

Item 6.**Section 4.55 Application: 189-197 Kent Street Sydney – D/2018/1014/A**

File No.: D/2018/1014/A

Summary

Date of Submission:	8 May 2020, amended 11 September 2020
Applicant:	Barana Properties (No.1) Pty. Ltd.
Architect:	Francis-Jones Morehen Thorp Pty. Ltd.
Developer:	Barana Group
Owner:	Barana Properties (No.1) Pty. Ltd.
Planning Consultant	Ethos Urban
Cost of Works:	\$68,848,151 (as stated under D/2018/1014)
Zoning:	Zone B8 Metropolitan Centre
Proposal Summary:	<p>The application is a Section 4.55(2) modification to amend concept building envelopes for an indicative 80 metre high mixed use development including retail and residential land uses, and a pedestrian through site link between Kent Street and Jenkins Street.</p> <p>Specifically, the modifications include the addition of fenestration articulation and architectural roof feature zones, deletion of the northern side boundary setback between levels 16-23 (from 3 metres to nil), and modification of conditions 29 and 39 to defer the requirement for submission of a detailed Public Domain Plan.</p> <p>The application is referred to the Central Sydney Planning Committee (CSPC) for determination as the proposed modifications relate to “major development” for the purposes of the City of Sydney Act, 1988.</p> <p>A separate detailed design development application (D/2020/399) is presented to the CSPC concurrently for approval.</p>

The proposed modifications to the subject concept development consent will deliver consistency between staged development applications, as required under Section 4.24 of the Environmental Planning and Assessment Act, 1979.

The original application was notified for 14 days between 12 May 2020 and 27 May 2020 in accordance with the City of Sydney Community Participation Plan 2019.

The amended application was renotified for 14 days between 14 September 2020 and 29 September 2020 in accordance with the City of Sydney Community Participation Plan 2019.

As a result of the notification of the original application and renotification of the amended application, there were a total of 8 submissions received. The submissions raised concerns about loss of views, loss of solar access and ambient light, loss of property value, loss of ventilation, exacerbated wind impacts, privacy impacts, bulk and scale impacts, traffic generation impacts, reflectivity impacts, constraints on future maintenance, construction impacts including air pollution, vibration and noise impacts, and traffic congestion. These concerns and further issues are addressed within the report.

As amended, the proposed modifications to the building envelopes are considered to result in a development that is substantially the same as previously approved and contextually appropriate. The changes are not likely to significantly impact the overall use of the building, nor the amenity of surrounding sites

The detailed design of the development will be considered concurrently by the CSPC under development application D/2020/399, which demonstrates that a generally compliant scheme can be provided within the amended envelopes. The proposed modifications are recommended for approval.

Summary Recommendation: The Section 4.55 application is recommended for approval

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000
- (ii) City of Sydney Act 1988 and City of Sydney Regulation 2016
- (iii) Roads Act 1993 and Roads Regulation 2018

- (iv) State Environmental Planning Policy No.65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)
- (v) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (vi) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (vii) Planning Proposal: Central Sydney 2020

Attachments:

- A. Amended Conditions of Consent
- B. Amended Building Envelope Drawings
- C. View Study
- D. Solar Access Study

Recommendation

It is resolved that consent be granted to Section 4.55 Application Number D/2018/1014/A, subject to the following amendments (addition shown in ***bold italics***, deletions shown in ~~strikethrough~~):

(2) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2018/1014 dated 30 August 2018 and the following drawings prepared by FJMT Studio:

Drawing Number	Drawing Name	Date
201 (Revision E J)	Proposed Envelope Diagrams	8 April 2019 <i>10/9/20</i>
202 (Revision E J)	Proposed Envelope Diagrams	8 April 2019 <i>10/9/20</i>
203 (Revision E J)	Proposed Envelope Diagrams	8 April 2019 <i>10/9/20</i>
301 (Revision E H)	Kent Street Envelope Elevation – Proposed Envelope	8 April 2019 <i>10/9/20</i>
302 (Revision E H)	Jenkins Lane Envelope Elevation – Proposed Envelope	8 April 2019 <i>10/9/20</i>
404 (Revision E)	Indicative Typical Section	8 April 2019

and as amended by the conditions of this consent.

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

(Condition amended - D/2018/1014/A - 10 December 2020)

(5A) ARCHITECTURAL ROOF FEATURE ZONES

The design of any future architectural roof features within architectural roof feature zones in a future detailed design development application must:

- (a) Comprise only decorative elements on the uppermost portion of the buildings;*
- (b) Not comprise an advertising structure; and*
- (c) Not include floor space area and not be reasonably capable of modification to include floor space area.*

(Condition inserted - D/2018/1014/A - 10 December 2020)

(5B) ARTICULATION ZONES

The design of any future fenestration within articulation zones encroaching into the Kent Street road reserve in a future detailed design development application must:

- (a) Comprise only decorative fenestration or shading devices;*
- (b) Not comprise any useable floor space or Gross Floor Area; and*
- (c) Be constructed primarily of masonry, reinforced concrete, steel or other non-combustible material.*

(Condition inserted - D/2018/1014/A - 10 December 2020)

(29) PUBLIC DOMAIN PLAN

- (a) A detailed Public Domain Plan must be prepared by a suitably qualified architect, urban designer, landscape architect or engineer and must be ~~lodged with any detailed design Development Application for the site~~ **submitted to and approved by Council's Area Planning Manager or Area Coordinator, Planning Assessments, prior to the issue of any Construction Certificate for the development other than for demolition or excavation.**
- (b) The Public Domain Plan must document all works required to ensure that the public domain complies with the City of Sydney's *Public Domain Manual*, *Sydney Streets Code* and *Sydney Streets Technical Specification*, including requirements for road pavement, traffic measures, footway pavement, kerb and gutter, drainage, vehicle crossovers, pedestrian ramps, lighting, street trees and landscaping, signage and other public domain elements. If an Alignment Levels condition applies to the development, the Public Domain Plan submission must incorporate the approved Alignment Levels. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.

- (c) The works to the public domain are to be completed in accordance with the approved Public Domain Plan and Alignment Levels plans and the *Public Domain Manual* before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.
- (d) A Public Domain Works Deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges and the *Public Domain Manual*. The Public Domain Works Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for completion of the obligations under this consent.
- (e) Council's Public Domain section must be contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to a Construction Certificate being issued.
- (f) The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.

(Condition amended - D/2018/1014/A - 10 December 2020)

(39) PUBLIC DOMAIN PLAN

- ~~(a) A detailed Public Domain Plan must be prepared by a suitably qualified architect, urban designer, landscape architect or engineer and must be lodged with any Stage 2 Development Application for the site.~~
- ~~(b) The Public Domain Plan must document all works required to ensure that the public domain complies with the City of Sydney's Public Domain Manual, Sydney Streets Code and Sydney Streets Technical Specification, including requirements for road pavement, traffic measures, footway pavement, kerb and gutter, drainage, vehicle crossovers, pedestrian ramps, lighting, street trees and landscaping, signage and other public domain elements. If an Alignment Levels condition applies to the development, the Public Domain Plan submission must incorporate the approved Alignment Levels. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.~~
- ~~(c) The works to the public domain are to be completed in accordance with the approved Public Domain Plan and Alignment Levels plans and the Public Domain Manual before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.~~
- ~~(d) A Public Domain Works Deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges and the Public Domain Manual. The Public Domain Works Deposit must be submitted as an unconditional bank guarantee in~~

~~*favour of Council as security for completion of the obligations under this consent.*~~

~~*(e) Council's Public Domain section must be contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to a Construction Certificate being issued.*~~

~~*(f) The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.*~~

(Condition deleted - D/2018/1014/A - 10 December 2020)

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as modified, 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 proposed modifications ensure that the detailed design development application is consistent with the concept approval, in order to satisfy Section 4.24 of the Environmental Planning and Assessment Act, 1979.
- (C) 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 the reasons set out in the report.
- (D) The modified building envelopes can accommodate a building design which is capable of exhibiting design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (E) The increased height and bulk of the building envelopes are in keeping with the desired future character of the area. These variations are reasonable and justified with regard to the concurrent detailed design development application D/2020/399.
- (F) The changes to the approved building envelopes are appropriate and are not likely to significantly impact the overall use of the building or the amenity of surrounding sites or locality.
- (G) The development as modified is in the public interest.

Background

The Site

1. The site has a legal description of Lot 1 in DP 220397, and is commonly known as 189-197 Kent Street, Sydney. It is located in the north-western part of the Sydney Central Business District, directly east of Barangaroo, within the broader City of Sydney Local Government Area.
2. The site is L-shaped, with an area of approximately 1,195 square metres. It has a primary street frontage of 42.365 metres to the western side of Kent Street and a secondary street frontage of 20.175 metres to Jenkins Street.
3. The adjacent section of Jenkins Street comprises several stratum lots, with the road surface at its southern end forming part of the adjoining property at 201-217 Kent Street, Sydney, with the remainder to the north in public ownership at ground level, and with the allotments below ground in private ownership.
4. The site is located close to the intersections of Kent Street with the Bradfield Highway, Western Distributor, Clarence Street and Gas Lane. Levels on the site fall across from east to west by approximately 12 metres, with a fall of approximately 2 metres from north to south.
5. Along the south and south-western boundaries is an easement for light and air over the north-eastern portion of 201-217 Kent Street, Sydney (also known as the AON Tower) which benefits the subject site. The easement is approximately 4.5 metres wide and is L-shaped, extending from Kent Street to the western boundary of the subject site. Additional easements for light, air, water supply, sewerage and rights of carriageway over Jenkins Street also benefit the site.
6. The site is not identified as a heritage item or as being located in a heritage conservation area or special character area in the Sydney LEP 2012.
7. The site is identified on the plan images in Figures 1 and 2, and aerial photographs in Figures 3, 4 and 5 below, showing its location and context.

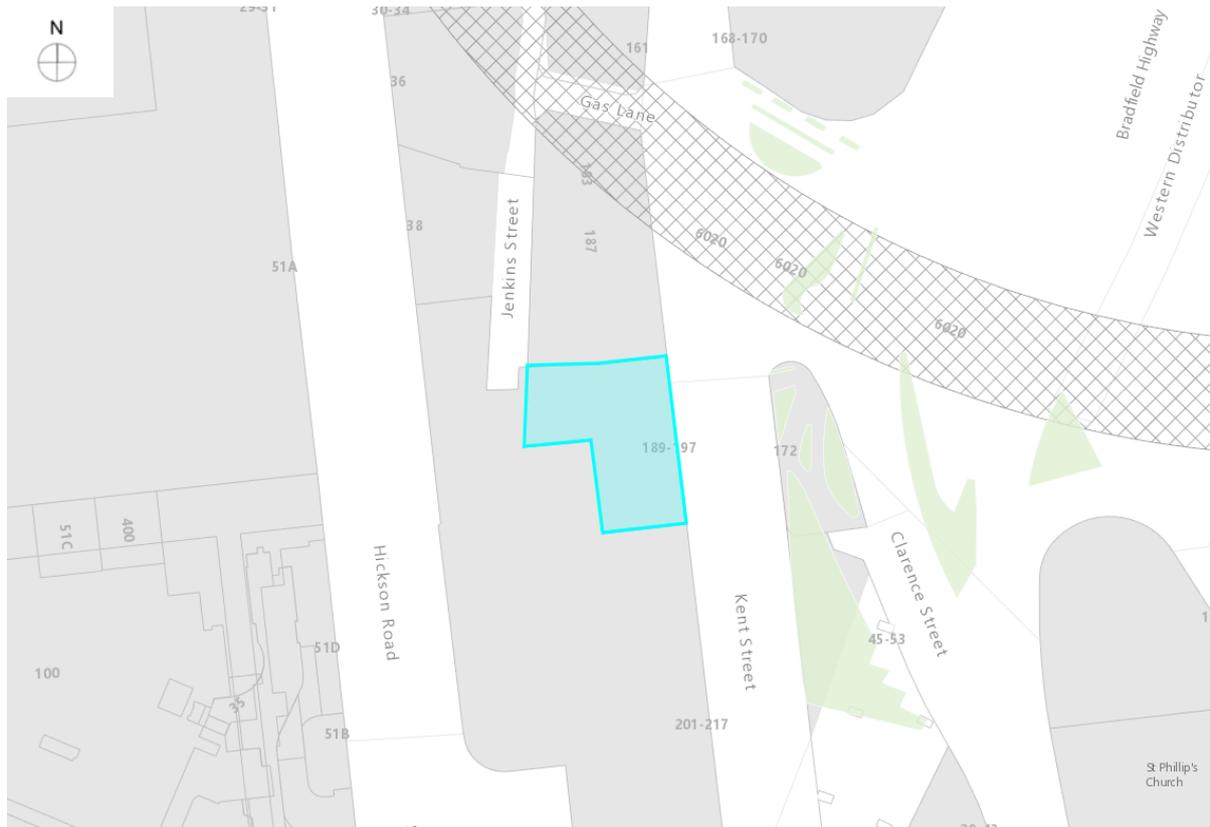


Figure 1: Plan image of subject site in blue and surrounding area (subterranean Sydney Metro corridor shown hatched)

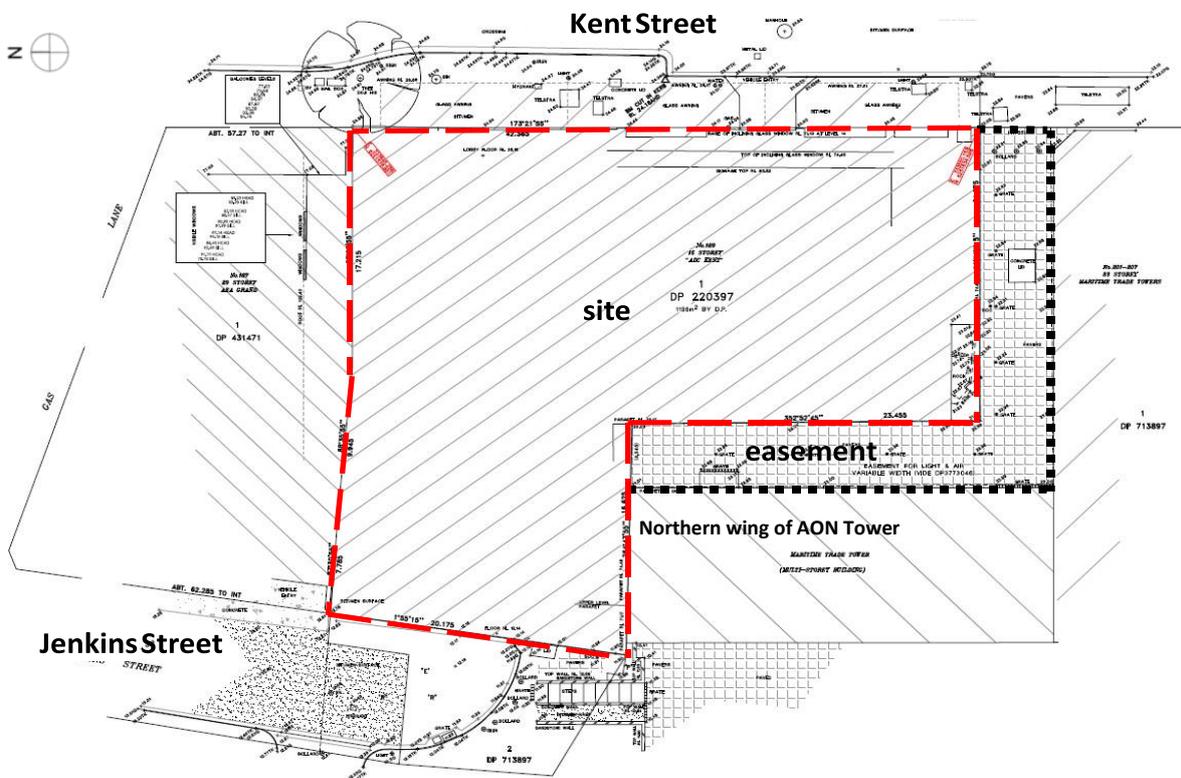


Figure 2: Survey plan extract showing location of easement along the south and south-west site boundaries.

