

Item 4.**Development Application: 499-501 Kent Street, Sydney - D/2019/969****File No.:** D/2019/969**Summary**

Date of Submission: The application was lodged with Council on 30 August 2019. Amended plans and documentation were submitted on 12 March 2020.

Applicant: B Leung C/- Urbis Pty Ltd

Architect: PTW Architects

Owner: SAATVIC Holdings Pty Ltd

Cost of Works: \$55,661,743

Zoning: The site is zoned B8 - Metropolitan Centre under the Sydney Local Environmental Plan 2012. The proposed land uses comprise residential accommodation, retail and commercial uses, which are permissible with consent in the B8 zone.

Proposal Summary: The application seeks concept approval for the following:

- 80m tower (indicatively 24 storeys) building above an existing local heritage item;
- conservation and restoration of the original facade design to Kent Street and Druitt Lane of the existing heritage listed building;
- eight levels of basement parking (indicatively) and services; and
- a mix of retail, commercial and residential uses.

During the assessment the scheme was amended and additional information was submitted, to address the concerns of the City's Design Advisory Panel Residential Subcommittee and Council officers. These matters included:

- how the indicative reference design occupies the entire building envelope which presents a number of Apartment Design Guide (ADG) challenges and limits the ability to achieve design excellence;
- matters relating to the relationship with the neighbouring residential apartment tower to the west (60 Bathurst Street);
- ADG non-compliances;
- flooding; and
- land contamination.

The application was amended with the following modifications:

- varied rear (west) setback from 6m to 1.9m-9m;
- increased front/Kent Street setback (at level 3 only) from 8m to 18m;
- increased communal space area, consolidated at level 3;
- indicative increase in residential apartments from 72 to 75; and
- consolidation of all commercial/retail floor space within existing heritage building

The amended application was presented to the City's Design Advisory Panel, who did not support the amended proposal, with the following recommendations:

- issues remain regarding the proposed western setback, communal open space, and floor to floor heights;
- the site may not be suitable for a residential development and many of the issues would not be as significant if it was a commercial or mixed-use proposal;
- a residential scheme would require full compliance with the ADG, likely resulting in fewer apartments;
- more activation to Druiitt Lane is required; and
- the Heritage Floor Space scheme should be utilised.

The proposal was originally advertised and notified for a period of 28 days between 4 September 2019 and 3 October 2019. A total of 12 submissions were received objecting to the proposed development.

The application was re-notified and re-advertised following design amendments for a period of 28 days between 20 March 2020 and 18 April 2020. A total of 8 objections were received during this notification period.

As a result of the 2 notification periods, a total of 20 objections were received from 16 individuals. The submissions which are discussed further in the body of the report, raised concerns regarding:

- heritage issues;
- insufficient separation and setbacks;
- Visual amenity impacts to neighbouring sites;
- solar access impacts;
- the extent of excavation;
- increased traffic and congestion;
- incorrect calculation of floor space ratio (FSR);
- inconsistency with design excellence requirements; and
- generally, an overdevelopment.

The current proposal has not adequately addressed the issues raised during pre-lodgement discussions nor during the assessment of the subject application. The proposal in its current form is not supported as it will result in a building envelope that cannot achieve satisfactory building separation and internal residential amenity required under SEPP 65 and ADG, the Sydney DCP 2012, and subsequently does not satisfy design excellence provisions in Clause 6.21(4) of the Sydney LEP 2012.

Overall, the amended building envelope and indicative scheme shows that a residential development may not be suitable for the site and the proposal as submitted doesn't exhibit design excellence.

Additionally, insufficient information has been provided.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) State Environmental Planning Policy No. 55 - Remediation of Land
- (ii) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (v) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP)
- (vi) Sydney Local Environmental Plan 2012
- (vii) Apartment Design Guide 2015
- (viii) Sydney Development Control Plan 2012

Attachments:

- A. Selected Drawings

Recommendation

It is resolved that consent be refused for Development Application No. D/2019/969 for the following reasons:

- (A) The proposed development does not comply with several design quality principles stipulated in the *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*, and results in several non-compliances in the accompanying Apartment Design Guide (ADG), as follows:
- (i) Separation - the proposed building envelope and indicative scheme does not comply with the minimum separation distances between habitable openings as required by Parts 2F and 3F of the ADG.
 - (ii) Cross Ventilation - Part 4B of the ADG requires that a minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated. The western setback causes a non-compliance with this control, with the westernmost apartments not achieving natural cross ventilation.
 - (iii) Communal Open Space - Part 3D of the ADG specifies that communal open space has a minimum area equal to 25% of the site, and that 50% of this space receive direct sunlight for 2 hours midwinter. The indicative scheme provides for approximately 295sqm (36%) of communal open space, however there are several issues associated with the amenity and useability of these spaces.
 - (iv) Floor to Ceiling Heights - Part 4C of the ADG requires a floor to ceiling height of 2.7m is provided for habitable rooms. The indicative scheme shows floor to floor heights of 3.05m which is not considered sufficient to accommodate 2.7m floor to ceiling heights.
 - (v) The amended proposal was not accompanied by an updated Design Verification Statement, which is required in accordance with Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000*.
 - (vi) Overall, the amended building envelope and indicative scheme shows that a residential development may not be suitable for the site, with the achievement of key ADG requirements unable to be demonstrated.
- (B) The development is not accompanied by adequate documentation to confirm that the site is suitable or capable of being made suitable for its intended land use, in accordance with the requirements of State Environmental Planning Policy No. 55 - Remediation of Land.
- (C) The proposed development fails to demonstrate design excellence in accordance with Clause 6.21 of Sydney LEP 2012. The building envelope and indicative scheme does not provide for a tower that achieves an acceptable relationship with other towers in terms of separation, setbacks, amenity and urban form, and thus is contrary to Clause 6.21(4)(d)(iv) and (vii) of the Sydney LEP 2012. Therefore, the proposal is not considered to achieve design excellence.

- (D) The proposal results in an exceedance of the Floor Space Ratio (FSR) permissible under Clauses 4.4 and 6.4 of the Sydney LEP 2012, with the inclusion of an additional 10% FSR for design excellence under Clause 6.21 of the Sydney LEP 2012. The quantum of floor space and gross floor area are not approved as part of a concept application, and a competitive design process has not been undertaken.
- (E) Insufficient information has been provided to enable the assessment of the proposal to be completed, including:
- (i) Detailed Environmental Site Investigation (DESI) – A DESI has not been submitted, which is required to confirm that the site is suitable or capable of being made suitable for its intended land uses in accordance with SEPP 55.
 - (ii) Solar access - The information submitted is not coordinated so it is difficult to determine if the indicative scheme achieves adequate solar access requirements.
 - (iii) Flooding and floor levels - The plans and flood assessment report require further coordination with regard to flood planning levels.
 - (iv) Landscape scheme - The submitted landscape statement is very detailed, which negates the intent of a landscape strategy at concept stage, and a revised landscape statement is required.
 - (v) Waste Management Plan (WMP) - An insufficiently detailed waste management plan has been provided.
- (F) For the reasons listed above, the development is not considered to be in the public interest pursuant to Section 4.15(1) of *Environmental Planning and Assessment Act 1979*.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 100 DP 1247505, and has a street address of 499-501 Kent Street, Sydney. The site is irregular in shape and has an area of 811.4sqm. It has a 11.5m frontage to Kent Street and a 43m frontage to Druitt Lane. There is a fall of 5.47m from the eastern (Kent Street) boundary to the western rear boundary. The site contains a 3 storey L-shaped commercial building with a lower level basement, and vehicular access provided from Druitt Lane. The western part of the site contains an existing hard stand area.
2. The building is identified as a local heritage item (item no. '11834'), known as the former "Universal Film Manufacturing Co" warehouse as well as 'RCA House'. Constructed in 1936, it is designed in the Inter-War Stripped Classical Style, and comprises a steel framed, brick building with four bays of windows to both facades. There is a brick extension on the west which dates from 1966 and has no decorative features. As a building erected for the Universal Film Manufacturing Co by an old-established firm of ironmongers and machinery importers, the subject building is historically significant for its reflection of the new investment opportunities provided by the emergence of the film industry in Australia. The building is aesthetically significant as an example of a relatively intact original commercial exterior of high-quality design. Internally, the building has been remodelled and no evidence of original finishes exist.
3. The character of the area is predominantly commercial in nature, with surrounding development comprising office, retail, hotel and residential uses. The surrounding context is as follows:
 - (a) Immediately to the site's west, is 60 Bathurst Street (formerly known as 286-296 Sussex Street), which was recently developed as a 26-storey mixed use building comprising hotel uses within the podium, a residential tower above and basement parking.
 - (b) Immediately to the site's south is a 13-storey commercial building at 503-505 Kent Street. Further to the south, on the corner of Kent Street and Bathurst Street, is 507-509 Kent Street which is a 26-storey serviced apartment building.
 - (c) Immediately to the north of the site is Druitt Lane, which is approximately 3.7m in width. It is a one-way lane in an easterly direction.
 - (d) To the site's north across Druitt Lane is 493-497 Kent Street, which is a 4-storey mixed use building with ground floor retail and commercial uses above. Further to the north is a 10-storey commercial building at 483-491 Kent Street.
 - (e) To the site's east across Kent Street is St Andrews Cathedral School, St Andrews Cathedral, Town Hall and Town Hall House. Sydney Square is a major public open space framed by these buildings.
4. Photos of the site and surrounds are provided below.



