

**Item 4.****Section 4.55 Application: 65-77 Market St, Sydney - D/2017/167/A**

File No.: D/2017/167/A

**Summary**

**Date of Submission:** The application was lodged on 19 March 2019. Amended plans and documentation were submitted throughout the assessment of the application, with the latest set of plans received on 14 October 2019.

**Applicant:** Urbis Pty Ltd

**Architect:** FJMT

**Developer:** Scentre Group and Cbus Property

**Owner:** David Jones Properties Pty Ltd

**Cost of Works (original):** \$271,273,443

**Zoning:** B8 Metropolitan Centre - proposal is permissible with consent.

**Proposal Summary:** The application is a Section 4.55(2) modification to amend a Stage 1 consent for a mixed-use building comprising retail and commercial uses within the existing 10-storey building with the proposed 22-storey tower form above accommodating residential apartments. The application seeks consent to amend the approved building envelope.

Specifically, the modification seeks to amend the approved building envelope of the Concept DA approval to accommodate the additional floor space benefited from the winning design excellence scheme, within reduced tower setbacks. The proposal is eligible to 3,322.28sqm of additional floor space under Clause 6.21(7).

A separate and concurrent Stage 2 application has been lodged and the amendments to the subject Stage 1 application will allow both applications to 'align' in terms of the siting of the proposed development.

During the assessment of the modification application, issues were raised by Council officers and the Design Advisory Panel regarding the proposed tower setback changes. These issues have been addressed, and the proposed modification now comprises the following changes to the approved building envelope:

- Decrease the minimum tower setback on the northern elevation to Market Street from 10m to 9m;
- Decrease the minimum tower setback on the eastern elevation to Castlereagh Street from 10m to 5m;
- Decrease the tower setback on part of the western elevation from 12m to 6m to accommodate the external lift core;
- Increase the average tower setback on the southern elevation from 6m to between 6m-10.1m; and
- An alternate height arrangement, remaining within the Hyde Park West Solar Access Plane in accordance with Condition 3 of the consent.

The original modification application was notified and advertised for 14 days between 8 April 2019 and 23 April 2019 in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000. One submission was received raising concerns regarding the height of the tower and potential impacts on views. These concerns are addressed within the report.

The amended modification application was not required to be renotified, as it was considered that the amended proposal was not a significant change to the original modified envelope and did not result in any further potential impacts.

Overall, the amended development as proposed to be modified is substantially the same as that originally approved, and the changes to the approved building envelope are considered appropriate and are not likely to impact the overall use of the building nor the amenity of surrounding sites.

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

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iii) State Environmental Planning Policy No. 55 - Remediation of Land
- (iv) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (v) State Environmental Planning Policy (Infrastructure) 2007
- (i) Sydney Harbour Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (ii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (iii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
- (iv) Central Sydney Development Contributions Plan 2013

**Attachments:**

- A. Recommended Conditions of Consent
- B. Envelope Drawings
- C. Stage 1 Approval (D/2017/167) Assessment Report

## Recommendation

It is resolved that consent be granted to Section 4.55 Application No. D/2017/167A subject to the amendment of the following conditions (with modifications shown in ***bold italics*** (additions) and ~~strikethrough~~ (deletions), as follows:

### (1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2017/167 dated 10 February 2017 and the following drawings prepared by Bates Smart:

Drawing Number	Drawing Name	Date
<del>DA.01.001 A</del>	<del>Solar Access Plane Study</del>	<del>15 December 2016</del>
<del>DA.01.002 A</del> <i>DA1.1200 Rev 01</i>	Solar Access Plane Study Section	<del>15 December 2016</del> <i>8 March 2019</i>
<del>DA.02.100 B</del> <i>DA1.1000 Rev 01</i>	<del>Key Plan</del> – Typical Level Plans	<del>8 August 2017</del> <i>8 March 2019</i>
<del>DA.02.101 B</del> <i>DA1.1001 Rev 01</i>	<del>Key Plan</del> – Typical Level Plans	<del>8 August 2017</del> <i>8 March 2019</i>
<i>DA1.1002 Rev 01</i>	<i>Typical Level Plans</i>	<i>8 March 2019</i>
<i>DA1.1003 Rev 01</i>	<i>Typical Level Plans</i>	<i>8 March 2019</i>
<del>DA.02.102 B</del> <i>DA1.1100 Rev 01</i>	<del>Key Plan – Elevation East</del>  <i>Castlereagh Street Elevation</i>	<del>8 August 2017</del> <i>8 March 2019</i>
<del>DA.02.103 B</del> <i>DA1.1101 Rev 01</i>	<del>Key Plan – Elevation North</del>  <i>Market Street Elevation</i>	<del>8 August 2017</del> <i>8 March 2019</i>

and as amended by the conditions of this consent.

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

### **Reasons for Recommendation**

The application is recommended for approval for the following reasons:

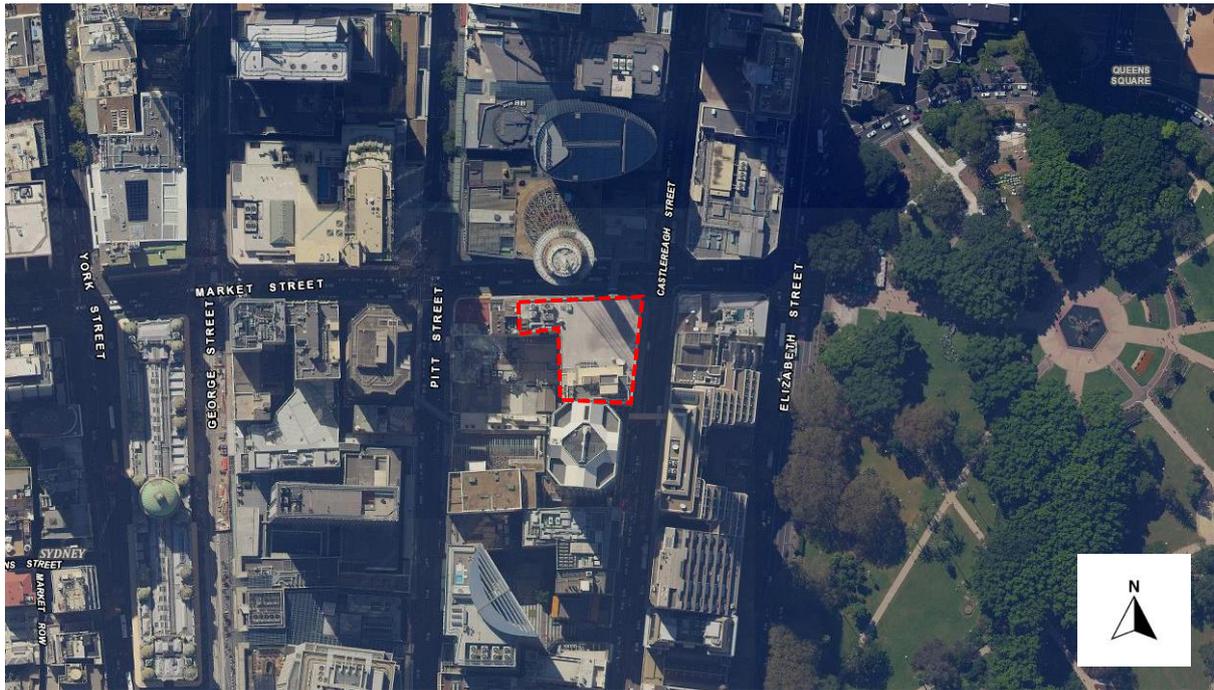
- (A) The application is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979;
- (B) The proposal is consistent with the aims, objectives and relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 for reasons set out in the report; and
- (C) The changes to the approved building envelope are considered appropriate and are not likely to impact the overall use of the building nor the amenity of surrounding sites.
- (D) The development as modified is in the public interest.

