

**Item 4.****Development Application - 420 & 422-424 Kent Street and 275 & 277 Clarence Street, Sydney - D/2018/1577**

File No.: D/2018/1577

**Summary**

<b>Date of Submission:</b>	19 December 2018
<b>Amended and additional information:</b>	6 June 2019, 31 July 2019 and 16 September 2019
<b>Applicant:</b>	Venemchlo Pty Ltd
<b>Architect/Designer:</b>	Francis-Jones Morehen Thorp Pty Ltd
<b>Owner:</b>	George Gialouris
<b>Cost of Works:</b>	\$82,437,537
<b>Zoning:</b>	B8 Metropolitan Centre zone - <i>'tourist and visitor accommodation'</i> and <i>'retail premises'</i> is permissible.
<b>Proposal Summary:</b>	<p>Refurbishment works to the Genesian Theatre, demolition and construction of a 19 storey development comprising of:</p> <ul style="list-style-type: none"><li>• Excavation to a depth of 1.7AHD for two (2) levels of basement;</li><li>• Construction of a 199 room hotel development and retail uses;</li><li>• Use of the Genesian Theatre as an adaptive performance space and additional dining area for the hotel's restaurant;</li><li>• Provision of a through-site link between the Genesian Theatre and hotel connecting Kent and Clarence Street;</li><li>• Landscaping and public domain works; and</li><li>• Zones for future business identification signage.</li></ul>

The application was notified and advertised for a period of 28 days between 10 January 2019 and 8 February 2019. Two (2) submissions were received raising the following matters:

- Demolition of buildings results in the loss of the heritage quality of the Kent and Clarence Street Special Character Area; and
- Potential increased traffic impacts and the safety of pedestrians.

The Genesian Theatre building is identified as an item of local heritage significance being the 'former church including interiors and front fence' (I1829) under Sydney LEP 2012. The application has been amended to address issues relating to built form and the degree of cantilever that was considered to overwhelm the curtilage of the heritage listed building. As such, the amended scheme reduced the extent of the cantilever and increased the height difference and separation between the underside of the cantilever from the apex of the heritage church. This resulted in external and internal modifications to the development.

Accordingly, the amended plans were renotified for a period of 14 days between 19 September 2019 and 3 October 2019. One (1) submission was received, seeking clarification of the demolition and construction timeframe of the development.

The proposal complies with the maximum permissible height and floor space ratio (FSR) development standards prescribed in the Sydney Local Environmental Plan 2012, and is generally consistent with the relevant planning controls.

The site is located within the future Central Sydney Rail Link corridor and requires concurrence of the relevant rail authority pursuant to Clause 88 of SEPP (Infrastructure) 2007. Transport for NSW have granted concurrence for the development, subject to conditions contained in Attachment A.

The proposal adequately responds to surrounding development and its Central Sydney context, and achieves a high standard of architectural design that is considered to demonstrate design excellence.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy No. 55 - Remediation of Land
- (iv) State Environmental Planning Policy No. 64 - Advertising and Signage
- (v) State Environmental Planning Policy (Infrastructure) 2007
- (vi) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; and
- (vii) Central Sydney Development Contributions Plan 2013

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Architectural Drawings
- C. Shadow Diagrams

## Recommendation

It is resolved that:

- (A) the requirement of Section 51N of the City of Sydney Act 1988 to consult with the Central Sydney Traffic and Transport Committee not apply in this instance as the proposal does not require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD;
- (B) the requirement under Clause 6.21 of the Sydney Local Environmental Plan 2012 requiring a competitive design process is unreasonable or unnecessary in the circumstances;
- (C) the requirement under Clause 7.20 of the Sydney Local Environmental Plan 2012 requiring the preparation of a development control plan is unreasonable or unnecessary in the circumstances; and
- (D) consent be granted to Development Application No. D/2018/1577 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

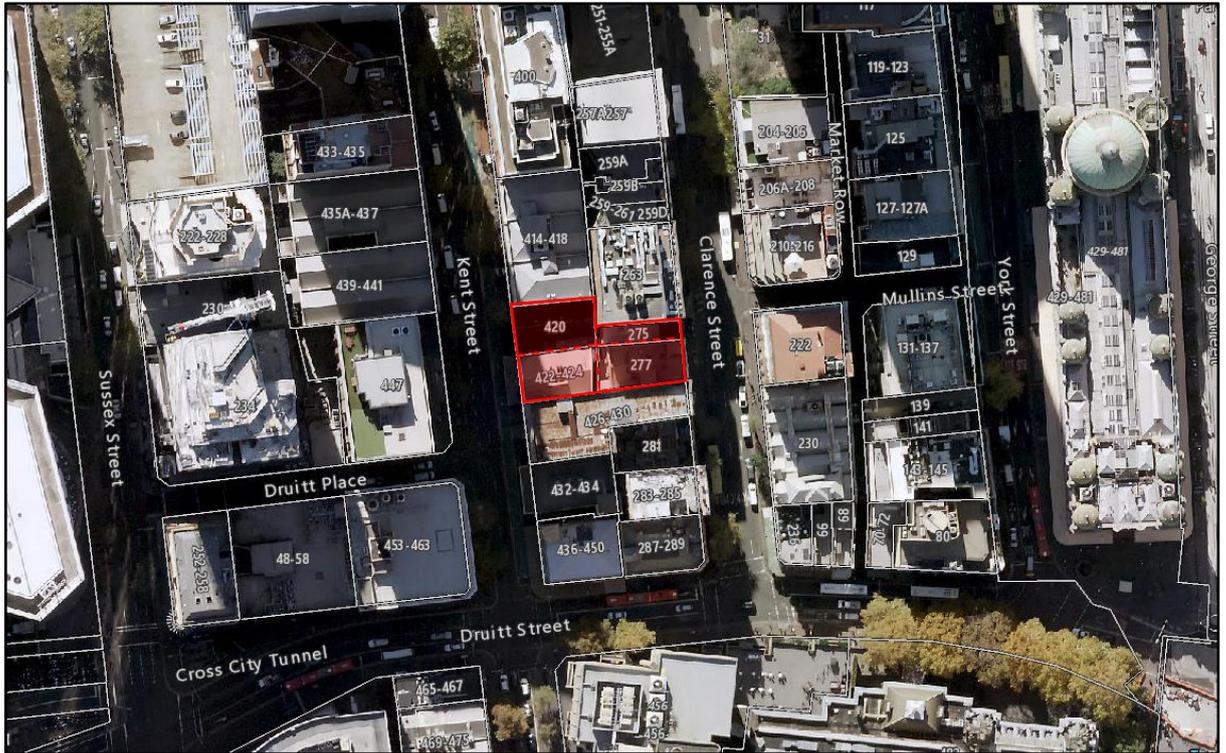
The application is recommended for approval for the following reasons:

- (A) the proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979;
- (B) the proposal generally satisfies the objectives and provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012;
- (C) the proposed 'micro-hotel' provides a greater diversity of hotel accommodation in Central Sydney with acceptable internal amenity;
- (D) the heritage listed Genesian Theatre will be refurbished and retained as a performance space and be re-invigorated;
- (E) the proposed building would not result in adverse environmental impacts;
- (F) the provision of a through-site link that would be accessible 24 hours a day connecting Kent and Clarence Street; and
- (G) the proposal is consistent with the objectives of the B8 Metropolitan Centre and is in the public interest.

## Background

### The Site and Surrounding Development

1. The most recent site visit was carried out by staff on 24 September 2019.
2. The site has a dual frontage to Kent Street to the east and Clarence Street to the west. It is located between DrUITT and Market Streets and has a total site area of 806.3sqm.
3. **Figure 1** below illustrates the location of the site and provides an aerial photograph of the site in its context.



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

4. The subject site comprises of four (4) separate allotments:
  - (a) 420 Kent Street has a legal description of Lot 1 DP 782342 and accommodates a heritage building of local significance being the 'former church including interiors and front fence' (I1829). The building is commonly known as the Genesian Theatre and is currently used as an entertainment facility.
  - (b) 422-424 Kent Street has a legal description of Lot 20 DP 64289 and accommodates a 3 storey brick commercial building. The building is built to the northern and southern boundaries and provides vehicular access from Kent Street. The allotment does not contain basement levels.
  - (c) 275 Clarence Street has a legal description of Lot 1 DP 74422 and accommodates a brick 3 storey commercial building. The building is built to the northern and southern boundaries and contains one level of basement and a small setback from the western boundary.

- (d) 277 Clarence Street has a legal description of SP 17931 and accommodates a 5 storey commercial building known as AMPCo House. The building is generally built to all boundaries and contains one level of basement.
5. Photographs of the subject site are provided in **Figures 2 to 5** below.



**Figure 2:** 420 and 422-424 Kent Street, looking east.



**Figure 3:** 275 and 277 Clarence Street indicated in outline, looking south-west.



**Figure 4:** Internal condition of the Genesian Theatre viewed from the Level 1 seating area.



**Figure 5:** Internal condition of the Genesian Theatre viewed from the stage.

6. The site adjoins heritage buildings of local significance to the north at 414-418 Kent Street being the 'former warehouse "Edward Dunlop & Co" including interiors and cart dock' (I1828). To the south of the site at 426-430 Kent Street exists the 'former Grace House warehouse including interiors' (I2276). The site is not located in a heritage conservation area but is located within the York Street Special Character Area including Clarence Street and Kent Street.
7. The locality is characterised by a mix of medium scale commercial buildings of a brick warehouse character with ground floor retail.

8. Contextual photos of the site and surrounds are provided in **Figures 6 and 7** below:



**Figure 6:** Kent Street streetscape, looking north-east.



**Figure 7:** Clarence Street streetscape, looking south-west.

## Proposal

9. The application seeks consent for the retention and refurbishment of the Genesian Theatre located at 420 Kent Street, excavation for two basement levels, demolition of structures and construction of a 19 storey hotel development consisting of 199 rooms and comprises the following:
- (a) Basement Level 2:**
    - (i) Bicycle parking for 34 bikes and associated end of journey facilities;
    - (ii) Loading dock with combined hoist and turntable;
    - (iii) Services and plant;
  - (b) Basement Level 1**
    - (i) Hotel restaurant, amenities and kitchen facilities;
    - (ii) Services and plant;
  - (c) Lower Ground Floor (Kent Street):**
    - (i) One retail tenancy with an approximate area of 85.2sqm;
    - (ii) Vehicular and servicing access point to basement Level 2;
    - (iii) Substation, plant and services;
    - (iv) Entry to the Genesian Theatre for use as an adaptive performance space and additional dining area for the hotel's restaurant;
    - (v) Provision of a through-site link between the Genesian Theatre and hotel;
  - (d) Upper Ground Floor (Clarence Street):**
    - (i) Main hotel lobby and reception area;
    - (ii) Hotel lounge;
    - (iii) Fire control room;
  - (e) Levels 1 - 17**
    - (i) Guest rooms ranging from 8 to 13 rooms per level and is determined by the varying floor plate as it cantilevers over the Genesian Theatre;
  - (f) Level 18**
    - (i) 6 guests rooms;
    - (ii) Plant and equipment rooms.
10. The proposal has a maximum height of 60 metres, a floor space ratio of 10.4:1 and gross floor area (GFA) of 8,360sqm.