Figure 1: Aerial image of subject site and surrounding area. Site outlined in red.



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



Figure 3: Existing Kent Street frontage of the site



Figure 4: Druit Lane looking west. The site is to the left of the laneway.



Figure 5: Druitt Lane looking east. The site is to the right of the laneway.



Figure 6: Druitt Lane looking east

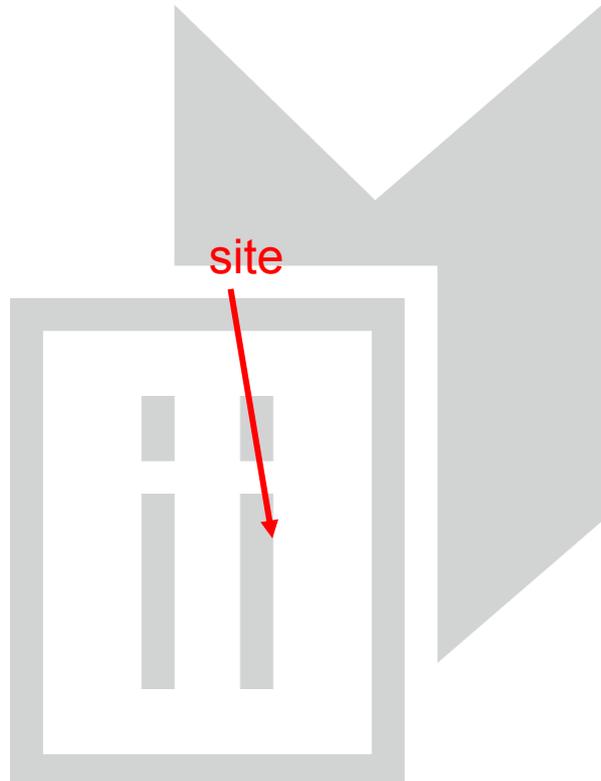


Figure 7: Buildings along Druitt Lane looking east

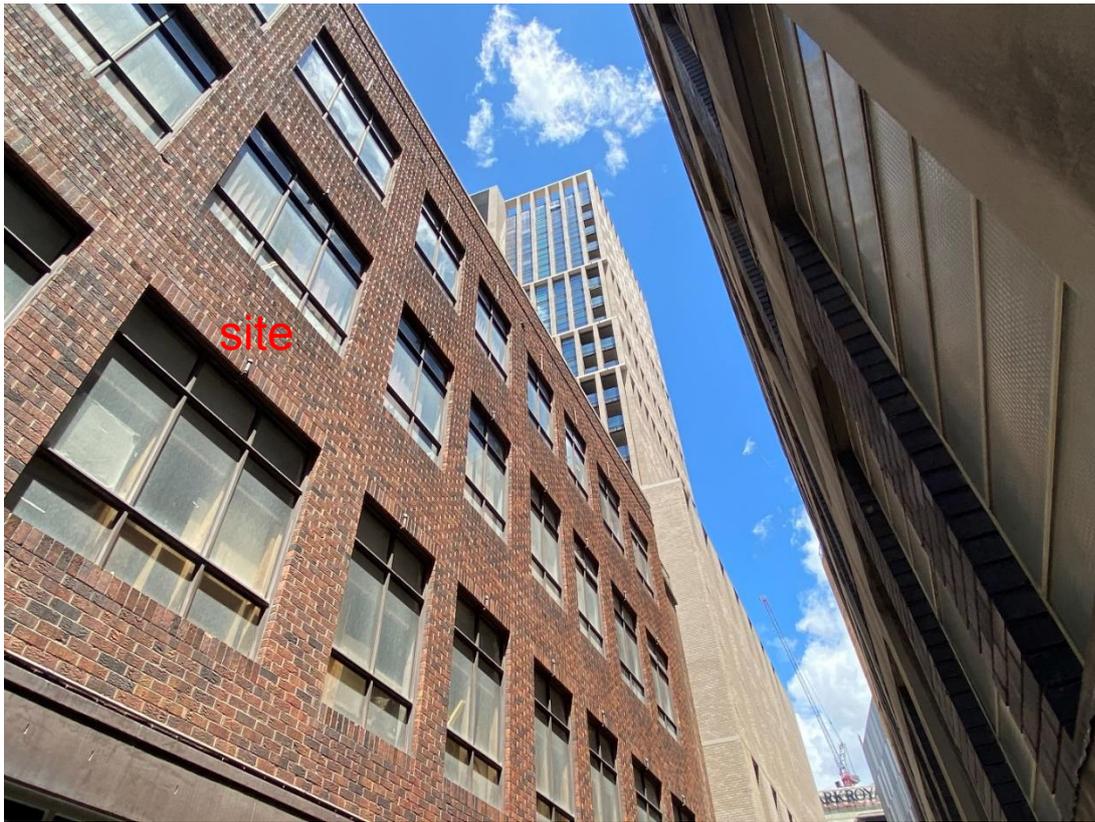


Figure 8: Druit Lane looking west. Subject site in the foreground and 60 Bathurst Street in the background.



Figure 9: Kent Street streetscape



Figure 10: Properties to site's north including 493-497 Kent Street and 483-491 Kent Street



Figure 11: Properties to the site's south including 503-505 Kent Street and 507-509 Kent Street

Proposal

5. The application seeks concept approval for a building envelope and design parameters including the following:
 - (a) retention of the existing heritage building's facade, part of the existing floors and some of the internal columns;
 - (b) construction of a 20-storey tower with a 4-storey podium (being the parts of the retained heritage building as described above), and 8 basement levels; and
 - (c) retail, commercial and residential land uses.
6. The maximum building height is 80m, and the maximum gross floor area of the development is 9,514sqm (including 10% future design excellence bonus, which should not be included as part of the Concept Approval, as detailed further below).
7. Amended plans were received on 12 March 2020, making the following modifications in response to concerns raised by the Design Advisory Panel Residential Subcommittee and Council officers:
 - (a) provision of a varied rear (western) setback, from 6m to between 1.9m and 9m;
 - (b) increase of front (eastern) setback at level 3 only, from 8m to 18m, to create an undercroft area. A front tower setback remains at 8m;
 - (c) use of the undercroft for increased communal space area consolidated at level 3;
 - (d) increase in residential apartments from 72 to 75; and
 - (e) consolidation of all commercial/retail floor space within the existing heritage building. The tower component comprises residential units only.
8. Plans of the proposed development as amended are provided below.