## Background

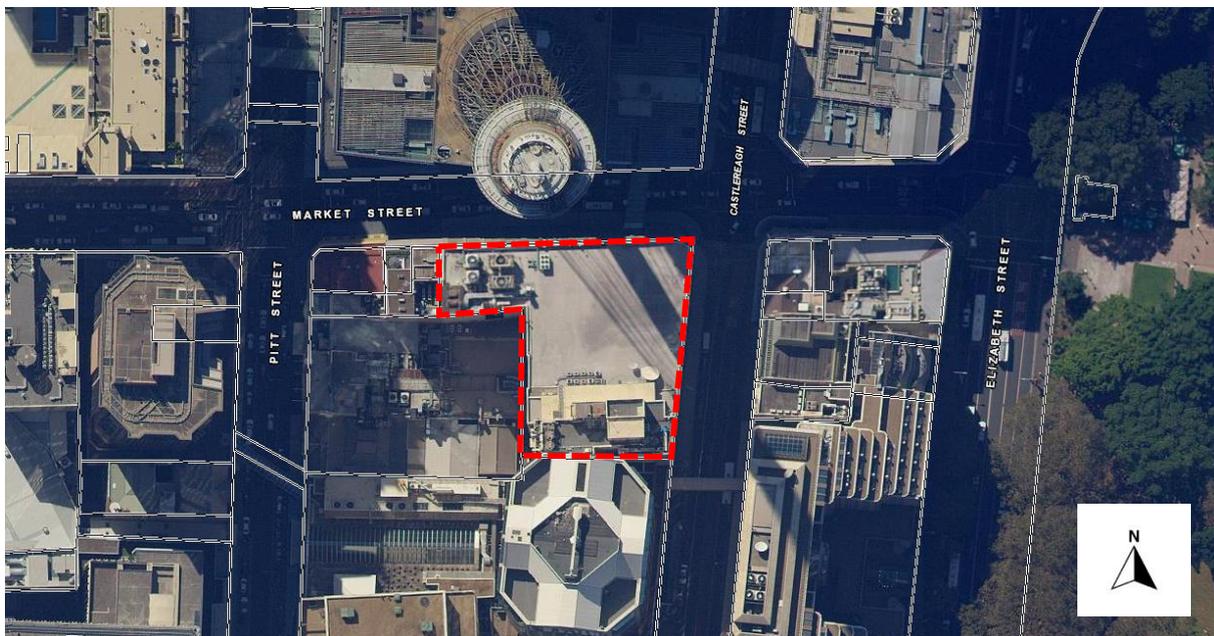
### The Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP 538917, has a street address of 65-77 Market Street, Sydney, and is commonly known as the David Jones Market Street store.
2. The site is irregular in shape and has an area of 2,533sqm. It has a 63.66m frontage to Market Street and a 56.73m frontage to Castlereagh Street. There is a fall of 2.36m from the south-eastern corner to the north-western corner of the site.
3. The site contains a 10-storey commercial building. This building has accommodated the David Jones department store from around 1938 to the present and is identified as a local heritage item ('I1888'). There is an existing vehicle entrance and crossover at the southern end of the Castlereagh Street frontage.
4. Adjacent to the site on the opposite northern side of Market Street is the Westfields shopping centre and Sydney Tower. The subject site is connected to the Westfields building by a pedestrian bridge over Market Street and a tunnel beneath Market Street.
5. Adjacent to the site to the north-west are several commercial buildings fronting Market Street. These include 192-192A Pitt Street which a local heritage item known as the former Fay's chambers ('I1926'), and 61-63 Market Street. These buildings are 7 and 12-storeys in height, respectively.
6. Immediately adjacent to the west and fronting Pitt Street is the City Tattersalls Club, which comprises several buildings ranging from 4 to 8-storeys in height. These are identified as local heritage items known as the former Symonds Building at 194 Pitt Street ('I1927') and the City Tattersalls Club at 196-204 Pitt Street ('I1928' and 'I1929'). It is noted that a Stage 1 Concept DA was approved by the CSPC on 14 November 2019 for the redevelopment of this site, which comprises a podium and tower up to 50-storeys in height, containing indicative residential, retail, hotel and club land uses. No general vehicle car parking spaces were approved as part of this application.
7. Immediately adjacent to the south at 133-145 Castlereagh Street is the Stockland Piccadilly complex comprising a 2-level shopping centre, a 13-storey commercial office tower fronting Pitt Street known as Piccadilly Court, and a 31-storey commercial office tower fronting Castlereagh Street. The Stockland Piccadilly shopping centre is directly accessible from the subject site via a ground level opening. The Stockland Piccadilly site has frontages to both Castlereagh and Pitt Streets.
8. On the opposite north-eastern corner of the intersection of Market and Castlereagh Streets is the David Jones Elizabeth Street store at 84-110 Castlereagh Street, which is also identified as a local heritage item ('I1697'). The subject site is connected to the David Jones Elizabeth Street store via pedestrian links through the Westfields site and an underground vehicle service tunnel. Further to the north-west is Pitt Street Mall.
9. On the opposite eastern side of Castlereagh Street are commercial buildings ranging from 7 to 23-storeys in height. Further to the east is St James train station and Hyde Park.

10. Photos of the site and surrounds are shown in **Figures 1 to 10** below.



**Figure 1:** Location map. Site outlined in red.



**Figure 2:** Aerial image of subject site and surrounding area. Site outlined in red.



**Figure 3:** Subject site, view facing south-west.



**Figure 4:** Westfields tower, looking south-west along Castlereagh Street.



**Figure 5:** Elizabeth St David Jones building, opposite the site.



**Figure 6:** Buildings across Castlereagh to the east of the site.



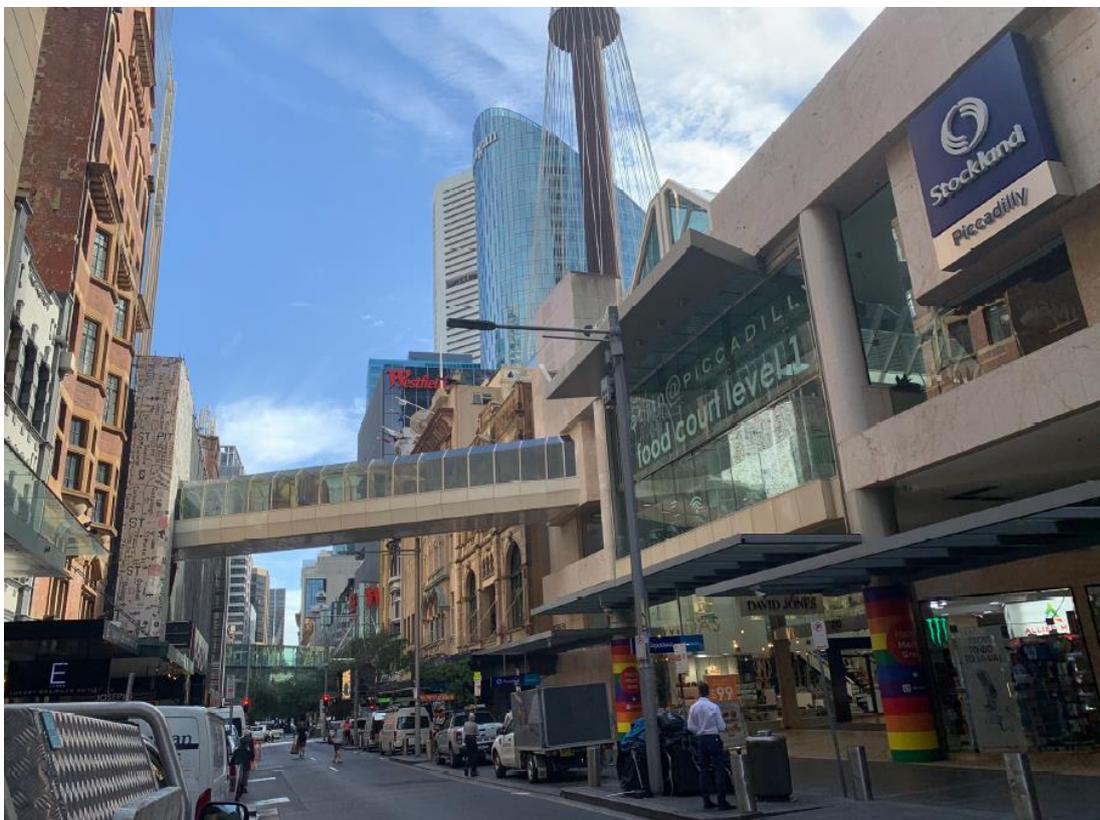
Figure 7: Market St, facing east.



Figure 8: Castlereagh St, facing south.



**Figure 9:** Buildings to the west and south-west of the site, including City Tatts.



**Figure 10:** Buildings along Pitt St including the Stockland Piccadilly complex, City Tatts and Westfields Tower, facing north.

## History Relevant to the Development Application

### *History of the Site*

11. The original David Jones building was designed by architects Crawford Mackellar and Bruce Partridge in 1937. The building was constructed over several phases from 1938-1969. The first 6-storeys were constructed by May 1938, with 2 more storeys constructed in 1940 and a further 2 storeys in 1952. Upon purchase of the property at 65 Market Street, an addition was completed.
12. On 9 August 2000, the Central Sydney Planning Committee (CSPC) granted development consent for a Stage 1 proposal for refurbishment and conservation works to David Jones' Elizabeth Street and Market Street stores and for the staged award of heritage floor space (HFS) under D/2000/00377. The latest modification to that consent is D/2000/00377/L. The following is noted with regard to the award of HFS under the referenced consent:
  - Several Stage 2 applications were approved for the various phases of refurbishment and conservation works between 2003 and 2007. All of these approved works were completed by December 2007. Despite the award of heritage floor space approved by these consents, a restriction was not registered on title for the subject site which would prevent the proposed redevelopment of the site.
  - For the Elizabeth Street store, Condition 4 of D/2000/00377 allows a total HFS amount of 14,132sqm to be awarded over 10 stages (subsequently reduced to 8 stages). The combined total of the HFS awarded for Stages 1 to 7 is 10,111sqm. The final Stage allows an award of 4,021sqm - a Deed for this final amount is currently being finalised. Condition 4 also requires the registration of a covenant on title. It is assumed that this has already been registered against the Elizabeth St store for Stages 1 to 7.
  - For the Market St store, Condition 60 of D/2000/00377 allows a total HFS award of 10,112sqm over 10 stages. The condition also requires the registration of a covenant on title. It appears that it has not been sought for the HFS to be awarded for the Market St store.
  - As such, it is recommended that a condition be imposed on the consent of the Stage 2 DA (D/2019/263) which requires that modification to D/2000/377/L is required, to ensure the removal of the HFS award for the Market Street store (i.e. delete Condition 60).
13. In 2014, the South African company Woolworth's Holdings purchased the David Jones company. In mid-2016, Woolworth's Holdings announced that it would be relocating the head office of David Jones from Sydney to Melbourne. Soon after, and after operating under the ownership of David Jones for over 70 years, the site was sold to the current owners Scentre Group and Cbus Property. A lease agreement ensured David Jones' occupancy on the site until late 2019, after which time the entire store's operations will be consolidated within the Elizabeth Street store.