11. **Figures 8 to 12** illustrate the photomontage and elevations of the proposed development.



**Figure 8:** Illustration of the proposal viewed from Kent Street.

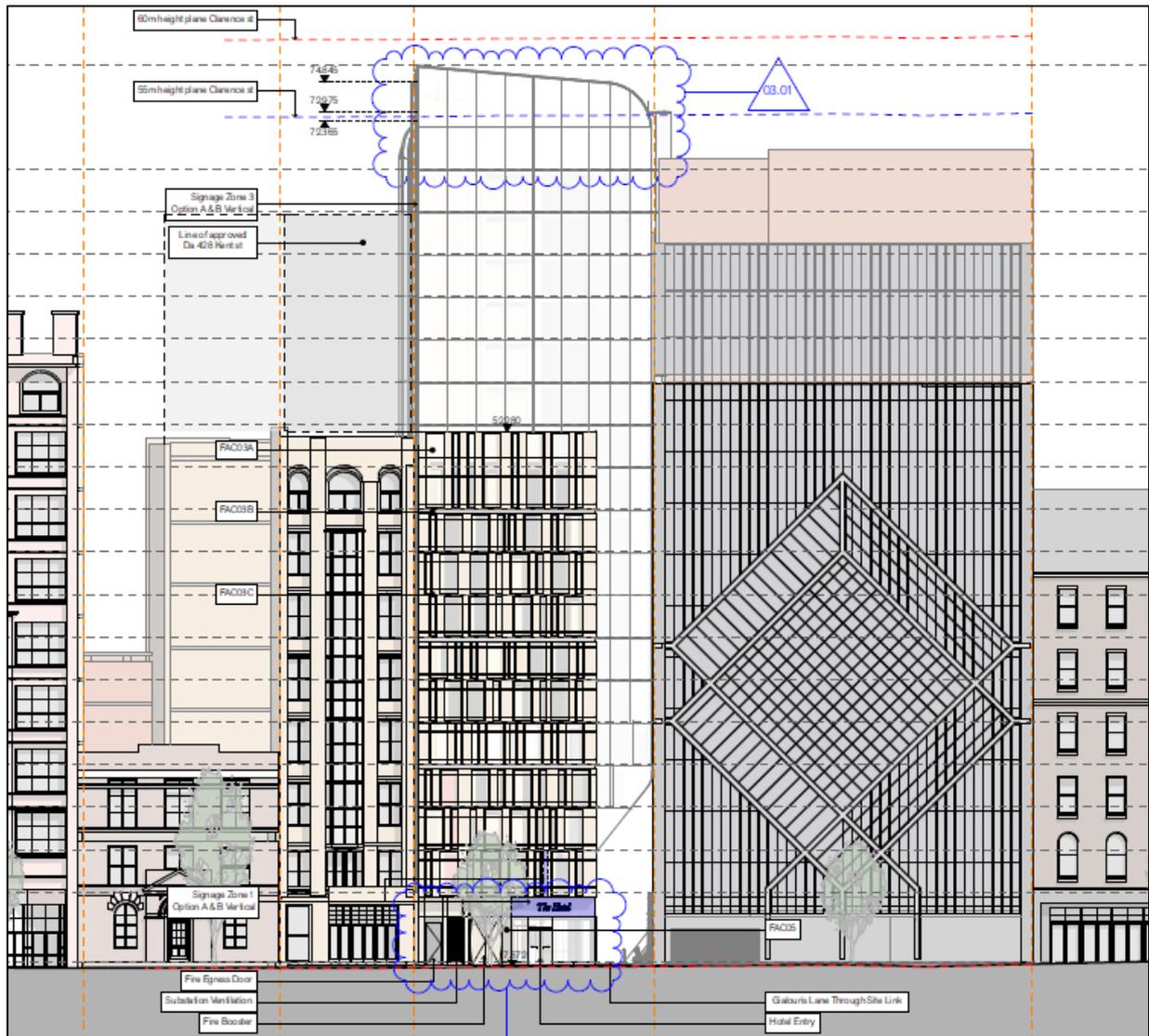


Figure 9: Proposed east elevation (Clarence Street).

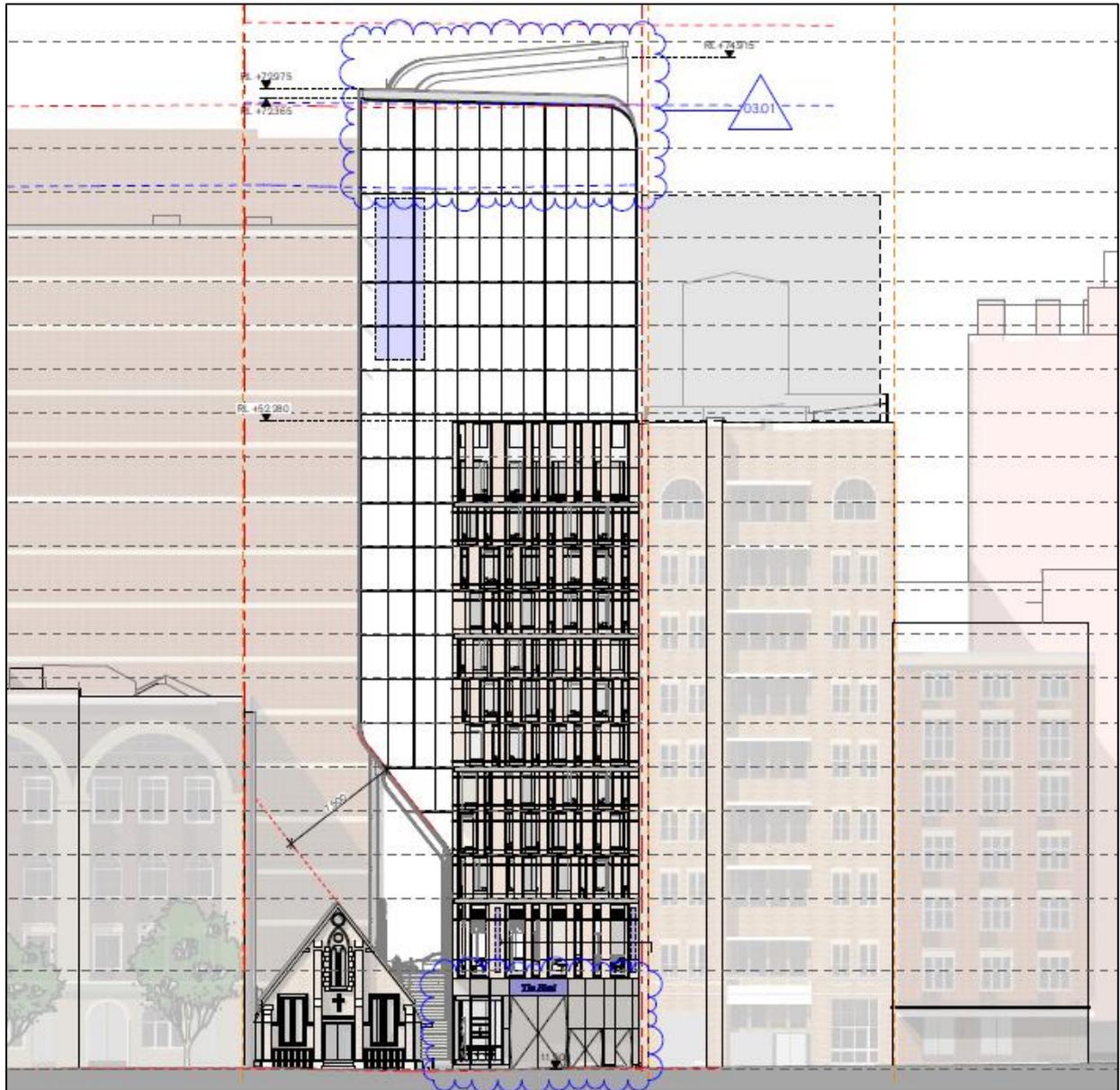


Figure 10: Proposed west elevation (Kent Street).

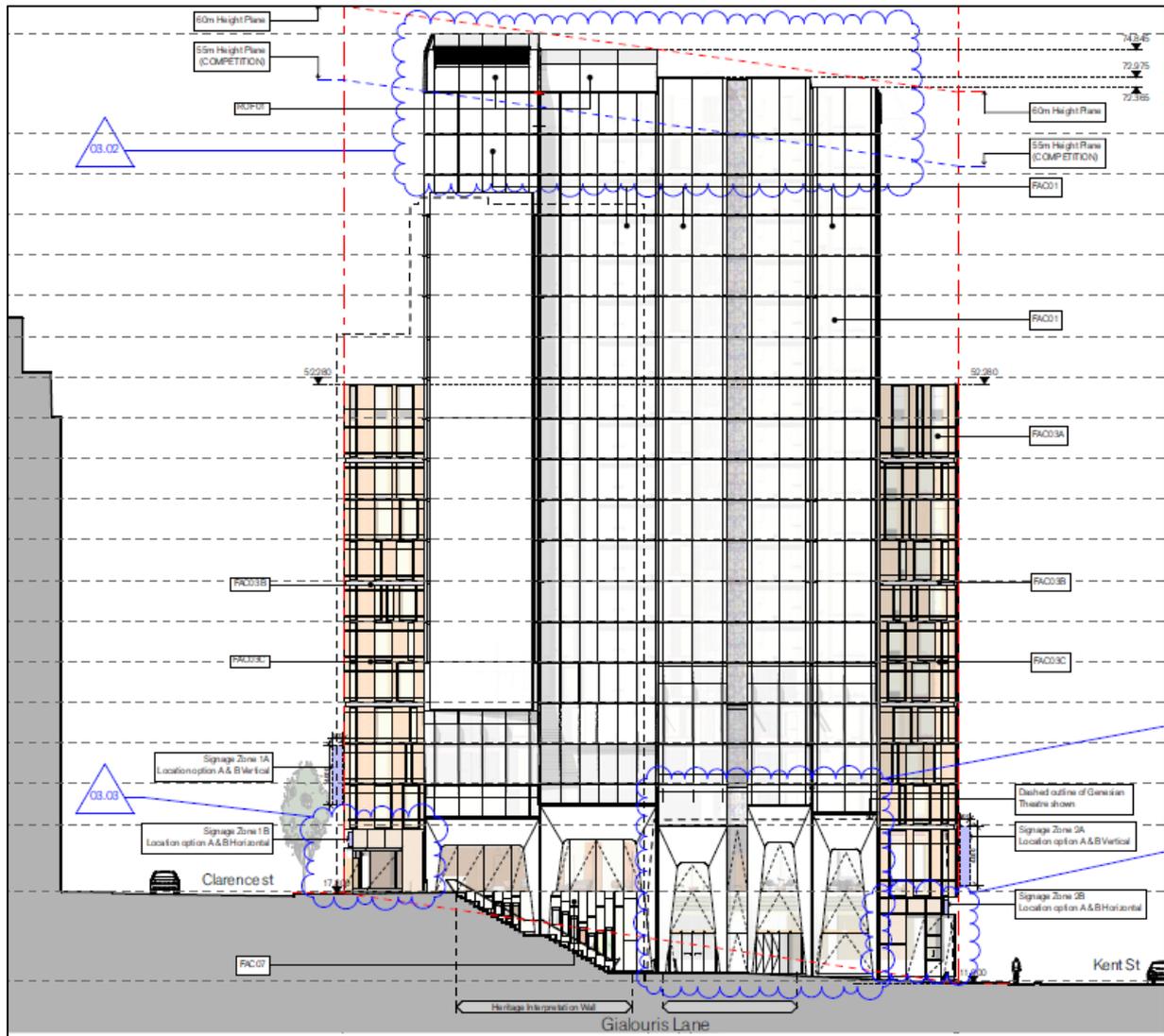


Figure 11: Proposed north elevation.

