

**Item 3.****Development Application: 410 Pitt Street, Haymarket - D/2020/1387**

File No.: D/2020/1387

**Summary**

<b>Date of Submission:</b>	21 December 2020, amendments received 16 April 2021, 29 June 2021
<b>Applicant:</b>	Tricon Management Group Pty Ltd
<b>Architect:</b>	Durbach Block Jagers
<b>Developer:</b>	Tricon Management Group Pty Ltd
<b>Owner:</b>	R Criola, B Ingham
<b>Planning Consultant:</b>	Mecone
<b>Heritage Consultant:</b>	Hericon Consulting
<b>DAP:</b>	11 March 2021
<b>Cost of Works:</b>	\$23,517,007.50
<b>Zoning:</b>	B8 Metropolitan Centre Zone, proposal is permissible with consent
<b>Proposal Summary:</b>	<p>Detailed development application for the demolition of the existing building and construction of a new 33 storey hotel accommodation building.</p> <p>Stage 1 concept approval D/2015/661 was approved by the Land and Environment Court on 19 May 2016 for a building envelope for a 31 storey accommodation hotel at the site. A competitive design process was undertaken in accordance with the concept approval. The competition jury selected the scheme prepared by Durbach Block Jagers. The subject application is a design development of the scheme.</p>

The development application was notified between 22 December 2020 and 2 February 2021. Forty submissions were received in response to the proposal, therefore the application is referred to the Local Planning Panel for determination.

Issues raised in submissions include objections to additional height, view loss, privacy and amenity impacts, solar impacts, building separation, BCA compliance, waste arrangements, pedestrian and traffic impacts, safety and anti-social behaviour, noise impacts, construction impacts, and social impacts. The impacts of the proposal are largely considered to align with the concept approval. Amended plans have been submitted to address issues associated with additional height. Conditions of consent are recommended to address operational and construction impacts where appropriate.

The application was considered by the Design Advisory Panel on 11 March 2021. The panel noted that the podium design of the proposal differed from the competition winning scheme and recommended the competition jury be reconvened to consider the application.

The reconvened competition jury met on 12 April 2021 to consider the application. The jury advised that the design has retained the potential for design excellence.

Additional information was requested from the applicant on the 23 March 2021 and 15 June 2021 relating to view loss, overshadowing, wind impacts, landscaping, Environmentally Sustainable Design (ESD), waste management, and social impacts. The application has been amended and further information provided to address assessment issues.

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

- Development Controls:**
- (i) City of Sydney Act 1988
  - (ii) State Environmental Planning Policy No. 55 - Remediation of Land
  - (iii) State Environmental Planning Policy (Affordable Rental Housing) 2009
  - (iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
  - (v) Sydney Local Environmental Plan 2012
  - (vi) Sydney Development Control Plan 2012
  - (vii) Central Sydney Development Contributions Plan 2013

- Attachments:**
- A. Recommended Conditions of Consent
  - B. Selected Drawings

## **Recommendation**

It is resolved that consent be granted to Development Application No. D/2020/1387 subject to the conditions set out in Attachment A to the subject report.

## **Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the concept approval (as amended) that applies to the site.
- (B) The proposal is consistent with the objectives of the B8 Metropolitan Centre Zone.
- (C) The proposal satisfies the relevant controls relating to hotel accommodation.
- (D) The proposal satisfies the design excellence provisions of clause 6.21 of Sydney LEP 2012.

## Background

### The Site and Surrounding Development

1. The site is identified as Lot 1 in DP 69787 and is located at 410 Pitt Street, Haymarket. The site is located on the eastern side of Pitt Street between Goulburn Street to the north and Campbell Street to the south.
2. The site has an area of approximately 345sqm with a western frontage to Pitt Street of 6.4 metres. The site contains a six storey building with a ground floor commercial use and boarding house use above.
3. The site is not heritage listed or located within a heritage conservation area.
4. The site is located within Central Sydney in an area characterised by a mix of commercial and residential buildings and land uses. The scale of surrounding development ranges from two storeys to 38 storey tower buildings.
5. To the north of the site at 398-408 Pitt Street is the 'Miramar' apartment building, which is listed in Schedule 5 of Sydney LEP as an item of local heritage significance the "Former Sydney Tourist Hotel facade". The heritage facade is 5 storeys and functions as a podium to the residential tower above. To the south of the site at 412 Pitt Street is a fourteen storey hotel building built circa 1930 that is currently undergoing redevelopment works. To the east, the site adjoins 414-418 Pitt Street a site containing a six storey podium building with two residential towers above 35 storeys and 38 storeys in height. To the west of the site opposite at 403 - 427 Pitt Street is the local heritage item "CB Hotel including ground level shops, 1930 addition on Goulburn Street and interior".
6. A site visit was carried out on 25 February 2021. Photos of the site and surrounds are provided below.