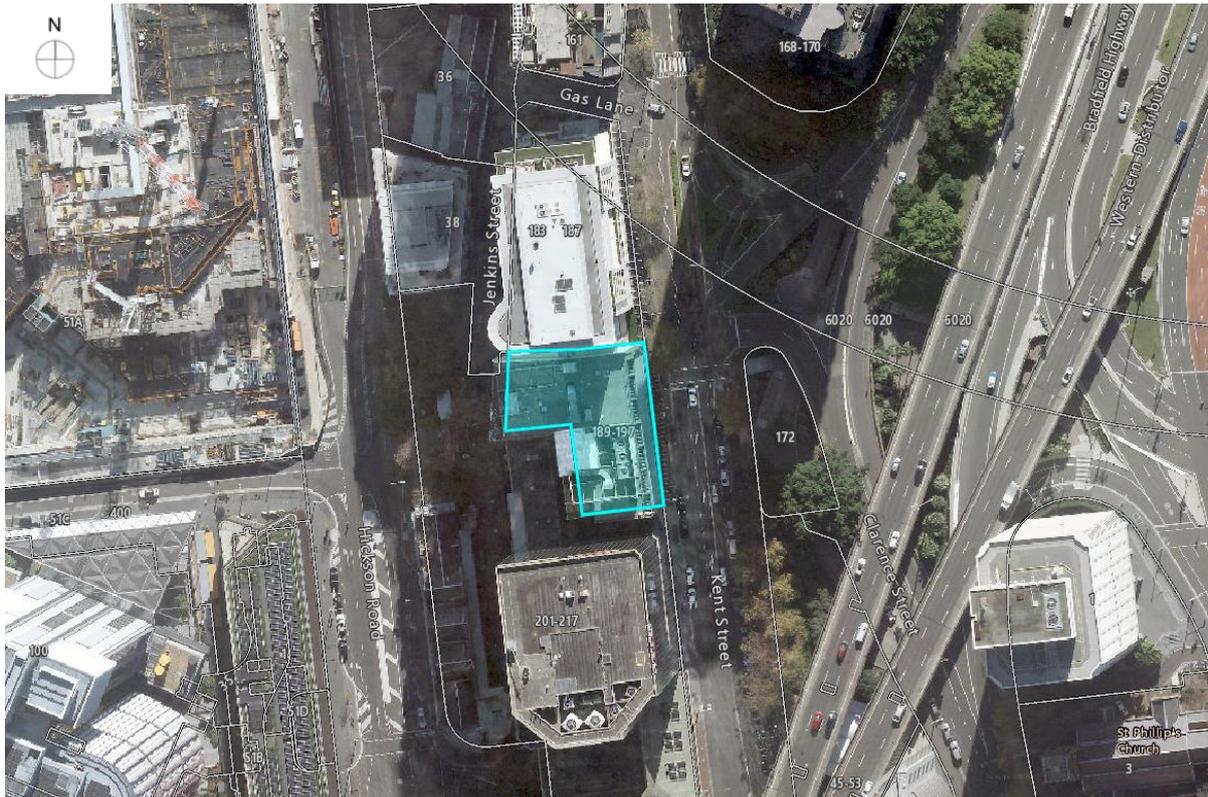


Figure 3: Aerial photograph of the site in blue and surrounding area

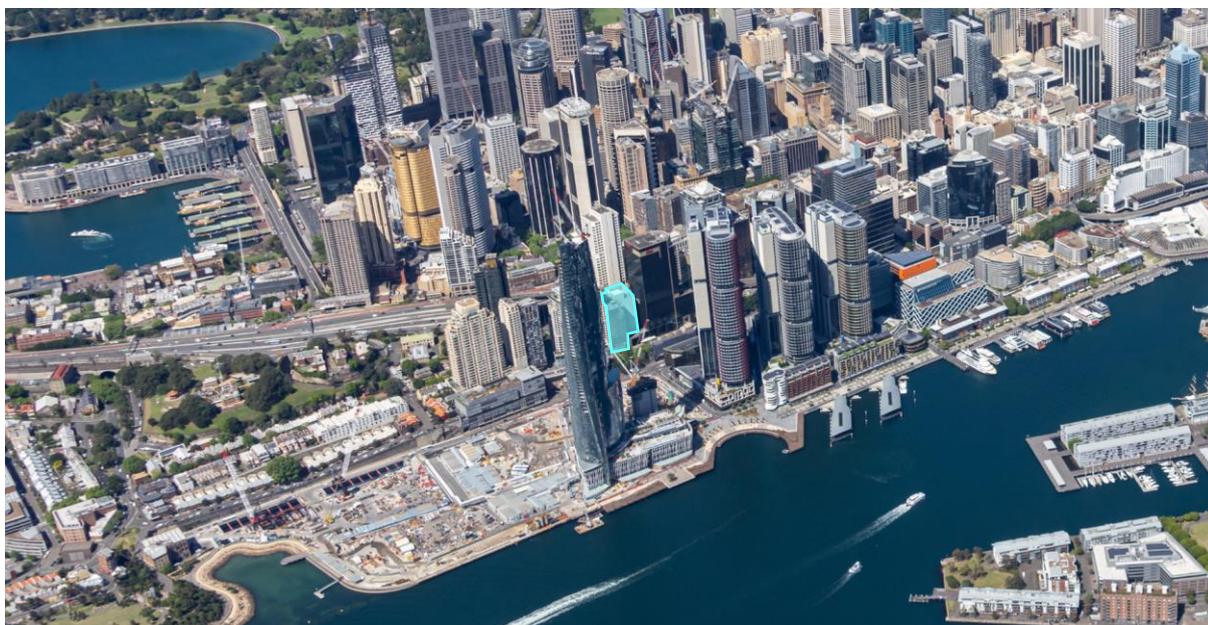


Figure 4: Oblique aerial photograph of the site in blue and surrounding area looking south-east



Figure 5: Extract from the 'Development Application: Architectural Design Statement' (FJMT), with an oblique aerial photograph of the site in red and surrounding area looking west

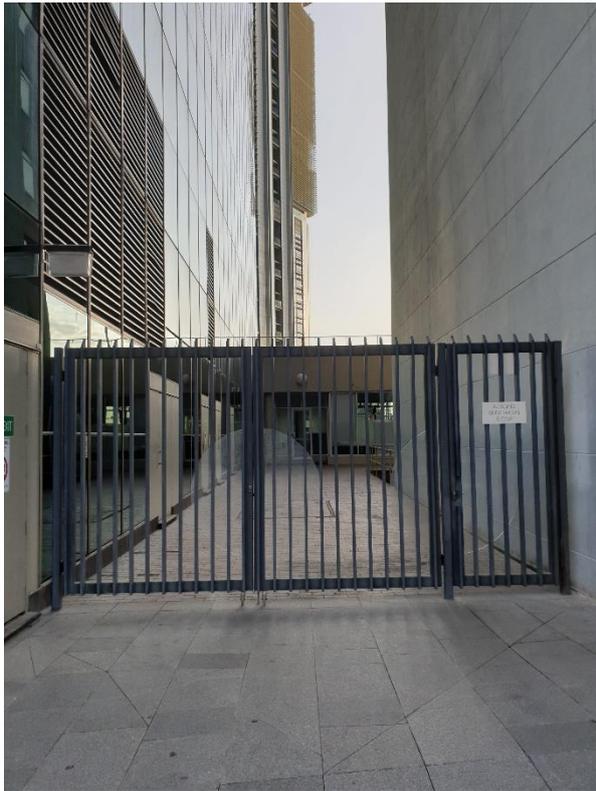
8. The site currently contains an 18-storey commercial office building, built to the boundaries without a podium.
9. The existing building includes 2 retail levels and a commercial car park within 4 basement car parking levels, accessed from Kent Street, with private tenant parking, loading and servicing access from Jenkins Street.
10. The primary pedestrian access is from Kent Street, with pedestrian fire egress only to Jenkins Street.
11. Photographs provided in Figures 6 to 12 show the existing development.



Figures 6 and 7: Eastern elevation viewed from the Bradfield Hwy on-ramp (left) and western elevation viewed from Hickson Rd (right)



Figure 8: Ground level retail, commercial car park vehicle access point and awning to Kent St



Figures 9 and 10: View of southern easement from Kent St (left) and view of easement looking north (right)



Figures 11 and 12: View of lower levels from Jenkins St, including rear loading access (left) and view of upper levels from Jenkins St (right)

The Locality

12. The surrounding area is characterised by a mixture of land uses, primarily comprising residential and commercial developments.
13. A heritage item listed on the State Heritage Register known as the former 'Grafton Bond Store' (State Heritage Register Number 01431), is located to the west at 201-217 Kent Street, Sydney, which has a primary frontage to Hickson Road. Jenkins Street is identified as a local heritage item (Item Number I890) under the Sydney LEP 2012.
14. Further to the west of the site, on the western side of Hickson Road, are the commercial towers and associated buildings within the Barangaroo South precinct, and the Barangaroo Central development project site, which is currently under construction. To the east of the site, on the eastern side of Kent Street, is the Kent Street cycleway, the Western Distributor overpass and the on ramps to the Bradfield Highway.
15. To the north at 183 and 187 Kent Street, Millers Point, is a 28-storey residential apartment building known as the 'Stamford on Kent', with ground floor food and drink premises and residential apartments in the levels above.
16. Further to the north, north-east and north-west are several other residential towers and buildings, including the 'Observatory Tower' at 168-170 Kent Street, Millers Point, the 'Stamford Marque' at 161 Kent Street, Millers Point, 'The Georgia' at 155-157 Kent Street, Millers Point, the 'Highgate Apartments' building at 127-153 Kent Street, Millers Point, and 'The Bond' at 38 Hickson Road, Millers Point.
17. To the south at 201-217 Kent Street, Sydney, is the Maritime Trade Towers site, which contains a 24 storey commercial building known as Symantec House, a 35 storey commercial building known as AON Tower, a publicly accessible through site link known as 'Grafton Lane', the former 'Grafton Bond Store' and a 5 storey northern wing to the AON Tower. The northern wing of the AON Tower is situated adjacent to the south-western portion of the subject site.
18. Photographs provided in Figures 13 to 22 below show existing surrounding development.



- | | |
|---|--|
| The Site | Residential |
| ① Maritime Trade Towers | Commercial |
| ② Stamfordmarque | Open Space |
| ③ Grafton Bond Store | Heritage |
| ④ Barangaroo South | Barangaroo Central |
| ⑤ Kent Street cycleway | Transport |
| ⑥ Crown Hotel Resort | Transport |
| ⑦ Barangaroo Central | |
| ⑧ Barangaroo Wharf | |
| ⑨ 168-170 Kent Street | |
| ⑩ Observatory Hill | |
| ⑪ City Park | |
| ⑫ 1 York Street | |
| ⑬ Wynyard Park & Station | |
| ⑭ Stamford on Kent | |
| ⑮ Hickson Park | |
| ⑯ Residential buildings (R4A, R4B and R5) | |
| ⑰ George Street Light Rail | |

Figure 13: Extract from the ‘Statement of Environmental Effects’ (Ethos Urban), with an aerial photograph and annotations illustrating the site context

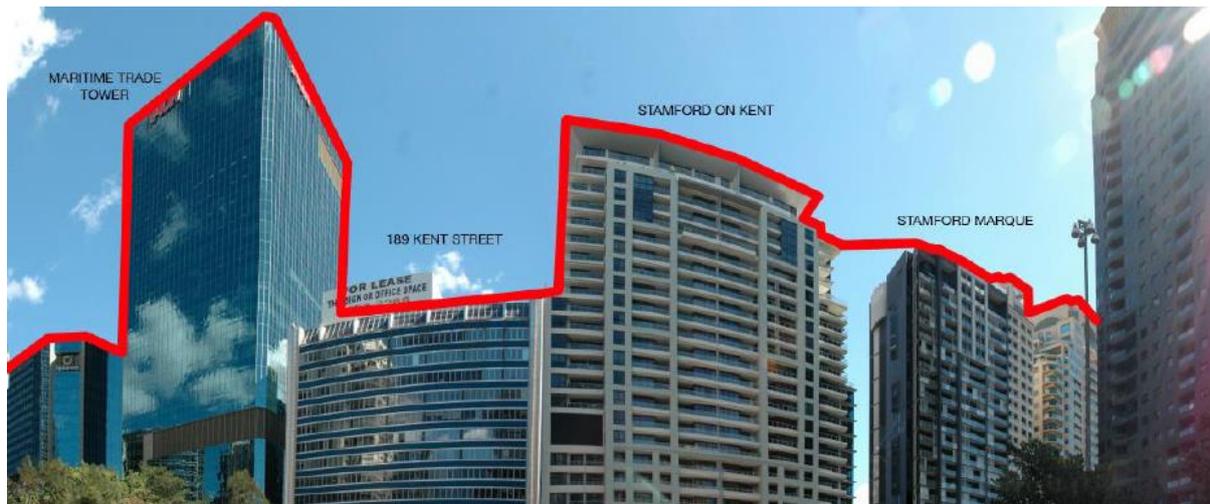
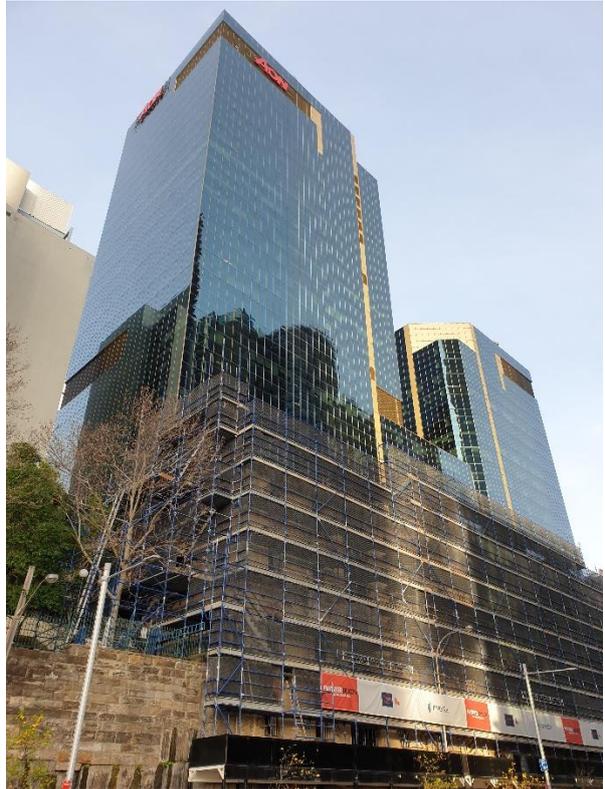
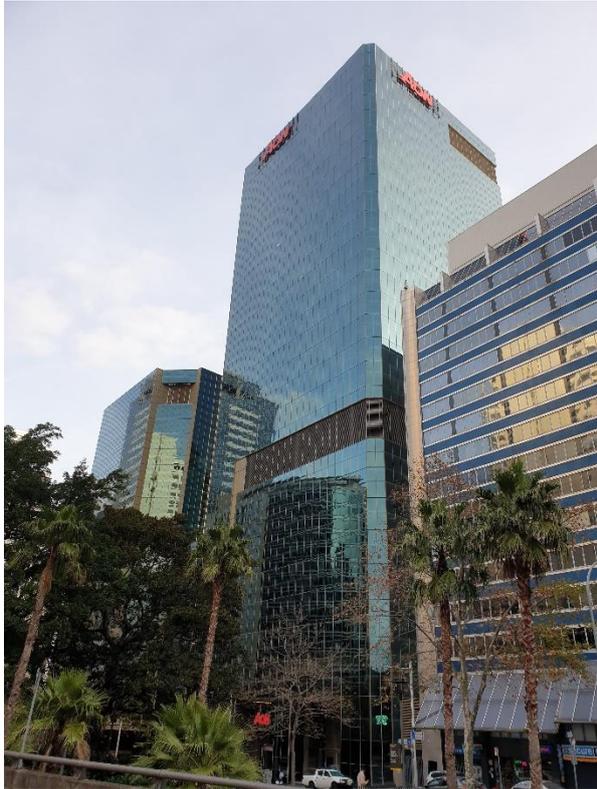


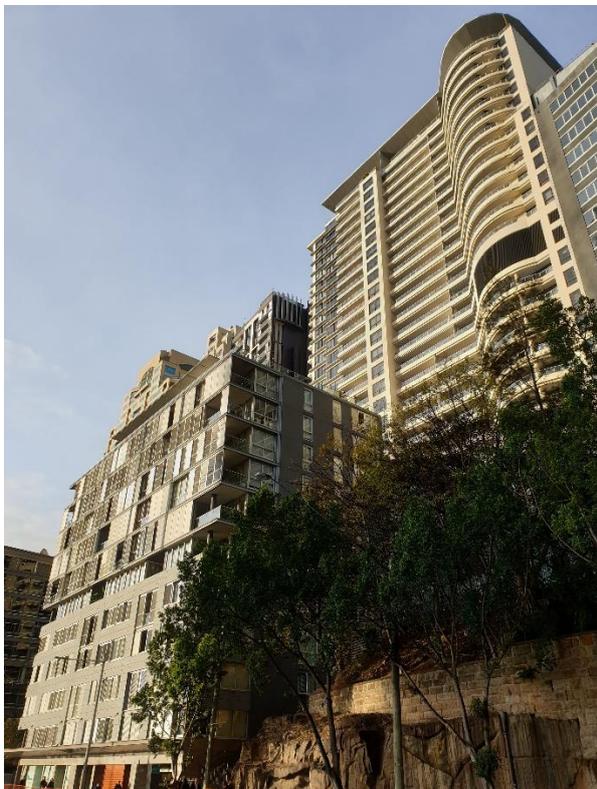
Figure 14: Extract from the ‘Statement of Environmental Effects’ (Ethos Urban), with a photograph depicting the streetscape along the western site of Kent St outlined in red



Figures 15 and 16: The ‘Stamford on Kent’, viewed from the Bradfield Hwy on-ramp (left) and, from left to right, the ‘Stamford Marque’, ‘The Georgia’ the ‘Highgate Apartments’ and the ‘Observatory Tower’ (right)



Figures 17 and 18: View of the Maritime Trade Towers from Kent St (left) and the Grafton Bond Store behind scaffolding from Hickson Rd (right)



Figures 19 and 20: View of the 'Bond Apartments' and 'Stamford on Kent' from Hickson Road (left) and the 'Bond Apartments' from Jenkins St (right)



Figure 21: View of Grafton Lane to the south-west from Jenkins St, with the Grafton Bond Store visible on the right

