floor to ceiling and floor to floor heights
- (xviii) Section 4.2.3.4 - Design features to manage solar access
- (xix) Section 4.2.3.5 - Landscaping

- (xx) Section 5.1.2.2 - Side and rear setbacks
- (xxi) Section 5.1.2.3 - Setbacks for buildings adjoining or fronting lanes
- (D) The application is not accompanied by a detailed environmental site investigation as recommended within the preliminary site investigation undertaken. The application therefore fails to determine whether the site is contaminated and whether it is or can be made suitable for the proposed use. The development is therefore contrary to Clause 7 of the State Environmental Planning Policy 55 - Remediation of Land.
- (E) The application has not provided sufficient information to satisfy Transport for NSW (a concurrent authority) that the development can be undertaken without adverse impacts to the interim rail corridor located under the site. The development is therefore contrary to Section 88 of the State Environmental Planning Policy (Infrastructure) 2007.
- (F) The development will not accommodate on-site servicing for waste collection, deliveries. The development therefore externalises demand and burdens the surrounding street network. The development is therefore contrary to the following planning provisions:

Sydney Local Environmental Plan 2012

- (i) Clause 1.2(2)(c) - to ensure that the pattern of land use and density in the City of Sydney reflects the existing and future capacity of the transport network and facilitates walking, cycling and the use of public transport

Sydney Development Control Plan 2012

- (ii) Section 3.11.6 - Service vehicle parking
- (iii) Section 3.14.1 - Waste and Recycling Management Plans
- (iv) Section 3.14.2 - Construction and demolition waste
- (v) Section 3.14.3 - Collection and minimisation of waste during occupation
- (vi) Section 4.2.3.6 - Waste and recycling management
- (G) The development fails to provide adequate communal facilities and management practices to meet the demands of guests and protect the amenity of the surrounding area. The development is therefore contrary to the following planning provisions:

Sydney Local Environmental Plan 2012

- (i) Clause 1.2(2)(h) - to enhance the amenity and quality of life of local communities

Sydney Development Control Plan 2012

- (ii) Section 4.4.8.1 - Visitor accommodation - General
- (iii) Section 4.4.8.4 - Additional provisions for backpacker accommodation
- (H) The application does not adequately consider construction impacts in particular noise, dust and traffic impacts. The development is therefore contrary to the following planning provisions:

Environmental Planning and Assessment Act 1979

- (i) Section 4.15(1)(b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- (l) For the reasons above, the development is not in the public interest.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 4 April 2019.
2. The site is legally known as Lots 6 and 7 DP 978643 and has an area of 300.25sqm. The primary frontage is to George Street (13.26 metres) with a secondary L-shaped frontage to St Laurence Lane at the rear. A three-storey commercial building occupies the entire site and is not a heritage item.
3. The surrounding area is characterised by a mix of commercial, hotel and residential buildings. The buildings the north at 800, 802, 804 and 806-808 and south at 812B George Street are three storey commercial buildings. At 743-755 George Street opposite the site is an 11-storey residential flat building, known as Capitol Terrace. These buildings are not heritage items.
4. At 757-759 and 761-763 George Street, opposite the site and on the corner of Valentine Street, are two adjoining two storey commercial buildings, the latter being a local heritage item known as the former Sutton Forest Meat building (item 843). As discussed below, an extant approval for a 15 storey hotel applies to the sites.
5. The Christ Church St Laurence and Parish Hall located at 814A George Street and 505 Pitt Street are to the east and south of the site. These sites are listed as a State heritage item (item 849).
6. Other heritage buildings within the vicinity of the site include the former Lottery Office at 814 George Street (item 848) now occupied by the Wake Up! accommodation, Station House at 790-798 George Street (item 846) now occupied by the 798 backpackers' accommodation and the former Daking House at 11-23 Rawson Place (item 863) now occupied by the Sydney Central YHA.
7. The site is located within the Haymarket/Chinatown Special Character Area. The CBD and South East Light Rail is currently under construction to the north on Rawson Place and George Street. Railway Square is located to the south of the former Lottery Office.
8. Photos of the site and surrounds are provided below:

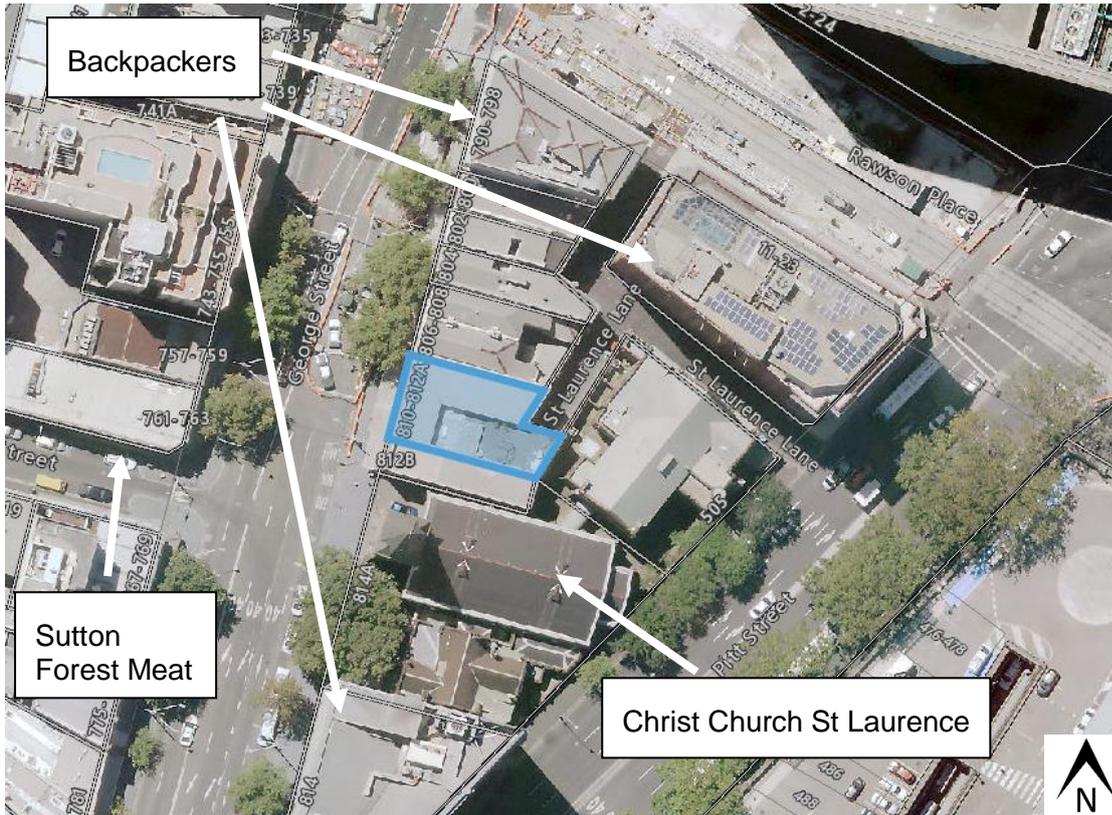


Figure 1: Aerial image of subject site and surrounding area

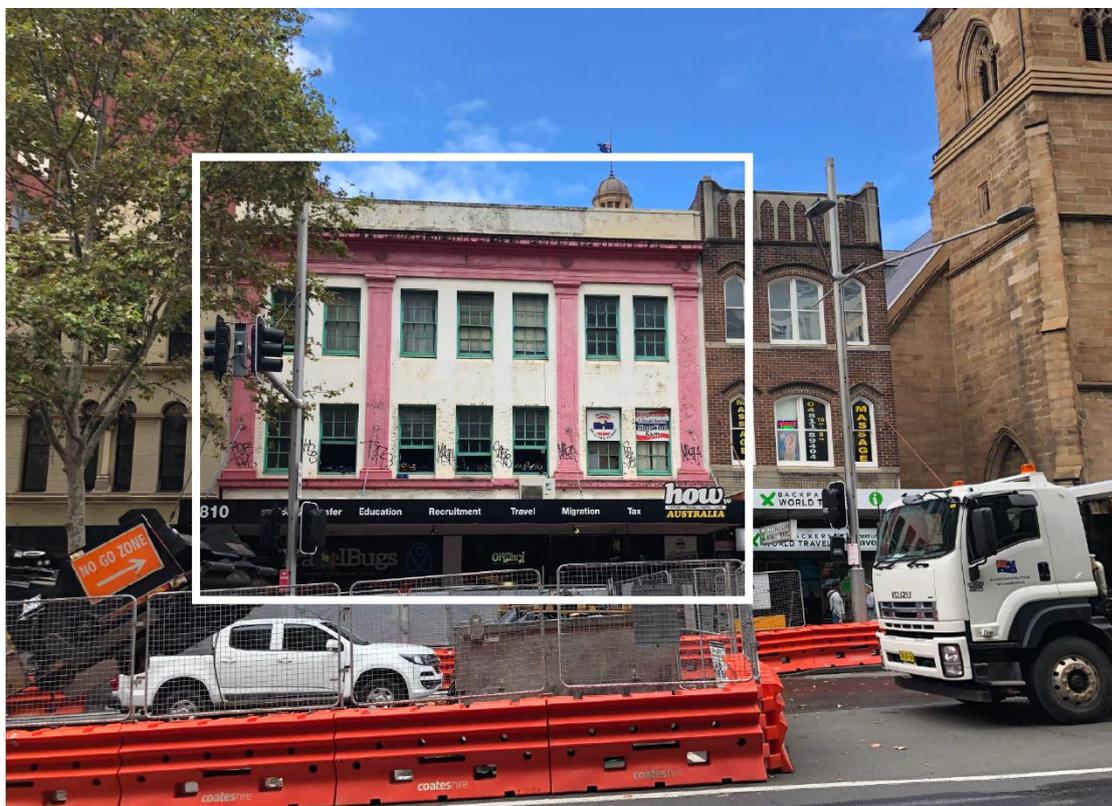


Figure 2: The subject site on George Street



Figure 3: Christ Church St Laurence



Figure 4: The site and Christ Church St Laurence viewed from George Street



Figure 5: The rear of the site viewed from St Laurence Lane

Proposal

9. The application proposes retention and renovation of the front facade, demolition of the existing buildings, and construction of a 16 storey backpackers' building with one basement level. The building is proposed to be 52.2 metres tall and provide 2336.82sqm of gross floor area. The backpackers would accommodate 291 dorm beds and 10 private rooms with a maximum capacity of 311 guests. Communal facilities including laundry, kitchen, outdoor pool and living rooms are included.