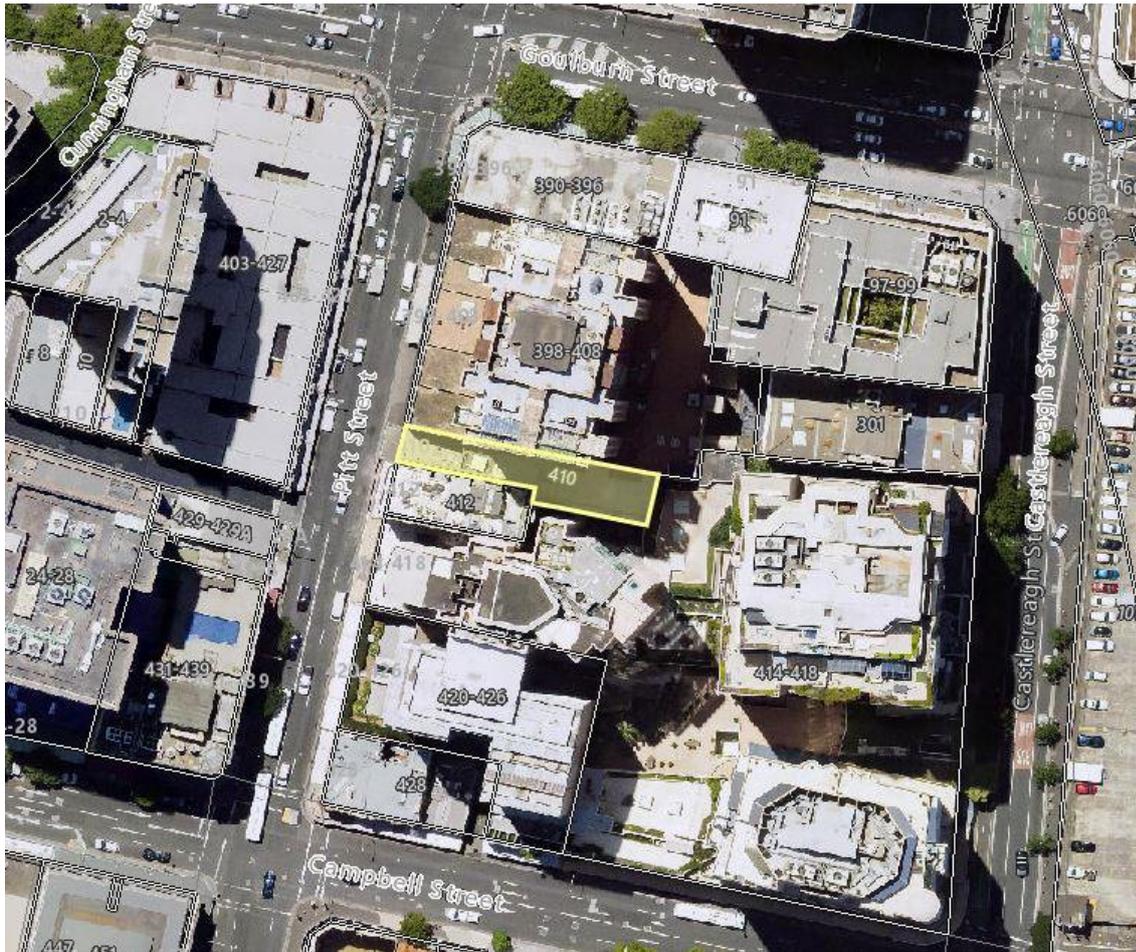


Figure 1: Aerial view of site and surrounds

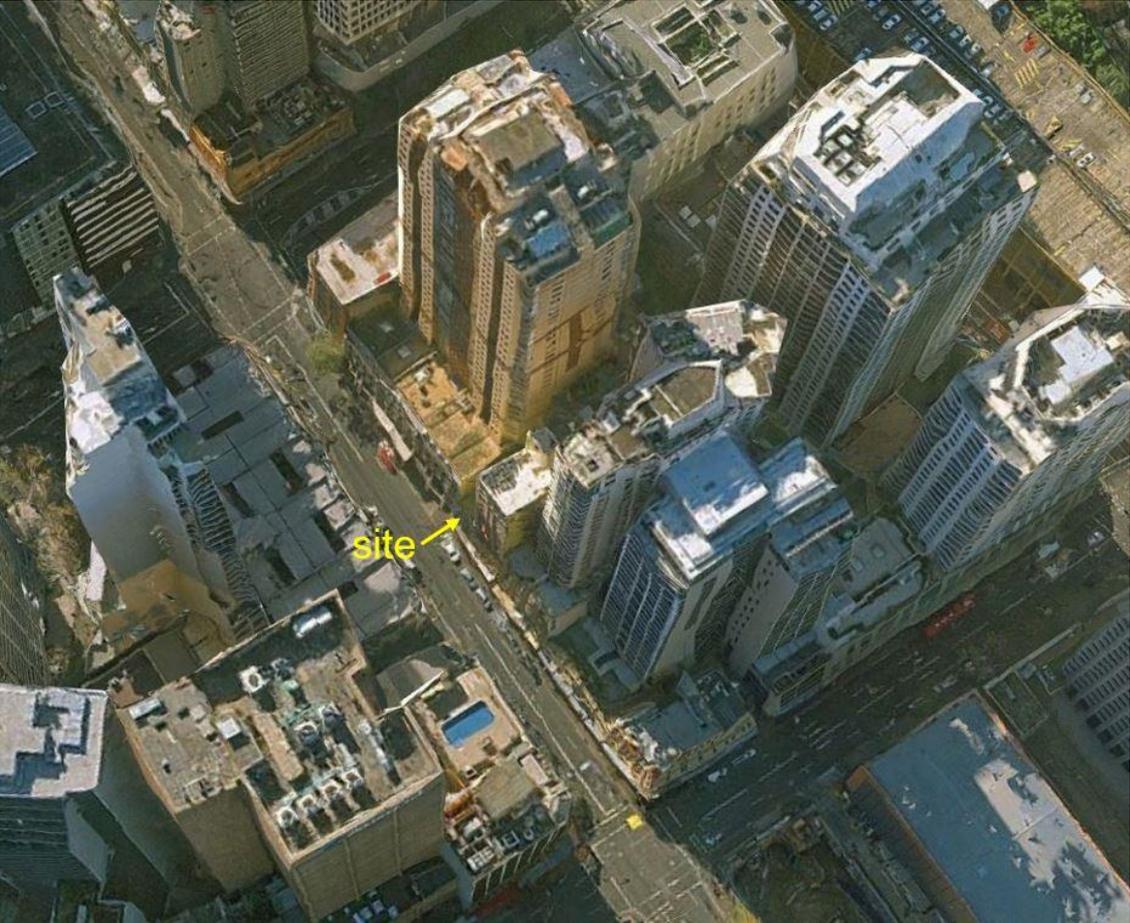


Figure 2: Aerial view of site



Figure 3: Site viewed from Pitt Street looking east



Figure 4: Site viewed from Pitt Street looking south



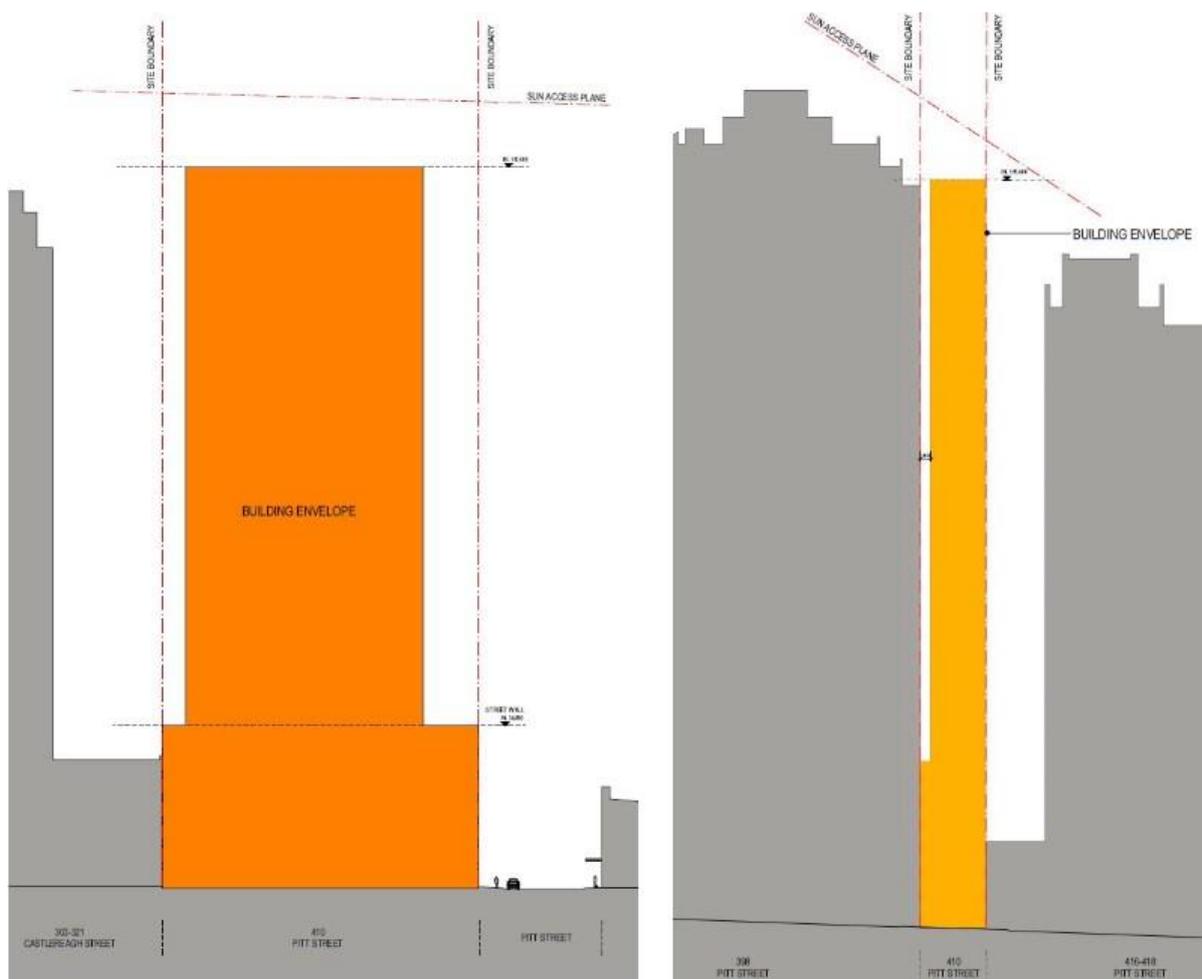
Figure 5: Site viewed from Pitt Street looking north

## History Relevant to the Development Application

### Development Applications

7. The following applications are relevant to the current proposal:

- **D/2015/661** – Development consent was granted approval by the Land and Environment Court on 19 May 2016 for 'Stage 1 building envelope for a new 31 storey accommodation hotel at 410 Pitt Street, Haymarket'. Two drawings of the approved building envelope are shown in the figure below. In accordance with Condition 3(d), the number of storeys for the development is an item not approved in the concept approval.



**Figure 6:** Approved concept building envelope drawings: north elevation (left), and north - south section (right)

- **D/2015/661/A** - was approved on 19 September 2019. This modification application approved amendments to Condition 5 relating to the submission of a design excellence strategy.

- A concurrent Section 4.55 application **D/2015/661/B** was lodged seeking to amend the approved building envelope to accommodate the detailed hotel building design under consideration in this application. This application is subject to a separate delegated assessment and has been approved.

### **Competitive Design Process**

8. Following on from and in accordance with the conditions of the Stage 1 approval, a competitive design alternatives process (design competition) was held for the development of the site during February to March 2020.
9. Four architectural firms participated in the design competition including:
  - (a) Scott Carver
  - (b) Durbach Block Jagers
  - (c) Sissons Architects
  - (d) SJB Architecture
10. The competition jury selected the scheme submitted by Durbach Block Jagers as the winning entry and recommended it as being capable of achieving design excellence.
11. A selection of images from the winning scheme presented during the design competition is provided below.



Figure 7: Design competition image: Pitt Street



Figure 8: Design competition image: Goulburn Street



Figure 9: Design competition image: Pitt Street looking south

**Design Advisory Panel**

12. The submitted development application was considered by the Design Advisory Panel (DAP) on 11 March 2021. The panel made the following comments on the application:
- (a) The podium design of the proposal differs from the competition winning scheme. A design statement is needed to explain the rationale for the departure including the removal of the original facade.
  - (b) Privacy issues for the adjoining apartments in relation to internal light wells be reviewed.
  - (c) Further information is needed on materiality.
  - (d) The panel recommends the design changes be referred to the judging panel for their review and recommendations.