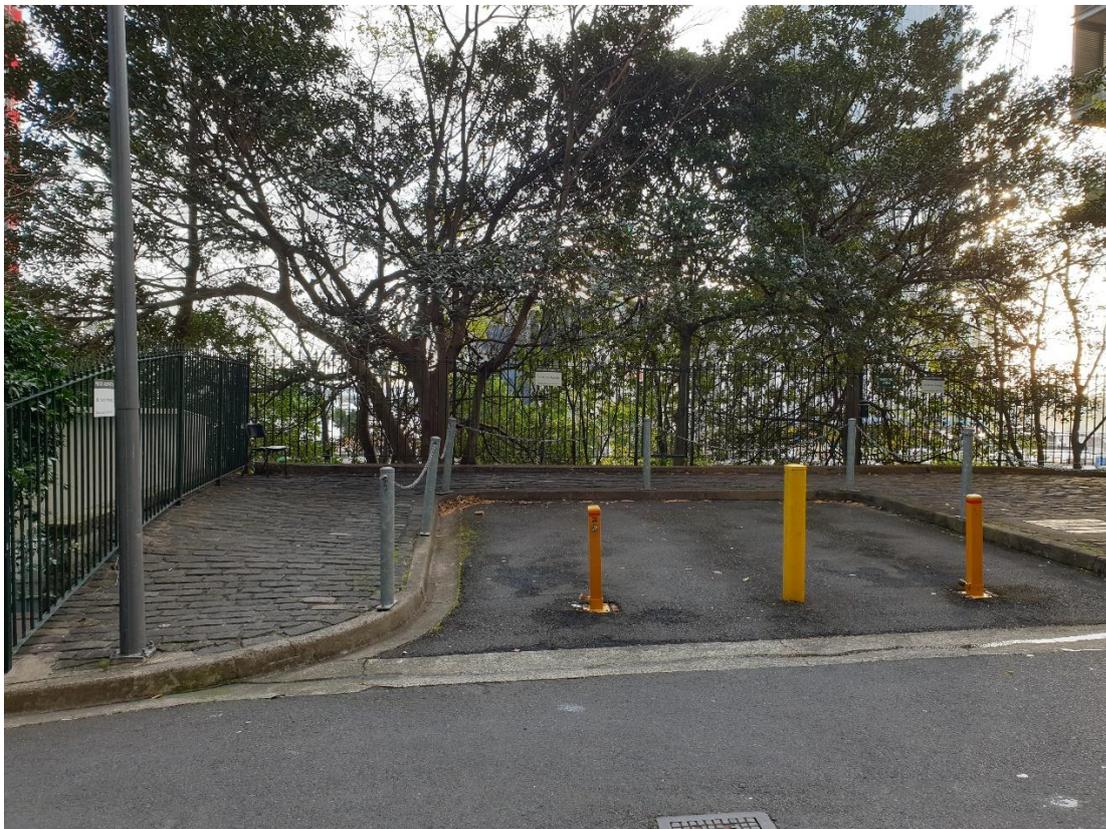


Figure 22: View of parking bay opposite the site to the west on Jenkins St

Proposal

19. The Section 4.55(2) modification application seeks to amend the concept development consent D/2018/1014 to bring it into line with the concurrent detailed design development application D/2020/399.
20. The application modifies the approved concept building envelopes to:
 - (a) include new and extended fenestration articulation zones to the northern, eastern, southern and western elevations of the building envelopes, including a zone to the southern envelope encroaching 450mm over the Kent Street road reserve, as depicted in Figure 23 below;
 - (b) include architectural roof feature zones above the approved building envelopes, as depicted in Figure 24 below;
 - (c) delete the 3 metre setback along the northern boundary between levels 16 to 23, as depicted in Figure 25 below;
 - (d) amendments to condition (2) 'Approved Development' to insert references to drawings depicted the above-mentioned changes; and
 - (e) amendments to condition (29) 'Public Domain Plan' and condition (39) 'Public Domain Plan' to:
 - (i) delete a requirement for the submission of a detailed public domain plan with a detailed design development application; and
 - (ii) insert requirements for the submission of a detailed public domain plan prior to the issue of a construction certificate.



Figure 23: Plan extract of a typical envelope tower level from the 'Statement of Environmental Effects' (Ethos Urban), illustrating new and extended articulation zones boxed in red

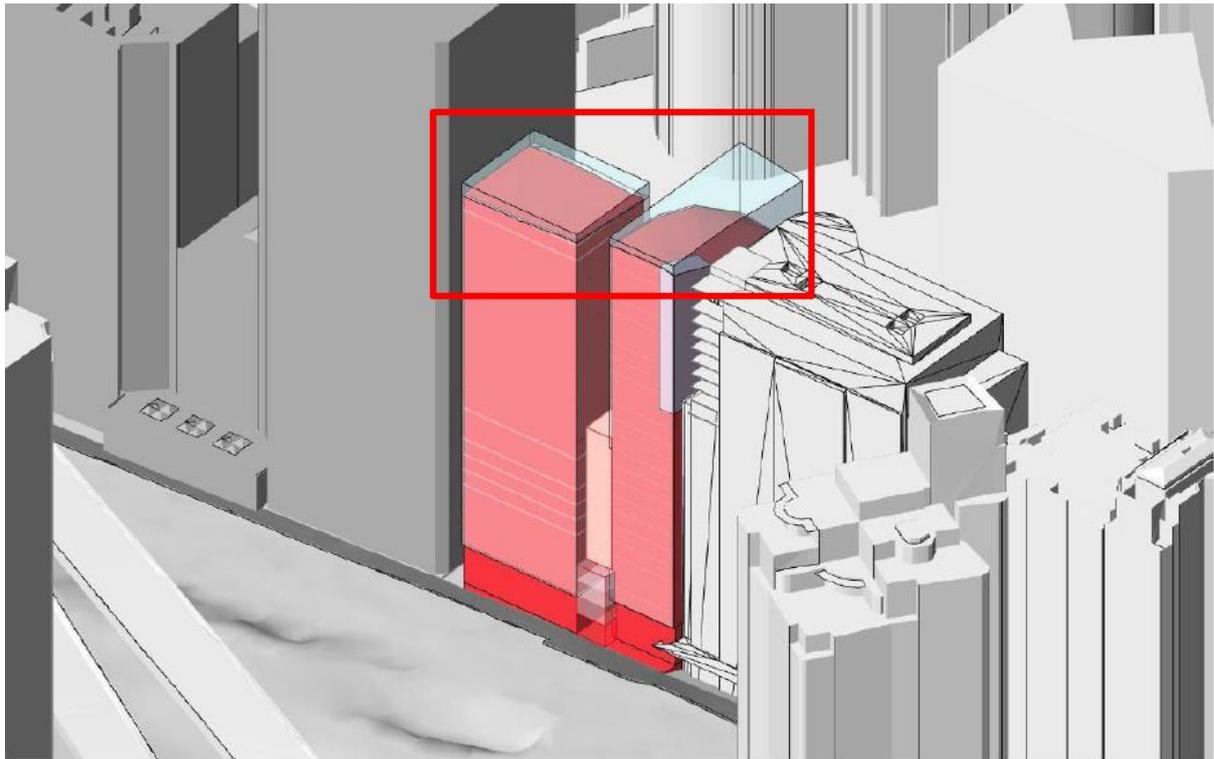


Figure 24: Axonometric view extract from the ‘Statement of Environmental Effects’ (Ethos Urban), illustrating new architectural roof feature zones in opaque blue and outlined in thick red line

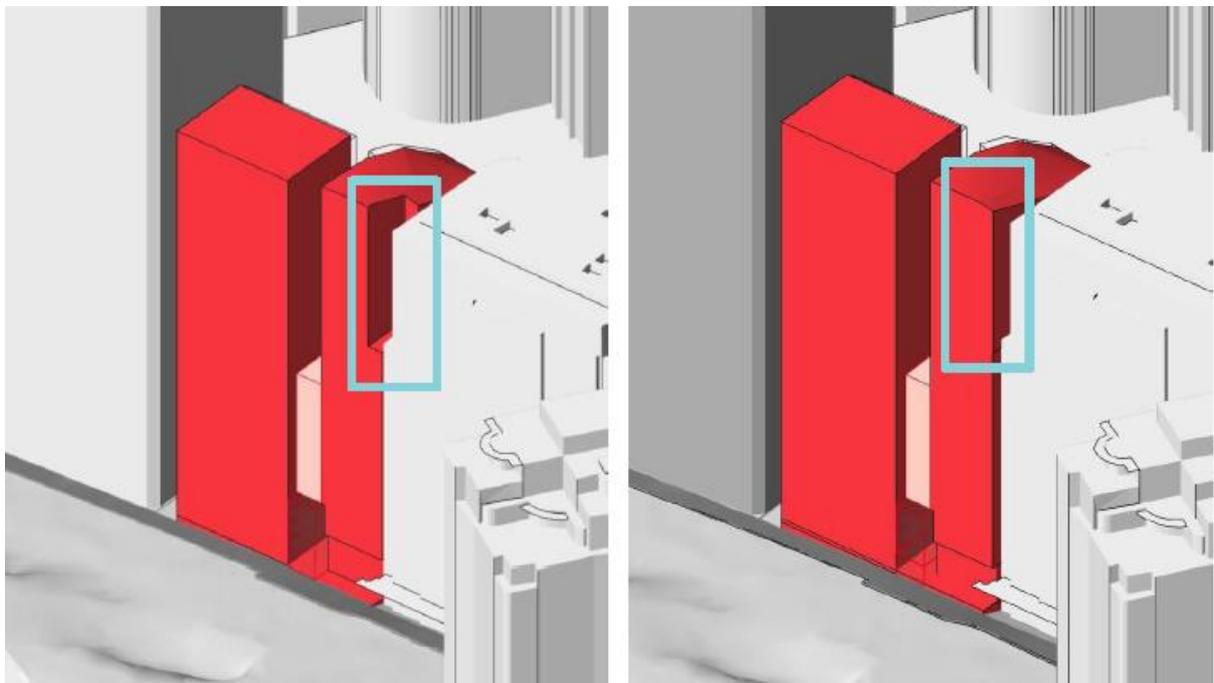


Figure 25: Axonometric view extract from the ‘Statement of Environmental Effects’ (Ethos Urban), illustrating the approved setback (left) and modified northern tower envelope (right) boxed in thick blue line

21. Drawings of the amended envelopes are provided in Figures 26 to 31 below and in Attachment B.

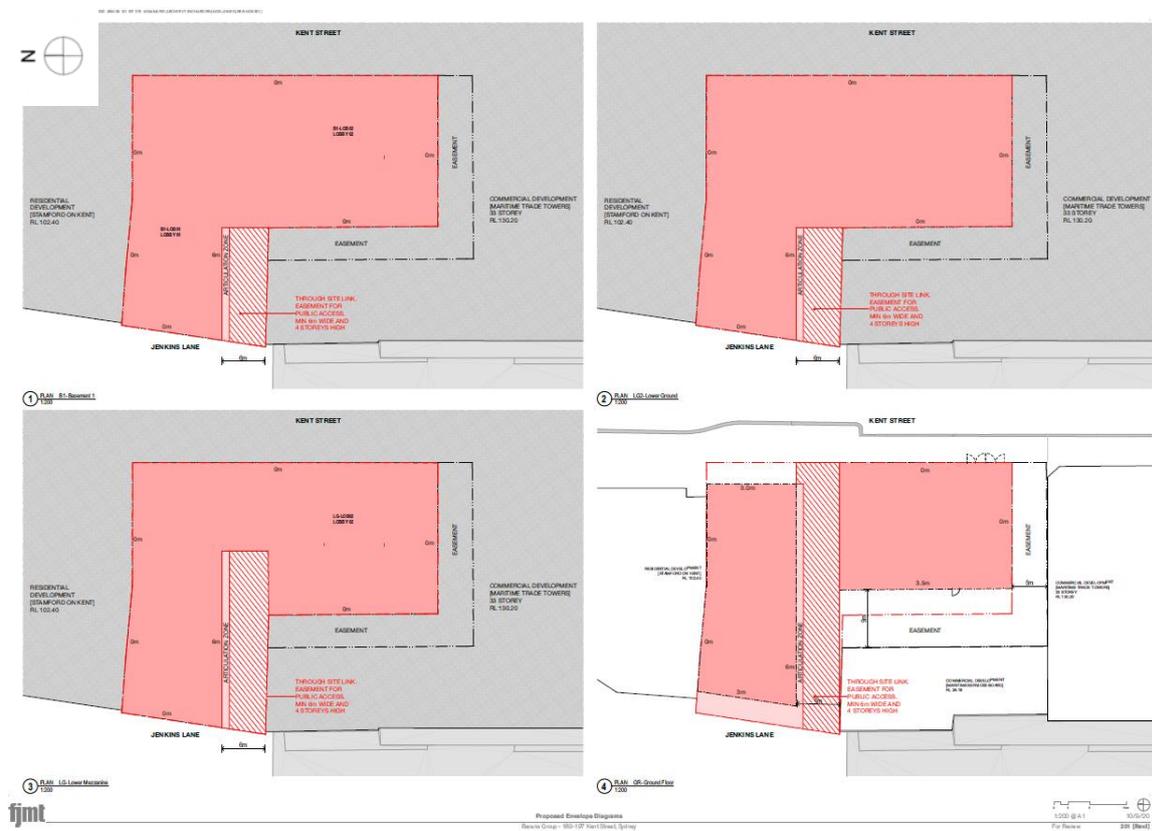


Figure 26: Proposed envelope plan diagrams, including basement, lower ground, lower mezzanine and ground floor levels

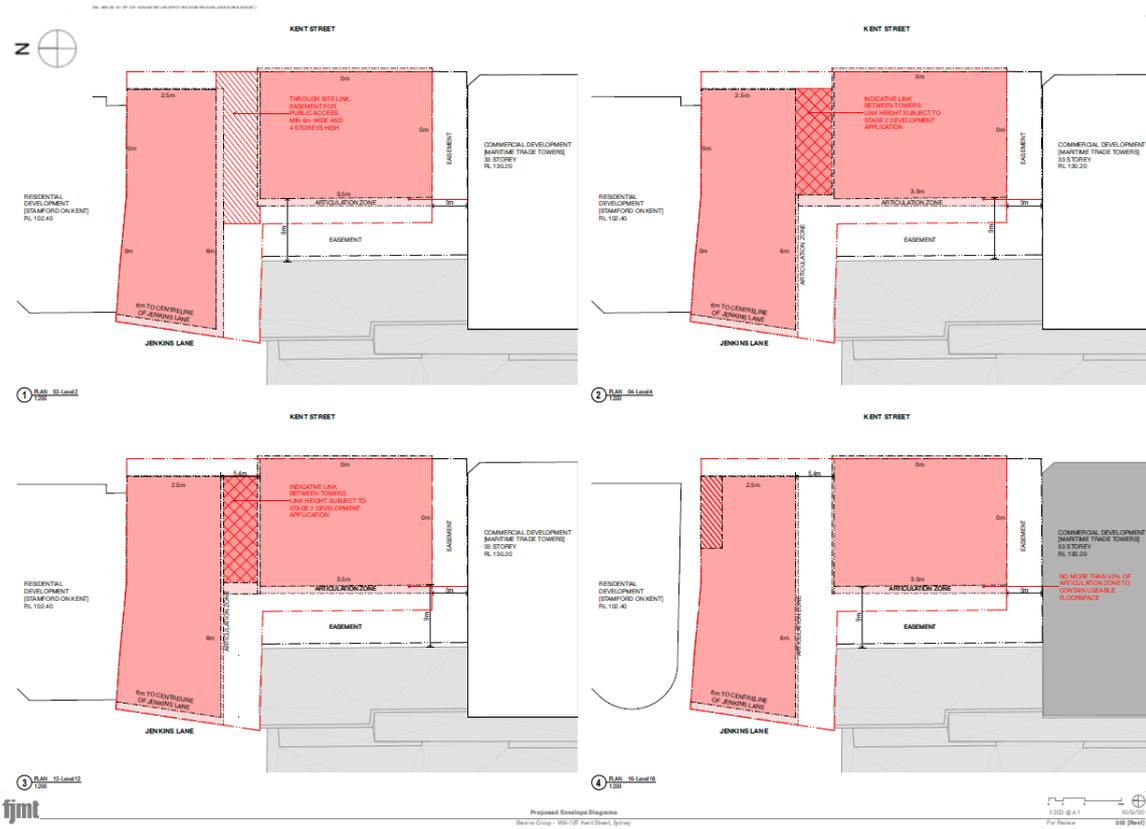


Figure 27: Proposed envelope plan diagrams, including floor levels 2, 4, 12 and 16



Figure 28: Proposed envelope plan diagrams, including floor levels 20 and 23 and roof feature