### **Stage 1 Approval**

14. On 30 November 2017, the CSPC granted development consent for a Stage 1 Development Application for a building envelope up to a height of 124.16m / RL of 144.33 (32 storeys) for a mixed-use building.

15. In-principle approval was granted for the conservation and refurbishment of the David Jones building, retention of the existing basement structures, alterations to the layout basement car parking, and widening of the existing Castlereagh Street vehicular access.
16. An indicative development scheme accompanied the application which included parking, storage and services on the basement levels, retail uses on the ground floor to Level 3, commercial uses on Levels 4 to 9, plant and equipment on Level 10 and Level 32, and 108 residential units on Levels 10 to 31. For the tower form, a 10m setback from both Market Street and Castlereagh Street, a 12m setback from the western boundary, and 6m boundary from the southern boundary were approved. Level 10 had no setbacks to these boundaries.

### ***Competitive Design Process***

17. Following the Stage 1 consent, an architectural design competition process (CMP/2017/5) was held for the site. Eight architectural firms, 2 of which were partnered to comprise 6 competitors, submitted a design proposal.
18. The competition resulted in the FJMT Studio design being selected as the winning scheme on 5 September 2018, following 2 rounds of presentations and jury deliberations. The Jury of the design competition resolved that the FJMT scheme best demonstrated the ability to achieve design excellence as per Clause 6.21 of the Sydney LEP 2012 and the architectural design competition Brief requirements.

### ***Stage 2 Approval***

19. A Stage 2 Development Application, D/2019/263, was lodged on 19 March 2019 for a 32-storey plus rooftop plant mixed-use building incorporating retail, commercial and residential land uses. That application is being presented as a separate report for the CSPC's consideration.

### **Proposal**

20. The application proposes modifying D/2017/167 to reflect the detailed design application for the site. The Stage 2 development application is also presented to this CSPC meeting for consideration.
21. The modification seeks to amend the approved building envelope of the Concept DA approval to accommodate the additional floor space benefited from the winning design excellence scheme, within reduced tower setbacks. The proposal is eligible to 3,322.28sqm of additional floor space under Clause 6.21(7).
22. Changes to the approved building envelope comprise the following:
  - (a) Increase the average tower setback on the northern elevation to Market Street from 10m to 10.7m;
  - (b) Decrease the average tower setback on the eastern elevation to Castlereagh Street from 10m to 8.4m;
  - (c) Decrease the tower setback on part of the western elevation from 12m to 6m to accommodate the external lift core;

- (d) Increase the average tower setback on the southern elevation from 6m to between 6m-10.1m; and
- (e) An alternate height arrangement, remaining within the Hyde Park West Solar Access Plane in accordance with Condition 3 of the consent.

### ***Amended Application***

23. On 22 March 2019 a letter was sent to the applicant requesting for a finalised set of drawings, which show original approved envelope to allow for a more direct comparison. It was also requested that the submitted Statement of Environmental Effects (SEE) be amended so that the figures accurately depict the concept approval for the site. In response, amended plans and a revised SEE were submitted to Council on 8 April 2019.
24. The proposal was considered by the Design Advisory Panel (DAP) on 16 May 2019. The Panel made the following comments regarding the proposed modified setbacks:
- (a) The tower setback on Market Street should be 10m to comply with the Sydney DCP 2012 and maintain the view corridor, as per the comments of the design competition jury.
  - (b) The proposed tower setback on Castlereagh Street is acceptable taking into account the adjacent conditions.
  - (c) The building separation of 6m is acceptable if privacy issues are addressed as per the approved Stage 1 DA condition for 'non-principle windows or solid wall to southern elevation'. This will require replanning of the impacted apartments and possible modelling of the building envelope.
25. The proposal was amended and considered again by the Design Advisory Panel on 12 September 2019. The Applicant presented 2 options to DAP, showing a 10m setback as well as a 9m setback to Market Street. It was outlined that the 10m setback required 9 structural columns within the existing heritage listed building to be strengthened internally to support the building envelope, as opposed to the 9m setback requiring localised strengthening of 6 existing columns.
26. The Panel made the following comments regarding the setback on Market Street:
- (a) The tower envelope in Option 2 with the 9m setback to Market Street is supported by the Panel.
27. As such, the amended proposal incorporates the following changes:
- (a) Decrease the minimum tower setback on the northern elevation to Market Street from 10m to 9m;
  - (b) Decrease the minimum tower setback on the eastern elevation to Castlereagh Street from 10m to 5m;
  - (c) Decrease the tower setback on part of the western elevation from 12m to 6m to accommodate the external lift core;
  - (d) Increase the average tower setback on the southern elevation from 6m to between 6m-10.1m; and

- (e) An alternate height arrangement, remaining within the Hyde Park West Solar Access Plane in accordance with Condition 3 of the consent.

28. Amended envelope plans are provided below.

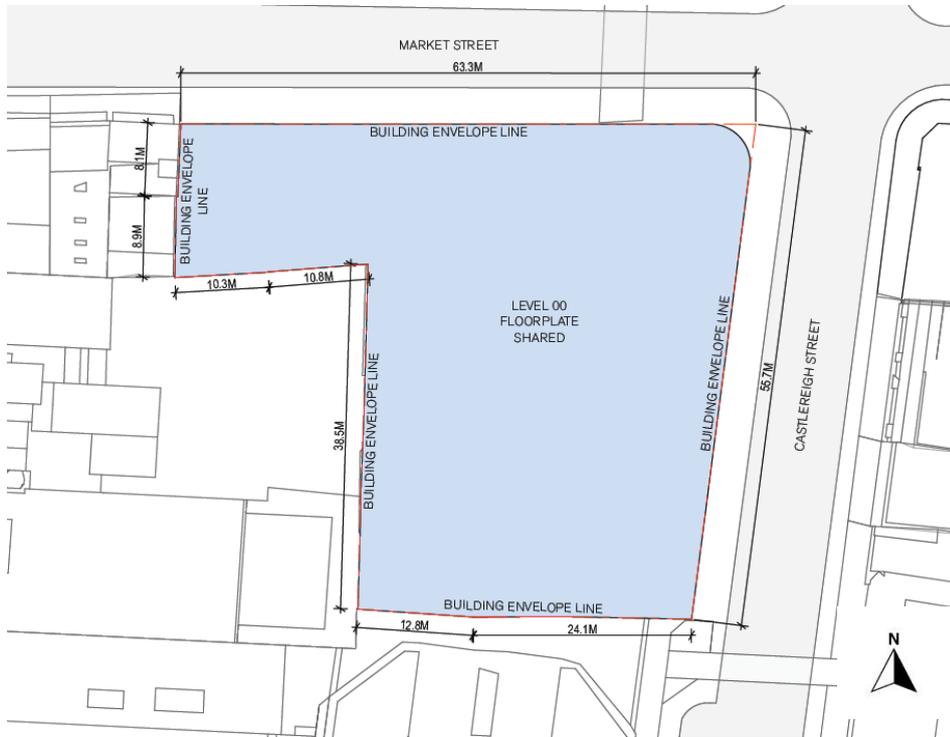


Figure 10 - Ground floor.