**Amendments**

13. Following the DAP meeting and preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 23 March 2021 raising the following items in addition to the DAP comments:
- (a) Further information to assess view loss impact and overshadowing analysis for adjoining apartment buildings required.
  - (b) Confirmation as to whether a substation is required.
  - (c) Updated wind assessment for street level, podium courtyard and flying balcony required.
  - (d) Further and coordinating landscaping details required.
  - (e) Required NABERS targets within the competition brief to be incorporated within application.
  - (f) Clarified and updated waste arrangements to be provided.
  - (g) Further detailed social impacts including the relocation of residents.

**Competition Jury**

14. The competition jury reconvened on the 12 April 2020 to review the proposal. A summary of the jury comments is provided as follows:
- (a) Where areas of the facade do not receive much light (lightwells and voids) materials would need to provide necessary reflectivity to allow light to penetrate lower levels of the tower.
  - (b) The success of smaller hotel room sizes would come down to the quality of joinery and design.
  - (c) The panel are satisfied with the materials and samples presented in the meeting.

- (d) The panel recognise that due to the constraints of the site, the original facade would have been difficult to retain. The development needs to be buildable. An alternative design solution is supported. The proposed contemporary podium design sits comfortably within the context of the site.
- (e) The panel are satisfied with the progression of the design and are satisfied that it has retained the potential for design excellence. Further design revisions can revert to the City for resolution.

### **Amendments**

15. Amendments and additional information in response to Council's letter and the reconvened jury were received on 16 April and 11 May 2021.
16. Further amendments and information were received on 26 & 29 June 2021 in relation to:
  - (a) View loss
  - (b) Overshadowing
  - (c) Privacy
  - (d) Materials
  - (e) Waste details

### **Compliance Action**

17. The site is subject to an ongoing compliance investigation regarding the current building condition.
18. There is also currently a dispute between the owners of the subject site and the owners of 412 Pitt Street regarding a sewer line to the existing building. The sewer line was recently blocked and resulted in overflow within neighbouring sites. The proposal will create a new sewer connection in Pitt Street.

### **Proposed Development**

19. The application seeks consent for the following:
  - Demolition of the existing building
  - Construction of a 33 storey, 173 room hotel building. The building consists of a six storey podium and 27 floor tower above with one basement level, including a ground level lobby with bicycle parking and end of trip facilities, level 1 café, level 2 lounge area, level 6 meeting and courtyard area, level 31 flying balcony and pool, level 32 spa deck
  - Operation of a hotel 24 hours a day, 7 days per week.