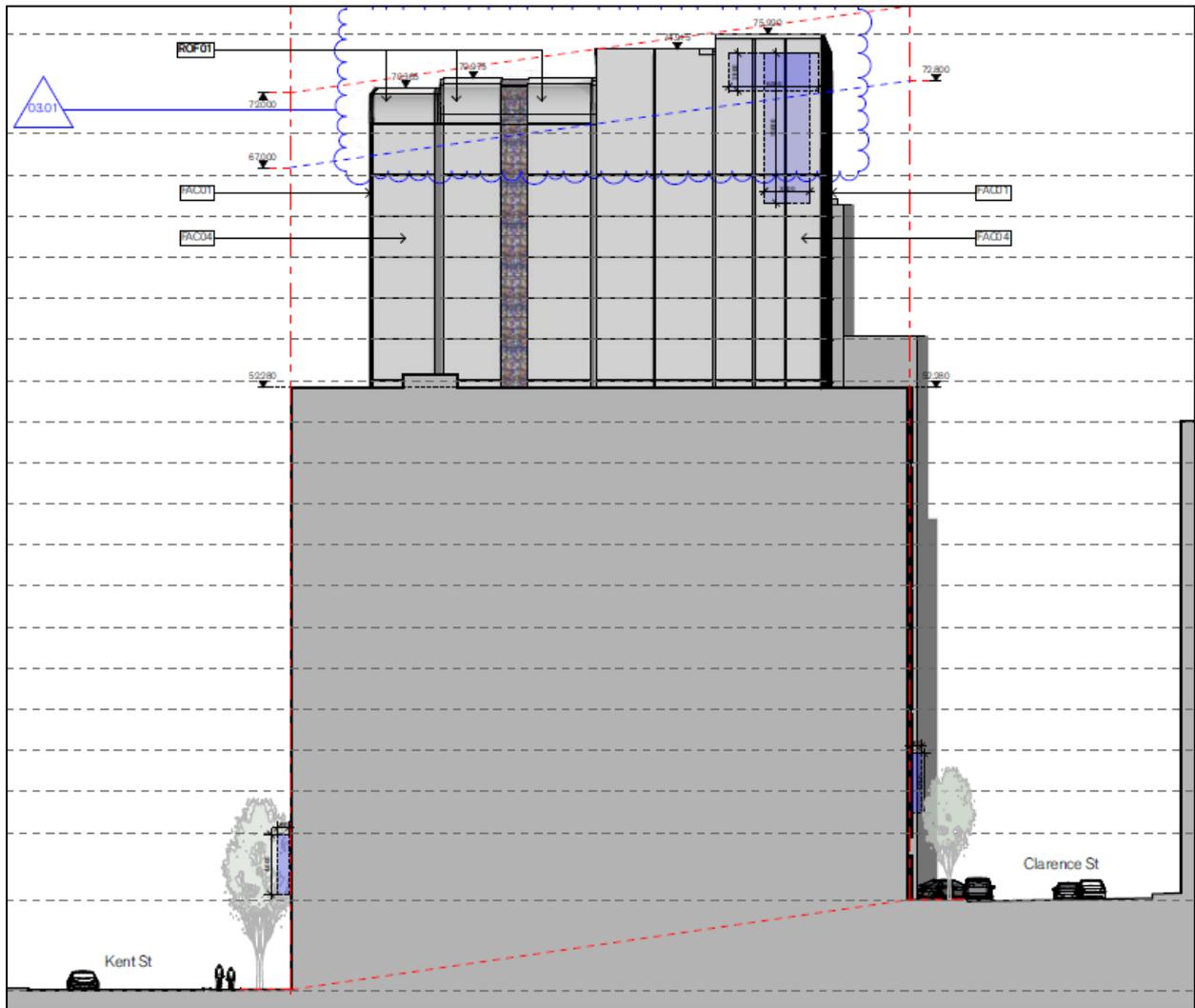


Figure 12: Proposed south elevation

## History Relevant to the Development Application

### *D/2014/1366*

12. On 29 June 2015, Development Application was approved by Council for the demolition of the existing 3 storey building at 422-424 Kent Street and the construction of a 15 storey mixed use building comprising one basement level, retail uses on the ground floor, commercial uses from Levels 1 to 10 as well as residential uses from Levels 11 to 14 with a landscaped roof terrace. This consent was not activated.

### *D/2016/853*

13. On 27 March 2017, Development Application was granted a deferred commencement approval by Council for the buildings located at 422-424 Kent Street and 275 & 277 Clarence Street. The proposal involved demolition of structures and construction of a part 16 and part 17 storey mixed use building comprising of excavation, ground floor retail, 72 hotel rooms and 13 residential apartments. The deferred commencement conditions related to amendments to address issues of transport, servicing, parking and flooding.
14. On 23 April 2018, Modification Application (D/2016/853/1) was approved to extend the lapse date of the consent for an additional 12 months until 27 March 2020. An operative consent has not been issued for the development application.

### *D/2017/445*

15. On 1 June 2018, Development Application was approved for the neighbouring heritage building at 426-430 Kent Street. The proposal involved internal alterations and restoration works as well as construction of a 3 storey addition and use for a commercial premises. The addition was approved with a variation to the required 10m front of building setback control above a heritage building. The numerical non-compliance of 5.2 metres to Clarence Street and 5.5 metres to Kent Street was considered acceptable as the development achieved the objectives of the front setback control in maintaining amenity to the premises, neighbouring buildings and public domain.

## History and Amendments to the Development Application

### *Pre-Development Application*

16. On 19 September 2018, a meeting was carried out with the applicant and Council Officers. It was discussed that the site located at 420 Kent Street, being the Genesian Theatre, had been acquired by the owner and advice was sought for a potential new development application that improved on the previously approved mixed used building approved under D/2016/853.

17. The applicant presented a 'micro-room' hotel scheme with a built form that cantilevered over the Genesian Theatre with the provision of a through-site link that connected Kent and Clarence Street. The proposal was generally supported and the applicant was requested to further explore materiality of the building with respect to the prevailing masonry character of the area and consider the built form and massing to respect the heritage significance of the former church.

#### *Request for Additional Information*

18. The detailed development application was submitted on 19 December 2018. Following a preliminary review of the application and including a review by Council's Design Advisory Panel (DAP), additional information was requested in written correspondence dated 5 April 2019 to address the following issues:

#### Heritage

- (a) The degree of cantilever was considered to be excessive and overwhelmed the curtilage and significance of the heritage building. It was recommended that the outer cantilever mass be amended and therefore, the internal hotel configuration be replanned.

#### Amenity and Adaptability

- (b) The proposed 2.7m floor to floor height was insufficient in providing adequate amenity to the micro-hotel rooms and enable flexible use and future adaptability of the building. It was requested that the development be amended to provide minimum floor to ceiling heights of 2.7m.

#### Through-site link

- (c) The through-site link does not satisfy the requirements of the Disability Discrimination Act (DDA) 1992 and the Building Code of Australia (BCA) to provide equitable access. It was requested that an easement for Right of Public Access be granted to ascertain that the owners of the land consent to the public traversing in the through-site link and recognise use of the hotel lobby lifts to provide equitable access.

#### Flooding

- (d) The development was not designed to the required flood levels prescribed by Council's Interim Floodplain Management Policy. It was requested that all access to the building and including the through-site link, egress and ventilation to the basement fronting Clarence Street must be protected up to the PMF level RL 18m AHD. Also, all access to the building, egress and ventilation to the basement fronting Kent Street must be protected up to the PMF level or 0.3m above the road's gutter level, whichever is the highest. The provision of flood gates were requested to be deleted.

#### Traffic and Transport

- (e) Additional details relating to the loading dock, truck/hoist/turn table operation as well as bicycle parking and end of journey facilities was requested to be provided.

## Plan of Management

- (f) Clarification was sought on the submitted Plan of Management (POM) and the use of the retail tenancies and restaurant as part of the hotel.

## Waste

- (g) Additional details was requested for the location and areas dedicated to waste and recycling storage areas, the nomination of waste collection points, path of access for collection vehicles and submission of a Construction and Demolition Plan.

## Landscaping

- (h) Clarification was sought as to how the proposed green wall is supported.

19. On 6 June 2019, the applicant submitted supplementary information to respond to the issues raised as follows:

- (a) A cantilever setback study and supporting heritage statement, which demonstrated a reduced built form and increased setback of the hotel cantilevered wall over the Genesian Theatre to improve the curtilage to the heritage building.
- (b) Amended Waste Management Plans, Traffic Statement, Plan of Management and Landscape details was submitted.
- (c) A 'Response to the Request for Additional Information', prepared by Urbis was submitted, which sought to justify the remaining issues and is summarised as follows:
  - (i) The 2.7m floor to floor height was acceptable. Effectively, the proposal would provide a 2.5m floor to ceiling height and is compliant with the 2.4m requirement of the BCA. Due to the constraints of the site in providing economic and viable floor plates for commercial use and difficulty to obtain compliance with the Apartment Design for residential use, the proposed hotel use is the best use for the site. Therefore, future adaptability would not be achievable for another use.
  - (ii) The creation of a through site link that is made available to the public is a significant contribution to the general public, and by virtue of the 24/7 operation of the hotel enables constant surveillance of the link that facilitates a high-quality public space that engenders safe, equitable and dignified access for all people.
  - (iii) The proposal provides finished floor levels that are consistent with the development approved under D/2016/853 to address flooding of the site.