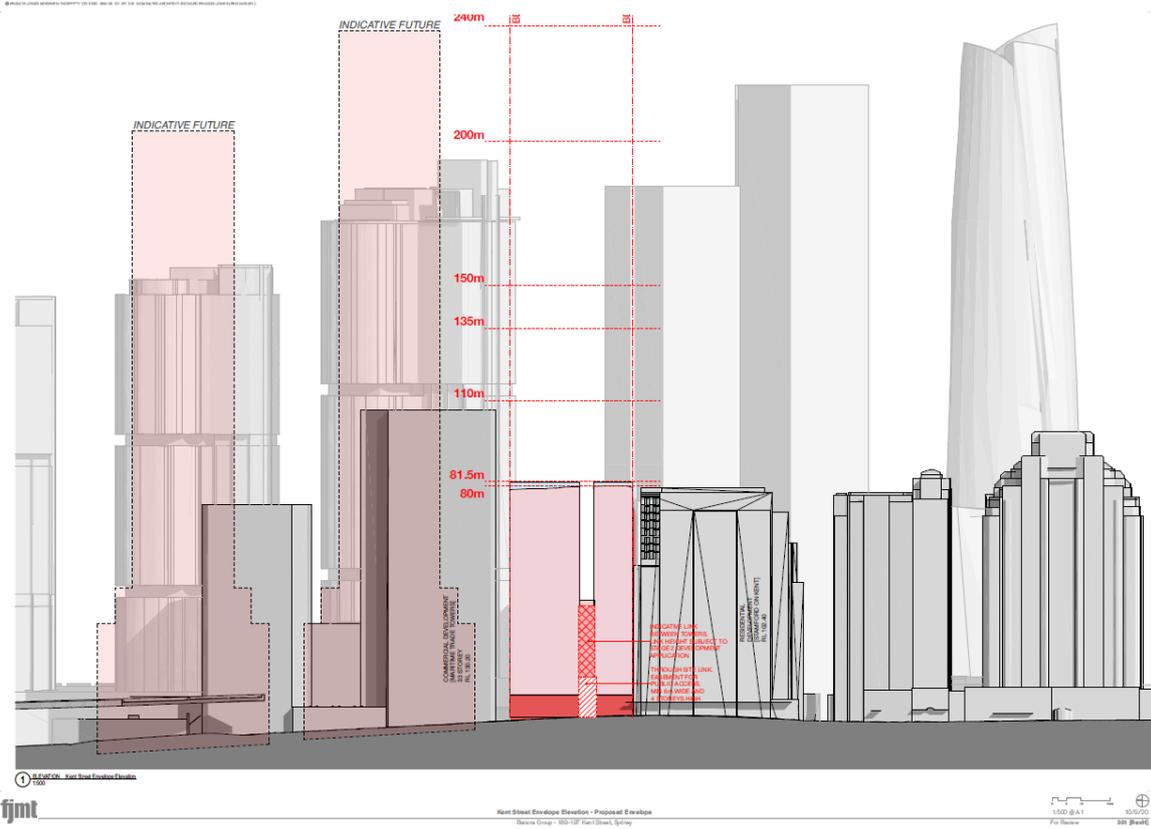


Figure 29: Proposed east (Kent Street) envelope elevation

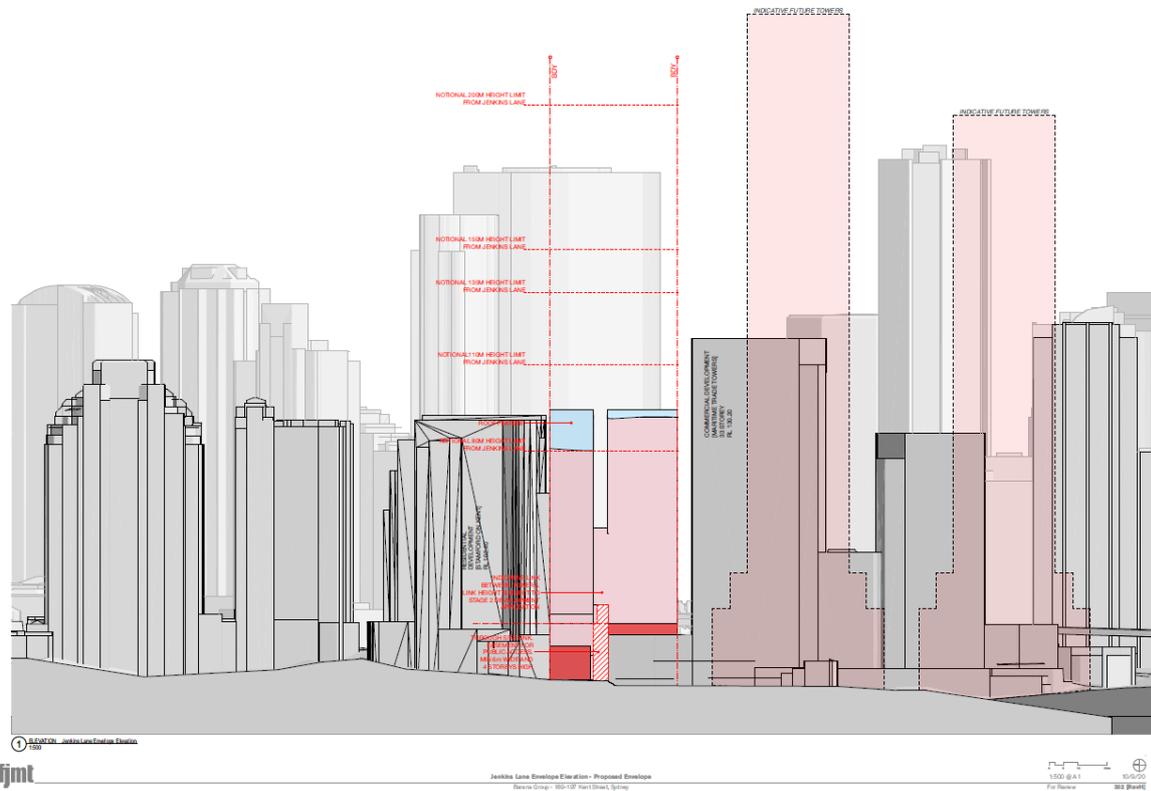


Figure 30: Proposed west (Jenkins Street) envelope elevation



Figure 31: Axonometric envelope views

History Relevant to the Development Application

First concept development consent

22. On 26 June 2006, development consent D/2005/1123 was granted by the CSPC for a concept development application to convert the existing commercial building to a mixed-use development comprising residential and commercial uses including an additional 6 storeys and a basement carpark.
23. This development consent lapsed on 26 June 2011.

Second concept development consent

24. On 10 September 2015, development consent D/2014/1900 was granted by the CSPC for a concept development application for an 80-metre building envelope for a mixed use development comprising retail and residential uses.
25. Development consent D/2014/1900 was subsequently amended by a Section 4.55 modification application (Amendment A) on 1 June 2018 to permit residential land uses on part of the ground floor and level 1 of the building, and to incorporate a Design Excellence Strategy within the consent.
26. This development consent lapsed on 10 September 2020.

Competitive design alternatives process

27. In 2018, the applicant undertook a competitive design alternatives process, in accordance with the design excellence provisions in the Sydney LEP 2012 and Sydney DCP 2012. This competitive process was based on the second concept development consent D/2014/1900.
28. Four architectural firms participated, with the winning scheme for the competitive design alternatives process awarded to FJMT on 25 October 2018.
29. The selection panel identified that further design development and investigations were required to resolve matters including setbacks and height, natural cross ventilation, appropriate landscaping, basement arrangements and access, wind impacts, and Ecologically Sustainable Development (ESD) initiatives.

Third concept development consent

30. On 20 June 2019, development consent D/2018/1014 was granted by the CSPC for an 80 metre concept building envelope for an indicative mixed use development including retail and residential land uses and a pedestrian through site link between Kent Street and Jenkins Street.
31. This development consent generally matches the building envelope and land use mix approved under the second concept development consent D/2014/1900, as approved under Amendment A, but allowing additional time of the submission of a detailed design development application, as the consent will not lapse until 20 June 2024.

Concurrent detailed design development application

32. A detailed design development application D/2020/399 was lodged with the City on 4 May 2020, amended on 11 September 2020 and 14 November 2020, and assessed concurrently with the subject Section 4.55(2) modification application.
33. Development application D/2020/399, as amended, proposes the demolition of the existing commercial building and construction of a new mixed use development, with a maximum height of 94.05 metres (RL 106.15 AHD), 24 storeys, 125 apartments, 4 basement levels, 91 parking spaces and commercial, food and drink premises and residential land uses.
34. The application is to be determined by the CSPC and is recommended for approval, subject to conditions. Refer to the detailed development application D/2020/399 CSPC assessment report for further details.

Subject modification application

35. Following lodgement of the application and finalisation of a preliminary assessment of the proposed modifications by Council staff, the application and the detailed design development application D/2020/399 were presented to the City's Design Advisory Panel (DAP) on 30 July 2020.

36. The DAP provided the following advice and comments in relation to the applications:
- (a) many of the recommendations and issues raised by the design competition jury had not been addressed;
 - (b) recommend that the designers address the elements that require further design development identified by the jury; and
 - (c) agree with all issues and concerns raised by the City's planning staff and commended the comprehensive assessment, including the following points relevant to the assessment of the modification application:
 - (i) Northern upper level setback: The removal of the 3-metre setback area is desirable for architectural integrity, but only acceptable if there are no significant adverse impacts on the amenity of adjoining apartments, including analysis of wind impacts to southern terraces of adjoining apartments; and
 - (ii) Height / roof feature: While desirable for architectural integrity, the additional overshadowing needs to be quantified.
37. Written correspondence was subsequently sent to the applicant on 19 August 2020, including requests for:
- (a) amended envelope drawings including fenestration articulation and architectural roof feature zones to align with those proposed under the detailed design development application D/2020/399;
 - (b) additional comparative wind tunnel testing to quantify impacts to the southern terraces at level 19 of the 'Stamford on Kent' building at 183 and 187 Kent Street, Sydney;
 - (c) additional comparative modelled views from the apartments and terraces of the 'Stamford on Kent' building at 183 and 187 Kent Street, Sydney; and
 - (d) additional overshadowing analysis and suns eye views of overshadowing arising from the architectural roof feature zones.
38. The applicant responded to the request on 11 September 2020, submitting amended drawings, a view study, additional sun eye views and wind effects statement. A further wind effects report, including the results of wind tunnel testing, was submitted to the City on 9 November 2020, and a revised view study on 13 November 2020.
39. The assessment provided in this report is based on the amended application and additional information outlined above.

Threshold Test

40. The development as proposed to be modified is substantially the same as that originally approved.

41. The location and overall form of the building envelopes are not inconsistent with the intent of the approved concept. As per the originally approved concept application, the proposed modifications will deliver mixed use building envelopes, including retail, commercial and residential land uses, fronting to Kent Street and Jenkins Street.
42. The proposed modifications primarily relate to the provision of new and extended fenestration articulation and architectural roof feature zones and the deletion of an approved setback area to the north-eastern corner of the building envelope.
43. The modification to the height of the envelope allows for the detailed design of architectural roof features that are permissible under Clause 5.6 the Sydney LEP 2012. The modifications to fenestration zones permit the detailed design of facade articulation, including minor projections over public roads that are permissible under Schedule 4 of the Sydney DCP 2012. The deletion of the setback area permits the building envelope to align with the competitive design alternatives process winning scheme.
44. The modifications to the envelopes are supported as they do not result in unacceptable amenity impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
45. In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act, 1979, an assessment of the application against the relevant provisions of Section 4.15(1) of the Act is provided under the headings below.

Economic, Social and Environmental Impact Assessment

46. The proposed modifications to the approved development have been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

State Environmental Planning Policies

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)

47. SEPP 65 applies to the subject modification application as the concurrent detailed design development application D/2020/399 includes a residential flat building of more than 3 floors and containing more than 4 apartments.
48. Clause 70B of the Environmental Planning and Assessment Regulation, 2000, provides that design verification required under Clause 50(1A) of the Regulation is not required for concept applications unless the application contains detailed proposals for a residential flat building.
49. Detailed development works are not sought in the subject Section 4.55(2) modification application and, as a result, no design verification statement was submitted with the application.

50. The aim of SEPP 65 is to improve the design quality of residential apartment development in New South Wales. It requires the consent authority to take into consideration a number of matters relating to design quality.
51. These include whether the proposed modifications to the building envelopes have the ability to achieve the 9 design quality principles set out in Schedule 1 of SEPP 65.
52. These principles are summarised and addressed with regard to the proposed modifications to the concept building envelope as follows:
- (a) **Principle 1: Context and Neighbourhood Character**
 - (i) The amended building envelopes permit the detailed design of the development to be contextually appropriate and consistent with the existing and desired future character of the area.
 - (b) **Principle 2: Built Form and Scale**
 - (i) The amended envelopes are capable of providing a built form that has appropriate massing and scale and which harmonises with the competitive design alternatives process winning scheme.
 - (c) **Principle 3: Density**
 - (i) The amended building envelopes allow for a development that can deliver a complying maximum Floor Space Ratio (FSR) in line with Clause 4.4 of the Sydney LEP 2012.
 - (d) **Principle 4: Sustainability**
 - (i) Detailed design applications are required to comply with BASIX and associated Ecologically Sustainable Development (ESD) requirements. The concurrent detailed design application D/2020/399 has demonstrated that sustainability targets can be met by the amended envelopes.
 - (e) **Principle 5: Landscape**
 - (i) The opportunity to provide deep soil zones on the site is constrained as the existing and approved building footprint occupies the whole site.
 - (ii) The amended envelopes allow opportunities for landscaping to be provided within and around the ground floor plane, the through site link and the bridging element between the envelopes at level 12.
 - (f) **Principle 6: Amenity**
 - (i) The amended envelopes can accommodate a development with a reasonable level of amenity for the future occupants of the development, as well as adjoining properties.

- (g) **Principle 7: Safety**
- (i) The amended envelopes allow for a detailed design of the development that can achieve the principles of Crime Prevention Through Environmental Design (CPTED).
- (h) **Principle 8: Housing Diversity and Social Interaction**
- (i) The amended envelopes allow for a detailed design for the development that can provide a suitable mix of dwelling types.
- (i) **Principle 9: Aesthetics**
- (i) The amended envelopes allow for a detailed design of the development consistent with the competitive design alternatives process winning scheme, which was considered by the selection panel as the entrant most capable of demonstrating design excellence.
53. The proposed modifications to the development are acceptable when assessed against the above stated principles, the provisions of SEPP 65 more broadly and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design provisions under the Sydney DCP 2012 and compliance with SEPP 65 generally implies compliance with Council's planning controls.
54. An assessment of the proposed modifications against the relevant objectives of the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18 metres (glass to glass)	Acceptable	<p>The proposed modifications to the northern envelope increase the building depth along its northern edge from between approximately 21-22 metres to between 31-32 metres.</p> <p>While this exceeds the maximum building depth requirement, it matches the approved overall depth of the northern envelope.</p> <p>Additionally, the concurrent detailed design development application D/2020/399 demonstrates that apartments with compliant 16 metre depths can be accommodated within the amended envelope.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12 metres between habitable rooms / balconies • 9 metres between habitable and non-habitable rooms • 6 metres between non-habitable rooms 	Yes	<p>The proposed modifications to the building envelope generally maintain the nil or minimal setbacks to the boundaries along the northern, eastern and southern boundaries, which is an acceptable and appropriate urban design outcome, given the context of the existing adjoining built form.</p> <p>The envelopes also maintain the varied 1.5 metre to 4.5 metre setbacks to the south-western boundary adjacent to the easement for the northern wing of the AON Tower, and compliant building separation between 6 metres and 9 metres.</p> <p>The 6 metre setback from the centreline of Jenkins Street is retained, including an appropriate alignment with the existing adjoining built form within the streetscape.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18 metres between habitable rooms / balconies • 12 metres between habitable and non-habitable rooms • 9 metres between non-habitable rooms 	Yes	<p>The approved nil to 3 metre setbacks are maintained to Kent Street, the northern and southern boundaries, which is acceptable given the applicable 20 to 45 metre street wall height provisions in the Sydney DCP 2012, the blank wall of the 'Stamford on Kent' building to the north and the commercial use of the AON Tower to the south.</p> <p>The retention of the 6 metre setback to the centreline of Jenkins Street measured is also consistent with established setbacks of the adjoining properties fronting Jenkins Street.</p>
<p>Nine storeys and above (over 25 metres):</p> <ul style="list-style-type: none"> • 24 metres between habitable rooms / balconies • 18 metres between habitable and non-habitable rooms • 12 metres between non-habitable rooms 	Acceptable	<p>The building separation provided by the amended envelopes from nine storeys and above does not comply with the requirements.</p> <p>This is acceptable as the proposed setbacks are an appropriate response to the surrounding urban context.</p> <p>Refer to the further discussion and assessment provided below under the Building Setbacks and Separation heading.</p>

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6 metres between habitable rooms / balconies • 3 metres between non-habitable rooms 	Yes	The amended building envelopes maintain setbacks from between 6 metres and 9 metres to the northern wing of the AON Tower. The detailed design development application D/2020/399 demonstrates that adequate visual privacy can be achieved.
Five to eight storeys (25 metres): <ul style="list-style-type: none"> • 9 metres between habitable rooms / balconies • 4.5 metres between non-habitable rooms 	Yes	The amended building envelopes maintain appropriate setbacks to the west (9 metres) and south-west (6 metres), and do not have any adverse impact on surrounding residential or commercial properties. The retained 6 metre setback from the centreline of Jenkins Street continues to align with adjoining buildings and does not have any adverse visual privacy impacts on surrounding properties.
Nine storeys and above (over 25m): <ul style="list-style-type: none"> • 12 metres between habitable rooms / balconies • 6 metres between non-habitable rooms 	Acceptable	The building setbacks provided by the amended envelopes from nine storeys and above do not comply with the requirements. This is acceptable however, given that the proposed blank wall condition to the northern boundary will provide adequate visual privacy. Refer to the further discussion and assessment provided below under the Building Setbacks and Separation heading.