20. Plans and elevations of the proposed development are provided below.



Figure 10: Proposal image

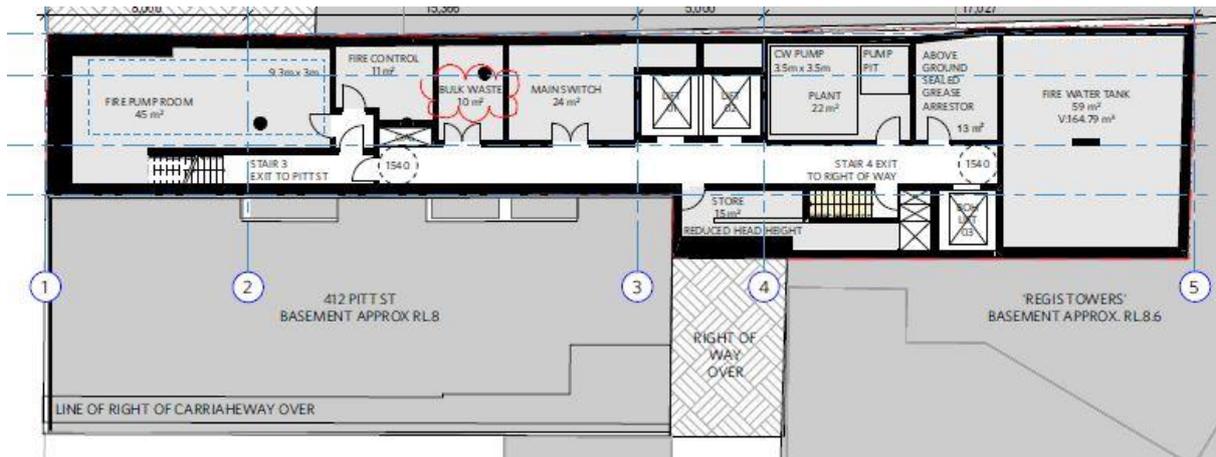


Figure 11: Basement plan

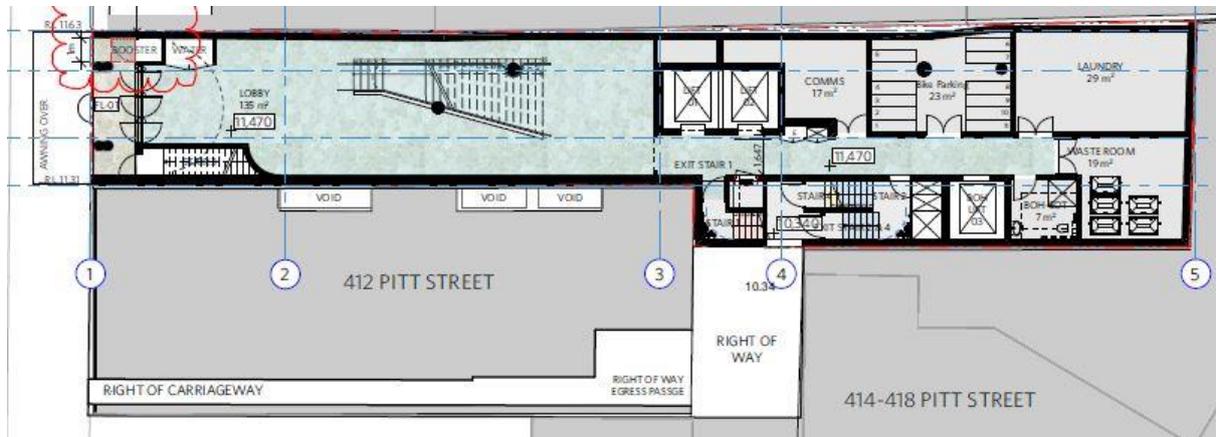


Figure 12: Ground floor plan

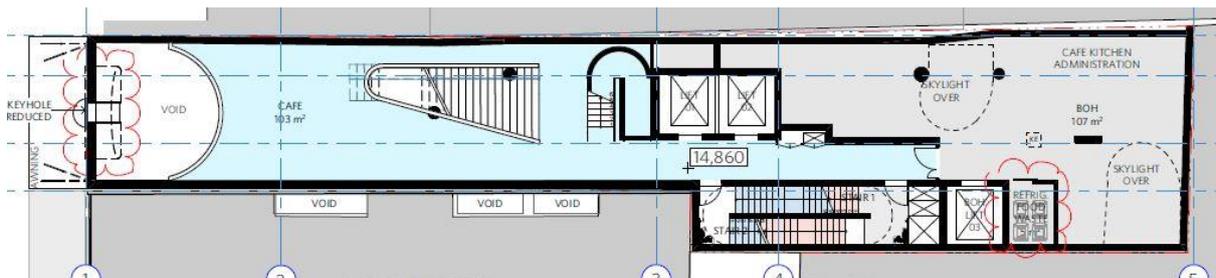


Figure 13: Level 1 plan

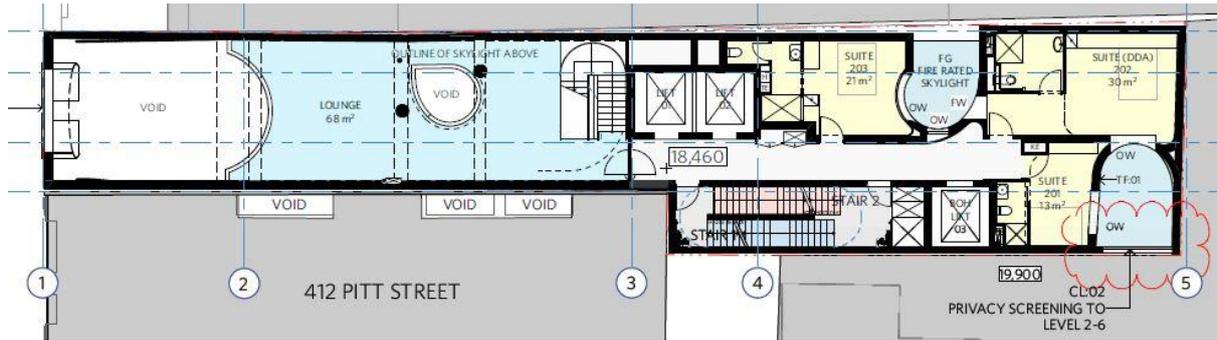


Figure 14: Level 2 plan



Figure 15: Levels 3-4 plan