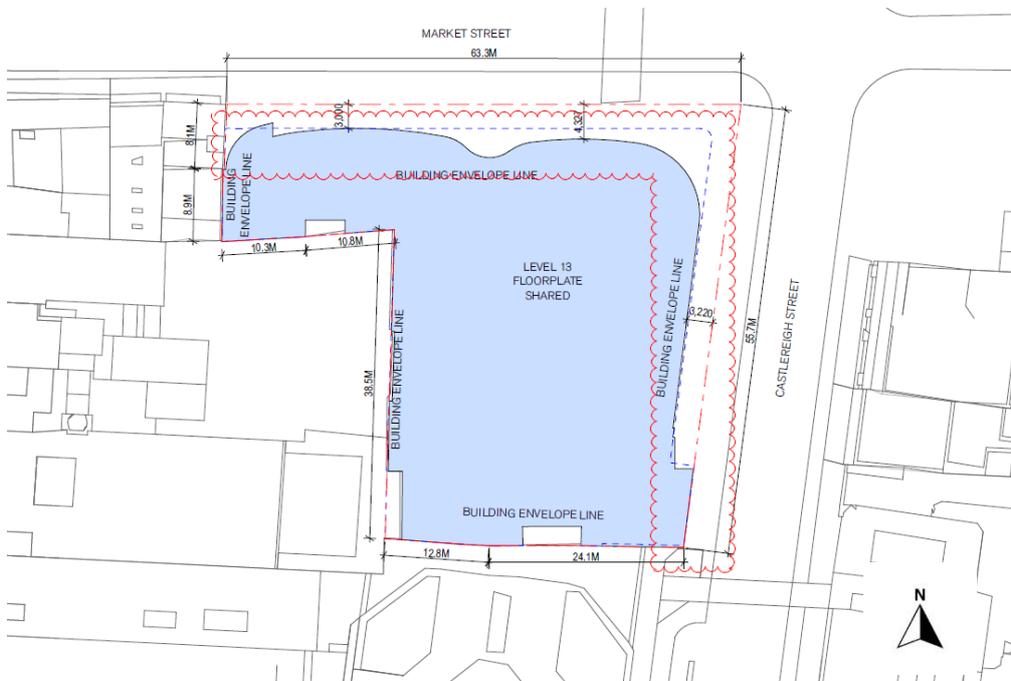
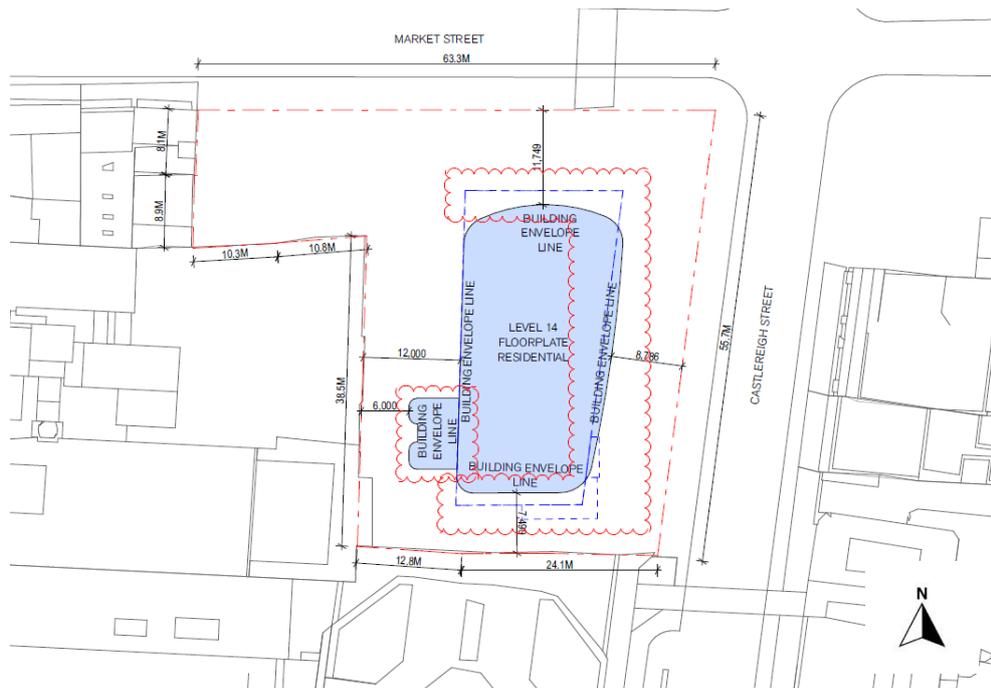
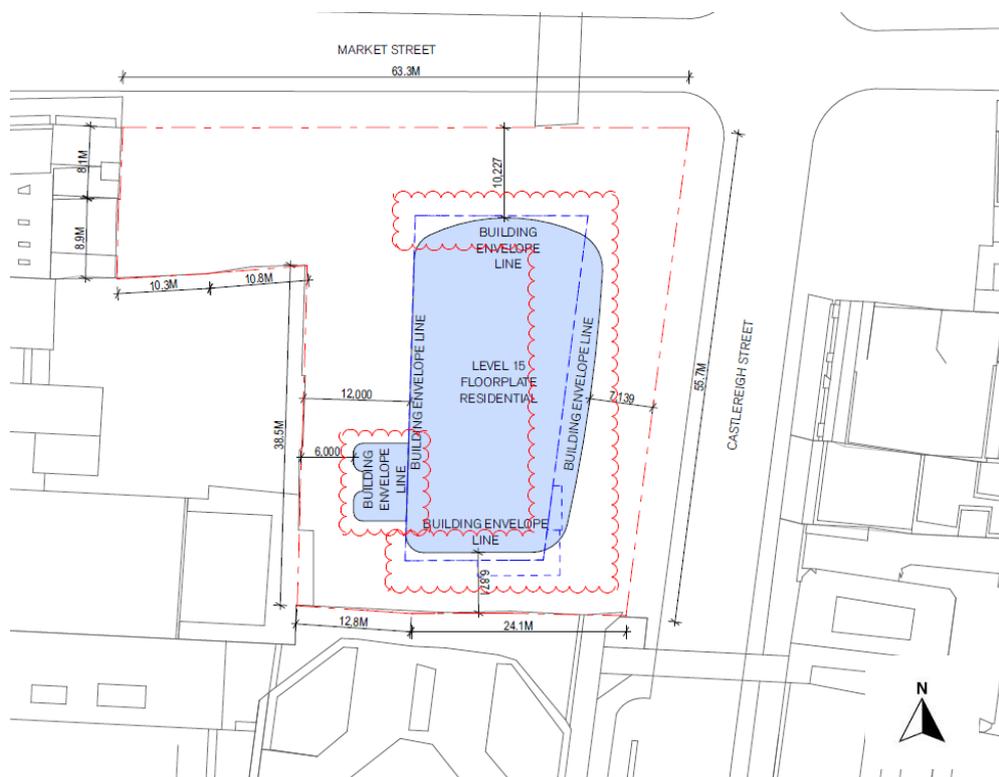


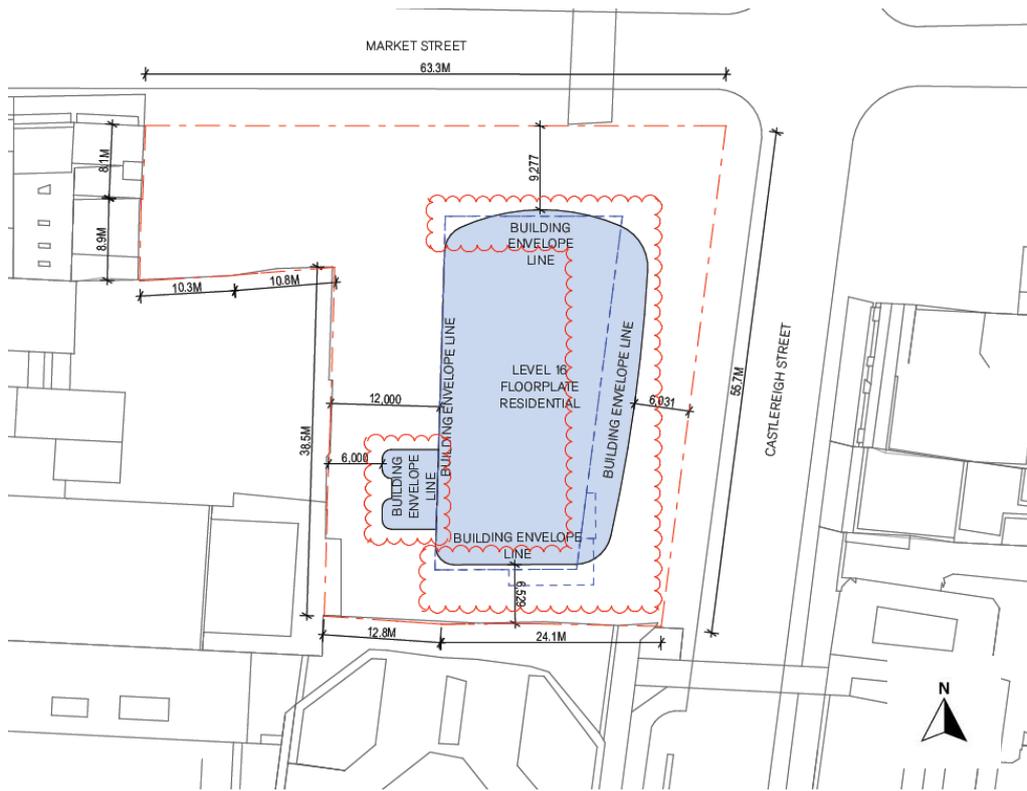
Figure 11 - Envelope plan of Level 13. The dashed blue line represents the currently approved tower footprint.