Local Environmental Plans

Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

55. An assessment of the proposed development against the relevant provisions of the Sydney LEP 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the B8 Metropolitan Centre zone.</p> <p>The proposed modifications are to building envelopes containing an indicative “mixed use development”, comprising “commercial premises” and “residential flat building” land uses, all of which are permissible with development consent in the zone.</p> <p>The proposed modifications generally meet the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 80 metres is permitted.</p> <p>A height of 94.05 metres is proposed to the highest point of the building envelopes.</p> <p>The proposed development does not comply with the maximum height of buildings development standard as a result.</p> <p>Refer to the further discussion and assessment provided below under the Architectural Roof Features heading.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.6 Architectural roof features	Yes	<p>The maximum height limit is exceeded by the proposed architectural roof feature zones.</p> <p>The zones are acceptable as they provide for spaces for decorative features which are capable of being fully integrated with the detailed design.</p> <p>Refer to the further discussion and assessment provided below under the Architectural Roof Features heading.</p>

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not a heritage item and is not located within a heritage conservation area. The site is within the vicinity of several heritage items, as discussed under the Locality heading above.</p> <p>The City's Heritage Specialist has advised that the proposed modifications to the approved development will not have any detrimental impact on the heritage significance of the nearby heritage items.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
7.16 Airspace operations	Yes	The amended building envelopes will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport.
7.20 Development requiring or authorising preparation of a development control plan (DCP)	Yes	<p>The proposed modifications to the approved building envelopes will result in the construction of a building greater than 55 metres above the existing ground level.</p> <p>This triggers the requirement for the preparation of a site-specific DCP.</p>

Provision	Compliance	Comment
		<p>Section 4.23 of the Environmental Planning and Assessment Act, 1979 allows a concept development application to be lodged in lieu of preparing a DCP.</p> <p>The matters under Clause 7.20(4) of the Sydney LEP 2012 are satisfied by the documentation submitted with the application and the amended conditions in Attachment A.</p> <p>The amended building envelopes and concept development consent D/2018/1014 satisfactorily sets expectations for the form, massing, scale, environmental impacts, ESD outcomes, access outcomes, interface with ground level and landscaping outcomes of the development.</p>

Development Control Plans

Sydney Development Control Plan 2012 (Sydney DCP 2012)

56. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided in the following sections.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>The proposed modifications to the timing of the submission of a detailed public domain plan have been reviewed and accepted by the City's Public Domain Unit, given that the concept development consent does not include any physical works.</p> <p>The appropriate timing of submission of the detailed design of any such public domain works is prior to the issue of any associated construction certificate for the detailed development application D/2020/399.</p> <p>The duplicate public domain condition (39) is also recommended to be deleted.</p>

Provision	Compliance	Comment
3.2 Defining the Public Domain 3.2.6 Wind effects	Yes	<p>A wind effects statement and wind effects report, including the results of wind tunnel testing, have been submitted with the original and amended applications.</p> <p>The statement and report demonstrate that the proposed modification to delete the upper level north-eastern setback will result in wind conditions for the adjoining residential development to the north which are either better than, or equivalent to the existing and approved wind conditions.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	The proposed modifications to the approved building envelopes align with the detailed design of a competitive design alternatives process winning scheme proposed under the concurrent development application D/2020/399.
3.5 Urban Ecology	Yes	The proposed modifications to the concept building envelopes will not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.9 Heritage	Yes	Refer to the discussion and assessment provided in relation to heritage conservation and Clause 5.10 of the Sydney LEP 2012 in the table above.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.1 Central Sydney 5.1.2 Building setbacks 5.1.2.2 Side and rear setbacks	Acceptable	<p>The proposed modifications to the north-eastern side setback does not comply with minimum setback between 6-12 metres prescribed under Section 5.1.2.2 of the Sydney DCP 2012.</p> <p>This is acceptable however, given that the proposed blank wall condition to the northern boundary will provide adequate visual privacy.</p> <p>Refer to the further discussion and assessment provided below under the Building Setbacks and Separation heading.</p>

Schedules

Provision	Compliance	Comment
Schedule 4 Projections over or into public road	Yes	<p>The proposed modifications include an articulation zone to the southern building envelope which projects over the Kent Street road reserve.</p> <p>This zone is generally acceptable with regard to the provisions set out in Schedule 4 of the Sydney DCP 2012, as it does not extend for more than 450 millimetres into the road reserve and is set more than 3 metres above the level of the Kent Street footpath.</p> <p>A condition is recommended to ensure that the detailed design of the articulation zone only contains decorative fenestration or shading devices, no useable floor space or Gross Floor Area and be constructed primarily of masonry, reinforced concrete, steel or other non-combustible materials.</p>

Discussion

Building Setbacks and Separation

57. The proposed deletion of the 3 metre setback area along the north-eastern portion of the boundary between levels 16 to 23 of the northern building envelope, allows for a nil northern setback for the full height and breadth of the detailed design of the development under the concurrent development application D/2020/399.
58. The Statement of Environmental Effects submitted with the application notes that the rationale for this proposed modification is to:

... improve the architectural form and integrity of the proposed development. The development has a monolithic, sculptural form that would be significantly compromised should the northern 'cut-out' be required to be accommodated in the design.

59. The assessment report for development application D/2018/1014 stated that:

A setback of 3 metres to the northern boundary is proposed above RL 74.60 to provide building separation of approximately 6 metres to existing south facing windows and balconies at 183 Kent Street. As shown on the indicative plans, a blank wall is proposed along the northern setback to provide visual and acoustic privacy to occupants at 183 Kent Street. In this instance, the proposed setback does not strictly comply with separation requirements under the ADG however, having regard to the existing setback of windows and balconies at 183 Kent Street to the boundary, the proposed setback of 3 metres satisfies the objective of 3F-1 of the ADG, in that adequate building separation is shared between the subject site and the adjacent property and reasonable privacy can be achieved, subject to detailed design as part of a Stage 2 Development Application.

60. It should also be noted that the Competitive Design Alternatives Process report stated the following in relation to the upper level setback:

The variation to the Kent Street upper level setback exhibits merit when considered alongside the existing development context of Kent Street, the vertical break in massing, and the 'push and pull' of the two tower forms.

Consider how GFA may be redistributed without compromising the design's key qualities should compliance with the 3m setback from the northern boundary be required.

61. The applicable planning controls relating to building setbacks are in Section 5.1.2.2 of the Sydney DCP 2012, and in Parts 2F, 2H and 3F of the ADG.
62. The controls in Section 5.1.2.2 of the Sydney DCP 2012 relate to side and rear setbacks and provide that principal windows and balconies of residential buildings must be setback from side property boundaries by between 6 metres below 45 metres in height, and by 12 metres for buildings above 45 metres in height to ensure visual privacy is achieved between dwellings.
63. The DCP defines principal window or balcony as being the main window or balcony of a living room and main bedroom of a dwelling unit. Notably, Figure 5.9 of the Sydney DCP 2012 indicates that where solid boundary walls are proposed without windows or balconies, residential buildings can be built to the boundary, as indicated in Figure 32 below.

Figure 5.9
Plan of the setbacks required for commercial buildings to residential, serviced apartments and hotel buildings above 45m on side and rear boundaries with windows

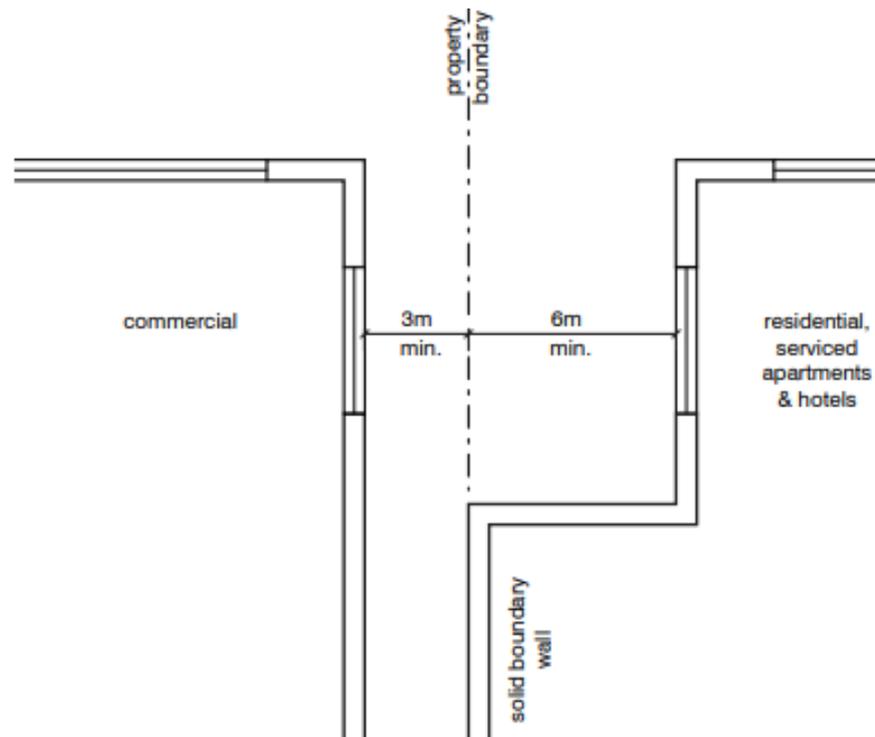


Figure 32: Extract of Figure 5.9 from the Sydney DCP 2012, indicating a nil side boundary setback to a residential building constructed with a solid boundary wall

64. Part 2F of the ADG relates to building separation between building envelopes and buildings and prescribes minimum distances for such separation based upon building heights.
65. Among the considerations in setting building separation controls, it states that no building separation is necessary where building types incorporate blank party walls.
66. Part 2H of the ADG relates to side and rear setbacks, governing the distance of a building from side and rear boundaries of a site, also relating to the height of the building. Among the considerations in setting side and rear setback controls, it states that zero side setbacks should be considered where the desired character is for a continuous street wall, such as in dense urban areas.
67. Part 3F of the ADG relates to visual privacy, which includes design criteria requiring separation between windows and balconies to ensure privacy is achieved. The separation distances required relate to the height of the building and particular uses served by the windows and balconies.
68. The concurrent detailed design of the development under development application D/2020/399 proposes a blank wall along the length of the northern boundary of the site, with no windows or balconies.
69. Contextually, the form of the modified building envelopes is consistent with that of the development in the locality, comprising a dense urban environment, with existing commercial and residential developments within the streetscape presenting minimal setbacks to side boundaries, as illustrated in Figure 33 and 34 below.

70. This satisfies the objectives in 2F and 2H of the ADG relating to the compatibility of building envelopes in terms of the context of surrounding development.

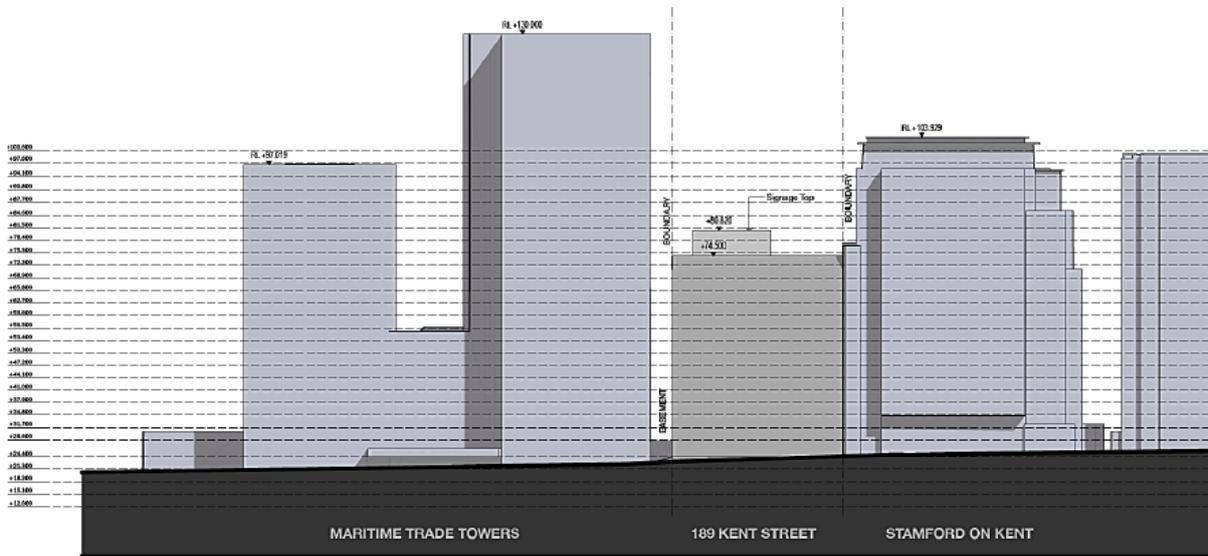


Figure 33: Extract of existing streetscape elevation to the western side of Kent St

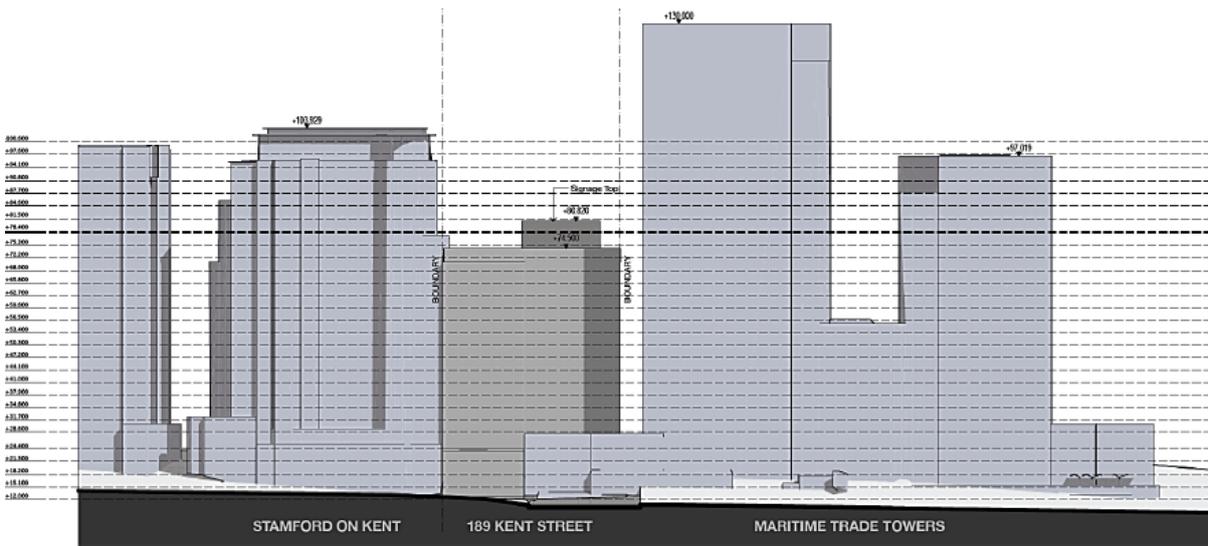


Figure 34: Extract of existing streetscape elevation to the eastern side of Jenkins St

71. The proposed blank wall will not result in any visual privacy impacts to the apartments within the south-eastern and south-western portions of the adjoining ‘Stamford on Kent’ building at 183 and 187 Kent Street, Millers Point, satisfying the objectives in 3F of the ADG.
72. Given that the terraces at level 19 of the adjoining development to the north, and the windows between levels 19 to 27 inclusive are south-facing, the nil setback will not result in any impacts to the receipt of direct solar access to these apartments, satisfying further considerations in 2F and 2H of the ADG and the objectives for building setbacks in Section 5.1.2 of the Sydney DCP 2012.

- 73. With regard to other potential amenity impacts, the wind impacts report submitted to the City on 9 November 2020 contains the results of comparative wind tunnel testing, which demonstrates that the proposed nil setback will result in wind conditions for the adjoining residential development to the north which are either better than, or equivalent to the existing and approved wind conditions. This achieves compliance with the relevant wind effects provisions and objective in Section 3.2.6 of the Sydney DCP 2012.
- 74. Although the proximity of the amended building envelope will result in reduced outlook and views from, and ambient light received by the south-facing terraces at level 19, and the south-facing windows between levels 19 and 27 of the ‘Stamford on Kent’ building, these impacts are considered reasonable.
- 75. This is because substantive outlook, views, direct solar access and daylight amenity is maintained to these apartments from the primary apartment balconies and window openings facing east and west across Kent Street and Jenkins Street respectively, as indicated in Figure 35 below.



Figure 35: Extract of floor plans of apartments within the ‘Stamford on Kent’ building at 183 and 187 Kent St, Millers Point

76. It is also noted that the existing amenity enjoyed by the occupants of these apartments is derived from across a side boundary, due to the under-developed nature of the subject site, with no easements burdening the subject site providing legal rights of access to light and air.
77. Overall, the proposed reduction to the northern setback is acceptable, as:
- (a) enforcing compliance with the approved 3 metre setback would compromise the architectural outcome of the competitive design alternatives process winning twin tower scheme;
 - (b) no windows or balconies are proposed within the blank wall of detailed design of the northern facade of the development, with no additional privacy impacts as a result;
 - (c) the affected terraces and windows to the adjoining development are south-facing, and would not be impacted in terms of solar access, or by additional wind impacts; and
 - (d) impacts on access to ambient light, outlook and views across the side boundary are acceptable, especially given that the primary aspect and amenity for apartments within the adjoining development is maintained.

Architectural Roof Features

78. The proposed architectural roof feature zones to the building envelopes exceeds the maximum 80 metre height of buildings development standard in Clause 4.3 of the Sydney LEP 2012 by between 1.575 to 13.850 metres. It should be noted that a written variation request made under Clause 4.6 of the Sydney LEP 2012 is not required for the assessment of a Section 4.55 modification application.
79. Clause 5.6 of the Sydney LEP 2012 sets out that development which includes an architectural roof feature may exceed the height limits set out in Clause 4.3, provided that the consent authority is satisfied that the tests in Clause 5.6(3) of the Sydney LEP 2012 have been met. These include that:
- (a) the architectural roof feature:
 - (i) comprises a decorative element on the uppermost portion of a building;
 - (ii) is not an advertising structure;
 - (iii) does not include floor space area and is not reasonably capable of modification include floor space area;
 - (iv) will cause minimal overshadowing; and
 - (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.
80. The proposed architectural roof feature zones atop the modified building envelopes are capable of providing architectural roof features which meet these tests, as demonstrated in the concurrent detailed design development application D/2020/399.