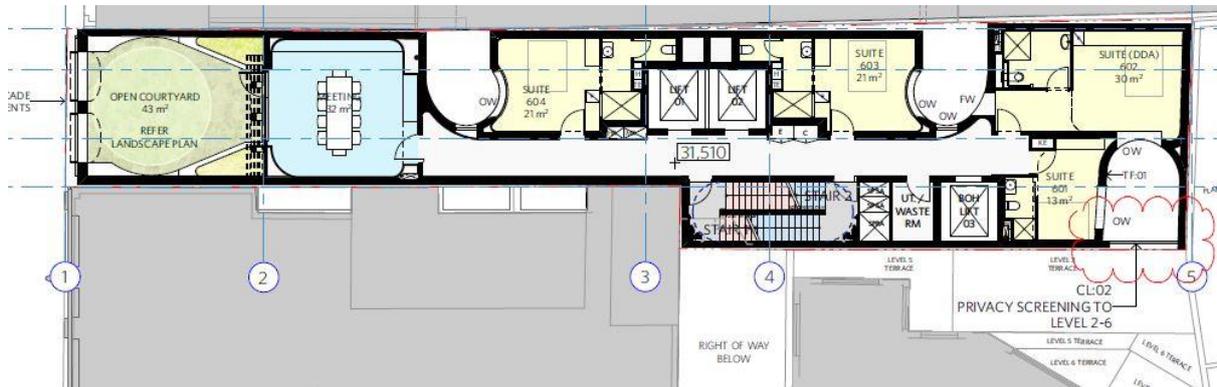


Figure 16: Level 6 plan

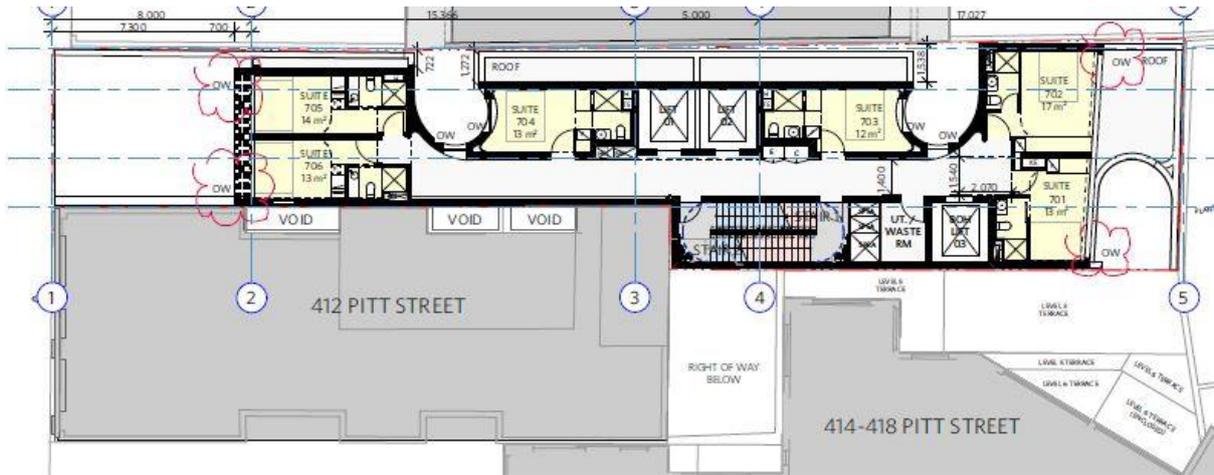


Figure 17: Typical floorplan levels 7 - 29

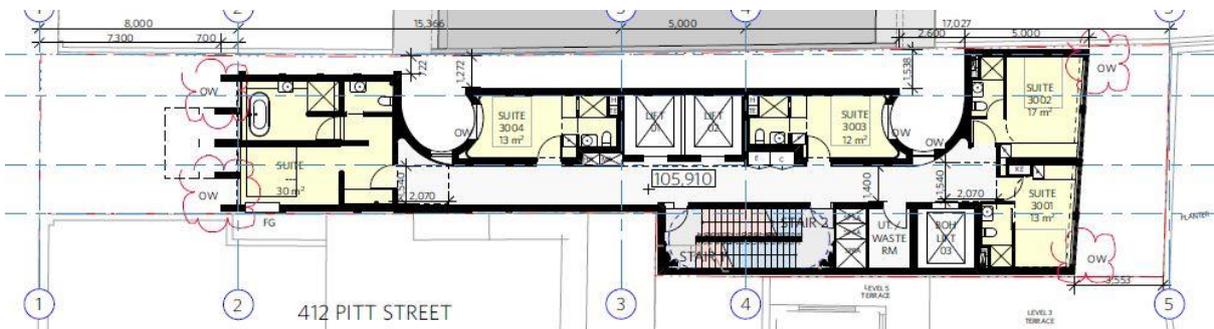


Figure 18: Level 30 plan



Figure 19: Level 31 plan

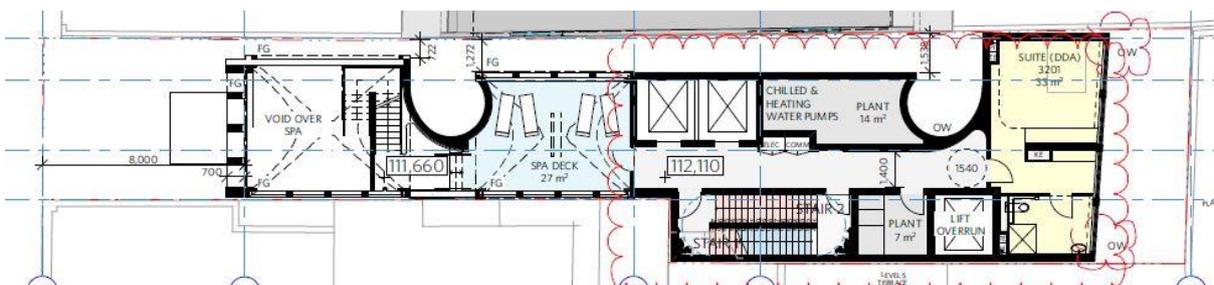


Figure 20: Level 32 plan



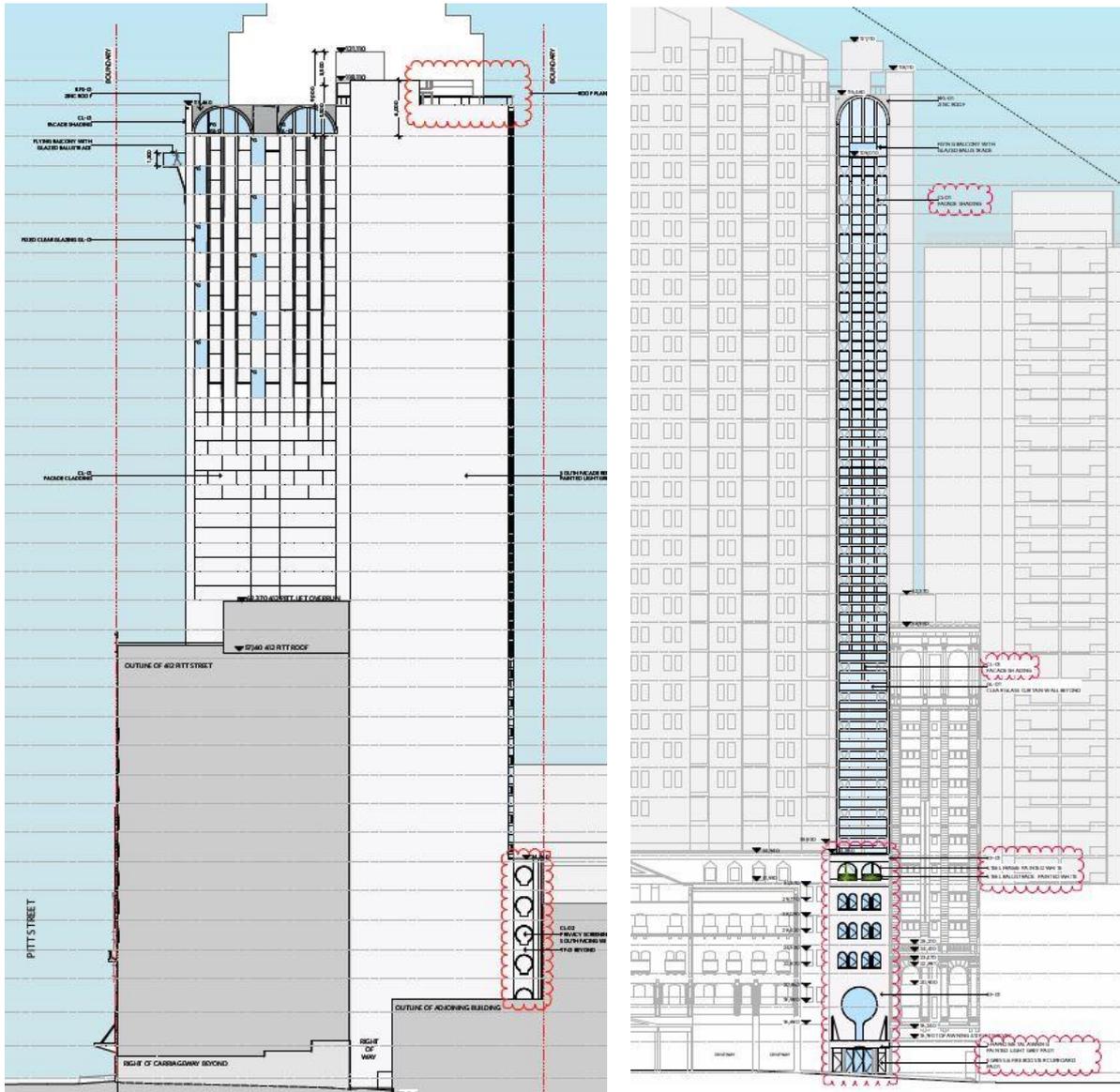


Figure 23: South elevation (left), west elevation (right)