(a) Basement Level

- (i) 60 bike spaces and end of trip facilities;
- (ii) laundry;
- (iii) services; and
- (iv) garbage.

(b) Ground Floor

- (i) reception;
- (ii) seating area and computer area;
- (iii) office;
- (iv) ancillary shop/café;
- (v) new awning;
- (vi) one x above awning sign and one x under awning sign fronting George Street, both illuminated; and
- (vii) One x wall sign fronting St Laurence Lane.

(c) Levels 1 - 2

- (i) dorm rooms; and
- (ii) communal bathrooms.

(d) Level 3

- (i) communal area and bar; and
- (ii) rooftop pool and jacuzzi.

(e) Levels 4-12

- (i) dorm rooms; and
- (ii) communal bathrooms.

(f) Levels 13-14

- (i) private rooms.

(g) Level 15

- (i) communal kitchen; and
- (ii) balconies.

(h) Roof

- (i) solar panels; and
- (ii) water tank.

10. Plans of the proposed development are provided below.



Figure 6: A photomontage of the proposed tower adjacent to Christ Church St Laurence



Figure 7: A photomontage of the proposed tower viewed from Railway Square



Figure 8: A photomontage of the proposed tower adjacent to Christ Church St Laurence viewed from Pitt Street

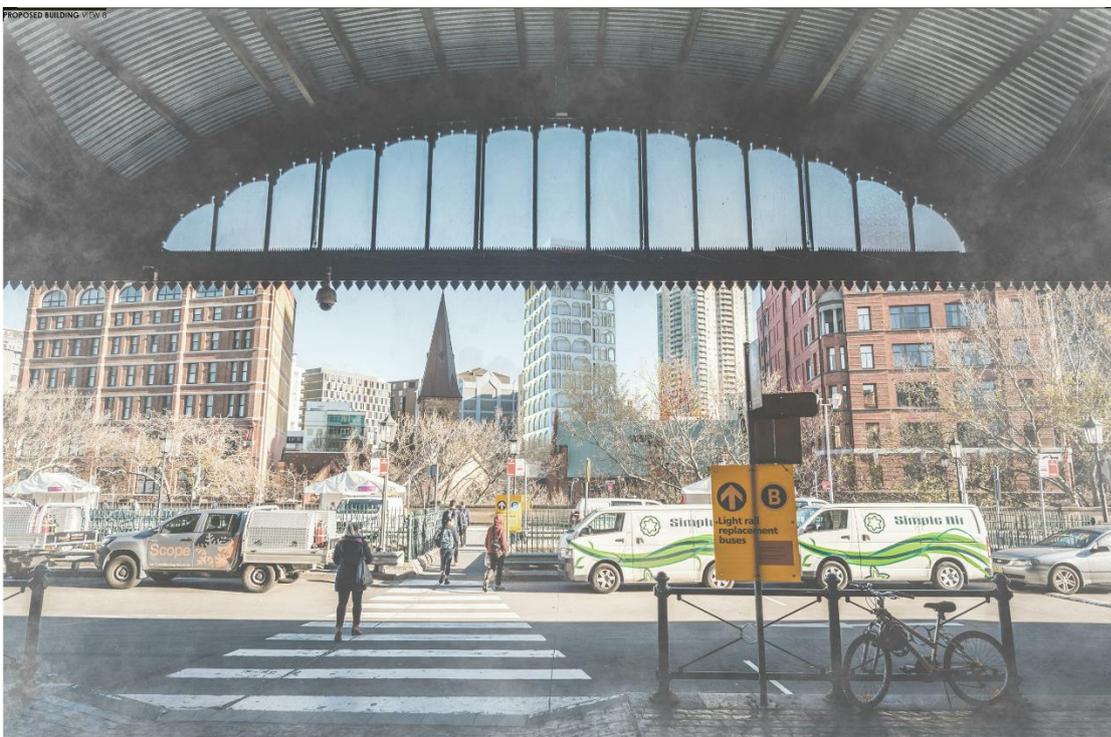


Figure 9: A photomontage of the proposed tower viewed from the country trains entrance to Central Station