Figure 12: Indicative 3D views

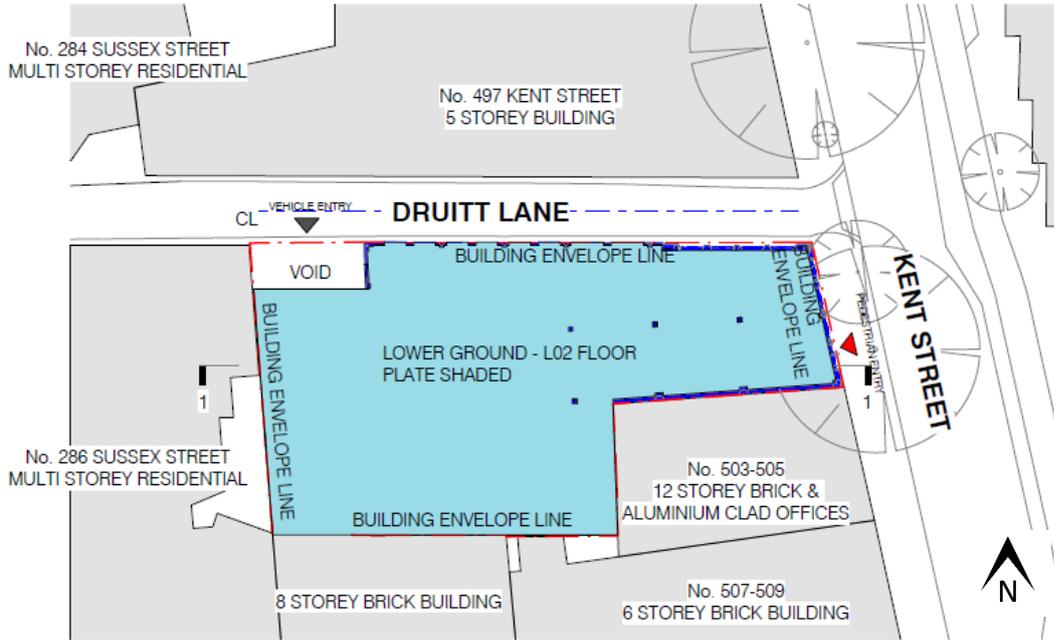


Figure 13: Lower ground - Level 2 envelope plan

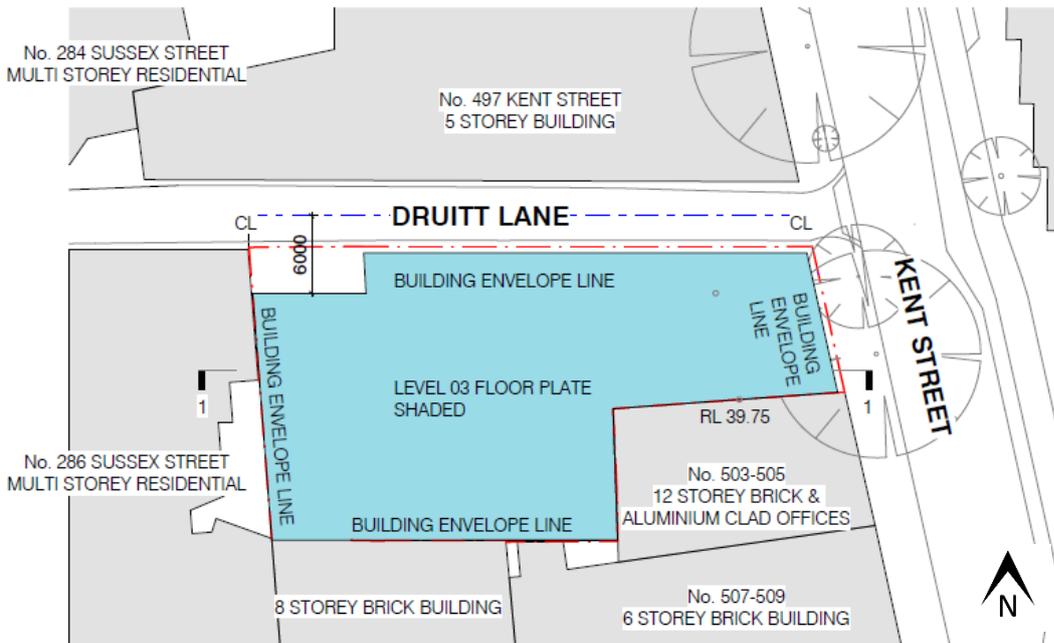


Figure 14: Level 3 envelope plan

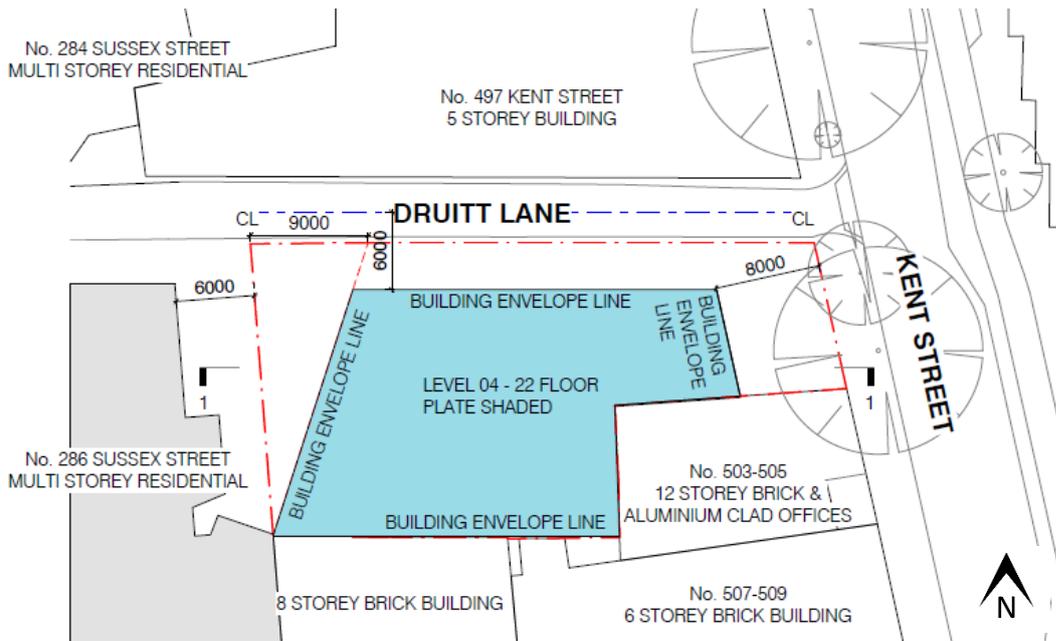


Figure 15: Level 4 - 22 envelope plan

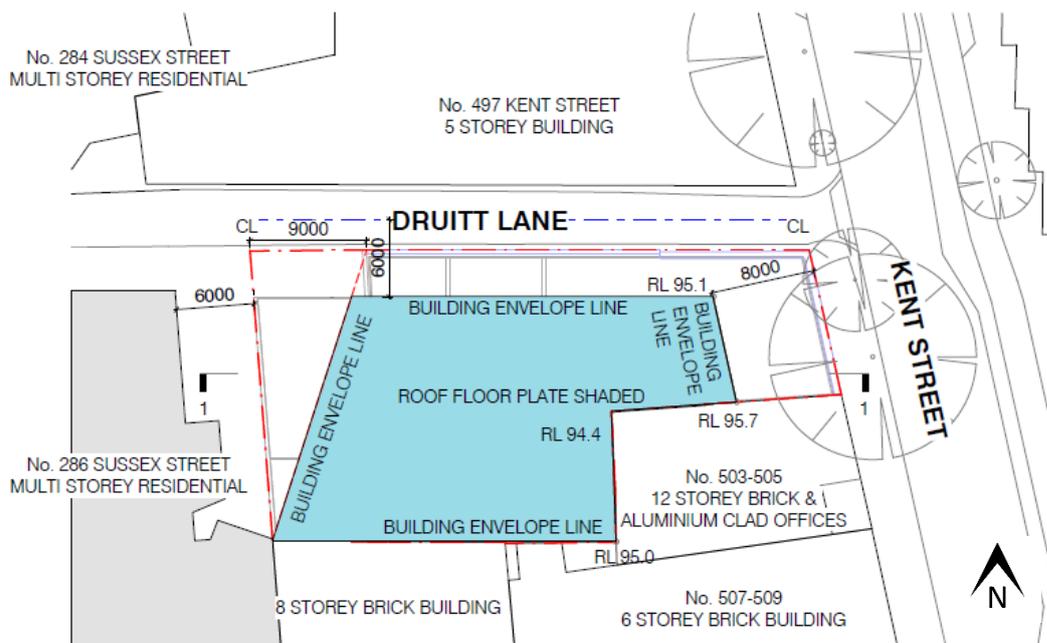


Figure 16: Roof envelope plan

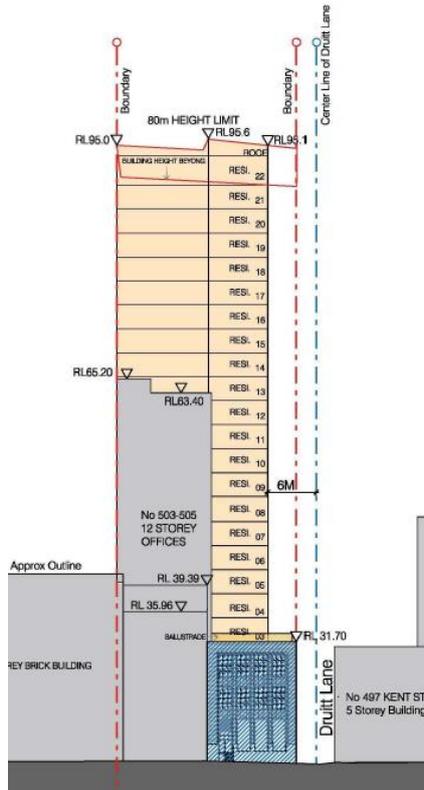


Figure 17: East (Kent St) elevation envelope plan

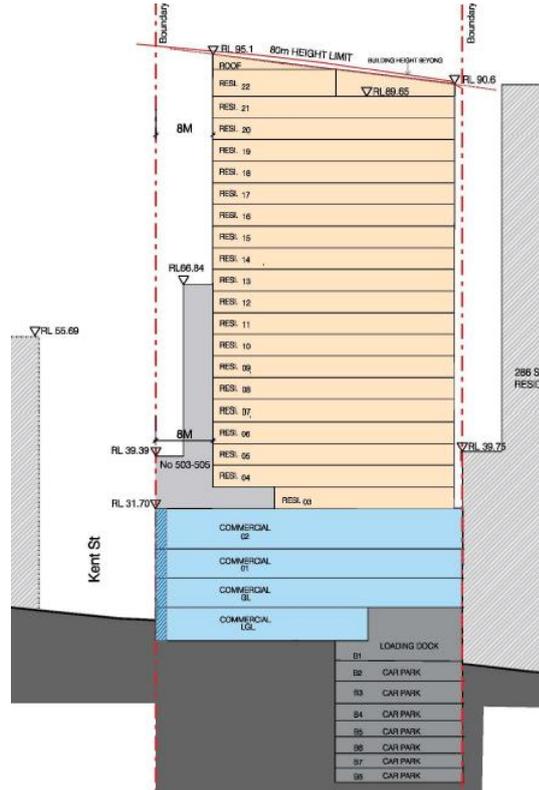


Figure 18: Envelope section

History Relevant to the Development Application

Pre-Lodgement

9. Pre-lodgement advice was provided by Council officers on 13 August 2018 and 3 April 2019, relating to the development of the site for the construction of a tower addition above the heritage building for serviced apartments and residential apartments.
10. In both correspondences, it was advised that the value and significance of the heritage item should be prioritised, and it is Council's preference that the award of Heritage Floor Space (HFS) as per Clause 6.10 of the Sydney LEP 2012 be explored instead of a tower addition.
11. It was advised that if a tower addition option was to proceed, the Stage 1 Concept application was to demonstrate full compliance with the relevant planning controls. It was also advised that the range of land uses were to be reconsidered and that the option of providing a commercial use within the tower was explored.