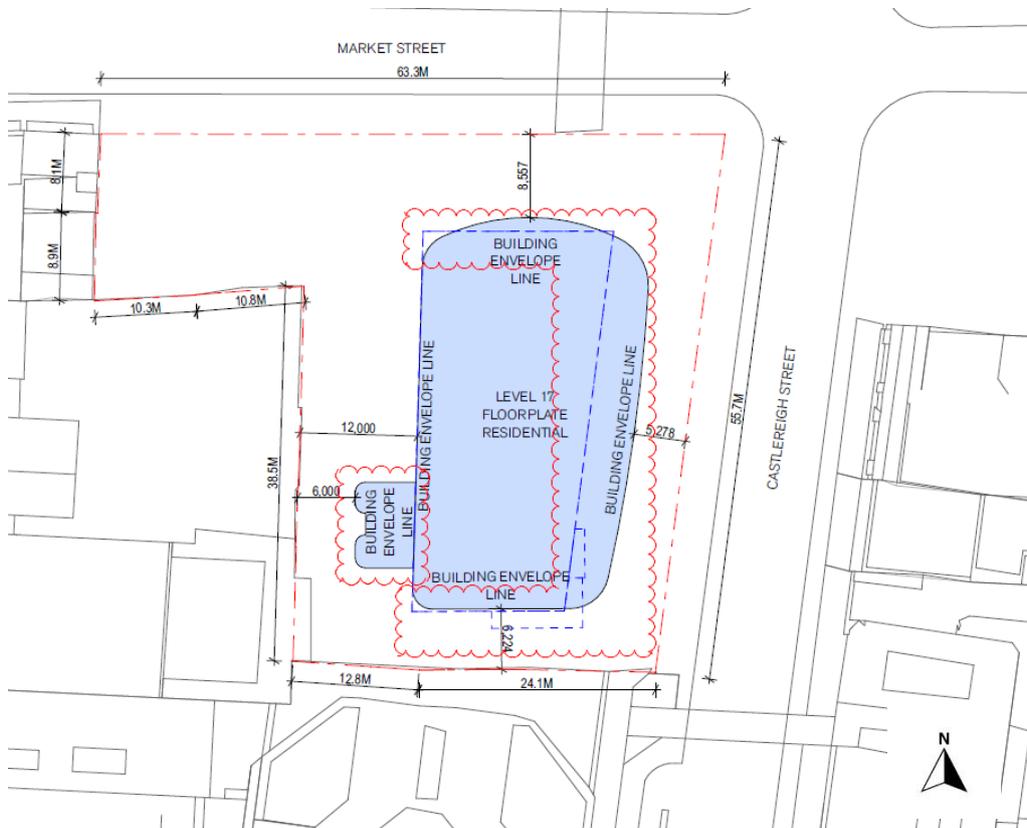
**Figure 12** - Envelope plan of Level 14. The dashed blue line represents the currently approved tower footprint.



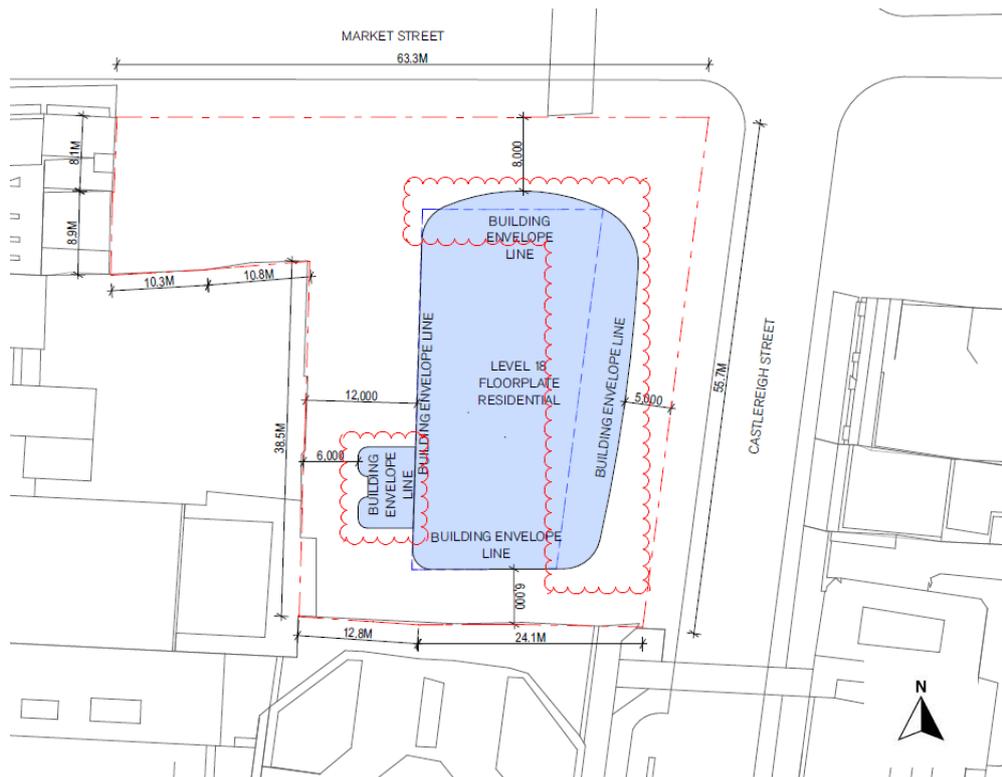
**Figure 13** - Envelope plan of Level 15. The dashed blue line represents the currently approved tower footprint.



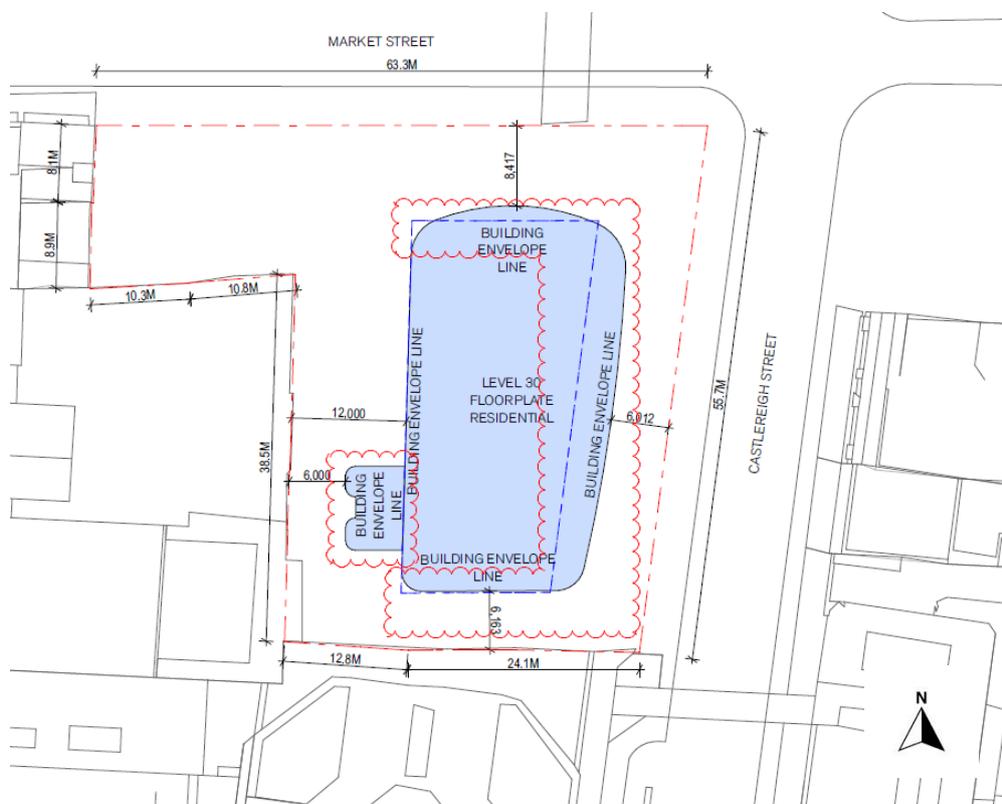
**Figure 14** - Envelope plan of Level 16. The dashed blue line represents the currently approved tower footprint.



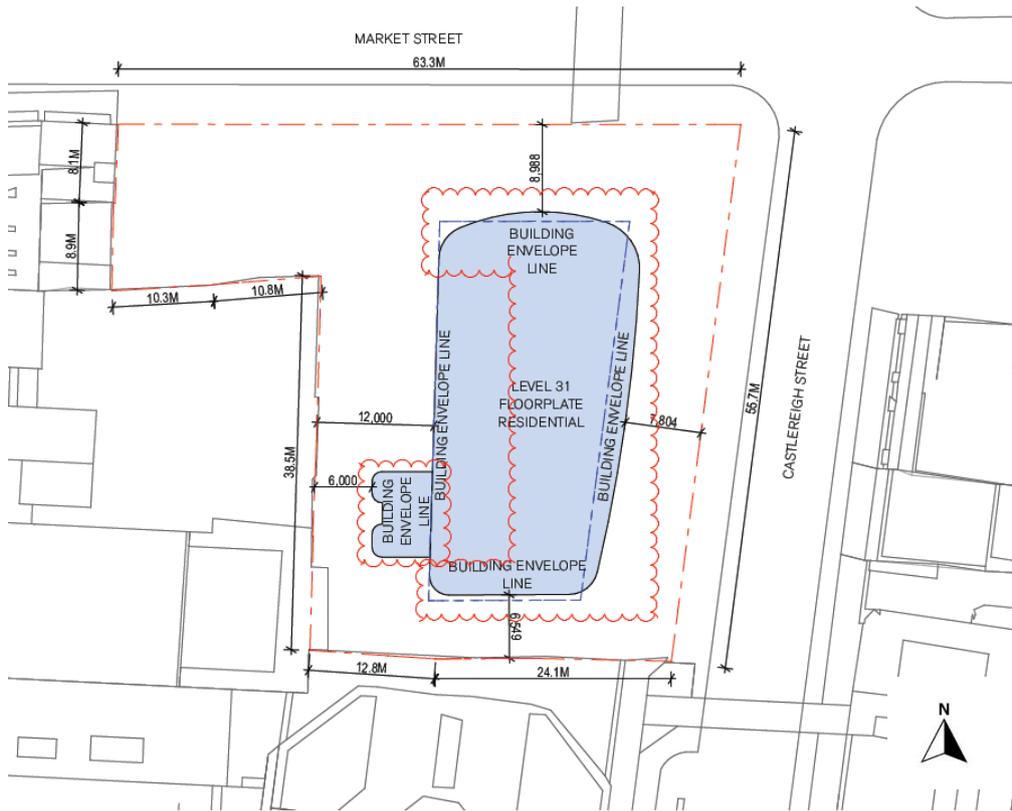
**Figure 15** - Envelope plan of Level 17. The dashed blue line represents the currently approved tower footprint.