20. On 31 July 2019, amended plans were submitted relating to a modified cantilever design and internal reconfiguration of the hotel rooms.

*Central Sydney Planning Committee (CSPC)*

21. On 5 September 2019, the application was presented to the CSPC. The development proposed a modulated cantilever with the greatest extent aligned with the apex of the Genesian Theatre. The extent of the modulated cantilever was not supported by the Committee. It was considered that the relationship of the development with the heritage building could be improved.
22. Accordingly, the CSPC resolved to defer the determination of the application to enable the preparation of an amended proposal that addressed the concerns relating to the cantilevered design and distribution of floor space within the tower. The CSPC also indicated that they may waive the requirement for a design competition and preparation of a site-specific development control plan or Stage 1 application in the case that the proposal exceeds 55m in height, provided it does not breach other controls.
23. On 16 September 2019, amended plans were submitted to Council, seeking to address the recommendations expressed by the CSPC. The amended plans were renotified for a period of 14 days between 19 September 2019 and 3 October 2019.

**City of Sydney Act 1988**

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

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

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

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

(3) The Planning Committee may delegate to a subcommittee of the Planning Committee, or the general manager or another member of the staff of the City Council, any of its functions under this section other than this power of delegation. A delegation can be given subject conditions. A delegation does not (despite section 38) require the approval of the Minister administering that section.

(4) The failure of the Planning Committee to comply with this section does not invalidate or otherwise affect any decision made by the Planning Committee."

25. Having liaised with the City's Access Unit, in this instance, the proposal is not considered to have a significant impact on traffic and transport in the CBD, and consultation with the CSTTC is not necessary.

### **Economic/Social/Environmental Impacts**

26. The application has been assessed under Section 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**

27. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
28. An 'Environmental Management Plan' and a 'Preliminary Contamination Assessment', both prepared by Environmental Earth Sciences was submitted with the development application. The Council's Health Unit is satisfied that subject to conditions, the site can be made suitable for the proposed use.

### **State Environmental Planning Policy No 64—Advertising and Signage**

29. The application involves a signage strategy indicating the location, size and dimensions of signage zones for business identification as follows:

- (a) Signage zone 1 - Clarence Street
- (i) 1 x vertical projecting wall sign with dimensions of 700mm (width) x 4000mm (height);
  - (ii) 1 x top hamper sign with dimensions of 5400mm (width) x 1200mm (height);
- (b) Signage zone 2 - Kent Street
- (i) 2 x signage zones for vertical projecting wall signs with dimensions of 700mm (width) x 4000mm (height);
  - (ii) 1 x top hamper sign with dimensions of 3500mm (width) x 1000mm (height);
- (c) Signage zone 3 - South Elevation
- (i) Option A: 1 x vertical top of building sign with dimensions of 3,000mm (width) x 10,000mm (height);
  - (ii) Option B: 1 x horizontal top of building sign with dimensions of 6,000mm (width) x 2,500mm (height); and
- (d) Signage zone 4 - West elevation
- (i) 1 x top of building sign with dimensions of 3,000mm (width) x 10,000mm (height).

30. 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.
31. As proposed, it is considered that the proposed signage strategy has the capability of satisfying the relevant aims and assessment criteria of SEPP 64, subject to conditions and as discussed in the **Issues** section of this report.
32. The application is limited to identifying appropriate zones on each elevation. As such, the details and content on the specific zones would be subject to a separate development application once the future hotel operators are known and a detailed assessment under SEPP 64 can be carried out. A condition is recommended to this effect.
33. Accordingly, the proposal signage strategy would be consistent with the aims and objectives of Clause 3 of SEPP 64 and as such, is supported subject to conditions.

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

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

#### Clause 44 and 45

35. The application is subject to Clause 44 and 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is within 10m (measured radially) of the centreline of the electricity supply corridor.
36. In accordance with the Clause, the application was referred to Ausgrid for a period of 21 days who consents to the development, subject to conditions contained in **Attachment A**.

#### Clause 88

37. The application is subject to Clause 88 of the SEPP (Development within or adjacent to interim rail corridor). The site is located within the future Central Sydney Rail Link corridor, which requires concurrence from the relevant rail authority.
38. Concurrence was received from Transport for NSW subject to conditions contained in **Attachment A**.

#### *Sydney Light Rail Project*

39. The application was referred to the CBD Coordination Office with TfNSW as the site is within close proximity to the Sydney Light Rail Project and the construction works may have an impact on traffic within the Central Sydney.
40. Recommended conditions of consent were received from TfNSW and are contained in **Attachment A**.

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

41. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.

42. 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.
43. 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

44. The site is located within the B8 Metropolitan Centre zone. The proposed use is defined as *'tourist and visitor accommodation'* and *'retail premises'* and is permissible.
45. 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	Yes	A maximum height of 60m is permitted. A height of 60m is proposed.
4.4 Floor Space Ratio 6.4 Accommodation Floor Space	Yes	A base FSR of 8:1 is permitted for the site.  The site is located in Area 3, which permits additional floor space of 3:1 if the building is used for residential accommodation, serviced apartments, hotel or motel accommodation, community facilities or centre-based child care facilities.  Therefore, a maximum permissible FSR of 11:1 and a GFA of 8,896.3sqm is permitted.

Development Control	Compliance	Comment
		A total FSR of 10.4:1 and a GFA of 8,360sqm is proposed, which includes the existing mezzanine area of the Genesian Theatre. The proposal is for a hotel accommodation and, therefore complies with the development standard.
5.10 Heritage conservation	Yes	<p>The subject site contains a heritage item of local significance, being the 'former church including interiors and front fence' (I1829) and also adjoins other heritage items.</p> <p>See discussion under the heading <b>Issues</b>.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.4 Accommodation floor space	Yes	As discussed above, the development is eligible for additional accommodation floor space and complies with the maximum permitted FSR of 11:1.
6.11 Utilisation of certain additional floor space requires allocation of heritage floor space	Yes	<p>The site is located in Area 3 on land in Central Sydney. Given that the proposal seeks to utilise accommodation floor space with a height that will exceed 55m, an amount of heritage floor space is required to be allocated to the site.</p> <p>Refer to <b>Issues</b> discussion below.</p>
6.16 Erection of tall buildings in Central Sydney	Yes	<p>The proposal presents a height greater than 55m for a development in Central Sydney, and as such, the provisions of this Clause are applicable.</p> <p>The tower employs appropriate setbacks and floor to ceiling heights that would provide acceptable amenity for future occupants and neighbouring buildings. The tower would not adversely affect the amenity of public spaces in terms of solar access and wind.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<p>Further, the development is compatible with its heritage and fine grain context, allows sunlight to reach the sides of the tower as well as to the proposed through-site link. The proposal promotes ventilation around the building with ground floor uses that would activate the street frontage.</p> <p>Accordingly, the proposal satisfies the objectives of tower development in Central Sydney.</p>
<p>6.19 Overshadowing of certain public spaces</p> <p><i>(i) Sydney Town Hall Steps</i></p> <p><i>(j) Sydney Square</i></p>	Yes	<p>The site is located within close proximity to Sydney Town Hall steps and Sydney Square and has the potential to overshadow these public spaces.</p> <p>Shadow diagrams were submitted with the application and confirms that the development would not result in additional overshadowing at any time to Sydney Town Hall Steps and Sydney Square. Refer to <b>Attachment C</b>.</p> <p>The proposed development satisfies the requirements of this provision.</p>
6.21 Design Excellence	Yes	<p>The proposal (as amended), achieves a high standard of architectural design that respects the streetscape and heritage building on the site.</p> <p>The development is required to undergo a competitive design process as the proposal presents a height greater than 55m and is located on land in Central Sydney.</p> <p>However, the consent authority may waive the requirement of a competitive design process if they are satisfied that such a process would be unreasonable or unnecessary in the circumstance of the development.</p> <p>Refer to the <b>Issues</b> discussion below.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	<p>As a hotel development, the proposal is able to provide 1 car parking space for every 5 rooms more than 100 rooms (maximum 39.8 spaces).</p> <p>The proposal provides no parking on the site. Having regard to the maximum provisions of this Clause and the site's proximity to frequent public transport, the development achieves the objectives of this provision in minimising vehicular traffic generation and is acceptable. The proposal is supported by Council's Traffic Planner, subject to conditions.</p>
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing class 5 Acid Sulphate Soil and is located within 50m of Class 1 and 2 Acid Sulphate Soil.</p> <p>Council's Environmental Health Officer has reviewed the proposal. The proposed excavation may require dewatering and trigger the requirements for assessment and management of Acid Sulphate Soil. Potential issues relating to Acid Sulphate Soil can be addressed through conditions of consent. A condition of consent is recommended to this effect.</p>
7.15 Flood planning	Yes	<p>The site is located in the Darling Harbour Drainage Catchment and is identified as being flood prone.</p> <p>The application was referred to Council's Engineer who confirms that the development has been appropriately designed to mitigate flood impacts and can be supported, subject to conditions.</p>
7.16 Airspace operations	Yes	<p>The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.19 Demolition must not result in long term adverse visual impacts	Yes	The development involves demolition of buildings on the site. However, the site will be comprehensively redeveloped under the subject development application and would not result in adverse visual impacts to the streetscape and special character area.
7.20 Development requiring preparation of a development control plan	Yes	<p>The site is located in Central Sydney. The proposal would result in a building with a height greater than 55m and is therefore development requiring the preparation of a development control plan or Stage 1 Application.</p> <p>However, a development control plan is not required to be prepared if the consent authority is satisfied that such a plan would be unreasonable or unnecessary in the circumstance of the development.</p> <p>Refer to <b>Issues</b> discussion below.</p>
7.24 Development near Cross City Tunnel ventilation stack	Yes	<p>The subject site is located within an area identified as being affected by the Cross City Tunnel ventilation stack.</p> <p>The development would not affect the dispersion of emissions of the Cross City Tunnel ventilation stack and future occupants of the building would not be unduly effected by these emissions.</p> <p>Refer to DCP discussion below.</p>