History of the Subject Application

12. The original proposal was presented to the Design Advisory Panel Residential Subcommittee on 10 December 2019. Notably, the Panel advised that the relationship between the indicative reference scheme and the proposed building envelope showed that it was a tight-fit building envelope, and that the scheme did not meet all relevant Apartment Design Guide (ADG) requirements which may create an unfortunate precedent at the competition and detailed DA stages. Concern was raised with the 6m upper level setback from the western boundary, with issues relating to insufficient separation, inadequate amenity and outlook for western apartments, and impacts on the apartments of the adjoining residential flat building to the west (60 Bathurst Street).
13. On 14 January 2019, a request for additional information letter was sent outlining several matters that were required to be addressed. Some of these matters included concerns relating to how the indicative reference design occupies the entire building envelope which presents a number of ADG challenges and limits the ability to achieve design excellence, matters relating to the relationship with the western neighbour (60 Bathurst Street), general ADG matters, flooding, and land contamination.
14. On 12 March 2020, in response to comments from the Design Advisory Panel Residential Subcommittee and Council's requested changes, an amended proposal was submitted, which included a variable west setback, an increased east setback at level 3 only to create an undercroft area, use of the undercroft area for increased communal space area consolidated at level 3, increase in residential apartments from 72 to 75 and consolidation of all commercial/retail floor space within the existing heritage building.
15. This amended proposal was presented to the Design Advisory Panel on 11 June 2019. The Panel noted that the site may not be suitable for a residential development and that many of the issues facing a residential redevelopment of the site would not be as significant if it was a commercial or mixed-use proposal. It was advised that if the applicant was to proceed with a residential scheme, then full compliance with all planning controls and the ADG would be necessary and not only limited to building setback, communal open space and floor to floor height controls. The Panel recommended that any future proposal will need to carefully assess heritage impacts and impacts on neighbouring properties and be clear as to the amenity being achieved by the proposal. The Panel also noted Council's pre-lodgement advice that the applicant should utilise the HFS scheme and supported this position.
16. On 3 July 2020, a withdrawal request letter was issued to the applicant, advising that the proposal in its current form is not supported as it will result in a building envelope that cannot achieve satisfactory building separation and internal residential amenity required under the Sydney DCP 2012, SEPP 65 and ADG, and subsequently does not satisfy design excellence provisions in Clause 6.21(4) of the Sydney LEP 2012. It was also specified that insufficient information was submitted in order to complete the assessment. The letter was concluded by advising that the only recommendation that could be made by Council is for the application to be refused.

City of Sydney Act 1988

17. 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."

18. The application and its associated traffic and transport issues was discussed with the CSTTC on 13 November 2019. In particular, the loading and servicing provision and arrangements as well as the proposed driveway access and design was discussed. The CSTTC deferred the matter to TfNSW. On 31 March 2020, TfNSW referred back to their response dated 24 September 2019, which provided items to be addressed as part of the Stage 2 Development Application including the preparation of a Freight and Servicing Car Lift and Shuttle Parking System Management Plan as well as a Construction Pedestrian and Traffic Management Plan.

Economic/Social/Environmental Impacts

19. 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

20. 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.
21. In accordance with Clause 7 (1) of SEPP 55, consent cannot be granted to the carrying out of any development unless:
 - (a) it has considered whether the land is contaminated; and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable), after remediation) for the purpose for which the development is proposed to be carried out; and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
22. Importantly, Clause 7 (3) of the SEPP outlines that the consent authority may require the applicant to carry out, and provide a report on, a detailed investigation if it considers that the findings of the preliminary investigation warrant such an investigation.
23. A Preliminary Site Investigation (PSI) for contamination prepared by Douglas Partners was submitted with the application. The PSI recommends that a Detailed Environmental Site Investigation (DESI) is to be carried out to confirm that the site is suitable (or will be suitable after mediation) for the proposed use.
24. As such, in Council's request for additional letter dated 14 January 2020, it was requested that a DESI be prepared. As recommended in the PSI, it was specified that the DESI include additional testing of the fill material around the heritage item on site to determine the lateral extent of contamination of the soils (namely the presence of metals and Polycyclic Aromatic Hydrocarbons (PAH's) in the soils), completion of soil sampling to the full depth of fill, and potentially an investigation into groundwater quality. It was also advised that where the DESI states that the site requires remediation, a Remediation Action Plan (RAP) is to be prepared in conjunction with an interim letter of advice from an NSW accredited site auditor.
25. The applicant provided a response on 11 March 2020, stating the following:

This DA seeks concept approval only. No demolition or construction works are proposed. A DESI will be prepared and submitted with the Stage 2 DA. This is considered appropriate given the subject (Stage 1) DA will not provide consent for demolition or construction works. A PSI is considered sufficient at this stage.

We suggest imposing a condition of consent requiring the preparation of a DESI as part of the detailed DA.

26. The City's Environment Health Unit do not support the above position, as Council must consider all impacts of a DA at concept stage including contaminated land, particularly where there is a change of use, in accordance with Clause 7 of SEPP 55. This is required as it is important to establish at concept stage whether the land use is going to be capable of being made suitable for the proposed use and the deferral of the issue to the detailed DA stage can create significant issues in the future. The current use is commercial only, whereas the proposed use will include residential apartments on the upper levels, and therefore there is an increase in sensitivity to the uses on site. It is also noted that part of the site is covered by a hard stand area where some testing could be readily conducted.
27. As such, the deferral of land contamination information is not supported, and a DESI is required at concept stage. In accordance with the requirements of SEPP 55, the application is not accompanied by adequate information to confirm that the site is suitable or capable of being made suitable for its intended land uses, and therefore development consent cannot be granted for the concept DA. This forms part of the reasons for refusal.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 45

29. The application is subject to Clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development will require a substation and was referred to Ausgrid for comment.
30. On 4 May 2020, Ausgrid provided a response advising that no objections were raised, subject to the imposition of conditions.

Clause 85

31. The application is subject to Clause 85 (Development adjacent to rail corridors) of the SEPP, given the location of the site in proximity to the rail corridor, and was required to be referred to Sydney Trains for comment.
32. On 23 December 2019, Sydney Trains provided a response to the proposal, including recommended conditions of consent.

Clause 88

33. The application is subject to Clause 88 (Development within or adjacent to interim rail corridor) of the SEPP as the proposed works are located in proximity to the CBD Rail Link (CBDRL) (Zone B) corridor and was required to be referred to TfNSW.
34. On 24 September 2019, TfNSW provided a response to the proposal, including items to be considered as part of the Stage 2 Development Application.
35. On 31 March 2020, TfNSW referred back to their previous comments.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

36. SEPP 65 provides that in determining an application for a residential flat development of three or more storeys and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including the 9 design quality principles at Schedule 1.
37. In accordance with Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000, a design verification statement is required to accompany an application that relates to residential development. The design verification statement is to be prepared by a qualified designer (a registered architect):
- (a) Verifying that he or she designed or directed the design of the development;
 - (b) Provide an explanation that verifies how the development:
 - (i) Addresses how the design quality principles are achieved; and
 - (ii) Demonstrates in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.
38. While the original application was accompanied by a statement addressing the design report including the above requirements, the amended proposal was not. As such, the amended application is not accompanied by a design verification statement in accordance with the Regulations and cannot be supported.

Notwithstanding, an assessment against the nine design quality principles is outlined below. This concept application as amended proposes a building envelope, with an accompanying proof of concept scheme to demonstrate how the building could comply with SEPP 65 and the accompanying Apartment Design Guide (ADG).

(a) **Principle 1: Context and Neighbourhood Character**

The proposed building envelope does not appropriately consider the surrounding context. The future built form and setbacks will adversely impact on adjoining properties. Please refer to the Issues Section for discussion.

(b) **Principle 2: Built Form and Scale**

The impacts on the adjoining western building will result in a poor urban design outcome and is not supported.

(c) **Principle 3: Density**

The indicative scheme prematurely includes the 10% bonus floor space within the total floor space of the site. As such, the proposal exceeds the maximum permitted FSR under the Sydney LEP 2012.