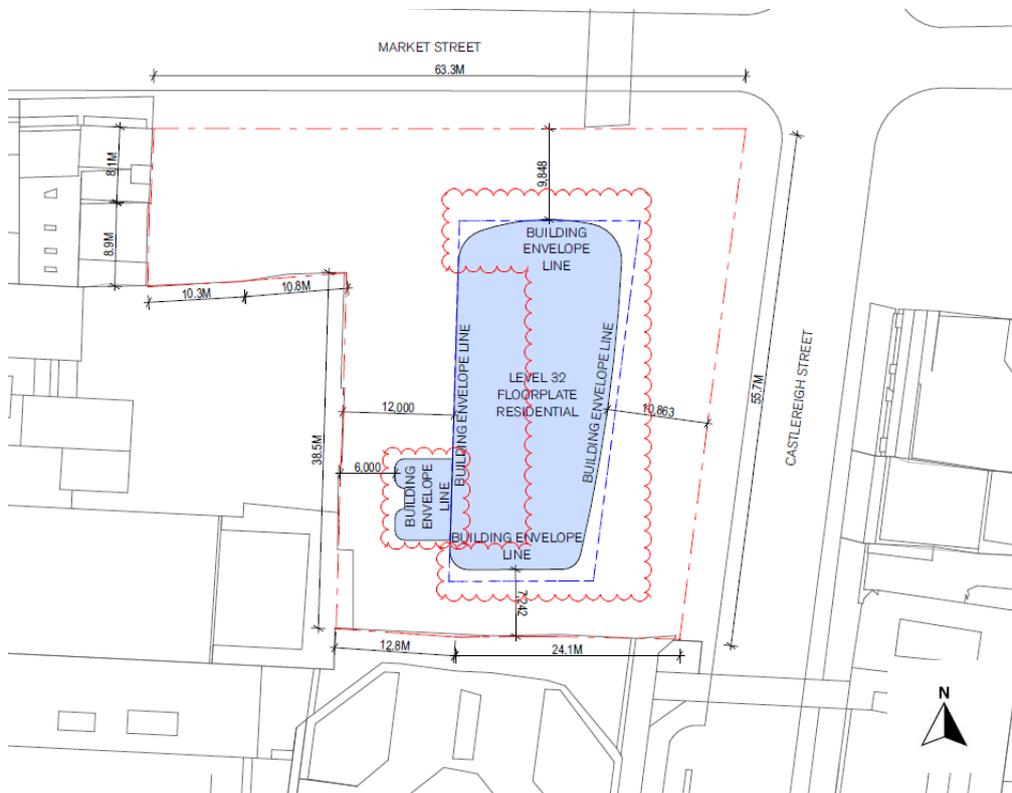
**Figure 16** - Envelope plan of Levels 18 to 29. The dashed blue line represents the currently approved tower footprint.



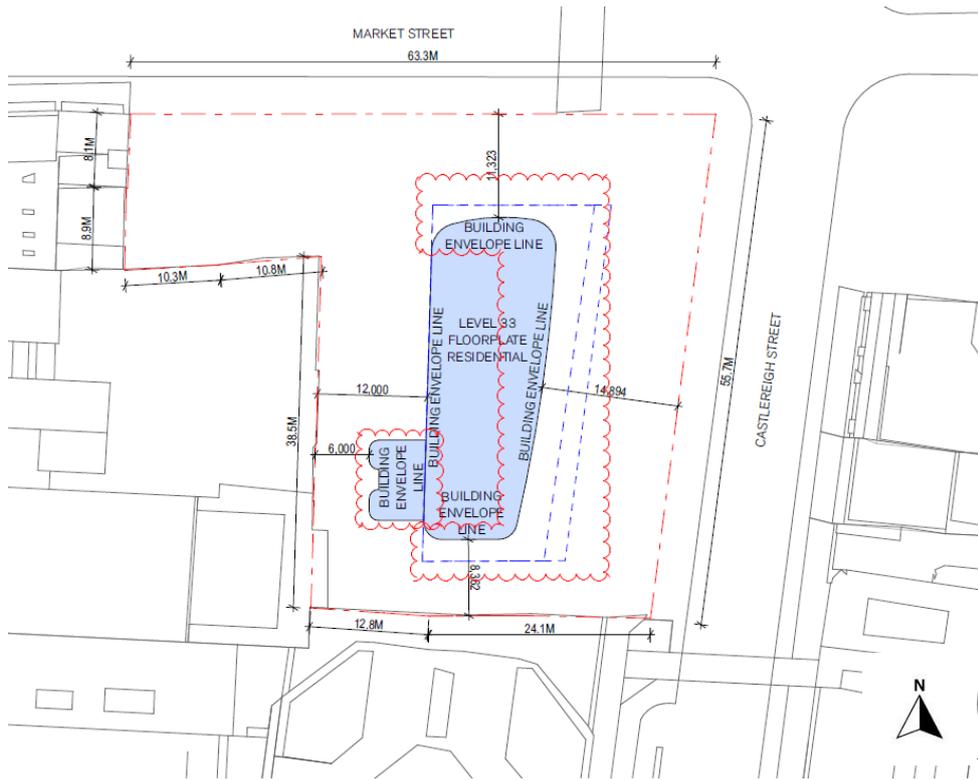
**Figure 17** - Envelope plan of Level 30. The dashed blue line represents the currently approved tower footprint.



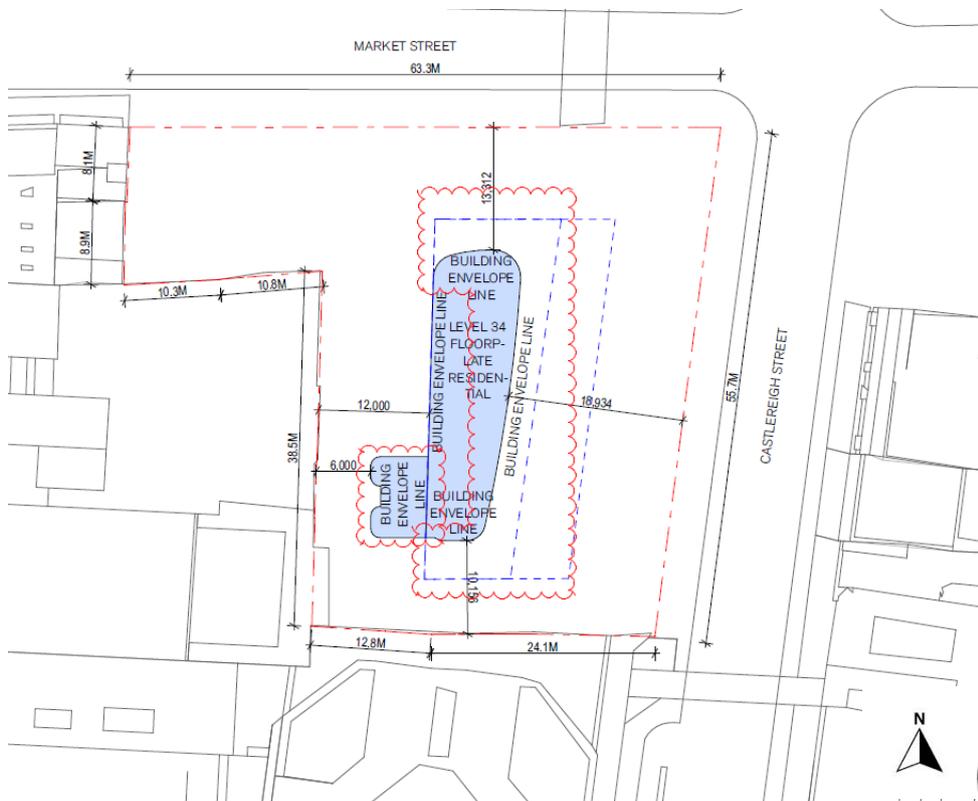
**Figure 18** - Envelope plan of Level 31. The dashed blue line represents the currently approved tower footprint.