Figure 10: A photomontage of the proposed tower viewed from St Laurence Lane



Figure 11: The proposed basement

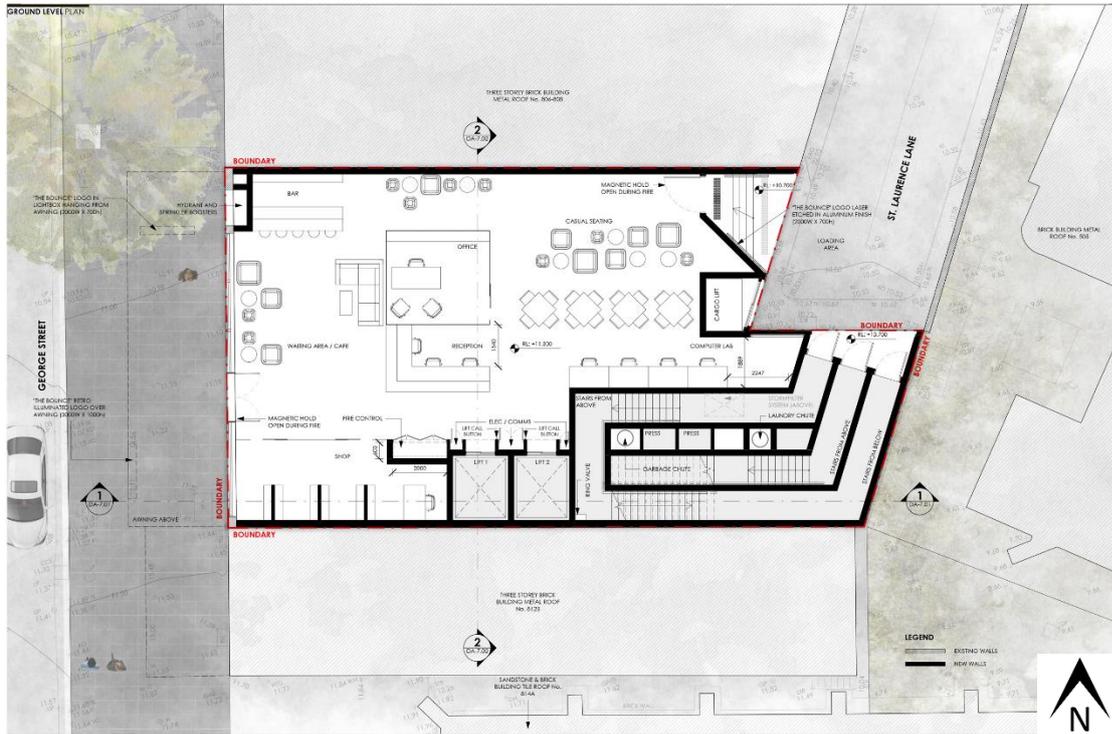


Figure 12: The ground floor

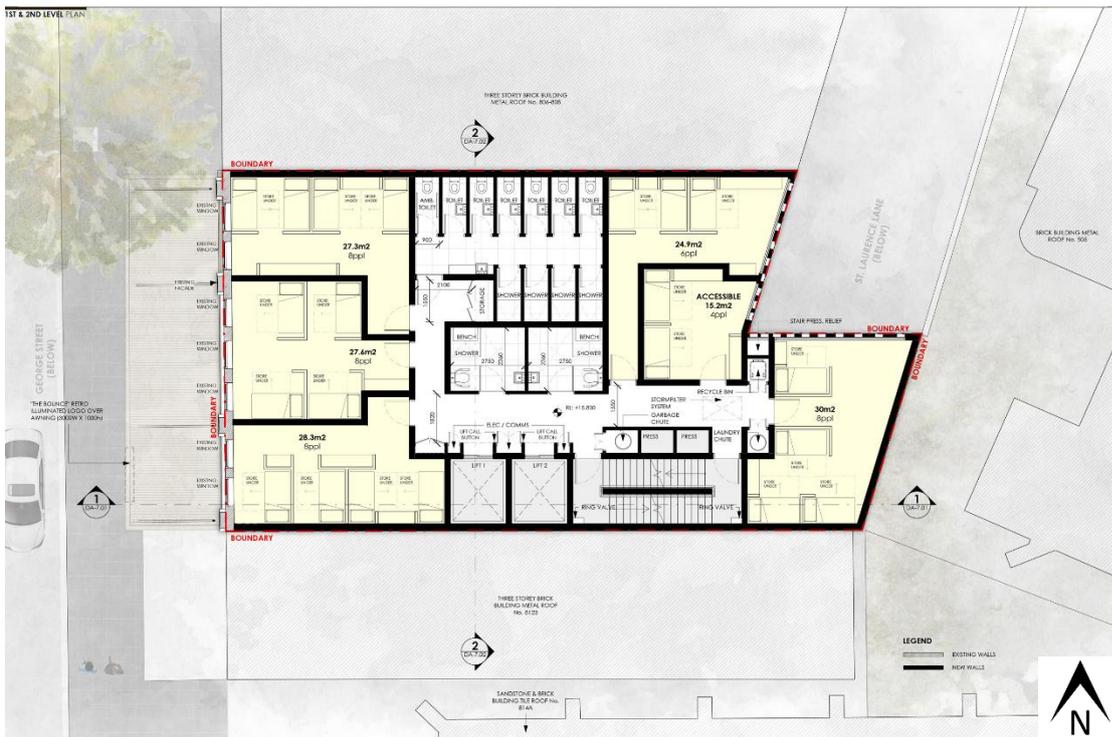


Figure 13: Levels 1 and 2

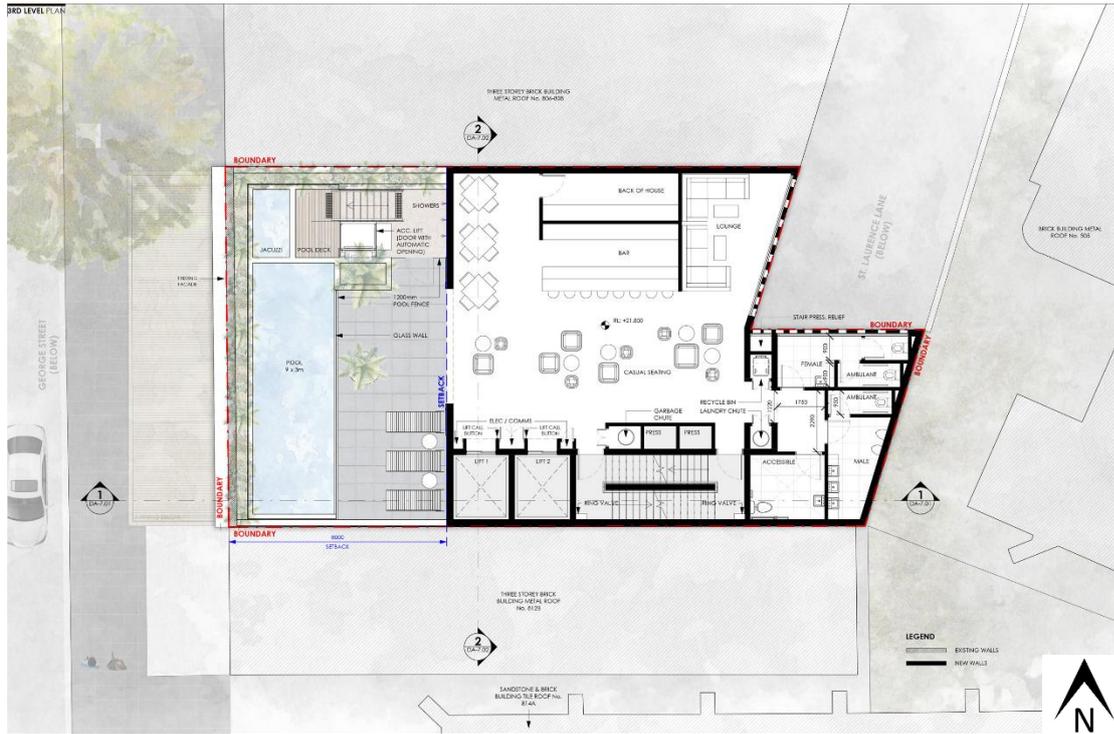


Figure 14: Level 3



Figure 15: Levels 4-12

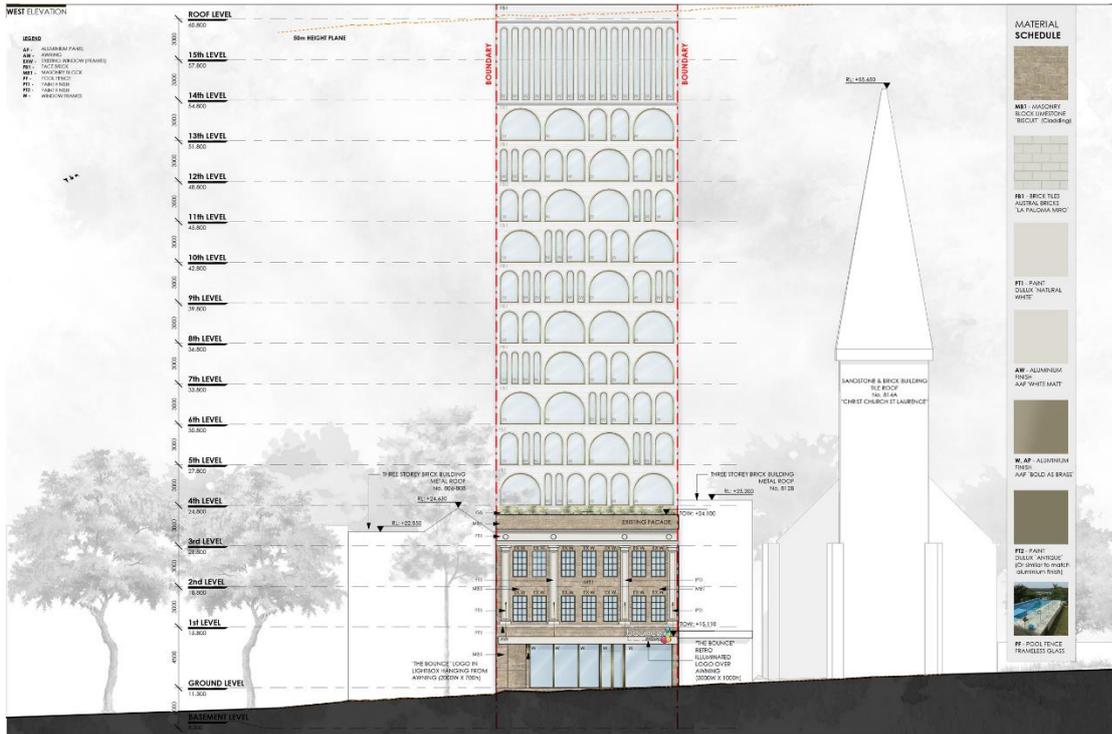


Figure 18: George Street elevation (west)

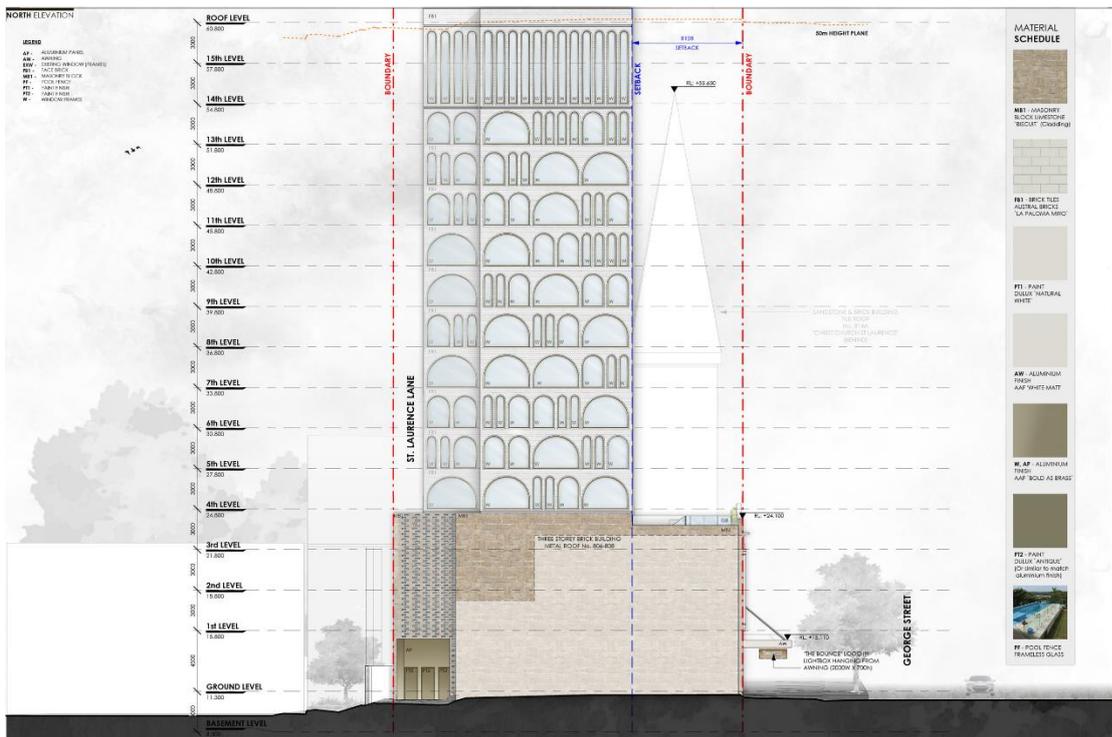


Figure 19: St Laurence Lane elevation (north)

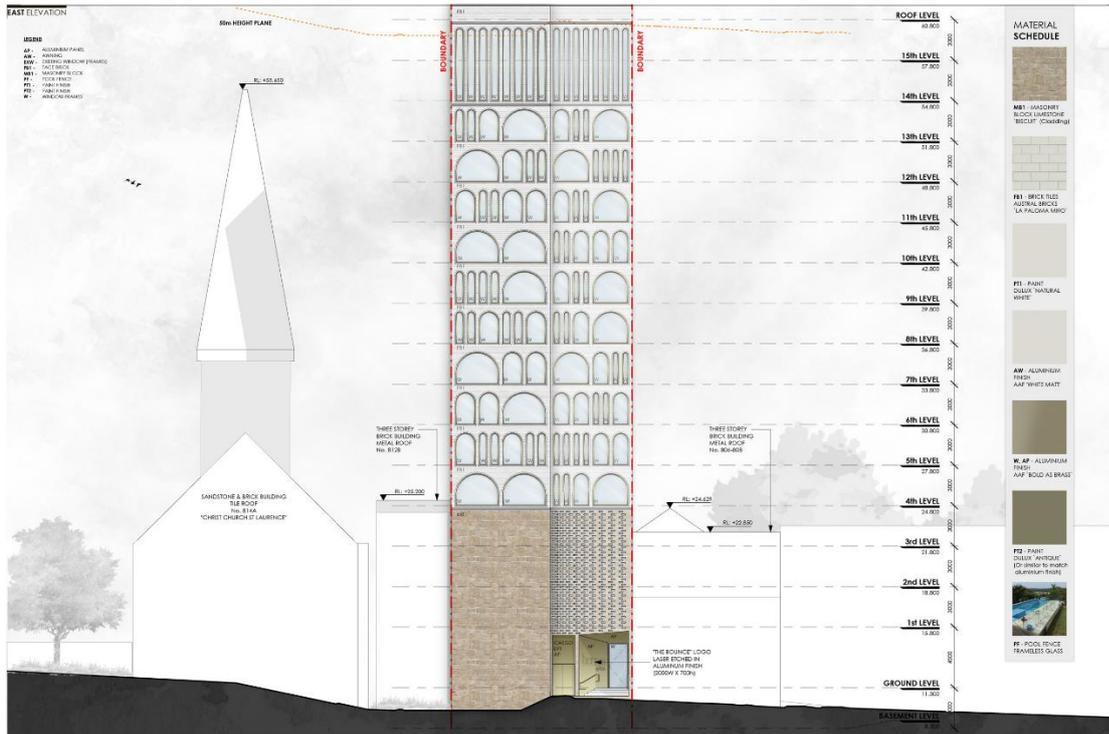


Figure 20: St Laurence Lane elevation (east)