(d) **Principle 4: Sustainability**

Sustainability objectives have been targeted including compliance with the requirements of Section J Energy Efficiency, 4 Star Green Star Design and As-Built v1.2 Equivalence, 5.5 Star NABERS Energy Base Building Rating, and NSW BASIX compliance.

(e) **Principle 5: Landscape**

The site does not provide deep soil on site, consistent with the dense urban context of Central Sydney. The indicative scheme identifies areas for landscaping on the podium as well as a landscaping statement which requires amendments, as outlined further in the Issues section below.

(f) **Principle 6: Amenity**

The indicative scheme demonstrates the proposed envelope will result in adverse amenity impacts to future occupants of the site as well as neighbouring sites, with separation, privacy, outlook and cross ventilation as key issues. Please refer to the Issues Section.

(g) **Principle 7: Safety**

The development would be required to address the provisions of CPTED as part of a detailed design application.

(h) **Principle 8: Housing Diversity and Social Interaction**

The indicative scheme provides for a limited range of apartment types, as detailed in the compliance tables below.

(i) **Principle 9: Aesthetics**

If the proposal was supported, the development would be subject to a design competition and detailed design application.

39. As the development will result in poor built form and amenity outcomes, the proposal is not considered to comply with the design quality principles. Further discussion is provided below regarding the Apartment Design Guide.

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	No	The indicative scheme slightly exceeds the required, with a building depth of 18.9m provided.

2F Building Separation / 3F Visual Privacy	Compliance	Comment
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> 12m between habitable rooms / balconies 	No	The proposed building envelope and indicative scheme does not meet the minimum setback/separation distances. Particular concern is raised regarding the changes to the western setback. This is discussed further in the Issue Section below.

2F Building Separation / 3F Visual Privacy	Compliance	Comment
<ul style="list-style-type: none"> • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms <p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> • 24m between habitable rooms / balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 		

3D Communal and Public Open Space	Compliance	Comment
<p>Communal open space has a minimum area equal to 25% of the site.</p>	<p>Partial compliance</p>	<p>The indicative scheme provides for approximately 295sqm (36% of the site area) of communal open space on Level 3.</p> <p>Despite meeting the numerical requirement, there are several useability and amenity concerns regarding the proposed communal open areas.</p> <p>Please refer to the Issues Section for discussion.</p>

3D Communal and Public Open Space	Compliance	Comment
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	No	A large portion (approximately 10m in depth) of the front communal open space area is covered by the level above. This significantly reduces the amount of direct sunlight received to this area.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	No, however considered acceptable	<p>The opportunity to provide deep soil zones are constrained as the proposed building footprint occupies the whole site.</p> <p>The design guidance states that the provision of deep soil, in accordance with the design criteria, may not be suitable in the central business district.</p>

Separation between windows and balconies is required to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Further information required	The applicant states that 85.33% of units receive a minimum of 2 hours direct sunlight in midwinter to living rooms and private open spaces.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.		However, additional information is required to satisfy Council that these controls are met. The solar access documentation submitted is not coordinated so it is difficult to determine if the indicative scheme achieves adequate solar access requirements. The apartments have not been numbered and it is not possible to review the submitted solar access spreadsheet with the sun's eye views. Additionally, 15-minute intervals are shown in the spreadsheet however only hourly sun's eye viewed has been provided.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	Complies.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No	<p>The applicant states that 78.26% of units are naturally cross ventilated.</p> <p>However, Council's Urban Design Specialist considers that changes to the western setback, results in only the apartments fronting Kent Street (approximately 25% of units) being able to be naturally cross ventilated.</p> <p>Please refer to the Issues Section for discussion.</p>

Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows in the table below.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	No	The indicative scheme shows floor to floor heights of 3.05m. Section 2C of the ADG indicates that in addition to the ceiling heights, an additional 0.4m per floor is required for structure, services, set downs and finishes. This is supported by Figure 4C-5 which indicates that a floor to floor height of 3.1m is required to accommodate 2.7m floor to ceiling heights.
Non-habitable rooms: 2.4m	Yes	Complies.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Yes	Complies.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m².</p>	Yes	The indicative scheme demonstrates that compliant apartment sizes and configurations can be achieved within the proposed envelope.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.		

4D Apartment Size and Layout	Compliance	Comment
Habitable room depths are to be no more than 2.5 x the ceiling height.		
8m maximum depth for open plans.		
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² Minimum dimension of any bedroom is 3m (excluding wardrobes).		
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 		

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	Yes	Indicative plans demonstrate that appropriately dimensioned wintergardens/private open spaces can be provided within the proposed building envelope.

4E Private Open Space and Balconies	Compliance	Comment
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m ² and a minimum depth of 3m.	Yes	<p>The apartments on Level 3 of the podium have private open space areas in excess of these requirements.</p> <p>However, it is noted that these areas may conflict with the communal open spaces areas also provided on this level, in terms of visual and acoustic privacy.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The indicative scheme demonstrates compliance with this provision is achievable.
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Yes	Indicative plans demonstrate that 2 lifts will be provided.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to other rooms should be carefully controlled.	Yes	Indicative floor plans demonstrate that the proposed building envelope is capable of addressing circulation and privacy impacts with adequate separation between habitable room windows and common circulation areas.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	A window is provided on each level to the common corridors, which will provide daylight and natural ventilation.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Studio: 4m3 • 1 bed: 6m3 • 2 bed: 8m3 • 3 bed: 10m3 <p>(Minimum 50% storage area located within unit)</p>	Yes	The indicative plans do not show storage facilities, however details would be required to be provided at detailed design stage, demonstrating compliance.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	No	No Acoustic Assessment has been submitted. This assessment would be useful in addressing any potential acoustic issues with the indicative scheme and would be required prior to design competition stage to inform competitors of any noise impacts that may affect the design.

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

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

Sydney Local Environmental Plan 2012

43. The site is located within the B8 - Metropolitan Centre zone. The proposed use is defined as retail and residential uses and is permissible.
44. 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	<p>A maximum height of 80m is permitted.</p> <p>A height of 80m is proposed.</p>
<p>4.4 Floor Space Ratio</p> <p>6.4 Accommodation Floor Space</p>	No	<p>A maximum FSR of 8:1 is permitted.</p> <p>In accordance with Clause 6.4 of the Sydney LEP 2012, the application can seek additional floor space of 2:1 for commercial uses and 3:1 for residential uses (proportionate to the part of the building used for that purpose). This equates to a permissible FSR of 10.77:1.</p> <p>The applicant submits that the proposed building envelope is capable of accommodating an FSR of 11.72:1</p> <p>In order to achieve an FSR of 11.72:1 the applicant must undertake a competitive design process in accordance with Clause 6.21 of the Sydney LEP 2012 and demonstrate design excellence in Stage 2 Development Application.</p> <p>Please refer to the Issues Section for discussion.</p>

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The subject site includes a local heritage item.</p> <p>Council's Heritage Specialist has reviewed the proposal and advises the following:</p> <ul style="list-style-type: none"> • The extent of demolition is extensive. However, excluding the original walls and floor structure, there are little original fabric and finishes remaining within the building. The interior of the building has been significantly modified. • It is noted that there are anomalies between the demolition plans and indicative scheme plans as to the extent of retention of concrete columns and associated beams, with 4 and 6 columns respectively showed to be retained. A condition of consent would rectify this. • The proposal includes the restoration of the steel framed windows and front elevation. <p>Therefore, while the proposal will result in extensive works, the impacts on the heritage item is generally acceptable.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.19 Overshadowing of certain public spaces	Yes	The proposal will not cause additional overshadowing to Sydney Town Hall Steps and Sydney Square to the times specified in Clause 6.19 of the Sydney LEP 2012.
6.21 Design excellence	No	The development is located in Central Sydney and exceeds 55m in height. As such, a design competition would be required to be held prior to the submission of a detailed design application.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<p>As discussed above, the proposal has prematurely included the bonus floor space up to 10% if a competitive design process is undertaken and design excellence is demonstrated at Stage 2, which should be excluded from the Concept DA.</p> <p>The building envelope and indicative scheme does not provide for a tower that achieves an acceptable relationship with other towers in terms of separation, setbacks, amenity and urban form, and thus is contrary to Clause 6.21(4)(d)(iv) and (vii) of the Sydney LEP 2012. Therefore, the proposal is not considered to achieve design excellence.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	The proposal seeks 38 residential car spaces within 8 levels of basement parking. Car parking numbers and configuration is not approved as part of a concept application.
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing Class 5 Acid Sulphate Soil (ASS).</p> <p>At detailed design stage, it would be determined if the ASS provisions of the Sydney LEP 2012 are triggered by any proposed works under natural ground level.</p>
7.15 Flood planning	No	<p>The subject site is located in the Darling Harbour catchment and is identified to have some affectation in the Probable Maximum Flood (PMF).</p> <p>During the assessment of the application, a Flood Assessment was requested.</p>