81. As illustrated in Figure 36 and Figure 37 below, the detailed design of the roof feature:
- (a) comprises a decorative element, designed to provide a robust profile and an improved relationship with the adjoining development;
 - (b) does not include any advertising structures;
 - (c) does not include any floor space, comprising a frame only, with no accessible slabs which could be reasonably modified to include floor space in the future; and
 - (d) contains no plant, equipment or signage, instead appearing only as an integrated building element designed to enhance the appearance of the development.

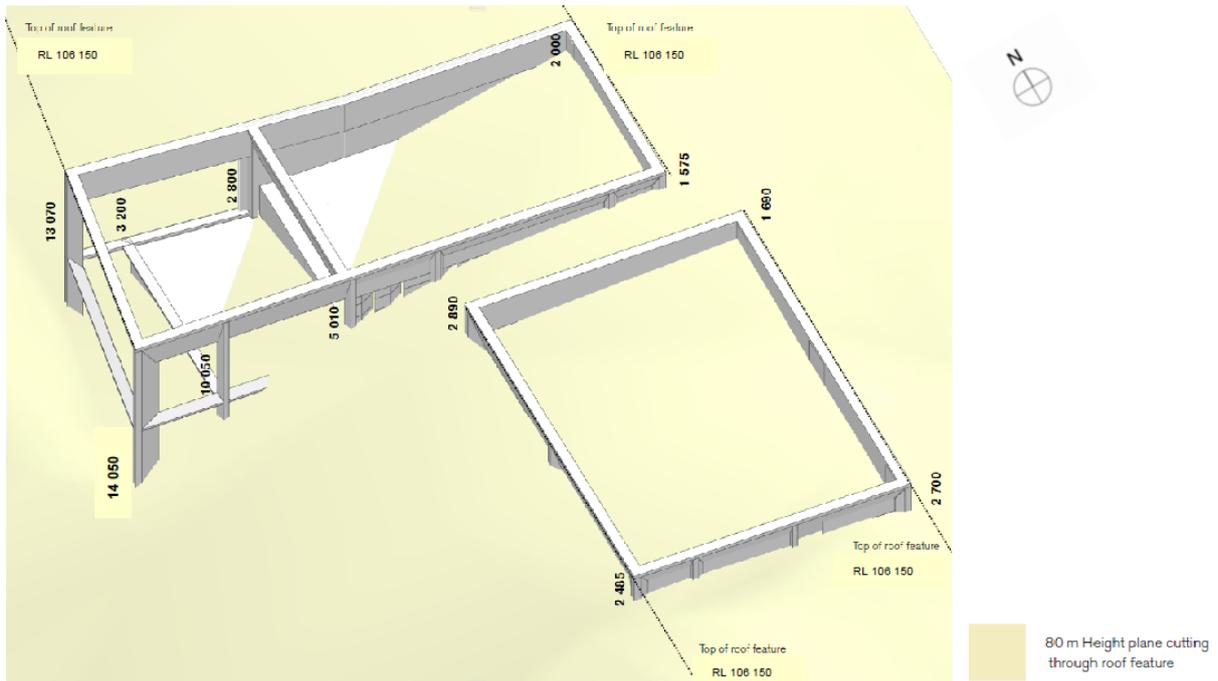


Figure 36: Axonometric view extract illustrating architectural roof feature elements exceeding the maximum 80 metre height plane

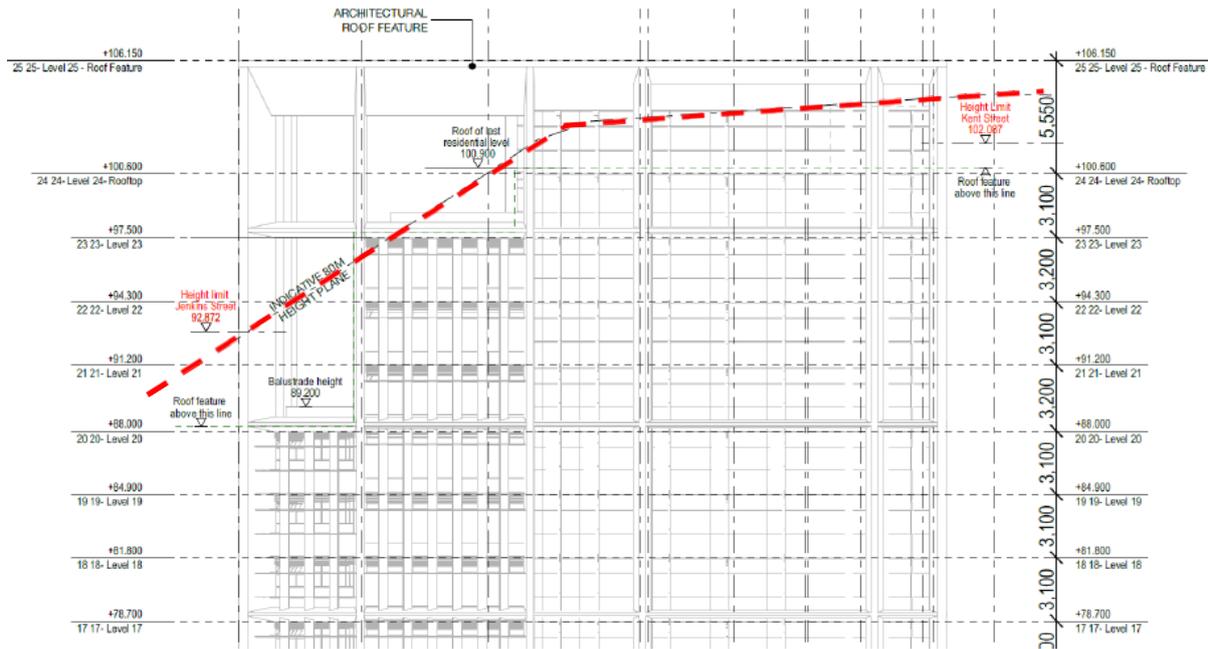


Figure 37: Section extract illustrating architectural roof feature elements exceeding the maximum 80 metre height plane

82. An overshadowing analysis was submitted with the amended application received by the City on 11 September 2020, which is included in Attachment D.
83. This solar access study demonstrates that the loss of solar access to the public domain and existing commercial buildings to the south-west, south and south-east of the site is minimal.
84. The suns eye view diagrams reproduced in Figures 38 and 39 below demonstrate that the shadow cast by the roof feature largely falls on surrounding commercial building facades and the Western Distributor, and not generally on public footpaths, parks, or residential dwellings.

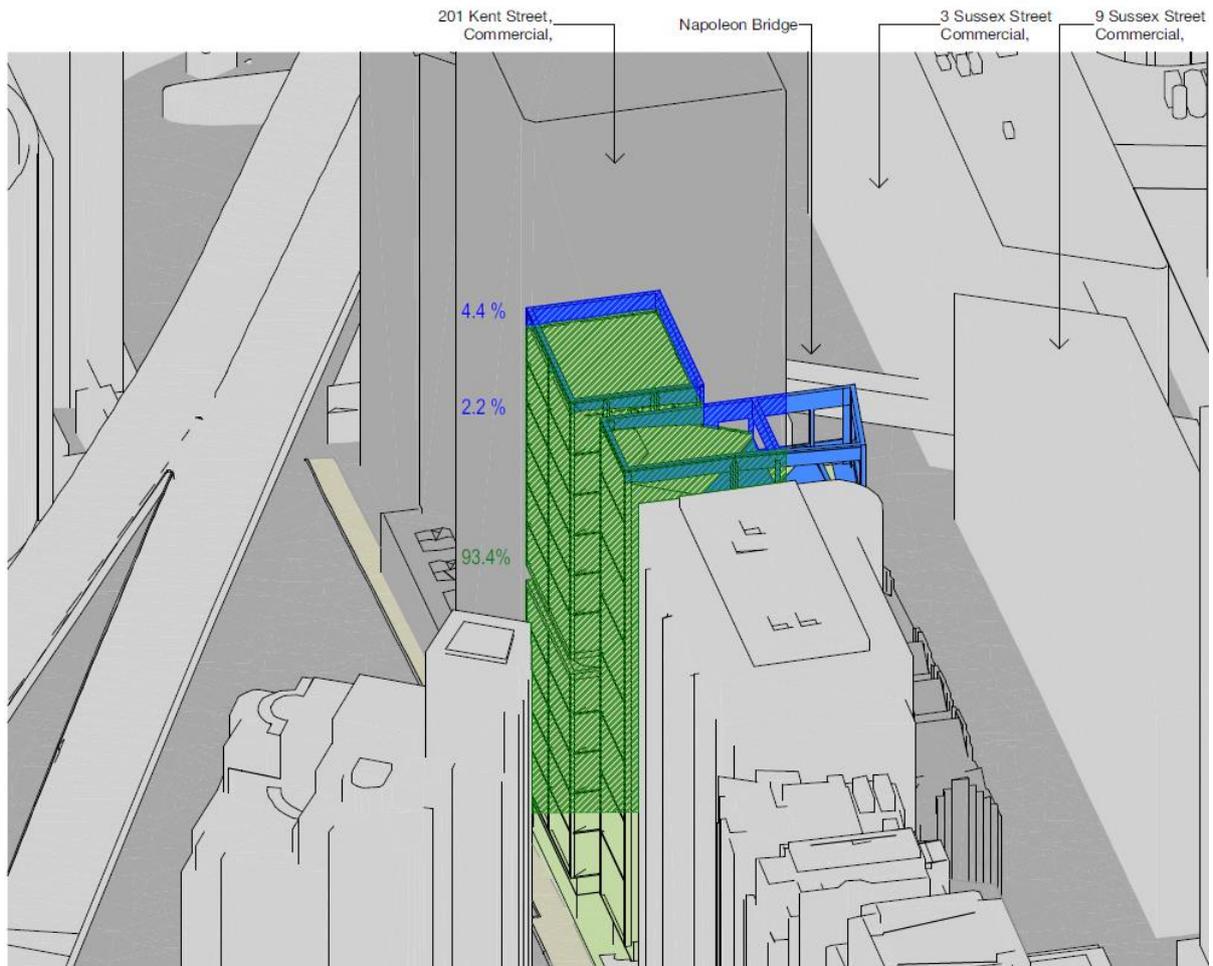


Figure 38: Sun's eye view extract, illustrating the extent of overshadowing from architectural roof feature elements at 11.30am at the midwinter solstice (21 June)

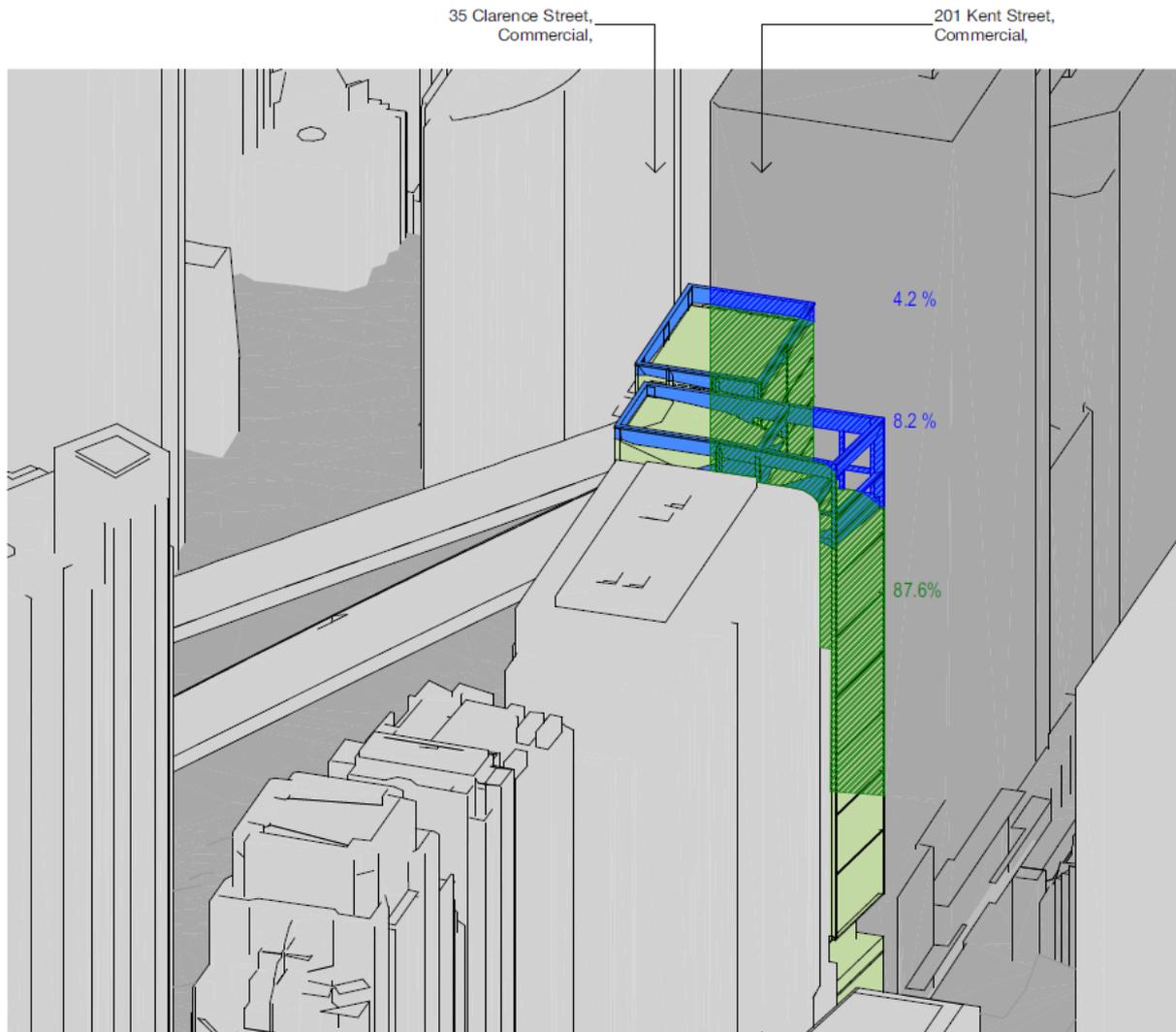


Figure 39: Sun's eye view extract, illustrating the extent of overshadowing from architectural roof feature elements at 1.30pm at the midwinter solstice (21 June)

85. The amount of shadow cast by the roof feature as a percentage of the total shadow cast on the adjoining southern commercial office building facade has been quantified by the study. The proportion of total shadow cast caused by the proposed roof features ranges from 3.4% at 9am to 17.2% at 12:30pm, mid-winter. This degree of additional overshadowing is minor in scope and does not comprise any significant impacts on surrounding sensitive uses, including those within the public domain or nearby residential buildings.
86. A condition is recommended for Attachment A, in order to ensure consistency with the provisions of Clause 5.9 of the Sydney LEP 2012 and to confirm that the detailed design of roof features provided within the proposed zones will remain as decorative elements and not include any advertising structures or floor space.

View Sharing and View Loss

Public Views

87. The proposed modifications to the height and form of the approved building envelopes do not result in significant impacts on views from public places to other public places.
88. The retention of the through site link will allow the detailed design of the development to provide east-west views through the site from Kent Street, Jenkins Street, Hickson Road and Watermans Quay.
89. View corridors running north-south along Kent Street also remain largely unaffected as the building envelope remains consistent with the character of the existing development along its western side.
90. From more distant vantage points, particularly from Barangaroo and from the Sydney Central Business District to the east of the site, the amended form of the envelope does not result in any significant adverse impacts to views to public places or icons.
91. The modified envelopes are considered to be an acceptable addition to the north-western edge of development within the Sydney Central Business District and the impact on public domain views is considered to be negligible.

Private Views

92. A number of submissions received raised concerns regarding the loss of private views from apartments within the south-eastern and south-western portions of the adjoining 'Stamford on Kent' building at 183 and 187 Kent Street, Millers Point, as a result of the proposed modifications to the approved building envelopes.
93. The views are across the side boundary with the subject site, primarily toward the south-east Sydney Central Business District skyline, but also to the south-west toward the commercial towers within the Barangaroo South precinct. It is noted that the existing commercial building at 189-197 Kent Street, Sydney, does not achieve the full development potential in regard to either building height or FSR permissible under the Sydney LEP 2012.
94. The aerial photograph in Figure 40 below shows the location of the 'Stamford on Kent' building and its proximity to the site.