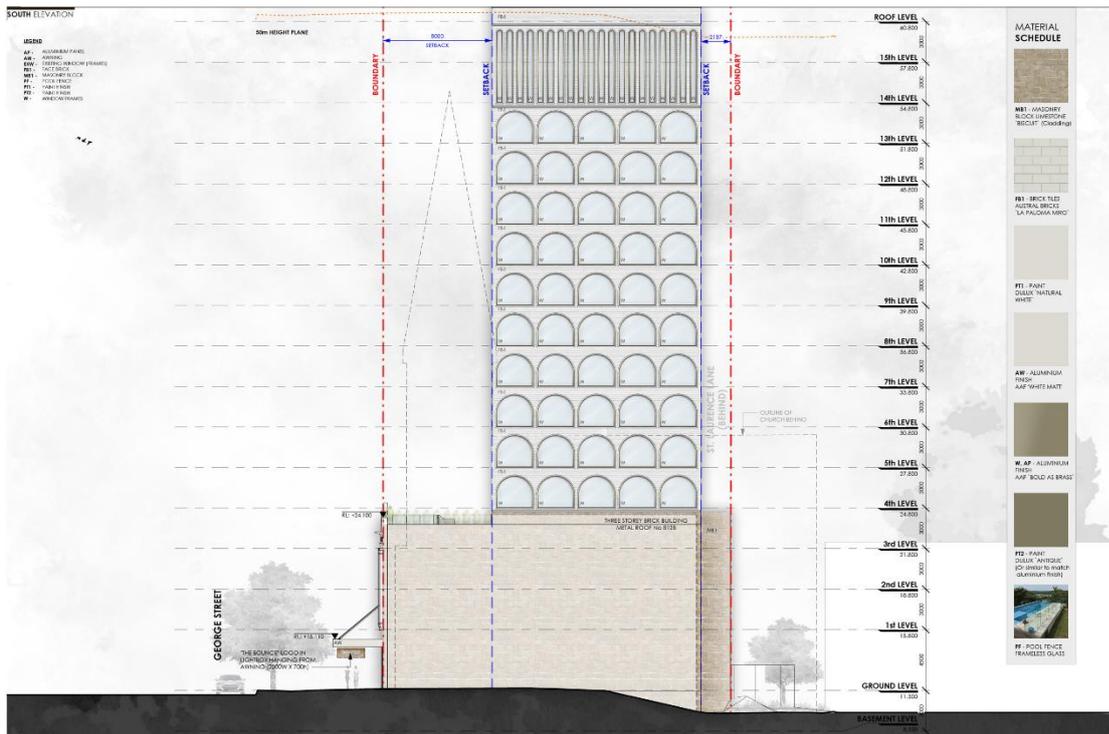


Figure 21: South elevation



Figure 22: George Street streetscape

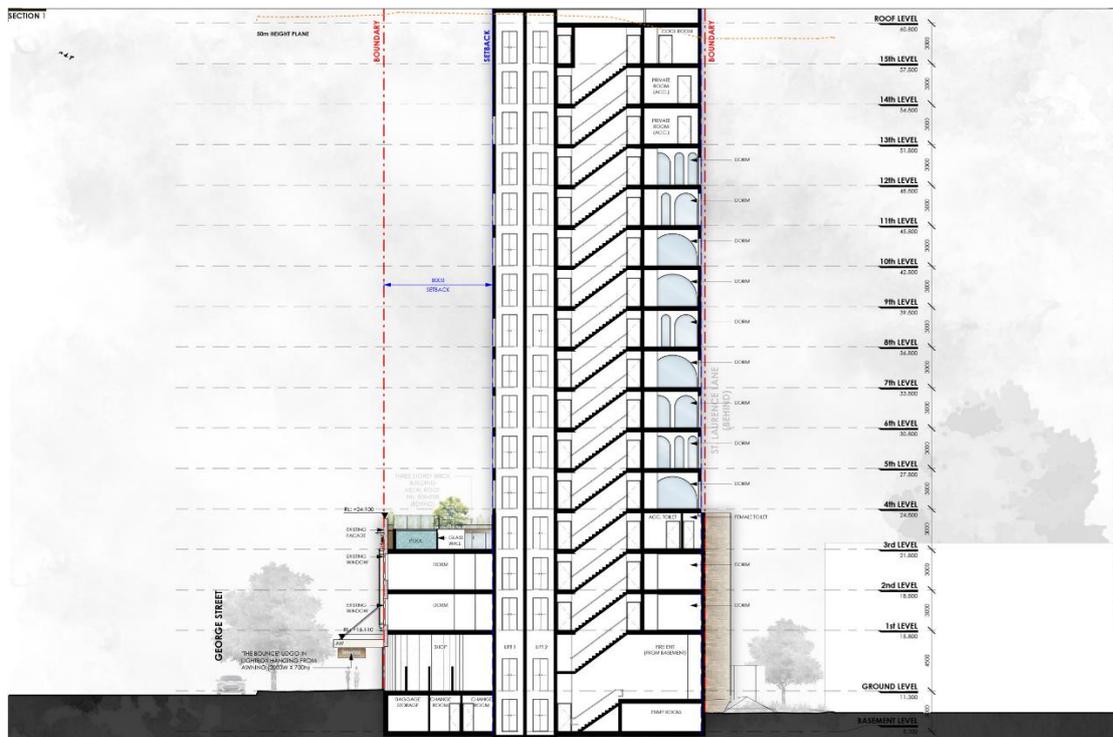


Figure 23: East-west section

History Relevant to the Development Application

11. On 3 April 2019, Transport for NSW, in their role as a concurrence authority under Clause 88 of the State Environmental Planning Policy (Infrastructure) 2007, requested additional information from the applicant regarding the proximity of the site to, and potential impacts of the development on an interim rail corridor. The request was sent to the applicant on 4 April 2019, advising that the information was required to be submitted by 24 May 2019. This information has not been submitted.

12. On 17 April 2019, the applicant was requested to withdraw the application as the application is not supported. The applicant was advised that amended plans would not be accepted in accordance with Clause 55 of the Environmental Planning and Assessment Regulation 2000.

Pre-DA discussions

13. The applicant submitted a pre-DA request on 5 June 2018 to discuss the proposed development, beginning with establishing an acceptable building envelope. At a meeting with Council staff on 10 July 2019, the applicant was advised to consider the impact on views of the Christ Church St Laurence and compliance with core controls. Due to site constraints, the applicant was recommended to consider consolidating with adjoining sites to the north to redistribute bulk away from the Church.
14. Further draft designs were submitted and reviewed by Council staff. Concern was raised by Council's Heritage officer regarding the form of the building, with a simple design and material encouraged if the scheme was to be pursued. Again, the applicant was encouraged to explore consolidation with properties to the north and to incorporate passive sun shading and other sustainability initiatives in the design.

D/2016/117 - 505 Pitt Street

15. On 15 August 2016, development consent D/2016/117 was granted at 505 Pitt Street to convert the ground floor of the Parish building to a childcare centre. A portion of the open space for the childcare centre adjoins the rear of the subject site. The site forms part of the Christ Church St Laurence State heritage item.

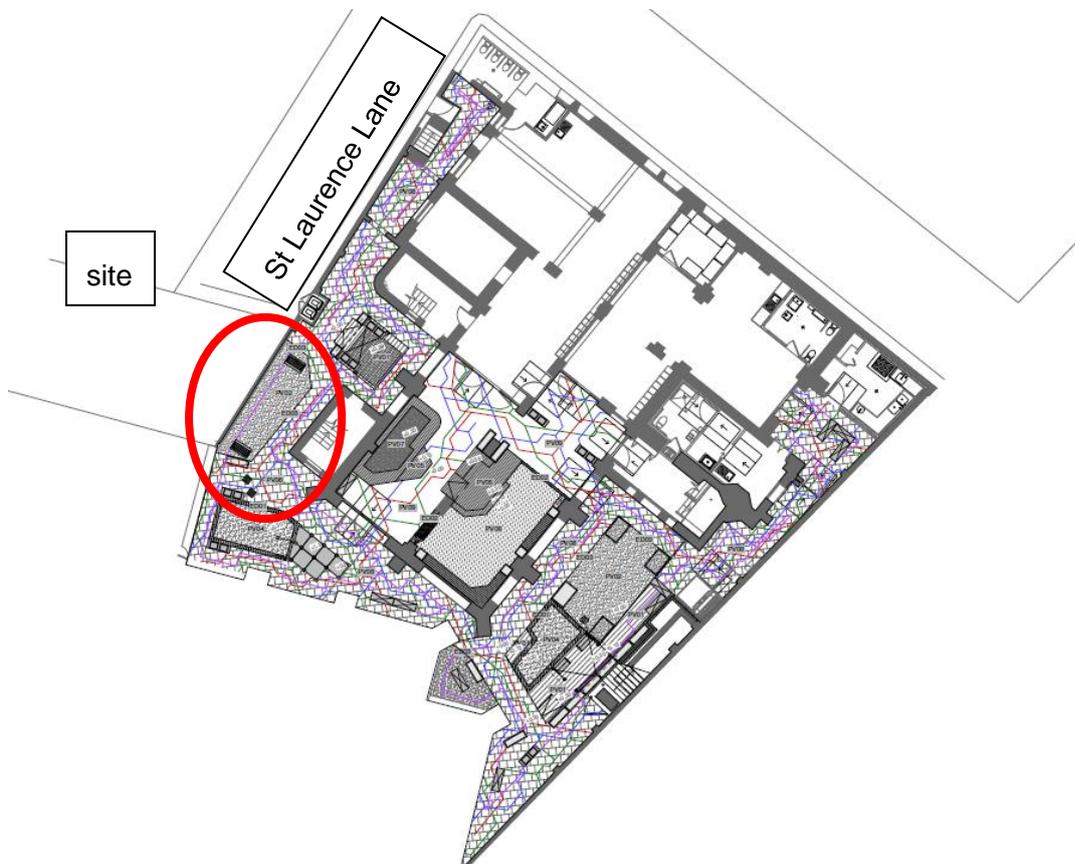


Figure 24: The approved ground floor layout of the childcare centre, with the open space highlighted adjoining the rear of the subject site

D/2017/353 - 757-759 and 761-763 George Street

16. On 23 October 2017, development consent D/2017/353 was granted at 757-763 George Street for demolition of the existing building at 757-759 George St, retention and adaptive re-use of the building at 761-763 George St, and construction of a 15 storey hotel building providing 174 hotel rooms and associated facilities including bar/restaurant and function rooms.



Figure 25: A photomontage of the approved hotel looking north on George Street towards Valentine Street



Figure 26: A photomontage of the approved hotel looking east on Valentine Street towards George Street

Economic/Social/Environmental Impacts

17. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy No 55 - Remediation of Land

18. 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.

19. A preliminary site investigation was undertaken and a report accompanies the application. The report does not identify any historic uses of the site that would contribute to site contamination, which has been confirmed by a search of the City's archives. While no soil sampling has been undertaken, the report raises the possibility (low risk) of contaminants on site, including asbestos, lead paint, metals associated with vehicles and oil and potential for contaminated fill on site.
20. Notwithstanding the low risk of contamination, the preliminary site investigation recommends a detailed environmental site investigation (DESI) is undertaken to ensure the site will be made suitable for the proposed use. A DESI has not been undertaken and as such the applicant has not demonstrated that the site is/can be made suitable for the proposed development.