Part 7 Local Provisions - General	Compliance	Comment
		<p>The submitted Flood Assessment Report prepared by Taylor Thomson Whiting “<i>recommends that the below-ground garage/car park level to be set at PMF flood levels as flood planning levels</i>”. The PMF level at the highest point of the entry to the below ground garage/car park is RL 10.70. The garage/car park floor level has been set at RL 10.20 – 0.5m below the PMF.</p> <p>Council's Public Domain team consider that insufficient information has been submitted, and the following is required:</p> <ul style="list-style-type: none"> • Either the plans are to be amended to suit the levels required in the report, or • The report is to be amended to clarify floor level and/or entry level requirements.
7.16 Airspace operations	Yes	The proposed development will not penetrate the Obstacle Limitation Surface (156m AHD) as shown on the Obstacle Limitation Surface Map for Sydney Airport.
7.20 Development requiring preparation of a development control plan	Yes	<p>The development is located in Central Sydney and exceeds 55 metres in height. As such a site-specific development control plan is required.</p> <p>Pursuant to Section 4.23 of the EP&A Act, this concept application has been lodged in lieu of a site-specific development control plan to satisfy the control. The design excellence strategy is discussed with regard to Section 3.3 of the Sydney DCP 2012.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.24 Development near Cross City Tunnel ventilation stack	Yes	<p>The site is located within 'Land affected by Cross City Tunnel Ventilation Stack' identified in Sydney LEP 2012.</p> <p>A Ventilation Stack Air Quality Assessment was submitted with the application. The assessment concludes that the proposed development would not affect the dispersion of emissions from the Cross City Tunnel ventilation stack and persons occupying the proposed development will not be unduly affected by those emissions.</p>

Sydney Development Control Plan 2012

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

2. Locality Statements – Sydney Square/Town Hall/St Andrews Special Character Area
<p>The subject site is located in the Sydney Square/Town Hall/St Andrews Special Character Area. The reasons for refusal of this DA illustrate that this site is constrained and that the development, as proposed, is not suitable for this locality.</p>

3. General Provisions	Compliance	Comment
3.1.5 Public Art	Yes	<p>A Public Art Strategy has been submitted to the satisfaction of Council's Public Art team. In the event the application was to be supported, a condition of consent would be recommended requesting that the public art is developed in line with the approved strategy and a Detailed Public Art Plan is submitted for the detailed DA.</p>

3. General Provisions	Compliance	Comment
3.3 Design Excellence and Competitive Design Processes	Further Information required	<p>A Design Excellence Strategy associated with the proposed envelope has been submitted.</p> <p>The Strategy has been reviewed by Council's Design Excellence Coordinator, who requires further clarification regarding ESD targets from the applicant. A final Design Excellence Strategy has not been accepted.</p>
3.5 Urban Ecology	Yes	The indicative scheme identifies areas for landscaping on the podium as well as a landscaping statement which requires amendments, as outlined further in the Issues section below
3.6 Ecologically Sustainable Development	Yes	<p>It is understood from the documentation submitted that the following sustainability objectives have been targeted:</p> <ul style="list-style-type: none"> • Building Code of Australia – compliance with the requirements of Section J Energy Efficiency; • 4 Star Green Star Design & As-Built v1.2 Equivalence • 5.5 Star NABERS Energy Base Building Rating • NSW BASIX compliance <p>It is noted that these targets are yet to be clarified in the submitted Design Excellence Strategy.</p>
3.7 Water and Flood Management	Further information required	As discussed in the Sydney LEP 2012 compliance table, the submitted plans and flood assessment report require further coordination with regard to flood planning levels
3.9 Heritage	Partial compliance	Discussed in the Sydney LEP 2012 compliance table.

3. General Provisions	Compliance	Comment
3.11 Transport and Parking	Partial compliance	Please refer to the Issues Section for discussion.
3.12 Accessible Design	Yes	Had the recommendation been for approval, a condition would have been included to ensure that the proposed development provided appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.14 Waste	No	An insufficiently detailed waste management plan has been provided as part of the application documents. The waste management plan must comply with the criteria in City of Sydney Guidelines for Waste Management in New Developments 2018.

4. Development Types 4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
4.2.3 Amenity	No	<p>The envelope and accompanying indicative plans demonstrate that the development will result in adverse amenity impacts for the residential component of the development, as well as the adjoining western neighbour.</p> <p>Further discussion is provided in the Issues Section.</p>
4.2.3.11 Flexible Housing	Partial compliance	<p>The indicative scheme does not fully comply with the dwelling mix required by the Sydney DCP 2012, as follows:</p> <ul style="list-style-type: none"> • <i>Studio</i>: 5-10% required, zero provided. Does not comply. • <i>1-bedroom</i>: 10-30% required, 19 units / 25% provided. Complies • <i>2-bedroom</i>: 40-75% required, 55 units / 73% provided. Complies

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed-use developments		<ul style="list-style-type: none"> 3+bedroom: 10-100% permitted, 1 unit / 1% provided. Does not comply. <p>Had the recommendation been for approval, conditions of consent would have been required for the detailed design to demonstrate compliance with these controls.</p>

5. Specific Areas	Compliance	Comment
5.1.2 Building setbacks	No	<p>New buildings or additions above a heritage item must have a setback of at least 10m from the street frontage height. The amended proposal has provided an increased front (eastern) setback at level 3 only, from 8m to 18m. Overall, the front tower setback remains at 8m which does not comply with these controls. Council consider the front setback non-compliance acceptable as:</p> <ul style="list-style-type: none"> Existing tall buildings above street walls present smaller setbacks from Kent Street. Due to its location and narrow frontage, the range of views on Kent Street towards the proposed tower is constrained. The 8m setback is able to provide an acceptable visual relationship with the retained heritage building and neighbouring heritage buildings. Section 5.1.3 of the DCP allows for 8m setbacks (refer to below).

5. Specific Areas	Compliance	Comment
		<p>There are two eastern boundaries - one being the Kent Street boundary, and the other being behind the neighbouring site at 503-505 Kent Street. A zero-metre setback is provided to the eastern boundary to 503-505 Kent Street, which will result in a blank wall. While located mostly behind the existing building at 503-505 Kent Street, it is noted that there will be 10 storeys (approximately 32m) of blank wall visible above this neighbouring building.</p> <p>Concern is raised regarding the non-compliant western setback. Refer to the Issues Section for discussion.</p>
5.1.3 Special Character Areas	Yes	<p>Provision (2) of this section specifies that for development within a Special Character Area where the setback is not illustrated in Figures 5.12 to 5.19 (subject site not identified in Figure 5.18), setbacks above the street frontage height are to be a minimum of 8m.</p> <p>As above, the proposed 8m front setback is acceptable.</p>
5.1.5.2 Residential buildings and serviced apartments	Yes	<p>The proposed tower floor plate is less than 1,000sqm and the horizontal dimension of the tower facade to both street frontages is less than 40m.</p>
5.1.9 Award and allocation of heritage floor space	Yes	<p>The proposal is not supported, however if approval were to be granted, the development would be subject to the provision of Section 5.1.9 at the detailed design stage.</p>

Issues

Setbacks

Rear (western) setback

46. The amended proposal comprises a variable setback of 1.9m-9m from the western boundary for the tower. It is understood that this splayed setback was provided to address privacy matters during the assessment of the application. However, this setback remains inconsistent with the requirements of the ADG, with regard to building separation, outlook and natural cross ventilation issues, as follows:
- The proposed building envelope and indicative scheme does not comply with the minimum separation distances between habitable openings, as outlined by parts 2F and 3F of the ADG - 24m building separation required (9 storeys and above), to be shared equally between sites. As a result, the apartments within the development as well as adjoining sites will have compromised visual and acoustic privacy.
 - In the tower, the minimum separation distance should be 12m. However, as per Figure 19 below, between 1.9m and 9m is provided. This results in both the apartments to the western boundary on a typical floor (L4-L8) having single aspect apartments with solid walls to the west.
 - This affects the ability of these apartments to contribute to natural cross ventilation. Part 4B of the ADG require a minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated, however Council's Urban Design Specialist considers that these changes to the western setback, results in only the corner apartments fronting Kent Street being able to be naturally cross ventilated (approximately 25% of units).
 - This also results in the south western apartment having poor outlook to the north, as it is blocked by the apartment in front which is located approximately 1.5m from the balcony and 4m from the external north facing wall.
 - The blank walls to the west indicate that there are still insufficient ADG separations between residential buildings across the western boundary. The blank walls are there to mitigate the visual and acoustic privacy impacts.
47. Council acknowledge that the adjoining western property, 60 Bathurst Street, encroaches on the separation requirements. However, at the time of the assessment of that application, the non-compliances were considered appropriate given the subject site's heritage status and the unlikelihood of a residential tower being developed.