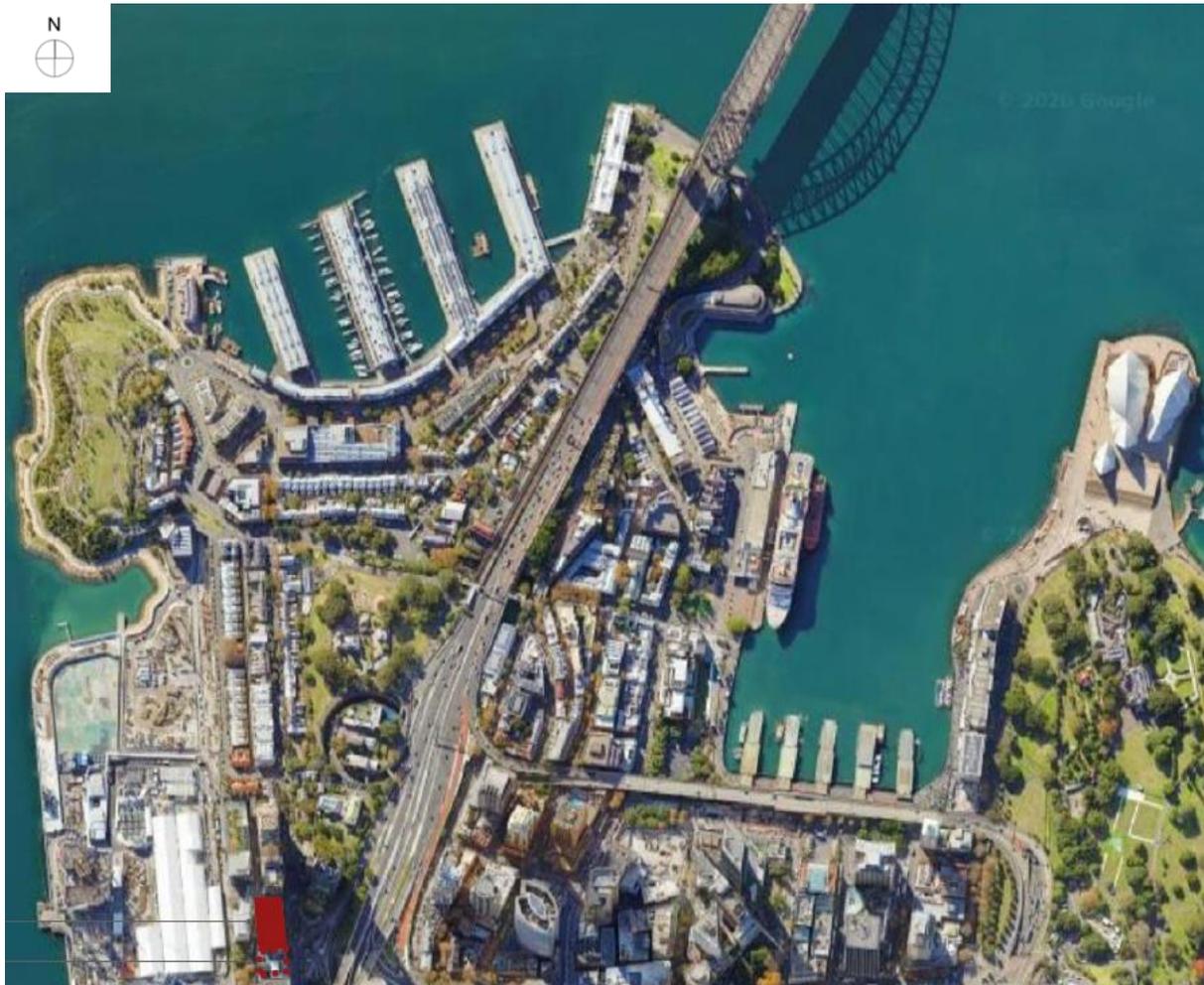


Figure 40: Aerial photograph of the site (dotted in red), the adjoining 'Stamford on Kent' building at 183 and 187 Kent St (solid red) and surrounding area

95. While the concerns raised by neighbouring residents are acknowledged, the assessment to determine the degree and reasonableness of view impacts must be made against the relevant planning controls and the extent to which the development complies. The relevant planning controls in the Sydney LEP 2012, Sydney DCP 2012, SEPP 65 and ADG make no specific provisions for the preservation of private views.
96. Compliance with the principal development standards and their relevance to view loss is discussed below, demonstrating that the proposed modifications to the approved building envelopes are acceptable with regard to view loss and view sharing considerations, as follows.

Sydney LEP 2012

97. A maximum height of 80 metres is applicable under Clause 4.3 of the Sydney LEP 2012. With the exception of the architectural rooftop feature zones discussed above, which would not interfere with any views from the adjoining development to the north, the height of the development, as proposed to be modified, is appropriate for its dense Central Sydney context, providing for an acceptable relationship with the neighbouring buildings.

98. The detailed design of the development in the concurrent development application D/2020/399 is eligible for an FSR of 12.07:1, including accommodation floor space available under Clause 6.4 of the Sydney LEP 2012, and design excellence floor space available under Clause 6.21 of the Sydney LEP 2012.
99. This design demonstrates that the proposed modifications to the building envelope can provide for a building design which complies with the maximum FSR available. Overall, the amended building envelope will have a form and density that is appropriate for its context. The proposal does not present as being out of character for the street and locality.
100. Having regard to the principal development standards, the proposal also satisfies the objectives of the B8 Metropolitan zone. The indicative commercial uses are commensurate with the zone objectives in reinforcing the pre-eminent role of Sydney's global status in providing business, office, retail premises that contribute to the economy.

Sydney DCP 2012

101. As discussed under the Building Setbacks and Separation heading above, the nil setback proposed to the northern boundary is consistent with the provisions of Section 5.1.2.2 of the Sydney DCP 2012 and satisfactory with regard to the setback objectives in Section 5.1.2 of the Sydney DCP 2012.
102. The provisions in Section 4.2.3.10 of the Sydney DCP 2012 provide additional guidance in relation to outlook and views from existing residential development, requiring the consideration of such matters in the site planning and massing of new development.
103. As discussed above, the primary view aspects from the affected apartments to the east and west is largely unaffected by the proposed modifications, with views to Sydney Harbour, the Rocks and Opera House maintained. Detailed analysis of views and outlook from the adjoining residential apartments has been carried out, which demonstrates that the site planning and massing of the development is generally acceptable.

SEPP 65 and ADG

104. As discussed under the Building Setbacks and Separation heading above, the nil setback proposed to the northern boundary satisfies the building separation and setback considerations in Parts 2F and 2H of the ADG and presents no significant visual privacy concerns in relation to the design criteria and guidance in Part 3

View Impact Study

105. The application was accompanied by a view impact analysis study comprising 3D digital modelling and perspectives of existing and proposed views from indicative locations within apartments in the adjoining development.

106.

107. Although the view loss analysis did not provide specific heights, levels or camera angles, the view images have been reviewed by Council staff and are a generally acceptable depiction of views from the 'Stamford on Kent' building at various heights, as illustrated below in Figures 41, 42, 43, 44, 45 and 46.

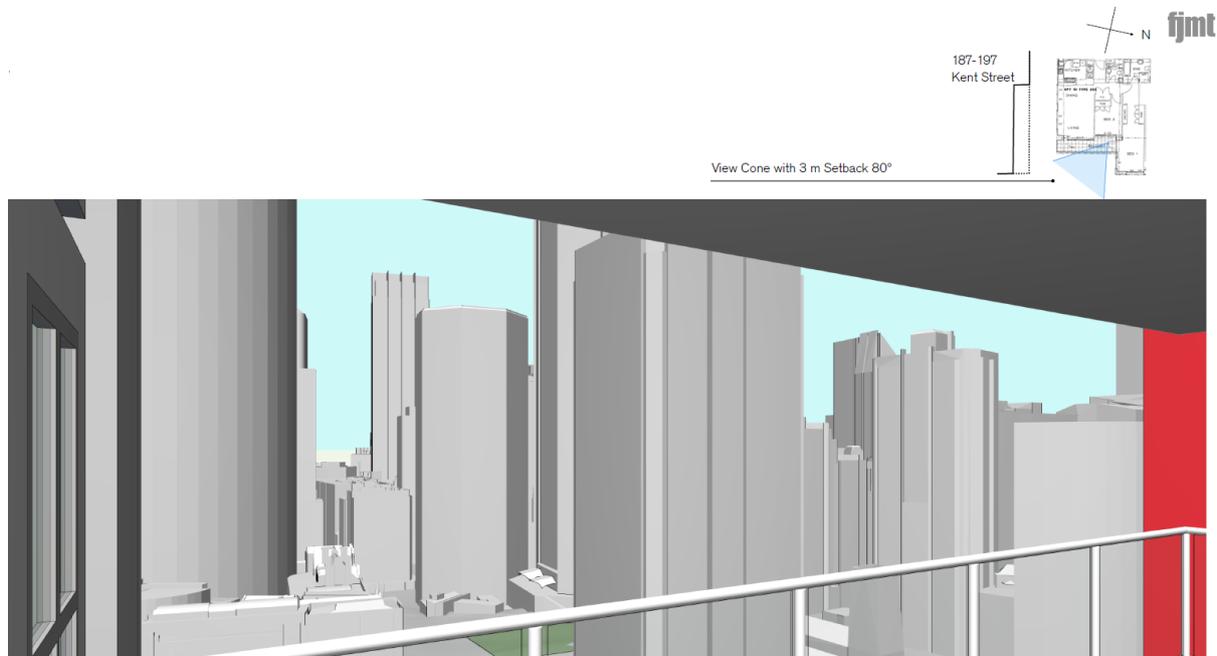


Figure 41: Extract of view study image from level 19 with the approved 3m envelope setback

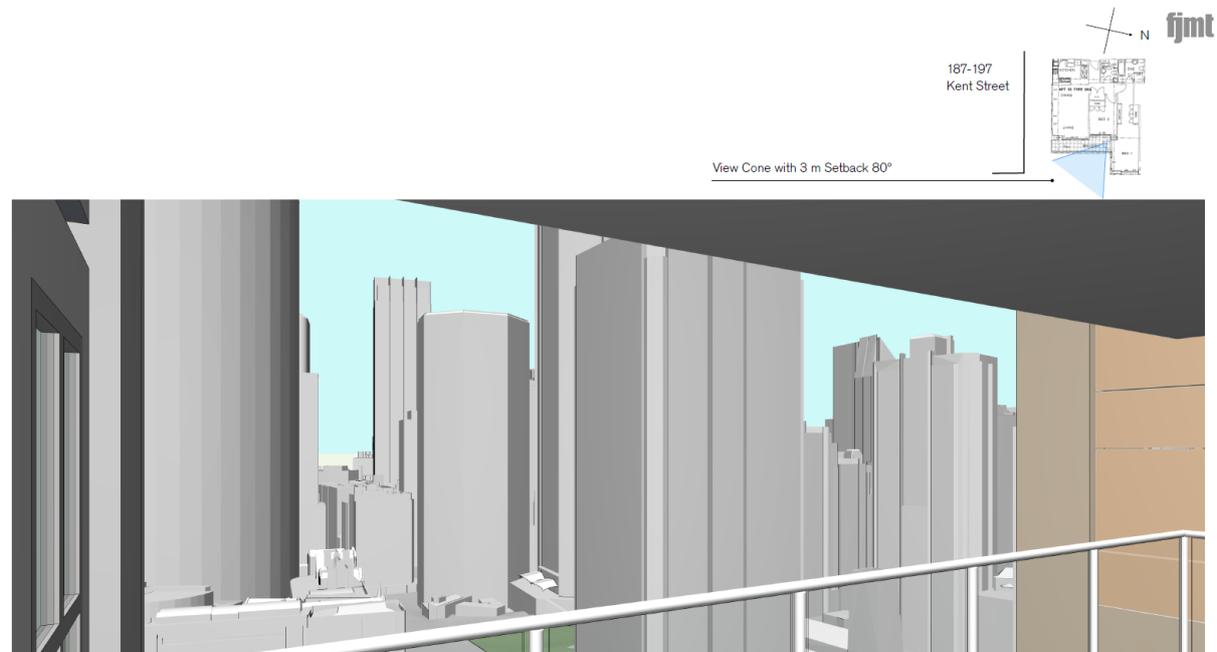


Figure 42: Extract of view study image from level 19 with the proposed nil setback

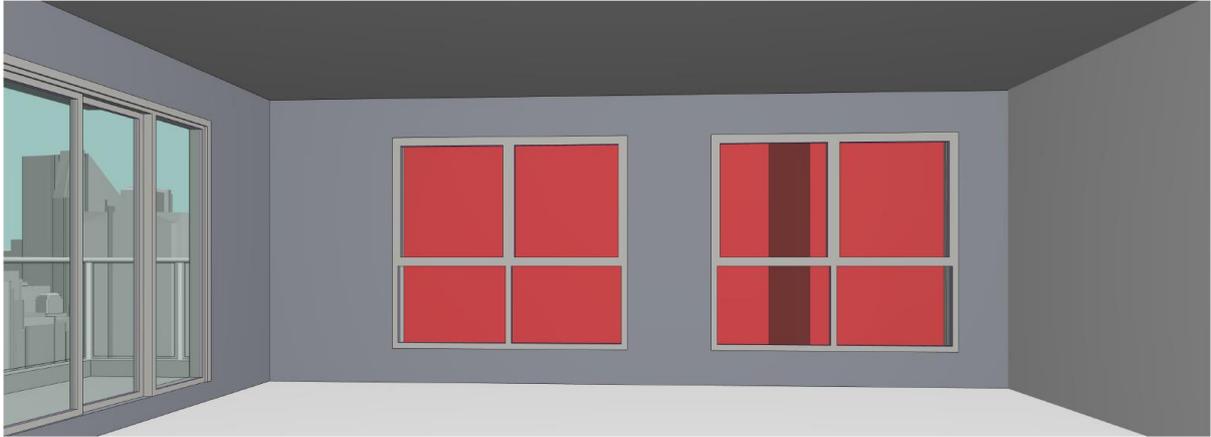
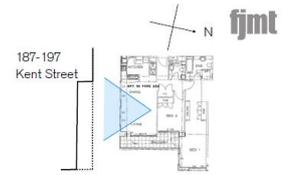


Figure 43: Extract of view study image from level 23 with the approved 3m envelope setback

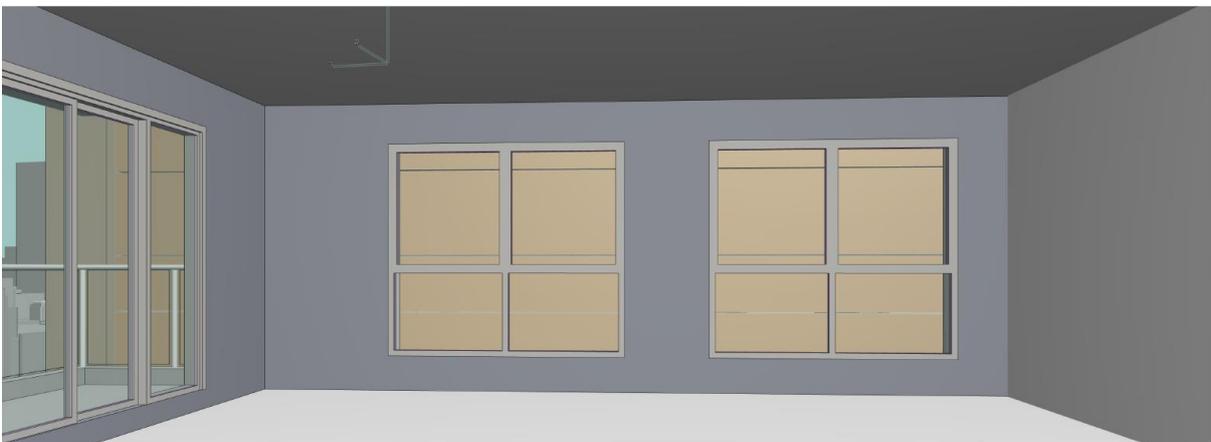
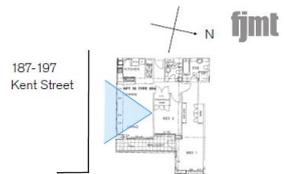


Figure 44: Extract of view study image from level 23 with the proposed nil setback



Figure 45: Extract of view study image from level 26 with the approved 3m envelope setback

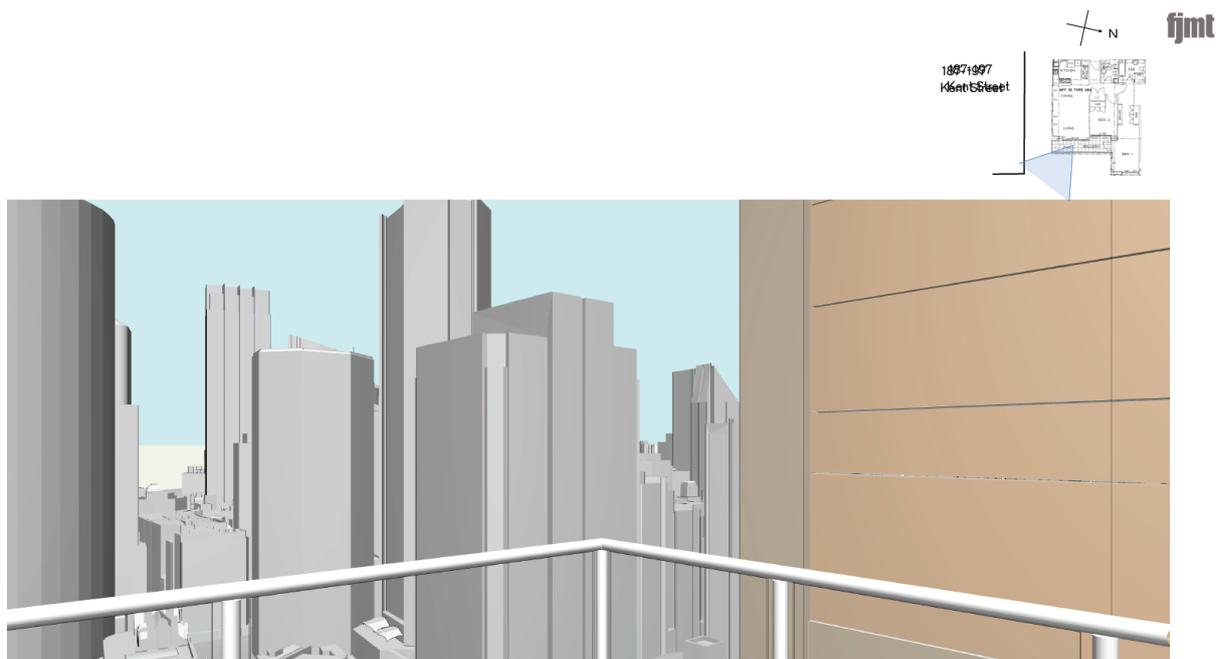


Figure 46: Extract of view study image from level 26 with the proposed nil setback

Planning Principle

108. In order to assess the impact of the proposed modifications to the approved building envelopes on existing views, an assessment has been made against the planning principle established by Senior Commissioner Roseth in the Land and Environment Court decision *Tenacity Consulting v Warringah* [2004] NSWLEC140 in relation to view sharing.