**Sydney Development Control Plan 2012**

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

<b>2. Locality Statements – York Street (Clarence &amp; Kent Street) Special Character Area</b>
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The subject site is located in the York Street Special Character Area, which includes Clarence and Kent Street. The proposal satisfactorily responds to the historic warehouse and commercial typology by incorporating a brick finish with a street frontage height that is consistent with neighbouring buildings. The materials respond to the prevailing masonry character of the locality. Overall, the development maintains significant views and vistas to the QVB and Sydney Town Hall.
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<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.1 Public Domain Elements	Yes	The proposal would make a positive contribution to the public domain by providing an active frontage to both Clarence and Kent Street. This is accentuated with the provision of a through-site link that will provide enhanced pedestrian permeability in this part of the CBD.
3.1.2.2 <i>Through-site links</i>	Yes	<p>The site is not required to provide a through-site link in accordance with the '<i>Through-site links map</i>' of Sydney DCP 2012.</p> <p>Notwithstanding this, the through-site link is a unique addition to the development. Whilst it is narrow with a predominant width of 2.7m, which is below the minimum 4m requirement, it provides a height greater than 6m with clear lines of sight from Kent and Clarence Street.</p> <p>The through-site link is clearly distinguished from vehicle access ways and includes landscaping to soften the site. It is proposed to be accessible 24 hours a day with the hotel development, in which an easement for Right of Public Access will be identified on Title. This is imposed as a condition of consent.</p>

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	The proposed development will enhance the public domain by ensuring adequate sun access is provided to publicly accessible spaces.
3.2.2 <i>Addressing the street and public domain</i>	Yes	<p>The provision of a through-site link enhances the address of the development to the public domain. The use of glazing to the facades abutting the through-site link provides legible and accessible entries from Kent and Clarence Street.</p> <p>Access to the basement levels for loading and servicing is provided on Kent Street and does not protrude above street level or the public domain.</p> <p>The main hotel lobby is accessed from the upper ground floor on Clarence Street. Access from Kent Street is provided by the through-site link with lift access to the main lobby on the upper ground floor.</p>
3.2.3 <i>Active frontage</i>	Yes	<p>The DCP does not require an active frontage to be provided on Kent and Clarence Street.</p> <p>Notwithstanding this, the development will provide a retail use on the Kent Street frontage with the main hotel lobby located on the Clarence Street frontage.</p>
3.2.6 <i>Wind effects</i>	Yes	<p>An 'Environmental Wind Assessment', prepared by Arup was submitted with the application.</p> <p>The report confirms that the development would have minimal impact on the local wind conditions of the area due to the stepped massing as well as its location in a dense urban setting. The wind conditions along the through-site link would satisfy pedestrian wind comfort and would pass the safety criterion.</p>

3. General Provisions	Compliance	Comment
3.2.7 Reflectivity	Yes	A 'Reflectivity Report', prepared by Arup, was submitted with the application. The report confirms that reflections from the development would not result in unacceptable glare to surrounding roads, traffic, pedestrians and surrounding buildings, subject to the external reflectance of glazed facades are below 20%. A condition of consent is recommended to this effect.
3.6 Ecologically Sustainable Development	Yes	A Section J Report, prepared by Windtech, was submitted with the application.  The proposal is capable of achieving the relevant energy efficiency requirements of Section J of the BCA by targeting a NABERS Energy Commitment Agreement at a rating of 4.5 stars as well as implementing other sustainable measures such as lighting and water efficiency. Conditions of consent have been imposed, as recommended by Council's Sustainability Officer.
3.7 Water and Flood Management	Yes	The subject site is flood prone. Appropriate conditions of consent have been recommended relating to flood management, as recommended by Council's Engineer.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Appropriate conditions of consent are recommended to require the consolidation of the site into one allotment and also that the hotel cannot be strata subdivided.
3.9 Heritage	Yes	The site contains a heritage item of local significance.  Refer to <b>Issues</b> discussion below.
3.10 Significant Architectural Building Types	Yes	The Genesian Theatre was formally a church that is recognised as a public and community building older than 50 years.

3. General Provisions	Compliance	Comment
		<p>The proposal involves retention of the building and refurbishment works, which seeks to be reused as an adaptive performance space and additional dining area for the hotel restaurant. Significant fabric and building elements would be retained and encourages its continual use.</p>
3.11 Transport and Parking	Yes	<p>The development proposes an onsite loading bay with car hoist and lift for loading and servicing of the site to be carried out within the basement levels. Access is provided from Kent Street. No car parking is proposed. A total of 44 bicycle spaces are also provided.</p> <p>A Traffic Report was submitted with the application and was reviewed by Council's Traffic Planner. Subject to conditions, the proposal would satisfy the objectives of this Section in ensuring that the demand for transport generated by the development is managed appropriately.</p>
3.11.3 <i>Bike parking and associated facilities</i>	Yes	<p>The proposal provides 44 (34 spaces for staff and 10 for customer/visitor) bicycle spaces and associated end of journey facilities and complies with the requirements of the DCP.</p> <p>An appropriate condition is recommended to ensure that all facilities are provided in accordance with the relevant Australian Standard.</p>
3.11.6 <i>Service vehicle parking</i>	Yes	<p>The development provides a loading bay hoist and turn table that is accessed from Kent Street for a SRV size vehicle with dimensions of 6.4m (length) and 3.5m (height). Servicing and parking is carried out on basement level 2 and is considered acceptable.</p> <p>A condition is recommended for a Loading Management Plan to be submitted to the satisfaction of Council prior to the issue of Construction Certificate to ensure that servicing of the site will be carried out without use of on-street facilities.</p>

3. General Provisions	Compliance	Comment
3.11.8 <i>Bus parking</i>	Acceptable	<p>The development does not (and is not able to) provide on-site set down or pick up parking for buses and coaches.</p> <p>The submitted Traffic Report outlines that the absence of bus and coach parking is acceptable in this instance as Clarence and Kent Street provide sufficient kerbside on-street 1P/4P parking and loading zones, which may be used for picking up and setting down passengers as outlined in the RMS parking rules. Also, the site is severely constrained in terms of width to accommodate on-site bus parking.</p> <p>Council's Traffic Planner considers this acceptable, subject to the submission of a 'Coach parking and guest pick-up and drop-off Management Plan' prior to issue of an Occupation Certificate. The Plan must include details of managing vehicles associated with guest arrivals, departures and tours and its potential impacts on surrounding streets.</p>
3.11.13 <i>Design and location of waste collection points and loading areas</i>	Yes	<p>The proposal allows for waste collection and loading to be carried within the basement that is accessed from Kent Street via a hoist and turn table.</p> <p>The proposal was referred to Council's Waste Officer, who considers the waste collection points and loading areas are acceptable, subject to conditions.</p>
3.12 Accessible Design	Yes	<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 Crime Prevention Through Environmental Design (CPTED) principles.</p>

3. General Provisions	Compliance	Comment
3.13.2 <i>Air quality for development near the Cross City Tunnel</i>	Yes	The development proposes a height of 60m. The subject site has a distance greater of approximately 370m from the Cross City Tunnel Ventilation Stack. In consideration of the building height relative to the distance from the Ventilation Stack, an air quality assessment report is not required as the proposal is outside the threshold requirements of the SDCP 2012. As such, the proposal and future occupants would not be unduly impacted by emissions.
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	<p>The site is located in the Late Night Management Area and is a Category A - High Impact Premises. A Plan of Management (POM) has been submitted and has been reviewed by Council's Licensing Officer. It is considered that the POM is acceptable for the use of the hotel accommodation and hotel lounge only.</p> <p>The hotel would also accommodate ancillary food and drink premises that may be licensed, in which the details of the use and operation are unknown. Accordingly, a condition of consent is recommended for the fit out and use of the retail areas to be subject to a separate application, where additional details relating to the operation and management of its future use can be considered.</p>
3.16 Signage and Advertising	Yes	A condition of consent is recommended to require the details of any future signage on the site to be subject to a separate development application.
3.16.1 <i>Signage Strategy</i>	Yes	<p>A signage strategy has been submitted with this application.</p> <p>Refer to <b>Issues</b> discussion below.</p>

4. Development Types  4.2 Residential flat, non-residential and mixed use developments	Compliance	Comment
4.2.1 Building height  4.2.1.2 Floor to ceiling heights and floor to floor heights	Acceptable	<p>Buildings with a commercial or retail use are required to have a minimum floor to floor height of 4.5m on the first basement floor as well as the ground floor. Upper floors for mixed use development require a minimum floor to ceiling height of 2.7m, which equates to a minimum floor to floor height of 3.1m.</p> <p>The proposal has a basement floor to floor level of 4.5m. A ground floor to floor height of 4.5m on Clarence Street and 6.10m on Kent Street is provided. The upper floors of the development have a floor to floor height of 2.75m.</p> <p>Refer to <b>Issues</b> discussion below.</p>
4.2.2 Building Setbacks	Acceptable	The proposal generally complies with the DCP setback requirements. This is further discussed in Section 5.1.2.2.
4.2.3.1 Solar Access	Yes	<p>The shadow diagrams submitted with the application, and as contained in <b>Attachment C</b>, reveal the development would result in some minor additional overshadowing to neighbouring buildings on 22 March and 21 June.</p> <p>The most affected properties are to the south of the site up to Drutt Street, which accommodate commercial uses.</p> <p>In consideration of the fine grain subdivision pattern of the area and the location of the site in a dense commercial block within the Central Sydney, overshadowing on neighbouring properties is inevitable. Notwithstanding this, the neighbouring properties would still receive adequate sunlight during the winter solstice.</p>

4. Development Types 4.4.8 Visitor Accommodation	Compliance	Comment
4.4.8.1 General	Yes	<p>A Plan of Management (POM) has been submitted with the application relating to the hotel use and operation.</p> <p>The POM outlines that the hotel will operate 24/7 with a hotel manager on duty at all times. Staffing will consist of front office/admin, housekeeping, maintenance and cleaners with on-site security and CCTV.</p> <p>The sleeping rooms do not include triple-tier bunks or cooking facilities and toilet 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 development is proposed to be a 'micro-room' hotel.</p> <p>Rooms vary in size with the smallest room measuring 19.3sqm and the largest room being 59.4sqm.</p> <p>The rooms are capable of accommodating 2 persons staying a maximum of 3 months, which satisfies the 11sqm minimum requirement of the DCP.</p> <p>Storage within the rooms and the absence of kitchenettes are considered adequate having regard to the micro arrangement of the hotel.</p>

5. Specific Areas 5.1 Central Sydney	Compliance	Comment
5.1.1 Street frontage heights	Yes	<p>New buildings are required to have a street frontage height between 20 and 45 metres above the site ground level and be aligned with the predominant street frontage height of adjacent buildings.</p>

5. Specific Areas 5.1 Central Sydney	Compliance	Comment
		The proposal provides a street frontage height of 34.6m on Clarence Street and 40.37m on Kent Street and is consistent with the street frontage heights of neighbouring buildings.
5.1.2 Building setbacks <i>5.1.2.2 Side and rear setbacks</i>	Yes	The proposal provides a nil side setback on the southern boundary with a varying north side set back as the building ascends and cantilevers over the Genesian Theatre. The proposed through-site link, with a minimum width of 2.2m, provides an appropriate setback to the Genesian Theatre and northern neighbouring property on the ground floor. The setback of the tower allows for daylight, outlook, ventilation and wind mitigation to be provided to the through-site link and adjoining buildings. Therefore, the proposed setbacks are acceptable having regard to the existing streetscape and satisfies the objectives in maintaining amenity to neighbouring buildings and the public domain.
5.1.3 Street frontage heights and setbacks for Special Character Areas	Acceptable	<p>The site is located in the York Street Special Character Area and is required to have a weighted average 8m setback (minimum 6m) above street frontage height.</p> <p>The proposal provides a setback above street frontage height of 5.2m on Clarence Street and 5.5m on Kent Street. Notwithstanding the numerical non-compliance, the departure is acceptable, given the setback is consistent with the setback approved under D/2017/445 for the addition above the neighbouring heritage building at 426-430 Kent Street. As such, the proposal is compatible with its context and achieves the objective of the control in enhancing and complementing the distinctive character of the special character area.</p>

5. Specific Areas	Compliance	Comment
5.1 Central Sydney		
		It should be noted that the neighbouring heritage building to the north of the site at 414-418 Kent Street has a 5 storey street frontage height. The 6 storey difference of the street frontage height is acceptable having regard to single storey nature of the Genesian Theatre, which breaks up the consistency on Kent Street. The proposal maintains the prevalent masonry facades of the street at the street frontage height.
5.1.6 Building Exteriors	Yes	The proposal has been appropriately designed to consider the street alignment, setback and facade proportions of neighbouring buildings. The building exterior integrates with the masonry character of the area with modern materials, which allows the building to achieve a horizontal and vertical balance.