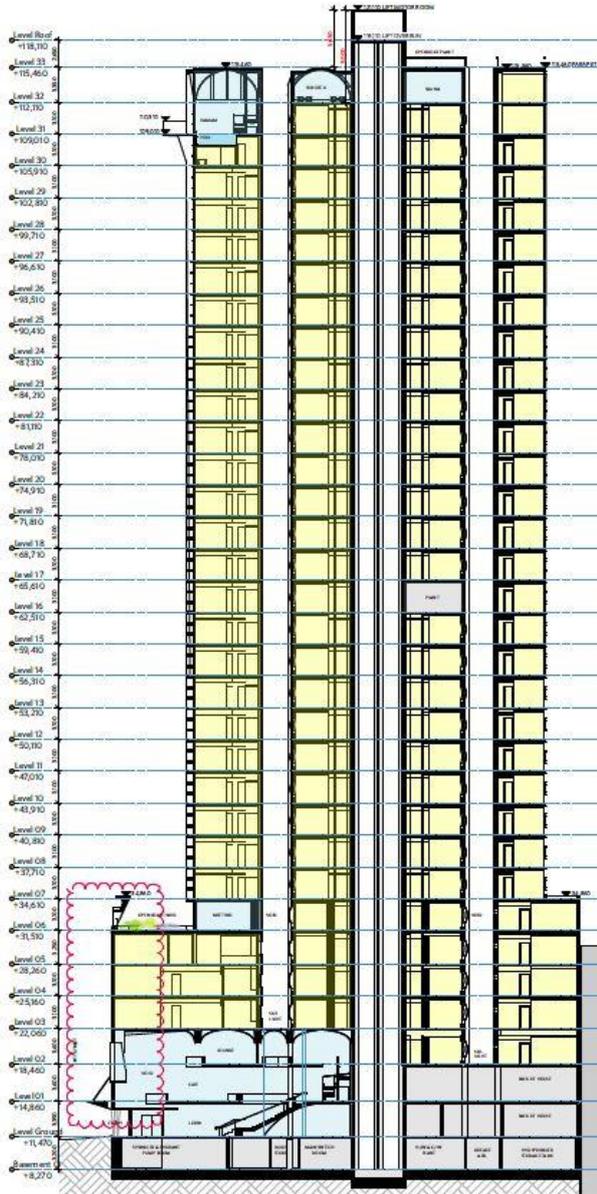


Figure 24: Section plan

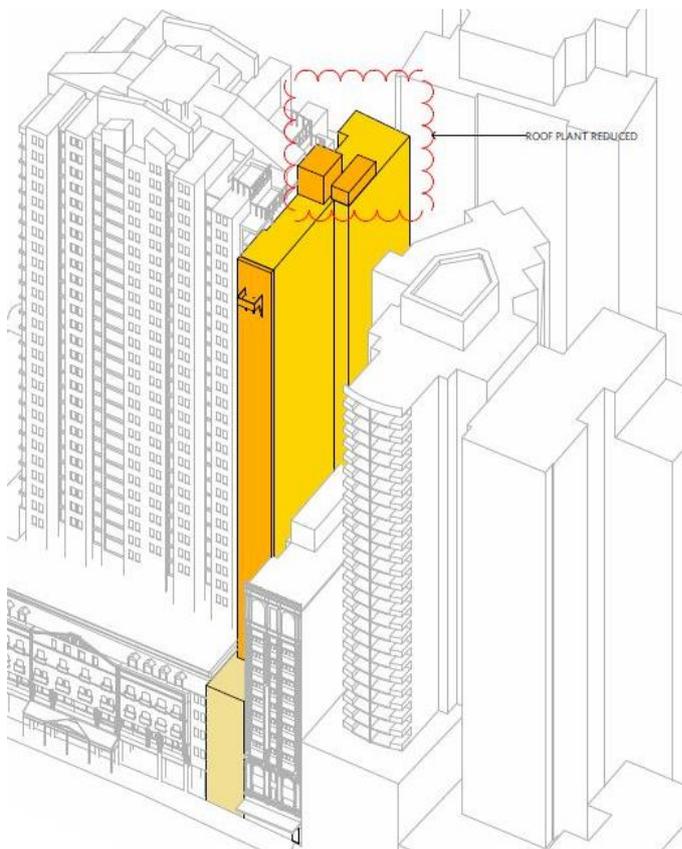


Figure 25: Proposal image: Pitt Street

## Assessment

### Concept Approval

21. In accordance with Section 4.24 of the Environmental Planning and Assessment Act 1979 (EP&A Act), a detailed development application cannot be inconsistent with a concept approval that is in force for the site.
22. As noted above concept approval D/2015/661 was approved by the Land and Environment Court on 19 May 2016 for 'Stage 1 building envelope for a new 31 storey accommodation hotel at 410 Pitt Street, Haymarket'.
23. The applicant has lodged a concurrent modification application D/2015/661/B to amend the concept approval in response to the design of the competition winning scheme and its design development; and for additional height to accommodate lift and stair overruns atop the roof as illustrated in the figure below.



**Figure 26:** Building envelope axonometric drawing

24. An assessment of the increased building envelope has been undertaken as part of the assessment of modification D/2015/661/B. The proposed building envelope was amended in response to Council staff assessment in relation to view loss. The modification application as amended has been approved in D/2015/661/B.
25. The subject proposal is not inconsistent with the amended building envelope. The proposal is not inconsistent with the conditions of consent for the concept approval.
26. The proposed development has been assessed under Section 4.15 of the EP&A Act.

## State Environmental Planning Policies

### State Environmental Planning Policy No 55 - Remediation of Land

27. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
28. A preliminary site investigation report has been submitted as part of the application. The report concludes that the existing building may contain hazardous materials including lead based paints and asbestos, but that there was no evidence of contaminated material within fill materials on the site.
29. The Council's Health Unit is satisfied that, subject to conditions, the site remains suitable for continued commercial use as proposed.

### State Environmental Planning Policy (Affordable Rental Housing) 2009

30. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
31. Part 3 of the SEPP addresses the retention of existing affordable housing. The applicant has identified that the current use of the premises as a boarding house providing low cost rental accommodation.
32. Under Clause 50, the consent authority when considering an application demolish a building that provides affordable housing is to take into account the guidelines and the matters contained in cl 50(2) as follows:
  - (a) whether there is likely to be a reduction in affordable housing on the land to which the application relates,
  - (b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,
  - (c) whether the development is likely to cause adverse social and economic effects on the general community,
  - (d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,
  - (e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area,
  - (f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements,
  - (g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development,

- (h) in the case of a boarding house, the financial viability of the continued use of the boarding house.
33. The Commissioners' findings in the approval of D/2015/661 included the following at paragraph 75:
- "In balancing the obligations for retaining and mitigating the loss of existing affordable rental housing, including the items in sub-cl 50(2) of SEPP ARH, with the extremely poor condition of the existing boarding house; the accepted evidence of the cost of fire safety works and other essential building works; and the evidence of the lack of financial viability of the existing boarding house; I am satisfied that the proposal to demolish the existing structure is acceptable."
34. This finding is considered to remain applicable to the current application for the applicable items for consideration under cl 50(2) of SEPP ARH and demolition of the existing building is recommended for approval.