State Environmental Planning Policy No 64 - Advertising and Signage

21. The application proposes the following signage:
 - one x internally illuminated sign attached to the fascia and projecting above the awning, fronting George Street;
 - one x internally illuminated under awning sign (double sided) fronting George Street; and
 - one x cut out wall sign fronting St Laurence Lane.
22. SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
23. Clause 8 of SEPP64 states the following:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

 - (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and
 - (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.

Assessment Criteria

24. The assessment criteria requires consideration of the signs as they relate to the building, their surrounds, the extent of illumination and impacts on special character areas, views, safety and landscaping. Council's signage and advertising controls align with the assessment criteria and have been considered accordingly.
25. The proposed under awning and wall signs comply with Council's controls under Section 3.16.6 of the Sydney DCP 2012 and is compatible with the Chinatown signage precinct under Section 3.16.12.9 of the Sydney DCP 2012.
26. Section 3.16.6.6 of the Sydney DCP 2012 prohibits signs projecting above the awning fascia as is proposed. There are no similar signs within the vicinity of the site.
27. The level of illumination could be controlled by way of a condition.

28. The proposed awning fascia sign is incompatible with the existing and desired future character of the area and is not supported. The under awning and wall signs are acceptable.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 88

30. The site is located above the Interim Rail Corridor (Zone B known as the CBD Rail Link). Pursuant to Clause 88, concurrence is required from Transport for NSW to ensure that the proposed works will not have an adverse impact on the future viability of the corridor.
31. On 3 April 2019, Transport for NSW requested a "stop the clock" for additional information to be provided by the applicant including a geotechnical report, structural assessment, noise and vibration report and electrolysis report to assess the impact of the proposal on the CBD Rail Link. The request was forwarded to the applicant on 4 April 2019, providing 50 days in which to submit the information.
32. The requested information has not been submitted at the time of writing this report. As such, the application fails to demonstrate that the development will not adversely impact the future rail corridor and is inconsistent with Clause 88 of the SEPP.

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

33. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
34. 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.
35. 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 Local Environmental Plan 2012

36. The site is located within the B8 - Metropolitan Centre zone. The proposed backpackers' accommodation is permissible with consent.

37. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

| Development Control | Compliance | Comment |
|---|------------|---|
| 4.3 Height of Buildings | No | The site is permitted a maximum building height of 50 metres. |
| 4.6 Exceptions to development standards | No | <p>The application proposes a maximum building height of 52.2 metres. A request to vary the maximum height of buildings development standard accompanies the application and is discussed under the Issues heading.</p> <p>The variation is not supported.</p> |
| 4.4 Floor Space Ratio | Yes | The site is permitted a maximum floor space ratio of 9:1. |
| 6.4 Accommodation floor space | Yes | The development proposes a floor space ratio of 7.89:1. |
| 5.10 Heritage conservation | No | <p>The site is not a heritage item, however it is located within proximity of Christ Church St Laurence (Church, former school and rectory including interiors), a State heritage item (item 849).</p> <p>Other heritage buildings within the vicinity of the site include the former Lottery Office at 814 George Street (item 848) now occupied by the Wake Up! accommodation, Station House at 790-798 George Street (item 846) now occupied by the 798 backpackers' accommodation and the former Daking House at 11-23 Rawson Place (item 863) now occupied by the Sydney Central YHA.</p> <p>At 757-759 and 761-763 George Street, opposite the site and on the corner of Valentine Street, are two adjoining two storey commercial buildings, the latter being a local heritage item known as the former Sutton Forest Meat building (item 843). As discussed below, an extant approval for a 15 storey hotel applies to the sites.</p> |

| Development Control | Compliance | Comment |
|---------------------|------------|--|
| | | <p>A heritage impact statement accompanies the subject application.</p> <p>As discussed under the Issues heading, the development will have an adverse impact on the visual setting and heritage significance of the adjacent Christ Church St Laurence and surrounding area and is not supported.</p> |

| Part 6 Local Provisions - Height and Floor Space | Compliance | Comment |
|--|------------|---|
| 6.21 Design excellence | No | As discussed under the Issues heading, the development will have an adverse impact on the visual setting and heritage significance of the adjacent Christ Church St Laurence and surrounding area and is not supported. |

| Part 7 Local Provisions - General | Compliance | Comment |
|-----------------------------------|------------|--|
| 7.15 Flood planning | Yes | Council's Flood Engineer has reviewed the proposed development and is satisfied that the development complies with Council's Interim Floodplain Management Policy. |

Sydney Development Control Plan 2012

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

2.1.3 Haymarket/Chinatown Special Character Area

The subject site is located in the Haymarket/Chinatown Special Character Area. As an area somewhat removed from the City Centre, it retains fine grained subdivision patterns, narrow frontages, informal public spaces and generally low building heights. The consistent low street wall, and the absence of the tower form, creates a pleasant microclimate at street level, which is well sunlit and protected from winds.

A principle of the locality statement is to maintain and enhance the vista along Valentine Street towards Christ Church St Laurence.

2.1.3 Haymarket/Chinatown Special Character Area

As discussed under the Issues heading, the development will have an adverse impact on the visual setting and heritage significance of the adjacent Christ Church St Laurence and Haymarket/Chinatown Special Character Area and is not supported.

| 3. General Provisions | Compliance | Comment |
|------------------------------|-------------------|---|
| 3.1.5 Public art | No | The estimated cost of development exceeds \$10 million and as such is required to contribute public art. The application is not accompanied by a public art plan. |
| 3.2.3 Active frontages | Yes | This section of George Street is identified on the active frontages map. The development provides an active frontage to George Street. |
| 3.2.4 Footpath awnings | Yes | This section of George Street is identified on the footpath awnings map. The development provides an awning in accordance with the controls. |
| 3.2.6 Wind effects | No | A wind effects report accompanies the application as the proposed building exceeds 45 metres in height. The report does not address the impact of the tower design on the podium outdoor area and the outdoor play space of the adjacent childcare centre. Further discussion is provided under the Issues heading. |
| 3.2.7 Reflectivity | Yes | A reflectivity report accompanies the application, demonstrating that the materials will not exceed a reflectivity score of 20%. |

| 3. General Provisions | Compliance | Comment |
|---|--------------------|---|
| 3.6 Ecologically Sustainable Development | Partial compliance | <p>The application has made some commitments to reduce energy, water and resource use, such as using an electric heat pump rather than gas, collecting rain water for the pool and spa and committing to Forest Stewardship Certified wood.</p> <p>However the ESD statement makes reference, rather than commitments, to achieving a NABERS Hotel Energy performance of 4.5-5 stars, and does not address passive solar design and providing natural ventilation to rooms.</p> |
| 3.7 Water and Flood Management | Yes | <p>Council's Flood Engineer has reviewed the proposed development and is satisfied that the development complies with Council's Interim Floodplain Management Policy.</p> <p>The development would be required to connect the Council's stormwater drainage system.</p> |
| 3.9 Heritage | No | See further discussion under the Issues heading. |
| 3.11.3 Bike parking and associated facilities | Yes | <p>The development is required to provide 34 bike spaces.</p> <p>60 bike spaces, two showers, change rooms and lockers are provided in the basement.</p> |
| 3.11.6 Service vehicle parking | No | The development is required to provide four service vehicle spaces. No vehicle spaces are proposed, with servicing proposed in St Laurence Lane. |
| Schedule 7.8.1 Service vehicles | No | <p>The development seeks to significantly intensify the use of the site and benefits from rear lane access. It is therefore unacceptable for the development to burden surrounding streets for servicing.</p> |
| 3.11.8 Bus parking | No | |

| 3. General Provisions | Compliance | Comment |
|---|------------|--|
| Schedule 7.8.3 Passenger pick up and set down areas | No | <p>The development is required to submit a Parking and Access report which assesses the provision of bus set-down and parking. Three bus/coach parking spaces are recommended.</p> <p>The development does not provide on-site coach parking, and the accompanying Traffic and Parking Assessment Report does not discuss accommodating visitors by bus/coach.</p> |
| 3.12 Accessible Design | Yes | The development provides appropriate access and facilities for persons with disabilities in accordance with the DCP and the NCC. |
| 3.13 Social and Environmental Responsibilities | Yes | The development provides adequate passive surveillance and is generally designed in accordance with CPTED principles. |
| 3.14 Waste | No | A demolition and construction waste management plan does not accompany the application and as such the application fails to demonstrate a commitment to reducing waste in accordance with the City's Guidelines for Waste Management in New Developments. |

| 3. General Provisions | Compliance | Comment |
|------------------------------------|--------------------|--|
| 3.15 Late Night Trading Management | Partial compliance | <p>The site is located within the Late Night management trading area which permits 24-hour internal trading and external trading from 7am to 1am on a trial basis for low impact premises.</p> <p>The application proposes a 24 hour reception and use of the ground floor cafe/bar, level 3 internal and outdoor pool area and level 15 kitchen in accordance with the following hours:</p> <p>Sunday - Thursday: 8am - 9pm</p> <p>Friday - Saturday: 7am - midnight</p> <p>A Plan of Management accompanies the application.</p> <p>In accordance with Section 4.4.8.4(4), outdoor areas in backpacker premises are recommended to be vacated by 10pm. Use of the outdoor pool area and balconies past 10pm may adversely impact the amenity of nearby residential premises.</p> |
| 3.16 Signage and Advertising | Partial compliance | <p>The proposed under awning and wall signs comply with Council's controls under Section 3.16.6 of the Sydney DCP 2012 and is compatible with the Chinatown signage precinct under Section 3.16.12.9 of the Sydney DCP 2012.</p> <p>Section 3.16.6.6 of the Sydney DCP 2012 prohibits signs projecting above the awning fascia as is proposed. There are no similar signs within the vicinity of the site.</p> <p>The level of illumination could be controlled by way of a condition.</p> <p>The proposed awning fascia sign is incompatible with the existing and desired future character of the area and is not supported. The under awning and wall signs are acceptable.</p> |

| 4.2 Residential flat, commercial and mixed use developments | Compliance | Comment |
|---|------------|---|
| 4.2.1.2 Floor to floor heights | No | <p>The development is recommended to provide the following floor to floor heights:</p> <p>Basement and Ground - 4.5 metres</p> <p>First - 3.6 metres</p> <p>Upper levels - 3.1 metres</p> <p>The application proposes the following floor to floor heights:</p> <p>Basement - 3 metres</p> <p>Ground - 4.5 metres</p> <p>Upper levels - 3 metres</p> <p>The development fails to provide adequate floor to floor heights to allow flexible use of the building in the future.</p> |
| 4.2.3.1 Solar access | No | The development has not considered impacts to solar access to the adjoining childcare centre. |
| 4.2.3.4 Design features to manage solar access | No | The development does not incorporate passive solar design. |
| 4.2.3.5 Landscaping | No | <p>Insufficient information has been provided to determine the viability of the landscaping proposed to the podium, including the size of planters and access for maintenance.</p> <p>A green wall is proposed on the landscape plans but not shown on the architectural plans.</p> |