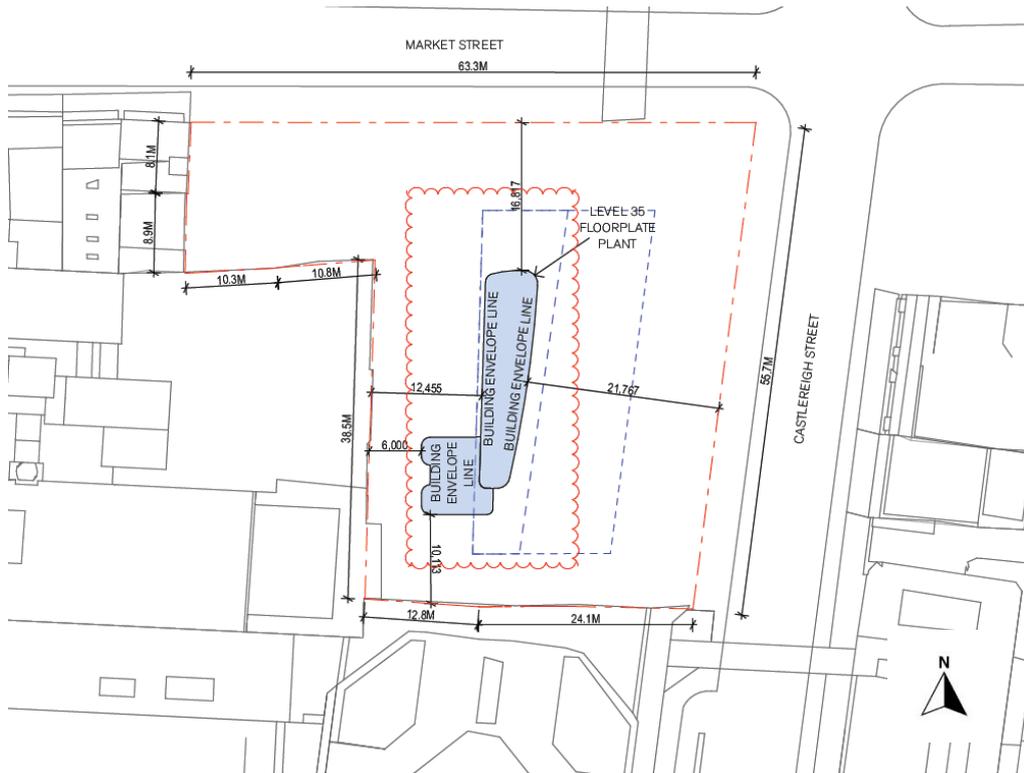
**Figure 19** - Envelope plan of Level 32. The dashed blue line represents the currently approved tower footprint.



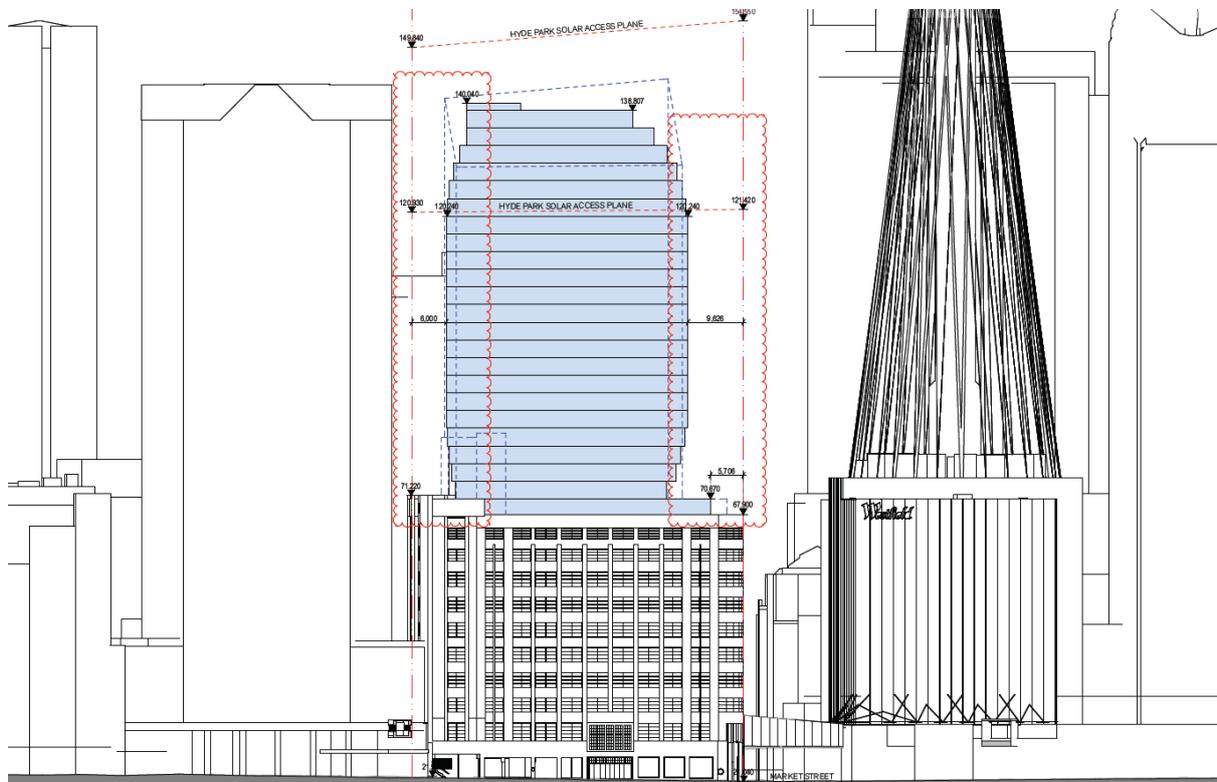
**Figure 20** - Envelope plan of Level 33. The dashed blue line represents the currently approved tower footprint.



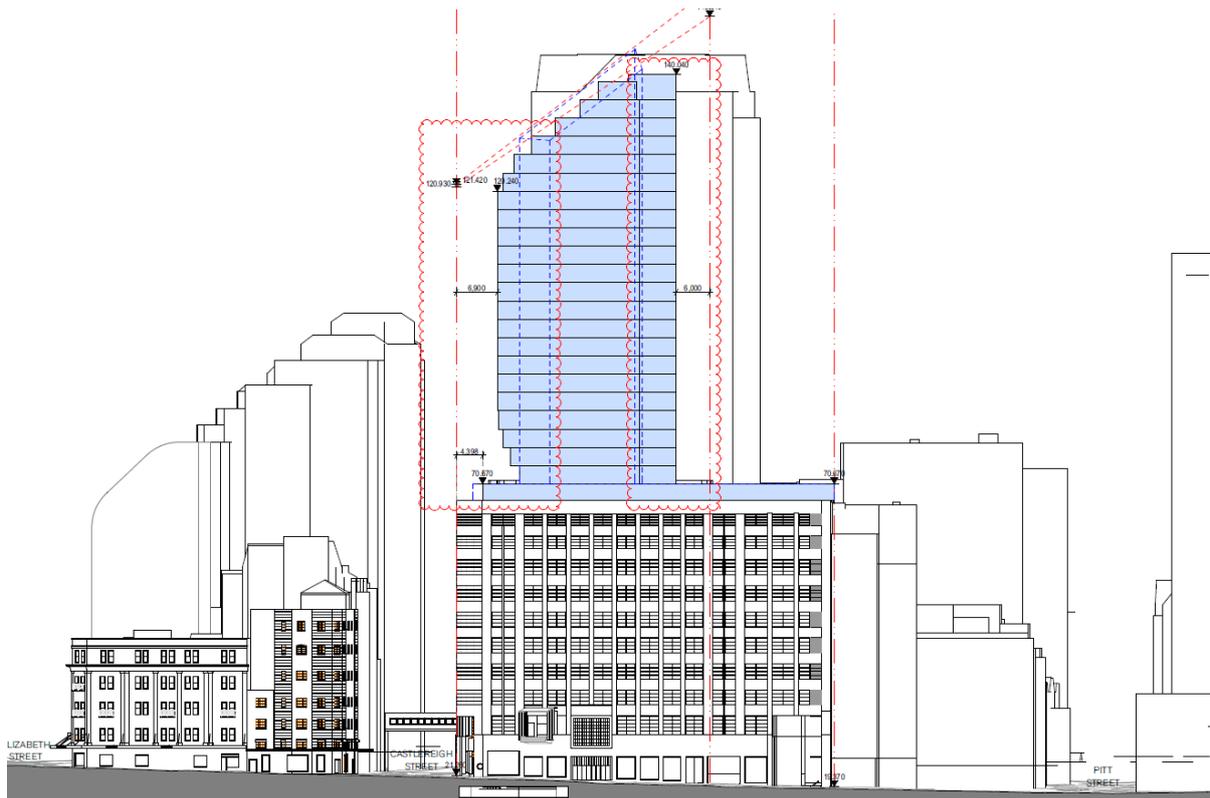
**Figure 21** - Envelope plan of Level 34. The dashed blue line represents the currently approved tower footprint.



**Figure 22** - Envelope plan of Level 35. The dashed blue line represents the currently approved tower footprint.



**Figure 23** - Envelope plan of eastern (Castlereagh Street) elevation.



**Figure 24** - Envelope plan of northern (Market Street) elevation.

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

29. Besides the matters discussed in this report, the assessment against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, contained in the report to the CPSC as its meeting on 30 November 2017 are still relevant.
30. A copy of the original planning assessment report for D/2017/167 is provided at Attachment C.

### **Threshold Test**

31. The development as proposed to be modified is substantially the same as that originally approved.
32. In accordance with Section 4.55(3), an assessment against the relevant provisions of Section 4.15(1) of the Act are provided under the following headings. There were no reasons provided on the original Notice of Determination for the decision.