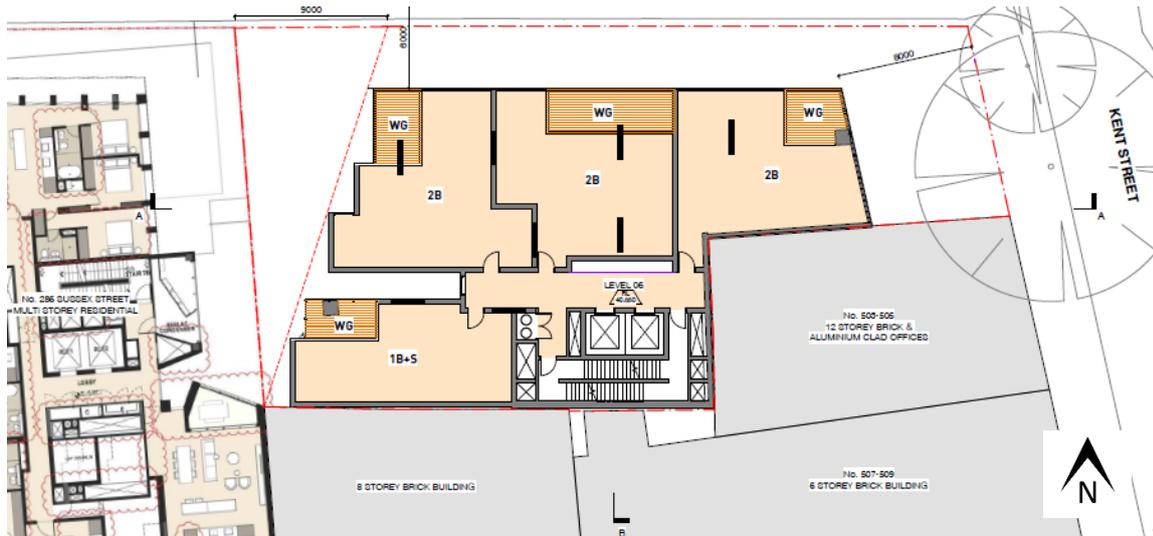


Figure 19: Typical tower floor plan

Communal Open Space

- 48. The ADG specifies that communal open space has a minimum area equal to 25% of the site, and that 50% of this space receive direct sunlight for 2 hours midwinter. The ADG also provides guidance for how the communal open space is to be designed, in that it should be consolidated into a well-designed, easily identified and useable area. It also outlines that communal open space should be separated from private open space and windows to apartments.
- 49. The indicative scheme provides for approximately 295sqm of communal open space on Level 3 which accounts for 36% of the total site area.
- 50. Despite meeting the numerical ADG requirement, several concerns are raised regarding the proposed layout of these areas, as follows:
 - (a) a large portion of the front communal open space area being covered by the level above, as shown in Figure 20 below. This significantly reduces the amount of direct sunlight received to this area and essentially reduces the 'openness' of this space.

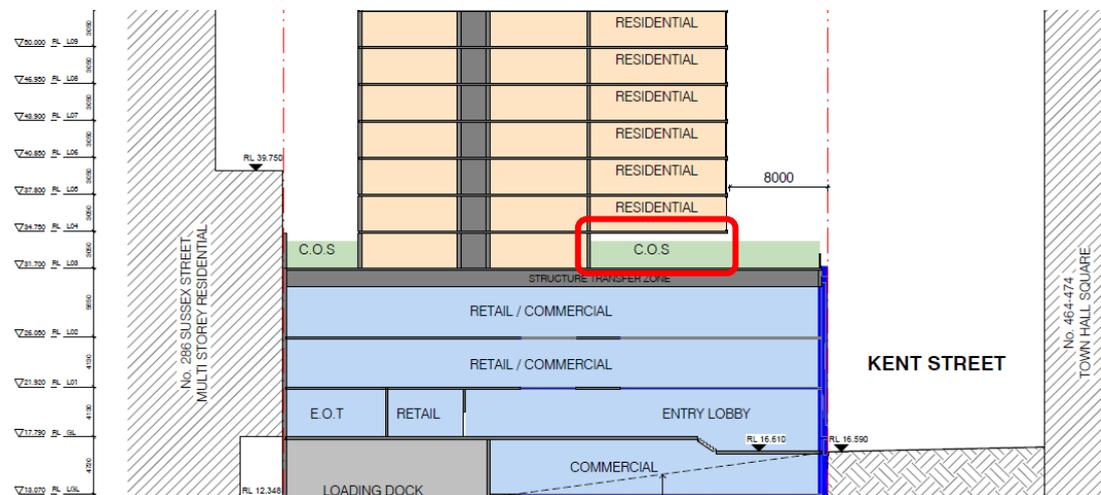


Figure 20: Indicative section. Large portion of common open space that is essentially 'roofed' circled.

- (b) Issues also arise with the proposed common open space to the west, with privacy issues with the western apartments on Level 3, which directly adjoin the common open space area. Additionally, a tall 3m wall is proposed to be built to the western boundary to mitigate privacy impacts with the adjoining property to the west, which is not an amenable outcome in terms of outlook and sunlight. Please refer to Figure 21 below.

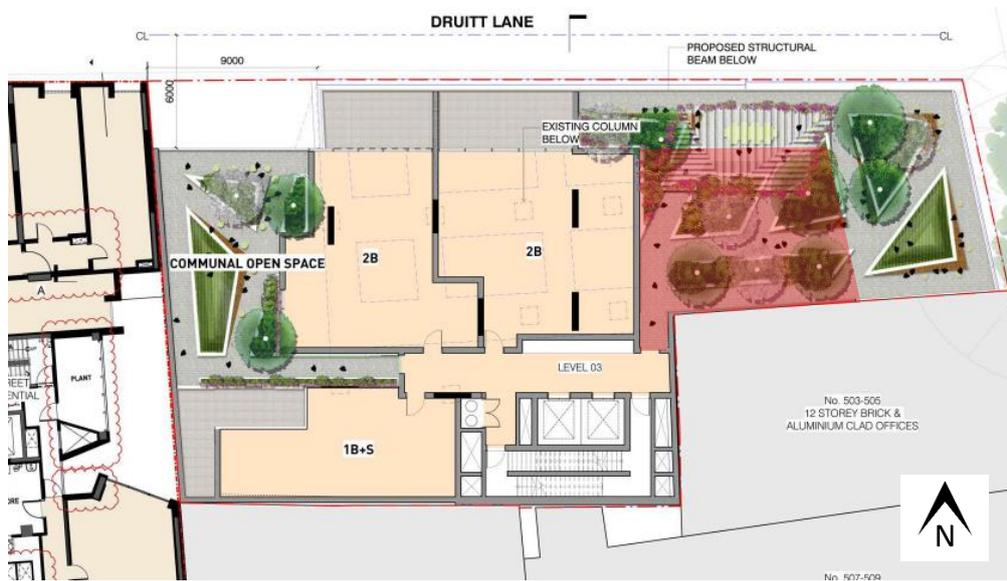


Figure 21: Indicative Level 3 plan. Approximate area undercover shaded in red.

51. Additionally, the submitted wind report has not been updated to confirm the suitability of the revised communal open space layout, which is required to demonstrate that this area is useable and amenable for future residents.
52. In consideration of the above, although the provision of communal open space area meets the ADG requirement, there are several issues associated with the amenity and useability of these spaces which will result in adverse impacts for the future occupants.

Floor to Ceiling Heights

53. The ADG requires that a floor to ceiling height of 2.7m is provided for habitable rooms. The height of ceiling contributes to amenity within an apartment and the perception of space. Ceiling height is also directly linked to achieving sufficient natural ventilation and daylight access.
54. The indicative scheme shows floor to floor heights of 3.05m which is not considered sufficient to accommodate 2.7m floor to ceiling heights. As stated previously, Section 2C of the ADG indicates that in addition to the ceiling heights, an additional 0.4m per floor is required for structure, services, set downs and finishes. Therefore, a floor to floor height of 3.1m would be more appropriate. This is supported by Figure 4C-5 which indicates that a floor to floor height of 3.1m is required to accommodate 2.7m floor to ceiling heights.
55. However, the height of the proposed building envelope is already at the maximum permitted. The application seeks to squeeze 24 storeys into a building envelope that has significant topography, a heritage building with existing floor to floor levels and an 80m high control.

56. A 21-storey building may be more appropriate within the maximum height control, providing for 3.1m floor to floor heights required for habitable rooms.

Floor Space Ratio

57. The proposed building envelope and indicative floor plans demonstrate that the envelope is capable of accommodating up to 9,514sqm of gross floor area, equating to a FSR of 11.72:1:1. The proposed FSR includes up to an additional 10% FSR for design excellence under the provisions of Clause 6.21 of the SLEP 2012.
58. As the quantum of floor space and gross floor area are not normally approved as part of a concept plan, it is not considered appropriate to award additional floor space as part of this application. Any additional floor space sought must comply with the provisions of the Sydney LEP 2012 and Sydney DCP 2012 and demonstrate the proposal exhibits design excellence. As such, the proposal exceeds the maximum permitted FSR under the SLEP 2012 (as the award of additional floor space must be excluded).