## Issues

### Heritage

47. The site contains a heritage item of local significance being the 'former church including interiors and front fence' (I1829) under Sydney LEP 2012 and also adjoins other heritage items.
48. The proposal involves retention and refurbishment of the heritage building and construction of a hotel development that results in a cantilever over the church.
49. A 'Conservation Management Plan' (CMP), prepared by Weir Phillips Heritage, was submitted with the application and was referred to Council's Heritage Specialist. Whilst the adaptive reuse of the former church was supported, it was considered that the CMP was deficient in specifying the works and methodologies for restoration and reconstruction. The concerns raised can be addressed through the imposition of conditions of consent, requiring an updated CMP to be submitted and approved by Council. This is contained in Attachment A.
50. Additionally, the proposal was referred to the Design Advisory Panel (DAP). DAP and Council's Heritage Specialist shared the same view in that the extent of the cantilever over the church was excessive and overwhelmed the curtilage of the heritage building. It was recommended that the modulated cantilever be amended in order to have a single consistent cantilever that would be set at the shortest protrusion of the tower.

51. On 6 June 2019, the applicant submitted a Cantilever Setback Study, which illustrated massing options of the cantilever over the church. The option which maintained the modulated cantilever with a reduced extent and increased distance from the springing point of the cantilever was considered reasonable in striking a balance with the architectural form and the heritage curtilage. This scheme was presented to the CSPC.
52. At the CSPC meeting on 5 September 2019, the panel concurred with the recommendations put forward by DAP and Council's Heritage Specialist. Consequently, the CSPC resolved to defer the determination of the application to enable the preparation of an amended proposal that addressed the concerns relating to the cantilevered design in order to improve the heritage curtilage of the development.
53. The amended proposal was submitted to Council on 16 September 2019 and was reviewed by City staff. The amended design demonstrates a single cantilever that results in a tall, slender tower built form.
54. The amended proposal is considered to be an improved outcome. The proposal has an acceptable heritage impact and would foster a continual use of the building for cultural uses. The cantilever allows sufficient visual separation with the existing church building and simultaneously, affords hotel rooms in the centre of the new building to have access to natural light and views of Kent Street.
55. In light of the above, the proposal adequately satisfies the objectives and provisions of *Clause 5.10 - Heritage Conservation* of Sydney LEP 2012 and *Section 3.9 - Heritage* of Sydney DCP 2012.
56. Extracts of the Cantilever Setback Study are illustrated in **Figures 13** and **15** below.

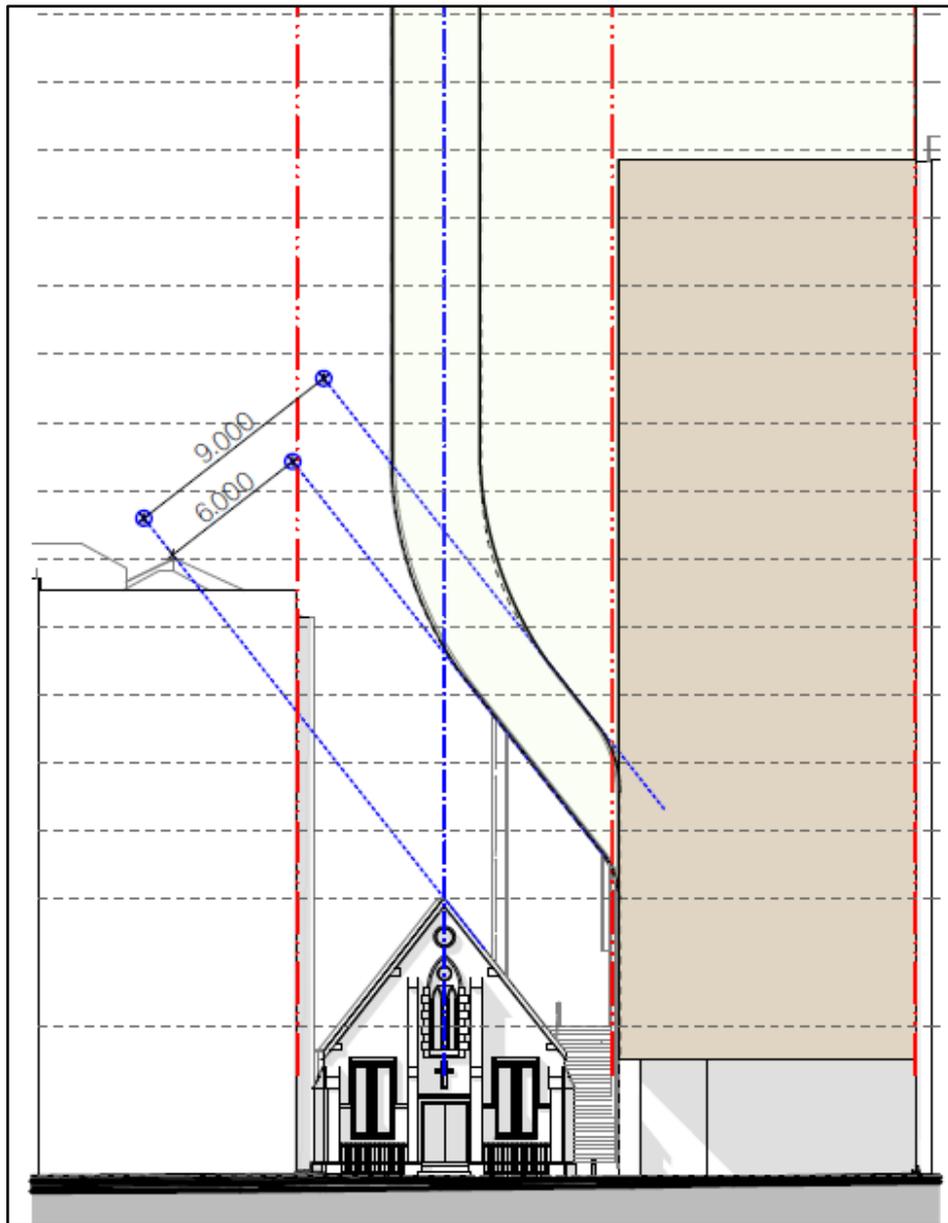
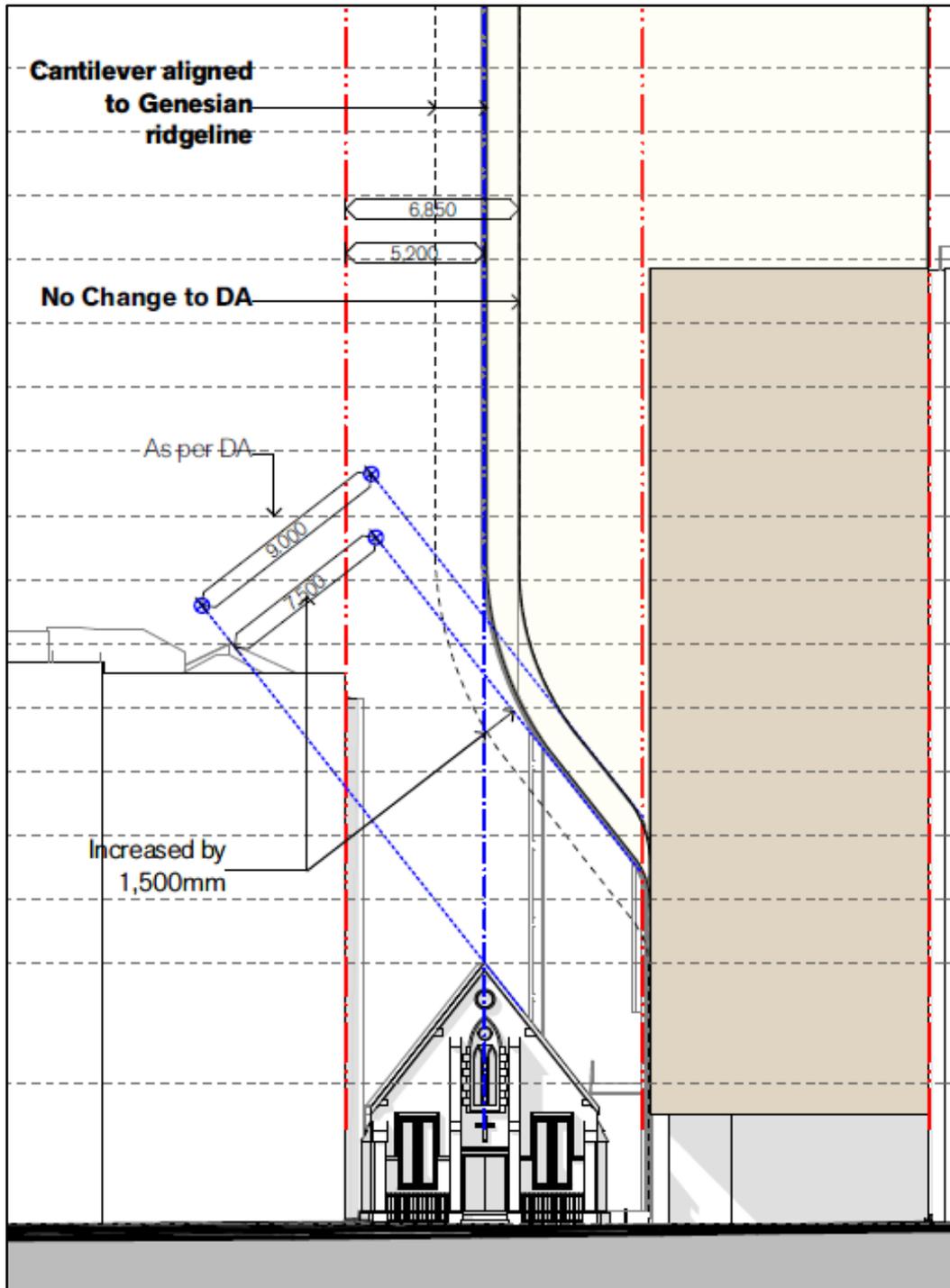
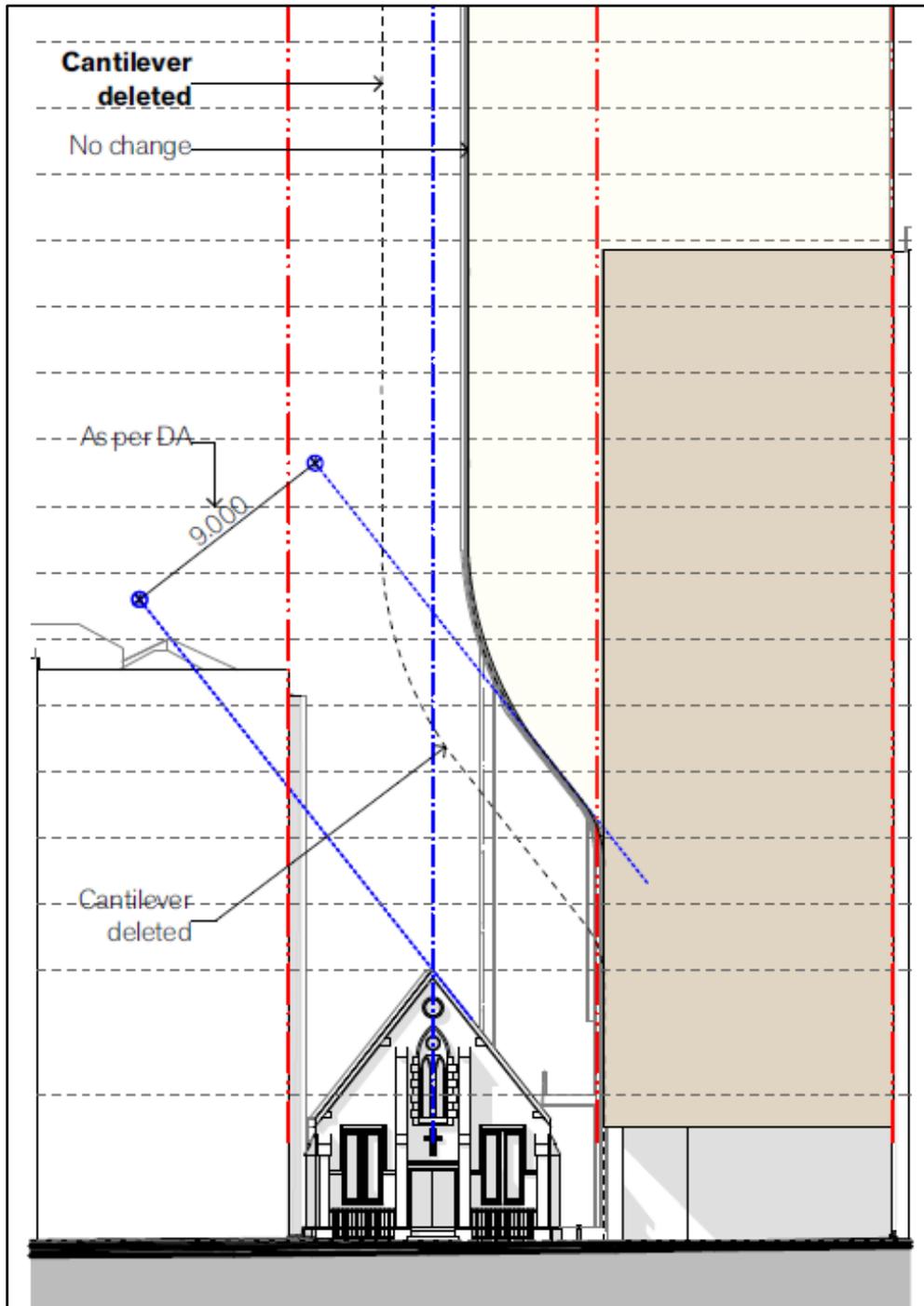