## Issues

33. The proposed changes and an assessment of their acceptability are discussed in the table below.

Modification	Assessment
<p>Increase in gross floor area as a result of additional floor space permitted.</p>	<p>As discussed above, the proposal was subject to a design competition and is eligible to 3,322.28sqm of additional floor space under Clause 6.21(7) (b) where design excellence is demonstrated.</p> <p>The modified proposal seeks to alter the approved setbacks to accommodate the additional floor space permitted. This is to ensure that the development does not exceed the applicable Hyde Park sun access plane. The setback changes are not considered to result in adverse impacts, as detailed in this table.</p>
<p>Decrease the minimum tower setback on the northern elevation to Market Street from 10m to 9m;</p>	<p>As advised above, during the assessment of the modification, concern was raised by Council officers and DAP regarding the amended setback to Market Street. Initially a minimum setback of 8.4m was proposed.</p> <p>It was considered that the setback should comply with the 10m requirement for buildings above a heritage item, within the Sydney DCP 2012. It was also required the view corridor in this location be maintained.</p> <p>In response the Applicant presented 2 options to DAP, showing a 10m setback as well as a 9m setback to Market Street. It was outlined that the 10m setback required 9 structural columns within the existing heritage listed building to be strengthened internally to support the building envelope, as opposed to the 9m setback requiring localised strengthening of 6 existing columns. DAP considered the 9m setback to result in a better heritage outcome for the site in terms of the amount of structural intervention to the existing structural system of the building.</p>

Modification	Assessment
	<p>The 9m setback was also considered by DAP to maintain the vista west down Market Street from the entrance to St James Station, and also that views are largely uninterrupted east down Market Street.</p> <p>The 9m setback will continue to provide a clear hierarchy between the street wall height and tower above. The new Level 13 podium together with the tapered form of the tower assists in mitigating the impact on the street wall height as it gives a greater perception of the tower as a secondary recessed building.</p> <p>In consideration of the above, the proposed 9m setback to Market Street is supported.</p>
<p>Decrease the minimum tower setback on the eastern elevation to Castlereagh Street from 10m to 5m;</p>	<p>The Architectural Design Competition Report identified a series of elements that contributed to the success of the scheme and should be retained throughout the next phase of the process. Notably, the Report stated that the proposal must maintain the view corridor along Market Street by respecting the setback controls but noting flexibility on the Castlereagh Street setback should be considered, as the Stockland Piccadilly building (known as 133-145 Castlereagh Street) to the south significantly encroaches on this setback.</p> <p>The amended Castlereagh Street setback reflects the established scale and setbacks of the surrounding buildings, particularly the Stockland building to the south of the site.</p> <p>The proposed setback on Castlereagh Street is acceptable taking into account the adjacent conditions.</p>
<p>Decrease the tower setback on part of the western elevation from 12m to 6m to accommodate the external lift core;</p>	<p>The proposed western setback is 12m measured to the building line, excluding the protrusion of the lift core which is set back only 6m from the boundary.</p>

Modification	Assessment
	<p>The 6m encroachment into the 12m requirement is acceptable given that it relates to the lift core only, which is non-habitable, and will not give rise to privacy impacts to future occupants of the site or neighbouring properties. The 12m setback is maintained for the tower/residential component, to ensure privacy is maintained, once the mixed-use redevelopment of the City Tattersalls Club (including residential apartments and serviced apartments) is developed.</p> <p>It is noted that DAP advised that the building separation of 6m is acceptable in this circumstance.</p>
<p>Increase the average tower setback on the southern elevation from 6m to between 6m-10.1m; and</p>	<p>The proposal comprises a minimum setback of 6m to the southern boundary, which increases at the lower and upper points of the tower.</p> <p>Throughout the assessment, concern was raised by Council Officers and DAP regarding this setback and the proposed south-facing apartments, as the ADG requires a 12m setback between habitable rooms and office spaces to ensure privacy.</p> <p>The applicant has justified this encroachment, as detailed within the Stage 2 application, through the treatment of this interface with a combination of solid, obstructed and glazed panelling, limiting visual access from surrounding properties into the residential apartments whilst permitting solar access and natural daylight. The Stage 2 application has also been amended so that the south-facing apartment typology comprises a 2-bedroom apartment (previously 3-bedroom) with windows facing east and west, orientated away from the southern boundary.</p> <p>It is noted that DAP advised that the building separation of 6m is acceptable in this circumstance.</p>

Modification	Assessment
An alternate height arrangement, remaining within the Hyde Park West Solar Access Plane in accordance with Condition 3 of the consent.	<p>The proposed alternate height arrangement as a result of the modified setbacks, maintains compliance with the sun access plane of a maximum height of 124.16m, with a proposed maximum height of RL 139.86 (118.21m).</p> <p>These changes do not result in adverse shadow impacts, when compared to the approved concept building envelope. Between 9am and 1pm in mid-winter, the modified building envelope shadow is consistent with the approved Concept DA envelope. Between 2pm and 3pm in mid-winter, the proposed development results in an improved overshadowing impact compared to the approved Concept DA envelope, with reduced overshadowing to Hyde Park at 3pm compared to the approved Concept DA.</p>

*SEPP 65*

34. SEPP 65 provides that in determining an application for a residential apartment development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles at Schedule 1. The tower component of the development is subject to the SEPP.
35. The development as modified does not diminish or detract from the design quality and intent of the original concept approval

*Sydney LEP 2012*

36. The provisions of the LEP have been taken into consideration in the assessment of the proposal. Compliance with Clause 6.17 sun access plane development standard has been discussed above, while the detailed design development application demonstrates that the revised building envelope can accommodate compliant floor space in accordance with Clauses 4.4, 6.4 and 6.21.
37. The development is not inconsistent with other relevant provisions.

**Other Impacts of the Development**

38. The proposal will have no significant detrimental effect relating to environmental, social or economic impacts of the locality, subject to appropriate conditions being imposed.

**Suitability of the Site for the Development**

39. The proposal is of a nature in keeping with the overall function of the site.

### Internal Referrals

40. The application was discussed with the Urban Design and Heritage Manager; Building Services Unit; Environmental Health; Public Domain; Safe City; Surveyors; Transport and Access; and Waste Management; who advised that the proposal is acceptable subject to conditions.
41. The proposal was considered by the Design Advisory Panel on 16 May 2019 and 12 September 2019. As advised above, the Panel considered the proposed changes are acceptable.
42. Where relevant, the conditions of other sections of Council have been included in the proposed conditions.

### External Referrals

43. The application was referred to Sydney Trains, Roads and Maritime Services (RMS), Transport for NSW (TfNSW), Ausgrid and Transgrid, who raised no objections to the modified proposal subject to the imposition of recommended conditions.

### Notification, Advertising and Delegation

44. In accordance the Community Participation Plan 2019 the proposed development is required to be notified. As such the application was notified for a period of 1414 days between 8 April 2019 and 23 April 2019. As a result of this notification a total of 346 properties were notified and there was 1 submission received. Matters raised are as follows:
  - (a) Concern regarding the height of the tower and potential impact on views from the Hilton Sydney, No. 488 George Street, Sydney.

**Response** - The modified proposal does not seek to increase the height approval under the Concept Approval, and the changes to the tower footprint are not considered to result in further view impacts to the Hilton Sydney, for the following reasons:

- The modified proposal comprising a curved tower form results in only slight encroachments to the approved setbacks, as shown in Figures 12-24, with the approved setbacks marked in blue on the proposed modified plans.
- The greatest decrease in setback relates to the eastern (Castlereagh Street) setback. This increase will largely not be discernible from the Hilton Sydney, which is located to the south-west of the site.
- The 1m decrease in the minimum setback to Market Street is minor and will not impact on views through to Hyde Park. This minimum setback increases with tower tapering down at the upper and lower points.
- The decrease in setback to the western boundary relates to the lift core only and will likely not be seen from the public domain or surrounding developments once the mixed-use redevelopment of the City Tattersalls Club is developed.

- The modified proposal comprises a minimum setback of 6m to the southern boundary, which was approved under the original application, however this setback now increases to a maximum of 10.1m at the lower and upper points of the tower. This is an improved outcome.

45. It is noted that the amended modification application was not required to be renotified, as it was considered that the amended proposal was not a significant change to the original modified envelope and did not result in any further potential impacts.

### **Public Interest**

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

### **S61 Contribution**

47. The modification does not affect the contributions payable.

### **Conclusion**

48. This Section 4.55(2) application proposes altering the approved building envelopes to be consistent with the detailed design development application (D/2019/263). The detailed design development application is presented to the CSPC concurrently for approval.

49. The scope of the proposed modifications include:

- (a) Amendments to the approved building envelope of the Concept DA approval to accommodate the additional floor space benefited from the winning design excellence scheme, within reduced tower setbacks, as follows:
  - (i) Decrease the minimum setback on the northern elevation to Market Street from 10 to 9m;
  - (ii) Decrease the minimum tower setback on the eastern elevation to Castlereagh Street from 10m to 5m;
  - (iii) Decrease the setback on part of the western elevation from 12m to 6m to accommodate the external lift core;
  - (iv) Increase the average tower setback on the southern elevation from 6m to between 6m-10.1m; and
- (b) Changes to the approved height arrangement, remaining within the Hyde Park West Solar Access Plane in accordance with Condition 3 of the consent.

50. The proposed modifications to the approved building envelope will ensure consistency between staged development applications for the site, as required under Section 4.24 of the Environmental Planning and Assessment Act, 1979. The application is presented to the CSPC to ensure consistency with the determination of the detailed development application.
51. The proposed modifications are in the public interest and recommended for approval.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Mia Music, Planner