Land Use Suitability

59. The amended building envelope and indicative scheme shows that a residential development may not be suitable for the site, with achievement of key ADG requirements unable to be demonstrated. Particular concern is raised where, seeking to address one requirement results in a number of non-compliances with other requirements (i.e. changes to the western setback to address privacy issues has resulted in cross ventilation and outlook issues).
60. It is also noted that the majority of proposed apartments will have a sole aspect to the north over a 3.7m wide laneway, across which is an under-developed site with a LEP height limit of 80m.
61. As recommended in pre-lodgement advice, and by DAP and DAPRS during the assessment of this application, a commercial tower may be more suitable and fit more comfortably with the site constraints and controls.

Insufficient Information

62. As raised throughout this report, the application contains insufficient information to enable the assessment of the proposal to be completed. The information that is required to enable a proper assessment include the following:
- (a) *Detailed Environmental Site Investigation (DESI)* – A DESI has not been submitted. Council must consider all impacts of a DA at concept stage included contaminated land, particularly where there is a change of use as per Clause 7 of SEPP 55. In accordance with the requirements of the SEPP, the application is not accompanied by adequate information to confirm that the site is suitable or capable of being made suitable for its intended land uses, and therefore development consent cannot be granted for the concept DA.
 - (b) *Solar access information* – The information submitted is not coordinated so it is difficult to determine if the indicative scheme achieves adequate solar access requirements. The apartments have not been numbered and it is not possible to review the submitted solar access spreadsheet with the sun's eye views. Additionally, 15-minute intervals are shown in the spreadsheet however only hourly sun's eye viewed has been provided.

- (c) *Design Excellence Strategy* – Council's Design Excellence team require further information regarding ESD targets. A final Design Excellence Strategy has not been accepted.
- (d) *Flooding and floor levels* – As advised above, Council's Public Domain team consider that the plans and flood assessment report require further coordination with regard to flood planning levels.
- (e) *Landscape scheme* – The submitted landscape statement is very detailed, which negates the intent of a landscape strategy at concept stage. In order for it to be included in a design competition brief it must not include an actual design, nor any images based on the reference scheme. The landscape statement should be revised to become a written statement with any necessary diagrams and precedent images. All diagrams must reference the envelope drawings only, and the written statement must document the constraints, aspirations for the landscape design, and key design requirements, and set a benchmark for the level of quality and amenity intended for the communal open spaces.
- (f) *Waste Management Plan (WMP)* – An insufficiently detailed waste management plan has been provided as part of the application documents. The waste management plan must comply with the criteria in City of Sydney Guidelines for Waste Management in New Developments 2018.
- (g) *Noise Impact Assessment (NIA)* – No NIA has been submitted. Although this is usually required at detailed development application, this assessment would be useful in addressing any potential acoustic issues with the indicative scheme and would be required prior to design competition stage to inform competitors of any noise impacts that may affect the design.

Traffic and Servicing

- 63. Council's Transport Unit have advised that while transport implications are assessed in detail in the detailed design application, vehicle accesses and loading/servicing issues are imperative at concept stage. As such, the prime concern remains regarding waste collection and access requirements for a Council garbage truck.
- 64. Private waste collection is proposed, with the development including a loading dock to accommodate a maximum 6.4m long vehicle (Small Rigid Vehicle, SRV). The amended Traffic Assessment suggests that due to the heritage item and reverse manoeuvring on Druitt Lane, Council's standard waste collection vehicle (9.25m long) is not suitable.
- 65. Whilst Council may accept private contractors to service residential development, Council require that development comply with the design requirements within the City's Guidelines for Waste Management in New Developments 2018 to ensure Council's ability to collect waste in the future, if required.

66. As such, Council's Transport Unit are now satisfied that further information can be provided in association with the detailed design application to address the requirements of Section 3.11 of the Sydney DCP 2012, as per below:
- (a) Servicing and loading:
 - Conditions of consent are recommended to ensure that the width of the driveway crossover is to be minimised as far as practical whilst still enabling access for Council's standard waste vehicle, provide swept paths of the largest vehicle to access the proposed loading area, and that waste collection is to be accommodated on-site. Had the recommendation been for approval, these would have been imposed in the consent.
 - (b) Car parking:
 - Residential parking spaces are proposed at the maximum permissible under the Sydney LEP 2012. It is preferable if parking was eliminated, if not further reduced in this location to encourage modal shift towards sustainable transport.
 - Car parking numbers, types and final layout is not approved as part of a concept application and would be subject to further consideration and approval during the assessment of a future detailed design development application.
 - (c) Bike parking:
 - The indicative plans would require approximately 104 bike spaces for customers, staff, residents and visitors. The amended documentation does not specify the indicative amount of parking provided however an increased bike parking storage area has been provided at ground floor which is likely to accommodate the required amount.

Suitability of the site for the Development

67. The development gives rise to adverse amenity impacts for future occupants, as well as adjoining site, and will result in a poor planning and urban design outcome. As such, the site is not considered suitable for the development.

Internal Referrals

68. The application was referred to, or discussed with, the following referral officers and bodies for review:
- (a) Design Advisory Panel Residential Subcommittee;
 - (b) Design Advisory Panel;
 - (c) Design Excellence Unit;
 - (d) City Model Unit;
 - (e) Heritage Specialist;

- (f) Urban Design Specialist;
 - (g) Environmental Health Unit;
 - (h) Public Domain Unit;
 - (i) Specialist Surveyor;
 - (j) Transport and Access Unit;
 - (k) Landscaping Officer;
 - (l) Sustainability Team; and
 - (m) Waste Management Unit.
69. As discussed elsewhere in this report, the above maintain matters of concern with regard to the proposed development.
70. Had the recommendation been for approval, where relevant, the conditions of other sections of Council have been included in the proposed conditions.

External Referrals

Notification, Advertising and Delegation

71. The proposal was originally advertised and notified for a period of 28 days between 4 September 2019 and 3 October 2019. A total of 1773 properties were notified and there were 12 submissions received objecting to the proposed development.
72. The application was re-notified and re-advertised following design amendments for a period of 28 days between 20 March 2020 and 18 April 2020. A total of 8 objections were received during this notification period.
73. As a result of the 2 notification periods, a total of 20 objections were received from 16 individuals. Issues raised are below:
- (a) Overall impact on surrounding heritage buildings:
 - (b) Loss of significant fabric and finishes of base heritage building:

Response - As noted in various Council officer advices to the applicant, the sympathetic restoration of the building and the award of Heritage Floor Space is preferred. Notwithstanding this, in consideration of the current application, the Council's Heritage Specialist considers the proposed envelope and indicative scheme do not adversely impact upon the heritage item and surrounding heritage context.

In addition, while the extent of demolition is extensive, there are little original fabric and finishes remaining within the building with the interior of the building has been significantly modified. The proposal includes the retention of the existing heritage building's facade.

- (c) Insufficient separation and setbacks:

Response - As discussed above, the proposed western setback is not supported given that it provides for insufficient separation with the adjoining neighbour, and results in natural cross ventilation and outlook impacts.

- (d) Visual amenity impacts to neighbouring sites:

Response - As discussed above, the proposal is not supported.

- (e) Solar access impacts:

Response - As discussed above, insufficient information has been provided to properly assess solar access impacts.

- (f) Extent of excavation and impacts on adjoining properties:

Response - Any detail design application would be required to consider and address any potential structural impacts on adjoining properties.

- (g) Increased traffic and congestion:

Response - Any detail design application would be required to ensure that the proposal does not result in adverse traffic issues.

- (h) Calculation of floor space ratio:

Response - Council consider that the applicant's calculation of FSR permitted for the site is inaccurate, given that the 10% design excellence FSR bonus has been included at concept stage.

Public Interest

74. As the proposal will adversely impact the amenity of neighbouring residential development and surrounding sites, and will result in poor planning and urban design outcomes, the proposal is not in the public interest.

S61 Contribution

75. The cost of the development is in excess of \$200,000 and as such would have been subject to a contribution subject to Section 61 of the City Act if approval were granted.

Relevant Legislation

76. Environmental Planning and Assessment Act 1979.

Conclusion

77. This application seeks concept approval for a 24-storey tower above an existing local heritage item, with 8 levels of basement parking. Indicative commercial and retail uses are provided within the podium, and 75 residential apartments are provided in the tower.
78. During the assessment the scheme was amended and additional information was submitted, to address the concerns of the City's Design Advisory Panel Residential Subcommittee and Council officers.
79. The application was originally exhibited for a period of 28 days and received 12 objections. The application was re-exhibited for 28 days and received 8 submissions. The concerns raised within the objections are addressed within the body of the report.
80. It is considered that the amended proposal has not adequately addressed the issues raised during pre-lodgement discussions nor during the assessment of the subject application. The proposal in its current form is not supported as it will result in a building envelope that cannot achieve satisfactory building separation and internal residential amenity required under SEPP 65 and ADG, the Sydney DCP 2012, and subsequently does not satisfy design excellence provisions in Clause 6.21(4) of the Sydney LEP 2012. Additionally, insufficient information has been provided.
81. The amended building envelope and indicative scheme shows that a residential development may not be suitable for the site. Alternatively, a commercial tower may be more suitable and fit more comfortably with the constraints of the site.
82. The application is recommended to be refused.

GRAHAM JAHN AM

Director City Planning, Development and Transport

Mia Music, Planner