| 4.2 Residential flat, commercial and mixed use developments | Compliance | Comment |
|---|------------|--|
| 4.2.3.11 Acoustic privacy | No | <p>Council's Environmental Health officer has reviewed the acoustic report accompanying the application and supports the recommendations regarding the operation of the hotel, bar and communal facilities.</p> <p>However insufficient information is provided to assess the acoustic impact of the roof top plant.</p> |
| 4.2.4 Fine grain, architectural diversity and articulation | Yes | The development respects the existing fine grain subdivision pattern and active street frontage. |
| 4.2.6 Waste minimisation | No | <p>An operational waste management plan accompanies the application.</p> <p>As previously discussed, the development does not provide for on-site servicing which will unduly burden surrounding streets. The plan and layout also fail to provide sufficient storage for bulk waste, cooking waste, a glass crusher and manoeuvrability for collection.</p> |
| 4.2.7 Heating and Cooling Infrastructure | No | The plans do not identify the location of heating and cooling infrastructure. It is noted that the acoustic report has not assessed the impact of plant on the surrounding area. |

| 4.4.8 Visitor accommodation | Compliance | Comment |
|--|------------|---|
| 4.4.8.1 General | | |
| (1) New development must be self-contained with no common access ways with adjoining properties. | Yes | The backpackers provides independent access from George Street. |

| 4.4.8 Visitor accommodation | Compliance | Comment |
|--|------------|--|
| (2) A site manager must be on site when guests have access to the premises. For premises with fewer than 20 residents, a resident caretaker may be acceptable. | Yes | The Plan of Management states that a manager will be on-site at all times. A 24-hour reception will be provided. |
| (3) For safety reasons, sleeping rooms are not to include triple-tier bunks and cooking facilities in sleeping rooms. | Yes | The rooms do not provide triple bunk beds or cooking equipment. |
| (6) A Plan of Management and a Noise Management Plan must be submitted with the development application. | Yes | A Plan of Management and acoustic report accompany the application. The management of patrons has been adequately addressed. |
| 4.4.8.4 Additional provisions for backpacker accommodation | | |
| (1) Backpacker accommodation is to be located within 400m of public transport and within easy access to facilities and services. | Yes | Central Station, Railway Square and the new CBD and South East Light Rail are within 400 metres of the site. |

| 4.4.8 Visitor accommodation | Compliance | Comment |
|---|------------|--|
| <p>(2) For sleeping rooms:</p> <p>(a) the maximum number of persons to be accommodated in a bedroom, or in a dormitory, must be determined on the basis of 3.25sqm per person per sleeping room</p> <p>(b) shared or dormitory-style accommodation in a single room must not accommodate more than 8 guests</p> <p>(c) the maximum length of stay for guests is 28 consecutive days</p> <p>(d) individual, secure lockable storage facilities of a minimum capacity of 0.6 cubic metres per person is to be provided to allow guests to individually store baggage and travel items within the sleeping room</p> <p>(e) where the premises comprise more than 30 beds, a range of room sizes and bed types are to be provided</p> | Yes | The development complies with the relevant provisions. |

| 4.4.8 Visitor accommodation | Compliance | Comment |
|--|------------|--|
| <p>(3) Communal recreational areas:</p> <p>(a) are to be provided within the premises at a rate of 0.75sqm per person based on the maximum number of guests</p> <p>(b) are to be a minimum total floor area of 20sqm with a minimum width of 3m where the maximum number of guests is less than 30</p> <p>(c) are to be provided internally where possible and in addition to any outdoor communal recreation area (dining areas may be included as a communal recreation area)</p> <p>Note: The floor area of bedrooms, bathrooms, laundries, reception area, storage, kitchens, car parking, loading docks, driveways, clothes drying areas, corridors and the like do not count towards the calculation of the required communal recreation area.</p> | No | The development is required to provide 233sqm of internal communal areas. 223sqm is provided excluding the area of kitchens and the bar. |

| 4.4.8 Visitor accommodation | Compliance | Comment |
|---|------------|---|
| <p>(4) Where communal outdoor facilities are proposed:</p> <p>(a) they should generally be no greater than 20% of the total communal recreational area</p> <p>(b) the design and location is to ensure that the noise impact to surrounding property is minimised</p> <p>(c) the use should be restricted to before 10pm, particularly if there are residential uses nearby</p> <p>(d) details on the management of the space including any restricted hours of access are to be included in the Plan of Management</p> | No | <p>The combined outdoor areas provided is equal to 92.8sqm or 29% of the total recreational area provided. The application also proposes access on Friday and Saturday night to midnight.</p> |
| <p>(5) For kitchen and dining areas:</p> <p>(a) an internal self-catering kitchen and a separate dining room for use by guests is to be provided with capacity for at least 15% of the maximum number of guests to prepare and consume meals at any one time</p> <p>(b) cooking facilities or kitchenettes are not permitted in sleeping rooms</p> | No | <p>The kitchen and dining area can only accommodate 24 people or 7% of the total capacity of the accommodation.</p> <p>Cooking facilities are not provided in the bedrooms.</p> |

| 4.4.8 Visitor accommodation | Compliance | Comment |
|--|------------|---|
| <p>(6) For bathrooms:</p> <p>(a) toilets are to be in a separate compartment from common showers and bathrooms</p> <p>(b) a minimum of one bathroom for males and one bathroom for females is to be provided</p> <p>(c) walls separating toilet and shower compartments in single sex facilities, must be a minimum of 1.8m high and a maximum 250mm off the ground</p> <p>(d) in unisex facilities, partitions separating adjacent compartments are to extend from floor level to ceiling</p> | No | Individual bathrooms are provided on levels 2 and 3, with unisex facilities provided on the floors above. However, insufficient information has been provided in the plans and within the SEE regarding the form of the unisex facilities to demonstrate compliance with the control. |
| <p>(7) Provide the following laundry facilities for every 50 occupants or part thereof:</p> <p>(a) a washtub, clothes washing machine</p> <p>(b) a clothes dryer, or a clothesline with a minimum length of 20m and which can be retractable in an outdoor area or drying room</p> | Yes | Laundry facilities are provided for guests in the basement. |
| <p>(8) Provide the following additional rooms:</p> <p>(a) a staff room</p> <p>(b) a site manager's office</p> <p>(c) a sleeping room where there is to be a resident and caretaker and is not a shared or dormitory room</p> | No | A staff room is not provided, and the application does not commit to providing accommodation for a resident caretaker. |

| 5. Specific Areas | Compliance | Comment |
|--|------------|--|
| 5.1.2.2 Side and rear setbacks | No | Tourist and visitor accommodation are required to provide a setback of 6 metres from primary windows to side and rear boundaries. The proposed building provides a zero setback to the side and rear boundaries. While the windows are the only source of light to rooms, the development is nevertheless contrary to the control. |
| 5.1.2.3 Setbacks for buildings adjoining or fronting lanes | No | Buildings are required to provide a setback of 6 metres measured from the centre of an adjoining lane. The proposed building provides a setback of between 3.2 and 4.8 metres on the east elevation and a zero setback on the north elevation. |
| 5.1.3 Street frontage heights and setbacks for Special Character Areas | Yes | The development maintains the existing facade and sets the tower back by 8 metres in accordance with the control. |
| 5.1.6 Building exteriors | No | The building exterior including its form and materials detract from the character and appearance of the surrounding area and is not supported. Further discussion is provided under the Issues heading. |

Issues

Heritage and Design Excellence

39. The site is not identified as a heritage item, however it adjoins local and State heritage items and is located with the Haymarket/Chinatown Special Character Area pursuant to Section 2.1.3 of the Sydney DCP 2012. A heritage impact statement accompanies the application as recommended by Clause 5.10 of the Sydney LEP 2012 and Section 3.9.1 of the Sydney DCP 2012.

Impact on Christ Church St Laurence

40. The site is adjacent to the Christ Church St Laurence Anglican Church and Pipe Organ, a State heritage item (item 849 under Schedule 5 of the Sydney LEP 2012). An extract from the statement of significance listed on the Office of Heritage website is summarised below:

Principal Significance

- *Christ Church St Laurence, completed in 1845, has a distinctive place in the history of the Australian Anglican Church as a parish church characterised by its Anglo-Catholic identity at times to the point of acquiring national iconic status within the Church.*
- *Christ Church St Laurence group including the Church, church hall and rectory is architecturally nationally significant as an ancient church group.*
- *The Church a landmark, a building which carried/brought in the Victorian Gothic Revival style, the early work of Edmund Blacket, the rectory and church development. one of the best quality Edwardian city developments also intact and part of one of the two earliest city blocks intact.*

Other Significance

- *The Church group has strong associations with important clergy and architects among many others including William Horatio Walsh, Charles Frederick Garnsey, Frederick John Albery and John Hope.*
 - *Christ Church St Laurence is a rare first-generation building in the city and as such has archaeological potential to reveal evidence of Sydney's original land form and pre-European culture. The Church retains the majority of all its important liturgical fittings from the original work and its major changes.*
 - *Christ Church St Laurence due to its prominent history and strong support of social causes maintains a high level of social significance. (Christ Church St Laurence Conservation Management Plan, Clive Lucas Stapleton, 2001).*
41. A Heritage Conservation Management Plan (CMP) for the Church by Clive Lucas Stapleton and Partners (2001) defines the setting of the Church as the visual catchment towards the Church, which extends beyond the site boundaries. The CMP considers the setting corresponds to the primary significance of the place as a historic landmark. Policy 9 of the CMP states that:
- (a) The following views to the place should be conserved:
- East from Valentine Street, the axial view of west facade of the Church, including the spire against the sky;*
- From Railway Square north towards site;*
- From George Street at Town Hall, the view of the tower and spire; and*
- From the concourse to the west of Central Railway Square west towards the site.*
42. The proposed new building will impact on the views towards the spire from Railway Square, Central Station western court, Pitt Street, George Street and Valentine Street. It appears behind or side-by-side with the spire in those views. Accordingly it will disturb the setting of the landmark outlined in the CMP. Views of the spire will therefore be detrimentally affected with the exception of views from north on George Street. This is demonstrated by the montages (plans DA8.03—DA8.09) within Attachment A.