Figure 13: Kent Street elevation and the extent of the modulated cantilever as originally proposed.



**Figure 14:** Kent Street elevation and the reduced extent of the modulated cantilever (increasing the separation of the underside of the cantilever and realignment of the outer edge with the apex of the Genesian Theatre roof), as proposed to the CSPC.



**Figure 15:** Kent Street elevation with a single consistent cantilever as proposed and recommended by the CSPC.

**Waiver for the requirement of a competitive design process and preparation of a development control plan**

57. As a consequence of amending the proposal to address the heritage issues, the development presents an amended height of 60m.
58. *Clause 6.21 - Design Excellence and Clause 7.20 - Development requiring or authorising preparation of a development control plan* of Sydney LEP 2012 stipulates that development in Central Sydney with a height exceeding 55m must undergo a competitive design process and requires preparation of a development control plan. Accordingly, the proposal is subject to these provisions.
59. However, Clause 6.21(6) and Clause 7.20(3) specify that the development is not required to undergo a competitive design process and not be required to prepare a development control plan if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstance of the development.
60. At the meeting on 5 September 2019, the CSPC as the consent authority indicated that they may waive the requirement for a design competition and preparation of a development control plan in the case that the amended proposal exceeds 55m in height, provided it does not breach other controls.
61. In the case of the subject development, such a process is considered to be unreasonable or unnecessary for the following reasons:
  - (a) Notwithstanding the exceedance to the 55m height threshold, the proposal is compliant with the height and FSR development standards under Sydney LEP 2012. The development results in a height that is appropriate and compatible for the site. The proposal has been designed accordingly with the heritage context of the locality in ensuring building elements such as the street frontage height and tower form, result in an appropriate height transition with neighbouring buildings. The density of the proposal is proportionate with development in the locality.
  - (b) Shadow diagrams have been submitted with the amended proposal and are contained in **Attachment C**. The additional height exceeding 55m will not result in additional overshadowing to certain public spaces, notably Sydney Town Hall steps and Sydney Square, as mandated in Clause 6.19 of Sydney LEP 2012.
  - (c) Additionally, the proposal is generally compliant with other planning controls prescribed in Sydney DCP 2012. The development provides an acceptable degree of amenity for future occupants and does not result adversely impact on the neighbouring properties and the locality.
  - (d) The extension of the building above the 55m height limit has arisen out of the desire to address concerns of the consent authority regarding the relationship of the new building with the existing heritage item. In this regard there is site-specific merit in granting a waiver of a competitive design process and preparation of a development control plan, that is, protecting the heritage curtilage of the Genesian Theatre by transferring the bulk of the development away from the theatre as much as possible.

- (e) The proposal satisfies the objectives and provisions of *Clause 6.21 - Design Excellence* of Sydney LEP 2012.
- (i) Specifically, subclause 6.21(8) refers to development that the consent authority cannot grant consent to, notwithstanding other provisions in this Clause as follows:
- (8)(a) Development that would result in any building on land projecting higher than any sun access plane that is taken to extend over that land by operation of Division 3, or*
- (b) Development that results in any building causing additional overshadowing of a kind specified in Division 3, or*
- (c) Development that results in any building on land in Area 1 or Area 2 on the Height of Buildings map having a height greater than the height of the building that was on the land at the commencement of this Plan.*
- (ii) For the case of the development, the site is not situated on land subject to the sun access plane. As discussed above, the proposed development would not result in additional overshadowing to certain public spaces specified in Division 3 of Sydney LEP 2012. Further, the building is not located on land in Area 1 or Area 2 of the Height of Buildings map, which requires consideration to any additional height to the height of the building on the land. Accordingly, the consent authority may grant consent to the development.
- (f) The proposal addresses the requirements to be contained in any development control plan outlined in *Clause 7.20* of Sydney LEP 2012 in that:
- (i) The proposal adequately demonstrates that the built form and external appearance does not adversely impact on the quality and amenity of the public domain. Rather, the provision of a through-site link enhances the public domain to both Kent and Clarence Street.
- (ii) The proposal does not detrimentally impact on view corridors;
- (iii) Overall and as detailed elsewhere in this report, the proposal is suitable for the site and context. The development sufficiently addresses the heritage constraints with a building bulk and articulation that achieves a satisfactory relationship with neighbouring sites. The proposal would have an acceptable environment impact that has been addressed in the assessment of the subject application.

62. In light of the above, the proposal sufficiently demonstrates that the requirement to undergo a competitive design process and preparation of a development control plan is unreasonable and unnecessary. Accordingly, it is recommended that these requirements be waived for the circumstance of the development.

### **Allocation of Heritage Floor Space**

63. The site is located in Area 3 on land in Central Sydney. Given that the proposal seeks to utilise accommodation floor space with a height that will exceed 55m, an amount of heritage floor space is required to be allocated to the site in accordance with Clause 6.11 of Sydney LEP 2012.

64. Pursuant to Clause 6.11(1)(a), the amount of heritage floor space to be allocated is equal to 50% of the accommodation floor space to be utilised. For the case of the development, the proposal utilises 2.4:1 (1,935.12sqm) of the 3:1 accommodation floor space permitted. Therefore, an amount of 968sqm of heritage floor space is to be allocated to the site.
65. Further, subclause (2)(b) allows the amount of heritage floor space to be reduced by up to 50% or 250sqm, whichever is lesser, if the consent authority is satisfied that the development includes any covered or partially covered pedestrian route through the site at street level and provides a vital publicly accessible link between 2 streets.
66. The development provides a through-site pedestrian link at street level connecting Kent and Clarence Street. The through-site link would be accessible 24 hours a days to the public and would positively enhance the public domain to both streets.
67. Therefore, the total amount of heritage floor space to be allocated to the site is **718sqm** and is calculated on the following basis:
  - (a)  $1,935.12\text{sqm (accommodation floor space)} / 50\% = 967.56\text{sqm} - 250\text{sqm}$ .