35. The application included a proposed relocation plan to assist existing residents of the hotel to be relocated prior to demolition of the existing building. The plan was reviewed by Council's Safe City Unit, Social Unit and Homelessness Unit. Meetings were also held with the applicant to discuss the issue, including updates regarding the current building condition and issues with the sewer line over the adjoining property.
36. An updated relocation plan has been provided outlining a framework to assist residents relocate prior to demolition. It is recommended that a more detailed plan be prepared that caters to individual needs of the residents prior to demolition with ongoing consultation with residents and support networks occurring prior. This is included as a recommended condition of consent.
37. Under Clause 51 a contribution applies for the reduction of affordable housing. The Commissioners' findings in the approval of D/2015/661 included at paragraph 53: "I am satisfied that the rental yield is below 6% when calculated in accordance with formula at sub-cl 51(5) of SEPP ARH." An updated rental yield assessment has been provided as part of this application and estimates a rental yield of 1.56%. For a yield of 3% or less, no contribution is applicable pursuant to cl 51(4)(a). The findings of the report are generally accepted and no contribution under the SEPP ARH is applicable for the proposal.

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

38. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
39. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

40. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 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	The site is located in the B8 Metropolitan Centre zone. The proposed development is defined as 'hotel or motel accommodation' and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	N/A	The site is located within 'Area 3' on the height of buildings map. The maximum height is determined by a sun access plane under Clause 6.17. The development is below the sun access plane.
4.4 Floor space ratio 6.3 Additional floor space in Central Sydney 6.4 Accommodation floor space 6.6 End of journey floor space 6.8 End of journey floor space 6.21 Design Excellence	Yes	A maximum FSR of 15.49 applies to the development.  This comprises of a base FSR of 8:1 and additional floor space in accordance with:  CI 6.4 for Accommodation floor space - 6:1  CI 6.6 End of journey floor space - equal to the floor space occupied by these facilities up to a maximum of 0.3:1 (in this instance (0.09:1)  CI 6.21(7) Design Excellence (up to 1.4:1  A FSR of 14.3:1 is proposed.

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is not identified as a heritage item, nor is it located within a heritage conservation area.

Provision	Compliance	Comment
		<p>The site is located in proximity of three local heritage listed items:</p> <p>398-408 Pitt Street - "Former Sydney Tourist Hotel facade"</p> <p>403-427 Pitt Street - "CB Hotel including ground level shops, 1930 addition on Goulburn Street and interior"</p> <p>420-428 Pitt Street - "Chamberlain Hotel including interior"</p> <p>Council's Heritage Specialist has reviewed the proposal and advised that in its amended form it would preserve the significance of these heritage items.</p>

### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 1 Additional floor space in Central Sydney		
Subdivision 2 Types of additional floor space 6.4 Accommodation floor space	Yes	<p>The proposed development is eligible for an additional floor space ratio of 6:1.</p> <p>Refer to floor space discussion above.</p>
Subdivision 3 Heritage floor space 6.11 Utilisation of certain additional floor space requires allocation of heritage floor space	Yes	<p>A condition is recommended requiring the allocation of HFS in accordance with the LEP and DCP.</p>
Division 3 Height of buildings and overshadowing		
6.16 Erection of tall buildings in Central Sydney	Addressed in concept approval	<p>The clause applies to development in Central Sydney for a building with a height of greater than 55 metres.</p> <p>Development consent is not to be granted on land with a site area of less than 800sqm unless:</p> <p>The building will have a freestanding tower each face of which will be able to be seen from a public place, and</p>