43. The following factors of the new building contribute its visual impact:
- (a) Proximity and height - The curtilage of the Church building and spire need to be preserved to protect their landmark value. The proposed tower exceeds the height of the spire and is significantly higher than the cornice line on the spire. Council's Heritage officer has determined that a minimum distance of approximately 18 metres, or equal to that between the spire and Lottery Office building to the south, is required to protect the curtilage of the Church with regard to the recommendations of the Conservation Management Plan. Any tall buildings should therefore be set back beyond this distance to preserve the setting of the spire, within which the proposed tower, at 11 metres away, encroaches. The proposed new building is therefore within the area that is considered to be the significant curtilage of the spire. In addition to the height of the tower exceeding 50 metres, the new building will impose an unacceptable impact on the visual setting of the Church.
 - (b) Bulk - the proposed new building is also much larger than the spire. Along with its proximity, it will dominate views of the Church.
 - (c) Tower form - The new building is read as a tower when compared to the much lower adjacent buildings. As previously discussed, the Haymarket/Chinatown Special Character Area features a fine grained subdivision pattern, narrow street frontages, low building height and absence of tower form. As was discussed with the applicant during preliminary discussions, a tower cannot easily be built in Haymarket due to the constraints of the lot sizes. In particular, it appears that the block surrounded by George Street, Pitt Street and Rawson Place has not been changed for the last 100 years. The large multistorey brick buildings at the three block corners (11-23 Rawson Place, 790 George St and 814 George St), low scale commercial terraces (800-808 George St) and Christ Church St Laurence characterise this unique block formed by the extension of Pitt St and the construction of Central Station in the early 20th and together contribute to the Special Character Area. The Church tower is the only tower form in the block and is accentuated by the low scale surrounding buildings. The new tower building, which is higher and bulkier, will eclipse the prominent church tower.
 - (d) Facades and material - The facade treatment (arch forms, brick tiles and colour) detracts from the Church tower and other heritage buildings within the block. The superficial application of arches, while a periodic feature of historic buildings, is inappropriate in this instance, particularly with regard to the use of modern materials. The current design is neither quiet nor compatible but dominating and overwhelming to the block. Its facade and materiality are poorly designed and detract from the neighbouring heritage buildings.
 - (e) Overshadowing - The stained glass windows on the northern elevation of the Church appear to already be overshadowed by existing buildings which will be compounded by the new proposed tower. The development will also overshadow the Church tower in the morning - sunlight on the spire may be considered to have spiritual significance to the Church.

Impact on other heritage buildings and local character

44. The character statement for the Haymarket/Chinatown Special Character Area is as follows:

The area is characterised by Victorian and Federation warehouses and commercial buildings and service laneways associated with the market, commercial and retail uses of the area and former wharfs of Darling Harbour, and evidence of development following the opening of Central Railway Station in 1906. The area has fine grained subdivision patterns, narrow frontages, informal public spaces and generally low building heights. The consistent low street wall heights, the general absence of tower forms create a pleasant microclimate at street level which is sunlit and protected from winds.

45. The building's scale, height, commercial use and inter-war Chicagoesque form contribute to the character of the Haymarket/Chinatown Special Character Area and neighbouring buildings. It complements Christ Church St Laurence and enhances the streetscape. The development proposes renovating the existing building facade with a limestone render. The tower above will be setback 8 metres from the front boundary in accordance with Section 5.1.3 of the Sydney DCP 2012.
46. The subject site and its northern neighbouring sites exemplify the character of the Haymarket/Chinatown Special Character Area. The proposed new building conflicts with the general absence of tower forms and, built on side and rear boundaries, will encourage similar redevelopment of its northern neighbouring sites, creating a bank of tall buildings without physical separation. Such a scenario would have a detrimental impact on all heritage buildings contained within the block surrounded by George Street, Rawson Place and Pitt Street.
47. The new building will also appear in the current sky backdrop of the Church school building (No 455 Pitt St) when being viewed from Pitt Street, where the intact form and setting of the Church group have not been affected by the later developments in the vicinity.
48. The proposed building also affects the vistas towards the Central Station Clock Tower and the Church tower, such as the vista along Valentine St shown on the photo below.



Figure 27: The intact building forms and their roofline setting as viewed from Pitt Street



Figure 28: The proposed tower, which is located to the north (left) of the Church and is higher than the Church spire will impact on views of the Church and the Central Station Clock Tower along Valentine Street.

Excavation in vicinity of heritage buildings

- 49. According to the geotechnical report, the extent of excavation is 3 metres deep and piling is needed for the footings of the new building. There is uncertainty about the soil condition and groundwater. Retaining supports are needed for the neighbouring buildings and the use of excavation machines may cause major vibrations. Further field investigations, including conditions of footings of the neighbouring buildings, are needed in developing the construction methodologies.
- 50. The risk caused the excavation would likely be manageable, subject to reducing its scale to incorporate retention structures to support the retained facade and neighbouring buildings.

Impact on the subject site

- 51. Although the existing building on the subject site is not heritage listed Council's Heritage officer has assessed the existing building as having considerable heritage significance. The main building structures were built in 1868 and 1904. Any stonework, brickwork and timber structure that dates from 1868 is rare in Central Sydney. That internal early finishes may already have been lost does not substantially diminish the early structure's significance. As such, the existing early structure including the side and rear walls and internal timber floors should be retained and adapted for any proposed new uses, in addition to the front facade. The proposal for a new building does not preclude options for retention of the majority of the original fabric and structure and minimising any new structure's impact to the existing building.

Clause 4.6 request to vary a development standard

- 52. The site is subject to a maximum building height of 50 metres. The proposed development has a building height of 52.2 metres. The development exceeds the maximum height standard by 4.4%.

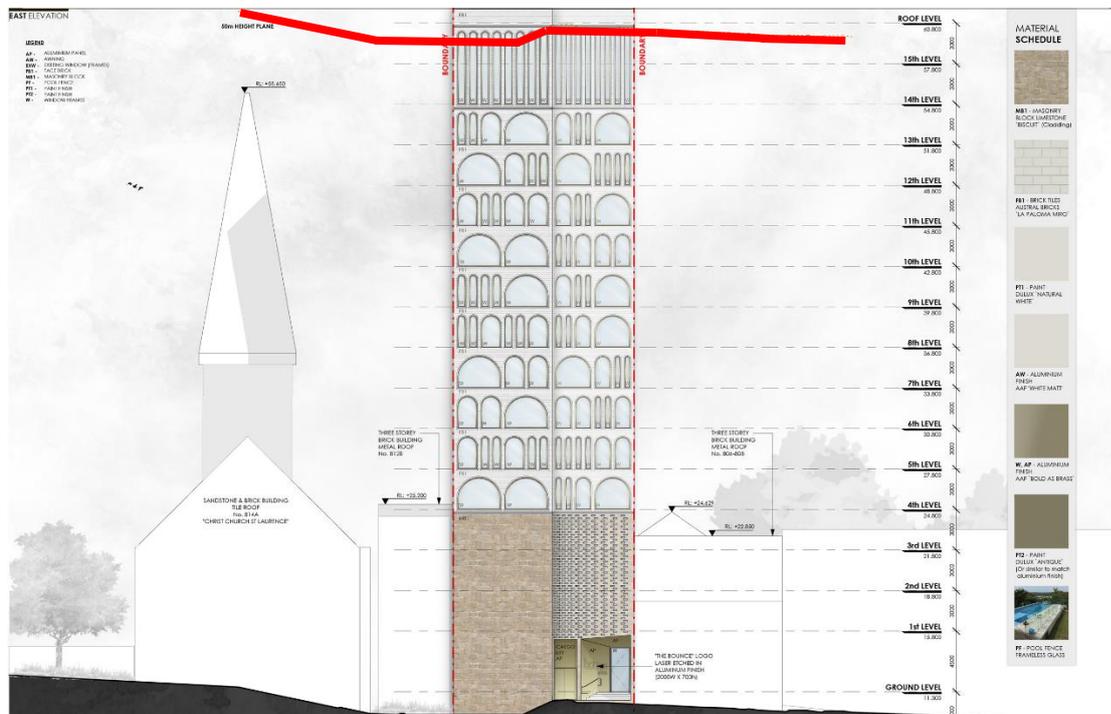


Figure 29: The rear elevation on St Laurence Lane, with the maximum 50 metre height of building development standard in red

53. 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.
54. A copy of the applicant's written request is provided at Attachment B.

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

55. 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 applicant has referred to *Wehbe v Pittwater Council [2007] NSWLEC 827*, whereby Preston CJ establishes the test for determining whether compliance with a standard is unreasonable or unnecessary. A summary of the applicant's request and assessment is provided below.
 - (ii) The applicant states that the development is consistent with the objectives of Clause 4.3 – the height of buildings development standard, notwithstanding non-compliance with the numerical standard, and therefore satisfies the first test under *Wehbe*. The objectives of the clause are provided below:
 - (a) *to ensure the height of development is appropriate to the condition of the site and its context,*
 - (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
 - (c) *to promote the sharing of views,*
 - (d) *to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
 - (e) *in respect of Green Square:*
 - (i) *to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
 - (ii) *to ensure the built form contributes to the physical definition of the street network and public spaces.*

- (iii) With regard to (a) the applicant asserts that the extent of the variation will be imperceptible from the public domain and neighbouring properties. The contemporary infill design will contribute to the urban context and desired future character of the locality having regard to both the current and anticipated scale of development in the surrounding area. The development has had consideration of the site constraints, surrounding built form and provides for the commercial use proposed.
 - (iv) With regard to (b) the applicant has drawn from the heritage impact statement accompanying the application to affirm the appropriateness of the development will regards to the adjacent Christ Church St Laurence. In particular the building will not disrupt views of the Church spire, has regard to the scale of development in the surrounding area and is designed "in the round" to provide uniformity.
 - (v) With regard to (c) the development does not obstruct views.
 - (i) With regard to (d) the development is generally consistent with the envisaged scale of development in the surrounding area. In terms of materiality, height, setbacks and overall form and scale the proposal will not adversely impact the locality while positively contributing to the diversity of architectural styles and densities provided within the area.
 - (ii) (e) is not relevant to the proposal as it not located within Green Square.
 - (iii) The applicant has also addressed the remaining four tests within *Wehbe* and stated that these are not relevant to the matter.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant has referred to *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*. A summary of the applicant's request and assessment is provided below.
 - (ii) The development will facilitate greater amenity for future residents on a site highly suited for the proposed use. The development will not detract from existing and future developments in the surrounding area.
 - (iii) The building parapets conceal services such as solar panels, the lift overrun and water tank. The uppermost level also contains communal facilities.
 - (iv) Strict compliance would not result in material benefit to the surrounding area and would hinder the provision of communal facilities.
 - (v) The extent of the variation will be imperceptible from the public domain and neighbouring properties such as overshadowing or loss of views.
 - (vi) Strict compliance with the permissible height of buildings standard would hinder the provision of the communal area to the uppermost building level that would compromise on the ability to offer higher levels of building amenity, including equitable building access to this level. In this regard, the proposal is considered to provide a better environmental planning outcome than if such elements were not provided.