### Floor to Floor Heights

68. *Section 4.2.1.2 - Floor to Ceiling and Floor to Floor Heights* of Sydney DCP 2012 requires mixed-used buildings to have a minimum floor to ceiling height of 2.7m, which equates to a minimum floor to floor height of 3.1m.
69. During the assessment of the application, concern was raised that the proposed floor to floor heights of 2.75m would compromise the amenity of the proposed micro-hotel rooms that are already narrow and confined in configuration. Concern was also raised that the proposal does not promote the flexible use and adaptability of the building as required by the DCP control. As such, the applicant was requested to amend the proposal to increase the floor to floor heights.
70. Amendments to address the floor to floor heights of the development was not provided to Council. However, the applicant provided the following responses to justify the non-compliance:
  - (a) The submitted DA proposes a floor to ceiling height of 2500mm and 2250mm for bathrooms. This is compliant with the BCA, Australian Standards and is typical for small format hotels of this type.
  - (b) All hotel rooms will have exposed profiled concrete soffits. All services, as is typical for hotel rooms will be wall mounted and air conditioning will be side throw from above the bathroom pod.
  - (c) All rooms will have mixed mode ventilation.

- (d) Given the constrained site and existing overshadowing, and that the peak occupation of hotel rooms is during the afternoon/evening, access to direct natural light can be optimised through the facade design to include internal blinds on all windows. Also, the glazed portion of the facade is to be composed of double glazing with a white polyceramic frit pattern to maximise thermal performance and minimise solar heat gain.
  - (e) Notwithstanding the minor non-compliance with floor to ceiling heights, the development overall provides ample internal amenity in terms of natural ventilation and light, by virtue of providing generous sized hotel rooms with appropriate glazing and numerous other internal communal areas for guests to enjoy and relax.
71. On balance, the justification provided by the applicant is considered acceptable in this circumstance given the intended 'micro-room' typology of the hotel development.
72. Notwithstanding the numerical non-compliance and limited adaptability, the development would be consistent with the minimum requirements of the BCA and would achieve the objectives of the control in maintaining amenity for the development and neighbouring sites as required in Section 4.2.1.2 of Sydney DCP 2012. Conditions of consent have been recommended to this effect.

### **Signage Strategy**

73. A signage strategy for future business identification signage is proposed as part of this application as follows:
- (a) Signage zone 1 - Clarence Street
    - (i) 1 x vertical projecting wall signs with dimensions of 700mm (width) x 4000mm (height);
    - (ii) 1 x top hamper sign with dimensions of 5400mm (width) x 1200mm (height);
  - (b) Signage zone 2 - Kent Street
    - (i) 2 x vertical projecting wall signs with dimensions of 700mm (width) x 4000mm (height);
    - (ii) 1 x top hamper sign with dimensions of 3500mm (width) x 1000mm (height);
  - (c) Signage zone 3 - South Elevation
    - (i) Option A: 1 x vertical top of building sign with dimensions of 3,000mm (width) x 10,000mm (height);
    - (ii) Option B: 1 x horizontal top of building sign with dimensions of 6,000mm (width) x 2,500mm (height); and
  - (d) Signage zone 4 - West elevation
    - (i) 1 x top of building sign with dimensions of 3,000mm (width) x 10,000mm (height).

74. In consideration of the objectives and provisions of *Section 3.16 - Signs and Advertisements* of Sydney DCP 2012 and in consultation with Council's Urban Designer and Heritage Specialist, the proposed signage strategy is acceptable subject to the following:
- (a) The scale and location of the top of building signage zones is appropriate and responds to the architectural form and vertical language of the building and would generally comply with Section 3.16.5.2. Therefore, Option A relating to the vertical top of building sign for Signage zone 3 is preferred;
  - (b) The scale and dimensions of the proposed vertical projecting wall signs within Signage Zones 1 and 2 are excessive and are not compatible with the heritage significance of the special character area, as stipulated by the general requirements for signage under Section 3.16.3. The signs are not consistent with the scale of neighbouring signs and must be reduced to be of a square shape and be located no higher than 5m from the ground floor so as to be consistent with the general requirements for business identification signs in Section 3.16.6.1.
  - (c) The provision of 2 x signage zones for the vertical projecting wall signs on the Kent Street frontage is acceptable to identify the future retail tenant as well as the hotel operator;
75. In light of the above, conditions of consent are recommended for an updated signage strategy to be submitted and approved by Council prior to the issue of Construction Certificate.
76. Further, a condition of consent is recommended for the detailed specifications of signage on the site to be subject to a separate application.

### **Access**

77. It is recommended that disabled access be provided in accordance with the provisions of the DCP. An appropriate condition is recommended.

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

78. The proposed development is capable of complying with the BCA.
79. 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**

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

### **Internal Referrals**

#### *Referrals*

81. The conditions of other sections of Council have been included in the proposed conditions.

82. 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; Landscape and Waste Management; who advised that the proposal is acceptable subject to the recommended conditions.
83. Additionally, the amended plans were reviewed by the relevant City Officers who maintain support of the amended proposal.

#### *Design Advisory Panel*

84. The original scheme was referred to the Design Advisory Panel (DAP) in which the following comments were made:
  - (a) The through-site link, reuse of the theatre and proposed hotel use is supported;
  - (b) It was considered that the proposal was an overdevelopment of the site resulting in uncomfortable urban form and rooms;
  - (c) The degree of cantilever over the adjacent heritage building was excessive and consideration should be made to delete the outer cantilever. This would result in the reduction and replanning of the hotel rooms;
  - (d) The micro-room configuration in terms of width and height of hotel rooms is not supported and significantly restricts sunlight and amenity. At a minimum, the BCA requirement of 2.4m must be achieved excluding an allowance for services;
  - (e) Every second wall between rooms should be non-structural to enable future adaptability;
  - (f) Servicing on both frontages at ground floor is poor and should be amended for better internal amenity and interface with the street.
85. The concerns raised by DAP has been addressed through amended plans and supplementary documentation that has been detailed elsewhere within this report.

## **External Referrals**

### *Referrals*

86. The application was referred to Transgrid, Ausgrid, NSW Office of Water, NSW Police, and Transport for NSW.
87. Concurrence was received from TfNSW on 25 February 2019 for the development in accordance with Clause 88 of SEPP (Infrastructure) 2007. Confirmation was received on 30 September 2019 from TfNSW advising they maintained concurrence for the amended proposal.
88. TfNSW also confirmed that the proposal would not impact on the works in Central Sydney in accordance with Clause 88 of SEPP (Infrastructure) 2007, subject to recommended conditions contained in Attachment A.

89. Written correspondence was received from Ausgrid on 19 February 2019 and 9 October 2019, noting that there are existing underground electricity network assets in Kent and Clarence Street. Subject to conditions, the proposal would not impact on existing Ausgrid infrastructure as prescribed under Clause 44 and 45 of SEPP (Infrastructure) 2007.
90. Written correspondence was received from Transgrid on 9 January 2019 and 18 September 2019, confirming the development would not be affected by a Transgrid easement or asset.
91. No response was received from NSW Office of Water and the NSW Police within the nominated timeframe. As such, it is assumed that no issues are raised regarding the proposal.

#### **Notification, Advertising and Delegation (Submissions Received)**

92. In accordance with Schedule 1 the Sydney DCP 2012, the original proposal was notified and advertised for a period of 28 days between 10 January 2019 and 8 February 2019. A total of 1,161 properties was notified and there were 2 submissions received raising the following issues:

- (a) *The demolition of the warehouse buildings at 277 Clarence Street and 422-424 Kent Street would be a detrimental loss to the character of the neighbourhood and does not address the significance of these buildings to the York Street Special Character Area.***

**Response** - The buildings proposed to be demolished are not identified to be of heritage significance. Notwithstanding this, Section 2.1.1 of Sydney DCP sets out the character statement and design principles for the York Street Special Character Area including Clarence and Kent Street.

The proposal is considered to satisfactorily reference the prevailing masonry character of the York Street Special Character Area by providing a masonry interface to both the Clarence and Kent Street frontages up to the street wall height. The proposal maintains the historic warehouse and commercial typology by emulating the scale and form of neighbouring buildings in the locality. The proposal does not compromise significant views to Darling Harbour, to the QVB and Sydney Town Hall. Therefore, the proposal is consistent with the principles of the special character area.

- (b) *The proposal would potentially increase traffic and impact on the safety of pedestrians, particularly students. A comprehensive Construction Traffic Management Plan (CTMP) should consider the volume of pedestrian traffic, including student pedestrian traffic as well as use of heavy construction vehicles. It is requested that the CTMP be available for review prior to implementation.***

**Response** - The application has been reviewed by Council's Traffic Planner as well as Transport for NSW (TfNSW). A condition of consent is recommended that requires a detailed CTMP to be prepared in consultation with the Sydney Coordination Office and Sydney Light Rail Team within TfNSW, which must be approved by Council prior to the issue of Construction Certificate.

The CTMP must include details that are not limited to the potential impacts on pedestrians, the cumulative impacts on surrounding development, identification of mitigation measures to minimise impacts on the Central Sydney road network as well as provide details on the construction program and estimated construction vehicle movements.

The details required to be addressed in the CTMP are considered to be adequate in ensuring that the proposed development would not impact on the safety of pedestrians during construction and use of the building.

93. The amended plans were renotified for a period of 14 days between 19 September 2019 and 3 October 2019. One (1) submission was received:

- (a) ***Clarification is sought on what development would be carried out over the next year and the works to no. 422-424 Kent Street.***

**Response** - The construction timeframe of the development is not considered or known during the assessment stage. However, should development consent be granted, the proponent has 5 years to carry out the approved works from the date of determination in accordance with *Clause 4.53 - Lapsing of Consent* under the Environmental Planning and Assessment Act 1979.

The works proposed to be carried out on 422-424 Kent Street involve demolition of existing structures to accommodate the new development.

### **Public Interest**

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

### **S61 Contribution**

95. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013. A condition relating to this levy has been included in the recommended conditions of consent. The levy is to be paid prior to the issue of a Construction Certificate.

### **Relevant Legislation**

96. The Environmental Planning and Assessment Act 1979.

### **Conclusion**

97. The proposal seeks consent for the retention and refurbishment of the Genesis Theatre and construction of a 19 storey hotel development, providing 199 rooms with servicing and loading to be carried out within the basement levels.
98. The proposal provides a through-site link that will connect Clarence and Kent Street and is considered to be a worthy contribution in Central Sydney.

99. The development has a maximum height of 60m, a floor space ratio of 10.4:1 and a gross floor area totalling 8,360sqm, which is consistent with the maximum permissible height and floor space ratio controls prescribed for the site under the Sydney LEP 2012.
100. The proposal is generally consistent with the relevant planning controls contained in Sydney LEP 2012 and Sydney DCP 2012. The development has been appropriately designed to respond to the characteristics of the site and surrounding development and exhibits design excellence.
101. Whilst the proposal presents a height greater than 55m, the requirement to undergo a competitive design process under Clause 6.11 as well as the requirement for preparation of a development control plan under Clause 7.20 in accordance with Sydney LEP 2012 is unreasonable and unnecessary in the circumstance of the development.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Reinah Urqueza, Specialist Planner