109. The principle specifies that the notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment which may, in some circumstances, be reasonable. The below four step assessment is adopted to determine whether view sharing is reasonable in the case of the proposed modifications.

Assessment of views to be affected

- (a) Views with the potential to be affected consist of views of the built environment and skyline of the Sydney Central Business District and Barangaroo South in a south-eastern and south-western direction respectively.
- (b) These views are enjoyed from windows, balconies and terraces of residential apartments in the south-eastern and south-western portions of the 'Stamford on Kent' building at 183 and 187 Kent Street, Millers Point, as indicated in Figures 47, 48, 49, 50, 51 and 52 below. The apartments also enjoy views to the east, north-east, north-west and west of the site.

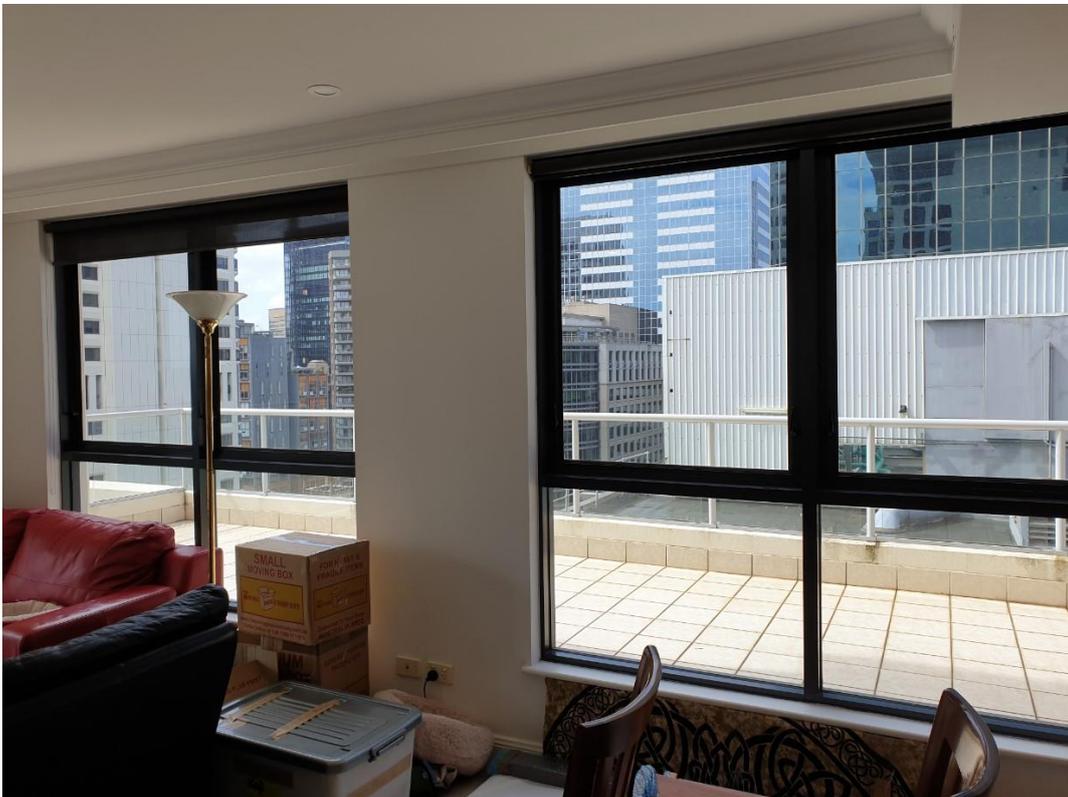


Figure 47: South views from level 19 'Stamford on Kent' living room windows



Figure 48: South-east views from level 19 'Stamford on Kent' terrace



Figure 49: South views from level 23 'Stamford on Kent' living room windows

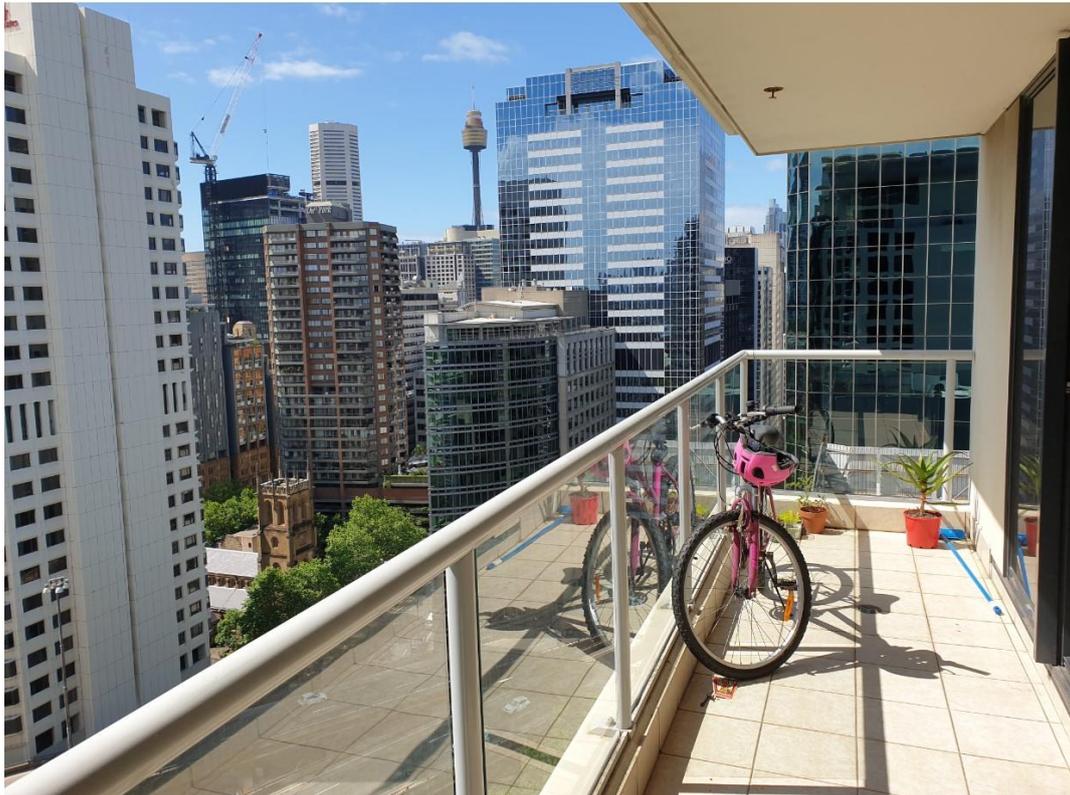


Figure 50: South views from level 23 'Stamford on Kent' balcony



Figure 51: South-east views from level 26 'Stamford on Kent' south elevation living room window



Figure 52: South-east views from level 26 'Stamford on Kent' balcony

Consider from what part of the property the views are obtained

- (a) The views under assessment are available from the living rooms, kitchens and balconies of the above-mentioned apartments, and from the external southern terraces at level 19.
- (b) The principle holds that the loss of views from living room windows from a standing position is considered to be of greater impact than the loss of views from bedrooms, bathrooms, or other service areas, or from a sitting position. It further states that it is unrealistic to expect that existing views across side boundaries can be protected.

Extent of the impact in relation to views available

- (a) The principle provides that the extent of impact should be assessed for the whole of the property, rather than just for the affected view.
- (b) The proposed modifications will have an additional impact to the south-eastern apartments from Levels 19 to 27 of the neighbouring building beyond that approved under development consent D/2018/1014, with a minor additional impact to the external terrace of the south-western apartment at Level 19.
- (c) This impact is considered to be negligible in scope however, given that the primary aspect and view amenity for apartments within the adjoining development is maintained to the east and west of the site, with views of the Sydney Central Business District skyline to the east, and views to Sydney Harbour and partial views of the Opera House unaffected by the proposal, as indicated in Figure 53, 54 and 55 below.



Figure 53: East views of Sydney Harbour and the Opera House from level 19 'Stamford on Kent' balcony doors



Figure 54: East views of Sydney Harbour and the Opera House from level 23 'Stamford on Kent' apartment living room



Figure 55: North-east views of Sydney Harbour and the Opera House from level 26 'Stamford on Kent' apartment balcony

Reasonableness

- (a) The degree to which an impact is considered to be reasonable depends on the extent to which the development complies with the relevant planning controls, and whether impacts could be mitigated by a more skilful design.
- (b) In the case of the proposed modifications to the approved building envelopes, the view impact results from the deletion of the 3 metre setback area to the north-eastern portion of the northern-most envelope. The stated intent of this amendment is to ensure that the envelope can accommodate the winning scheme of a competitive design alternatives process.
- (c) Overall, the loss of views occurs over the southern side property boundary. As mentioned above, it is unreasonable to expect that existing views across side boundaries can be protected.
- (d) The loss of views from the adjoining residential apartments resulting from the modifications to the approved development is not considered to be significant. This is because the cumulative impact on views is negligible, given existing panoramic views to Sydney Harbour, its interface with harbourside land, and icons such as the Opera House are unaffected by the proposal.

Conclusion

110. Having regard to the dense urban context of Central Sydney, it is inevitable that new development will affect views and outlook to existing neighbouring development.

111. An assessment of whether the proposed development adversely impacts views from other developments has been undertaken above and the proposed modifications to the approved envelopes have an acceptable impact.
112. The amended building envelope does not significantly or unreasonably reduce the view amenity enjoyed by surrounding residential land uses. It provides for adequate view sharing and is acceptable as a result.

Other Impacts of the Development

113. The proposed modifications provide amended building envelopes capable of accommodating the detailed design of buildings which can achieve compliance with the Building Code of Australia (BCA).
114. The proposed modifications will have no unacceptable environmental, social or economic impacts on the locality, subject to the amended conditions of consent recommended in Attachment A.

Suitability of the Site for the Development

115. The proposed modifications to the approved building envelopes are in keeping with the desired future character for the site and locality.
116. The site is situated in the Sydney Central Business District, located amongst similar built forms to that proposed to be modified. It is suitable for the proposed development.

Consultation

Internal Referrals

117. The application was referred to, or discussed with the City's:
 - (a) Design Advisory Panel;
 - (b) Heritage Specialist;
 - (c) Public Domain Unit;
 - (d) Urban Design Specialist; and
 - (e) Specialist Surveyor.
118. The amended application, including additional information received, addresses all issues raised initially and is acceptable, subject to the amended conditions of consent included in Attachment A.

External Referrals

119. No referrals were required to be made to any external organisations in relation to the application.

Advertising and Notification

120. In accordance with the City of Sydney Community Participation Plan 2019, the original application was notified for a period of 14 days 14 days between 12 May 2020 and 27 May 2020 in accordance with the City of Sydney Community Participation Plan 2019.
121. The amended application was renotified for 14 days between 14 September 2020 and 29 September 2020 in accordance with the City of Sydney Community Participation Plan 2019.
122. A total of 1,020 properties were notified during each exhibition period and a total of 8 submissions were received by the City.
123. The concerns raised in each of the submissions objecting to the proposal are summarised and addressed under each heading below.

- (a) **Issue:** Loss of views and outlook from apartments within the 'Stamford on Kent' building

Response: As discussed above under the View Loss heading above, the proposed modifications have been assessed against the relevant planning controls and the planning principle established by Senior Commissioner Roseth in the Land and Environment Court decision *Tenacity Consulting v Warringah [2004] NSWLEC 140* in relation to view sharing. Overall, the proposal would have a negligible impact on view loss to neighbouring residential development and is acceptable.

- (b) **Issue:** Loss of solar access to apartments within the 'Stamford on Kent' building

Response: The proposed modifications will have no impact on direct mid-winter solar access to the apartments in the 'Stamford on Kent' building at 183 and 187 Kent Street, Millers Point, as the subject site is to the south of that property and the development cannot physically cast shadows to the north.

- (c) **Issue:** Loss of ambient light to apartments within the 'Stamford on Kent' building

Response: As discussed under the Building Setbacks and Separation heading above, the proposed modifications will have some impact on ambient light received through the south-facing living room windows of apartments between levels 19 and 27 in the 'Stamford on Kent' building at 183 and 187 Kent Street, Millers Point.

This impact is considered acceptable however, given that the primary easterly aspect from, and direct solar access to these apartments will be unaffected by the development.

- (d) **Issue:** Loss of property value to apartments within the 'Stamford on Kent' building

Response: Matters relating to loss of property value are not considerations that can be given significant weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

- (e) **Issue:** Loss of ventilation to apartments within the 'Stamford on Kent' building

Response: The proposed modifications to the building envelopes will not serve to significantly reduce ventilation to apartments within the existing adjoining development to the north, given that the primary aspect of these apartments to the east and west is unaffected by the development.

- (f) **Issue:** Exacerbated wind impacts to apartments within the 'Stamford on Kent' building

Response: As discussed under the Building Setbacks and Separation heading above, the wind impacts report submitted to the City on 9 November 2020 contains the results of wind tunnel testing, which demonstrates that the proposed nil setback will result in wind conditions for the adjoining residential development to the north which are either better than, or equivalent to the existing and approved wind conditions.

- (g) **Issue:** Visual and acoustic privacy impacts to apartments within the 'Stamford on Kent' building

Response: As discussed under the Building Setbacks and Separation heading above, the proposed modifications to the building envelopes, as demonstrated by the blank side wall proposed under the concurrent detailed design development application D/2020/399, will not result in any visual privacy impacts to the adjoining development to the north. Matters relating to acoustic privacy are addressed under the concurrent detailed design development application D/2020/399

- (h) **Issue:** Bulk and scale impacts to apartments within the 'Stamford on Kent' building, proposal incompatible and detracts from surrounding development

Response: The bulk and scale of the proposed modifications to the approved building envelopes is considered to be contextually appropriate in the context of the existing development along the western side of Kent Street and eastern side of Jenkins Street, including as viewed from the adjoining properties as discussed under the Building Setbacks and Separation heading above.

The locality is characterised by large format commercial office towers which do not have podium forms, with buildings rising to their full height from the street frontages with little relief in built form.

The proposed modifications to the approved envelopes maintain an east-west ground plane through site link, connecting link between the tower components and building breaks to distinguish between low and high rise components, all of which serve to mitigate the bulk, scale and massing of the development.

- (i) **Issue:** Inadequate onsite parking provision and traffic generation impacts within the locality

Response: The application is for modifications to a concept development consent and building envelopes only and does not encompass matters relating to traffic generation. These are instead addressed under the concurrent detailed design development application D/2020/399.

- (j) **Issue:** Reflectivity impacts to apartments within the 'Stamford on Kent' building

Response: The application is for modifications to a concept development consent and building envelopes. Matters relating to reflectivity impacts are addressed under the concurrent detailed design development application D/2020/399.

- (k) **Issue:** Constraints on construction and future maintenance of boundary walls

Response: While the detailed design of walls with nil setbacks is a matter for the concurrent development application D/2020/399, any future maintenance of such walls must be carried out from within the subject site, or with the consent of adjoining property owners. This type of arrangement is common within the context of the Sydney Central Business District, given the density of the urban environment in Central Sydney.

- (l) **Issue:** Demolition, excavation and construction impacts including hours of work, damage to adjoining buildings, dust and air pollution, structural, vibration and noise impacts, and traffic congestion

Response: No construction is proposed or approved as part of the modifications to the concept development consent and building envelopes. These matters are addressed under the concurrent detailed design development application D/2020/399.

Financial Contributions

Levy under Section 61 of the City of Sydney Act 1988

124. The application is not subject to any levies under Section 61 of the City of Sydney Act, 1988, as it is for modifications to a concept building envelope and development consent only.
125. Appropriate contributions are recommended to be levied as part of any development consent granted by the CSPC to the concurrent detailed design development application D/2020/399.

Relevant Legislation

126. Environmental Planning and Assessment Act 1979.
127. City of Sydney Act, 1988.
128. Roads Act 1993.

Conclusion

129. This Section 4.55(2) modification application proposes to alter the approved building envelopes to be consistent with the detailed design development application (D/2020/399). The detailed design development application is presented to the CSPC concurrently for approval.
130. The proposed modifications to the approved building envelopes will ensure consistency between staged development applications, 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.
131. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelopes are not inconsistent with the intent of the approved concept development. As per the originally approved concept application, the proposed modifications will deliver mixed use building envelopes, including retail, commercial and residential land uses, fronting to Kent Street and Jenkins Street.
132. The proposed modifications primarily relate to the provision of new and extended fenestration articulation and architectural roof feature zones and the deletion of an approved setback area to the north-eastern corner of the building envelope.
133. The modification to the height of the envelope allows for the detailed design of architectural roof features that are permissible under Clause 5.6 of the Sydney LEP 2012. The modifications to fenestration zones permit the detailed design of facade articulation, including minor projections over public roads that are permissible under Schedule 4 of the Sydney DCP 2012. The deletion of the setback area permits the building envelope to align with the competitive design alternatives process winning scheme.
134. The modifications to the envelopes are supported as they do not result in unacceptable amenity impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.

135. The proposed building envelopes are capable of accommodating a future building which exhibits design excellence in accordance with Clause 6.21 of the Sydney LEP 2012. The detailed design application D/2020/399 being considered concurrently by CSPC demonstrates that a generally compliant scheme can be provided within the amended envelopes that delivers design excellence in accordance with Clause 6.21 of Sydney LEP 2012.
136. The proposed modifications are therefore in the public interest and are recommended for approval.

ANDREW THOMAS

Acting Director City Planning, Development and Transport

David Reynolds, Senior Planner