- (vii) The application represents the orderly and economic use and development of the land.

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

56. 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)?

57. The application correctly attempts to establish that compliance with the height of buildings development standard is unreasonable or unnecessary having regard to the objectives of the development standard. However, as previously discussed, the proposal will have an adverse impact on the visual setting and heritage significance of the adjacent Christ Church St Laurence and Haymarket/Chinatown Special Character Area, due primarily to its height, bulk and the proximity of the tower to the Church spire. The development therefore does not demonstrate adequate regard to those matters identified in objectives (a), (b) and (c) and can therefore not be granted development consent.

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

58. CJ Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 provides a comprehensive summary of those matters required to be addressed in the construction of a request to vary a development standard pursuant to Clause 4.6. With regard to Clause 4.6(3)(b):

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

59. The assertion that exceeding the height standard provides improved amenity to occupants by locating communal facilities on the uppermost floor is not considered an environmental planning ground sufficient to justify a variation, as these facilities could be located one floor lower and provide the same amenity whilst achieving compliance. It is noted that the development does not provide the minimum recommended provision of communal facilities in accordance with Section 4.4.8.4 of the Sydney DCP 2012. The location of services, plant and lift overrun on the roof would also not be compromised by reducing the height of the building by a storey to comply.
60. As previously discussed, the development will have an adverse impact on views towards, and the heritage significance of, the Christ Church St Laurence and the Haymarket/Chinatown Special Character Area. As such, any additional height will compound these impacts.
61. The applicant's assertion that the development will not adversely overshadow neighbouring properties has failed to consider overshadowing impacts on Christ Church St Laurence as previously discussed.
62. The application therefore has not provided sufficient environmental planning grounds to justify varying the height of buildings development standard and cannot be granted development consent.

Is the development in the public interest?

63. With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied. As has been discussed already, the exceedance to the height of buildings standard does not accord with objectives (a), (b) and (c). The development is therefore not in the public interest.
64. For completeness, an assessment against the objectives of the B8 - Metropolitan Centre zone is provided below. The objectives of the zone are as follows:
 - 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.
 - To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling.
 - 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.
65. The extent of the variation to the height of buildings development standard does not raise any conflicts with the objectives of the B8 - Metropolitan Centre zone.

Conclusion

66. For the reasons provided above the requested variation to the height of buildings development standard is not supported, as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. The proposed development is not in the public interest under Clause 4.6(4)(ii) because it is inconsistent with the objectives of the height of buildings development standard.

Setback to St Laurence Lane and wind effects

67. Section 3.2.6 of the Sydney DCP 2012 requires development to have consideration for wind effects from buildings greater than 45 metres tall and be based on wind tunnel testing such that development does not adversely impact public and private domains.
68. The Haymarket/Chinatown locality statement at Section 2.1.3 of the Sydney DCP 2012 specifically notes the absence of negative wind impacts due to the relative absence of tower forms.
69. The application includes a wind report which is experience based rather than based upon actual wind tunnel testing, contrary to the control.
70. Given the immediate proximity of the proposed tower to 505 Pitt Street (Christ Church St Laurence School), it is appropriate that wind impacts to outside areas are quantified via wind tunnel testing. The site is currently approved for use as a childcare centre (D/2016/117). In this approval, outdoor play areas and vegetable gardens are proposed immediately adjacent to the 50m shear wall at the eastern boundary.
71. The proposal includes a minimal setback at the shared eastern boundary with 505 Pitt Street varying from zero to 2.187m. A vertical wall of approximately 50m in height adjacent to open external areas will most likely have significant negative impacts on the use of these external areas. Downwash from easterly winds without any podium setback to reduce downwash will render this space unusable.
72. As such the development is contrary to Section 3.2.6 of the Sydney DCP 2012.

Other Impacts of the Development

73. The proposed development is capable of complying with the NCC..

Suitability of the site for the Development

74. With regard to heritage impacts, the site is not considered suitable for the proposed development.

Internal Referrals

75. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Safe City; Surveyors; Transport and Access; and Waste Management teams. Their responses are discussed within the body of the report.

External Referrals

Office of Heritage

76. The Office of Heritage provided the following comments with regard to the proposal. The first point differs to the assessment provided by Council's Heritage officer and is included for completeness:
- *The proposed design of the tower uses architectural detailing, fenestration patterns and proportions to respond to the character of the streetscape. In addition, the retention of the façade of the existing building allows the established character along George Street to be retained.*
 - *However, the proposed location and height of the tower will have a significant impact on the prominence of the adjacent Christ Church St Laurence Anglican Church spire, in particular when viewed looking north along George Street, and looking west from Pitt Street.*
 - *Christ Church St Laurence Anglican Church is listed on the State Heritage Register due to its social significance as well as its landmark value, including as part of one of the two earliest city blocks intact. The proposed tower will impact on the primacy of the spire and detract from its landmark qualities. We therefore recommend that the height of the tower be reduced to match the height of the cornice of the spire.*
77. The application was referred to Transport for NSW, the Police, Sydney Trains, WaterNSW and Ausgrid. Their responses where relevant are discussed within the body of the report.

Notification, Advertising and Delegation

78. 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 21 days between 22 February 2019 and 16 March 2019. As a result of this notification there were 76 unique objections received raising the following concerns:
- (a) The development by way of its form, scale and setting will adversely affect the heritage significance of the Christ Church St Laurence and surrounding Special Character Area.
- Response** - As discussed above, the development will have an adverse heritage impact and is not supported.
- (b) The development exceeds the maximum height of buildings development standard and height in storeys controls for the site.
- Response** - The development fails to address the provisions of Clause 4.6 in justifying the variation to the standard and is not supported.
- (c) The building height will overshadow neighbouring properties.
- Response** - Concern is raised regarding the impact of the tower on solar access to the Church and adjoining childcare centre.
- (d) The development exceeds the maximum floor space ratio permitted for the site.

Response - The development complies with the maximum floor space ratio for the site and proposed uses.

- (e) The building will create adverse wind effects on the public domain and neighbouring properties.

Response - Concern is raised regarding the impact of the tower on the amenity of the adjoining childcare centre.

- (f) The development does not provide for on-site servicing and waste collection, adversely impacting the surrounding street network.

Response - Agreed, the development does not comply with relevant planning policies for waste collection and on-site servicing.

- (g) The development will adversely contribute to traffic, demand for local transport services and on-street parking.

Response - The development is unlikely to result in private vehicular traffic and burden public transport.

- (h) The use by way of the proposed outdoor spaces and nature of backpackers will adversely impact the amenity of the surrounding area.

Response - The development does not comply with relevant planning policies regarding the management of the premises and patrons. Concern is raised this will adversely impact the amenity of the surrounding area.

- (i) Basement excavation may adversely impact the structural integrity of adjoining properties.

Response - Concern is raised that insufficient information has been provided to mitigate dilapidation of neighbouring properties during excavation.

- (j) The location of windows on the boundary will inhibit development of adjoining properties.

Response - The location of windows on boundaries can be managed by way of covenants on title.

- (k) The proposed laundry is not accessible to patrons with disability.

Response - The laundry could be made accessible.

- (l) The development does not contribute to the activation of St Laurence Lane.

Response - The development is not required to provide an active frontage to St Laurence Lane.

- (m) Construction impacts.

Response - The development is not accompanied by a demolition, excavation and construction noise and vibration management plan and construction traffic management plan.

- (n) The development does not comply with the minimum setback requirements for Central Sydney.

Response - Agreed the development will have an adverse impact on the public domain and neighbouring properties as a result.

- (o) The development does not comply with relevant provisions for backpackers' accommodation with regard to patron management and internal and external amenity.

Response - Agreed, the development provides insufficient communal facilities and management practices in accordance with Council's controls.

- (p) The surrounding area is over serviced by backpackers' accommodation.

Response - This is not a matter for consideration under current planning controls.

- (q) The site is inappropriate for a backpackers having regard to complaints from existing backpackers about the Church bells ringing on Sunday mornings.

Response - The noise from the bells does not render the site unsuitable for the proposed development, notwithstanding complaints received in the past.

Public Interest

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

S61 Contribution

80. The cost of the development is in excess of \$200,000 and would be subject to a Section 61 developer contribution.

Relevant Legislation

81. The Environmental Planning and Assessment Act 1979.

Conclusion

82. The application proposes partial demolition, renovation of the front facade, excavation and construction of a 16 storey backpackers' accommodation with single level basement. The backpackers will accommodate 291 dorm beds and 10 private rooms with a maximum capacity of 311 guests. Communal facilities including laundry, kitchen, outdoor pool, bar, cafe and living rooms are included.

83. The development exceeds the 50 metre height of buildings development standard by 2.2 metres. A request to vary the standard does not adequately address the provisions of Clause 4.6(3) and is not in the public interest. As such development consent must not be granted.
84. The development, by way of its height, bulk, appearance and proximity, will have an adverse impact on the visual setting and heritage significance of the adjacent Christ Church St Laurence and accompanying buildings, streetscape and Haymarket/Chinatown Special Character Area. The design does not consider passive sun shading and will contribute to adverse wind impacts on the adjoining childcare centre. The development therefore does not exhibit design excellence.
85. Inadequate information has been provided to receive the concurrence of Transport for NSW in accordance with Clause 88 of the State Environmental Planning Policy (Infrastructure) 2007.
86. The development fails to provide a detailed environmental site investigation as recommended by the applicant's environmental consultant regarding potential remediation of the site, contrary to State Environmental Planning Policy 55 - Remediation of Land.
87. The development does not provide for on-site loading and waste collection, unduly burdening the surrounding streets. The proposed hours of access to outdoor facilities to midnight and inadequate provision of internal communal facilities are contrary to Council's controls for backpackers and may adversely impact the amenity of neighbouring properties. The development also fails to contribute public art, landscaping details and the proposed signage is contrary to the character of the surrounding area.
88. The application was notified and advertised for 21 days and received 76 unique objections. The concerns are discussed within the report.
89. For the reasons above the development is not in the public interest and is recommended for refusal.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

David Zabell, Senior Planner