Provision	Compliance	Comment
		<p>The development will provide adequate amenity and privacy for occupants of the building and will not significantly adversely affect the amenity and privacy of occupants of neighbouring buildings, and</p> <p>The ground floor of all sides of the building facing the street will be used for the purposes of business or retail premises.</p> <p>Compliance with this provision was considered in detail by the LEC in the appeal of the concept application D/2015/661. The proposed development was deemed to adequately address the provision.</p> <p>Particular aspects of the building design are addressed in further detail under the heading 'Issues' below.</p>
6.17 Sun access planes	Yes	<p>The maximum building height permitted on the site is restricted by the Belmore Park 1A sun access plane area.</p> <p>The proposed building has a maximum height of RL 121.1 which is located below the sun access plan as illustrated in Figures 22 &amp; 23.</p>
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>A competitive design process was undertaken in accordance with the concept approval and Sydney DCP 2012.</p> <p>This application was reviewed by the Design Advisory Panel and the reconvened competition jury who advised the proposal has retained the potential for design excellence.</p> <p>See further discussion under the heading 'Discussion'.</p>

**Part 7 Local provisions – general**

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.7 Retail premises 7.9 Other land uses	Yes	No off street parking facilities proposed in accordance with concept approval D/2015/661.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The submitted preliminary environmental site investigation has noted the likelihood of encountering ASS as low given the proposed depth of excavation.
7.16 Airspace operations	Yes	The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport.
7.20 Development requiring or authorising preparation of a development control plan	Yes	The proposed development is located in Central Sydney and has a height that exceeds 55m. Under the clause a DCP is required to be prepared for the land.  Section 4.23 of the EP&A Act allows for the approval of a concept development application to fulfil the requirement for preparing a DCP.  Concept approval D/2015/661 applies to the site.

**Development Control Plans****Sydney Development Control Plan 2012**

41. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

**Section 2 – Locality Statements**

42. The site is not located within a locality area.

## Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The proposal results in minimal additional overshadowing to public spaces.</p> <p>The development provides an active frontage to the site.</p> <p>Whilst not noted as requiring an awning, an awning is provided that is consistent with the adjoining building.</p> <p>A wind impact assessment report has been provided as part of the application. Report concludes that wind conditions for pedestrians in local area remain suitable.</p> <p>A reflectivity report has been provided as part of the application. The report concludes that there would not be adverse reflectivity outcomes in the area.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>A competitive design process was required in accordance with the DCP and conditions of the concept approval.</p> <p>A competitive design alternatives process was undertaken prior to the submission of this detailed development application.</p>
3.6 Ecologically Sustainable Development	Yes	NABERS Energy Hotel Star Rating to be achieved for the proposal.
3.7 Water and Flood Management	Yes	The site is not identified as being flood affected.
3.9 Heritage	Yes	<p>The site is not identified as a heritage item, nor is it located within a heritage conservation area.</p> <p>The concept of demolition was approved in the concept approval, with detailed demolition to form part of this application.</p> <p>The site is located in proximity of three local heritage listed items:</p> <p>398-408 Pitt Street - "Former Sydney Tourist Hotel façade"</p>

Provision	Compliance	Comment
		<p>403-427 Pitt Street - "CB Hotel including ground level shops, 1930 addition on Goulburn Street and interior"</p> <p>420-428 Pitt Street - "Chamberlain Hotel including interior"</p> <p>Council's Heritage Specialists has reviewed the proposal and advised that in its amended form it would preserve the significance of these heritage items.</p>
3.11 Transport and Parking	Yes	<p>The findings of the Commissioner in the approval of D/2015/661 included that use of the public domain for the servicing of the hotel use, transport, service vehicle parking and coach parking were acceptable.</p> <p>The proposal is consistent with these approved arrangements.</p> <p>Conditions are included to finalise operational matters prior to the use commencing.</p>
3.12 Accessible Design	Yes	The proposal provides equitable access.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	<p>The findings of the Commissioner in the approval of D/2015/661 included that use of the public domain for the servicing of the hotel use including waste servicing was acceptable.</p> <p>A condition is to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	Yes	<p>The site is located within the Late Night Management Area in which 24 hour 7 days a week indoor trading is permitted.</p> <p>The 24 hour hotel trading is considered to be suitable.</p>

Provision	Compliance	Comment
		The use of outdoor areas would be restricted to 10.00pm. Additional outdoor trading may be sought subject to trial periods.
3.16 Signage and Advertising	N/A	No advertising proposed.

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.2 Floor to ceiling heights and floor to floor heights	Acceptable	<p>Proposed floor to floor heights.</p> <p>Basement - 3.2m</p> <p>Ground level - 3.39 (including 10.59m void area)</p> <p>Level 1 &amp; 2 - 3.6m</p> <p>Levels 3 to 32 - 3.1m</p> <p>Level 32 - 3.35m</p> <p>The provided floor to floor heights are lower than that specified in the DCP.</p> <p>The heights provide adequate amenity for the proposed use and are considered to be acceptable for the proposal.</p>
4.2.2 Building setbacks	N/A	Setbacks provided in accordance with Section 5 and the approved building envelope.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The application has provided shadow diagrams and views from the sun.</p> <p>The proposal will result in minimum additional overshadowing as compared to the approved concept building envelope.</p>

Provision	Compliance	Comment
4.2.3.4 Design features to manage solar access	Yes	Extensive glazing avoided.
4.2.3.5 Landscaping	Yes	Landscaping plan provided. Landscape design supported in principle.
4.2.3.11 Acoustic privacy	Yes	Acoustic report provided that demonstrates required noise levels can be achieved.
4.2.4 Fine grain, architectural diversity and articulation	Yes	Building frontage less than 40m.
4.2.6 Waste and recycling Management	Yes	<p>The findings of the Commissioner in the approval of D/2015/661 included that use of the public domain for the servicing of the hotel use including waste servicing was acceptable.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

#### 4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1 General	Yes	<p>Hotel is self-contained</p> <p>Staff to be on site</p> <p>No triple bunks proposed</p>
4.4.8.3 Additional provisions for hotels, private hotels and motels	Yes	Rooms sized greater than 6.5sqm.

### Section 5 – Specific Areas

#### 5.1 Central Sydney

Provision	Compliance	Comment
5.1.1 Street frontage heights	Yes	Street frontage height of 23.4m provided in accordance with the approved concept approval building envelope.

Provision	Compliance	Comment
5.1.2 Building setbacks	Yes	Setback above frontage height of 8m with an articulation zone of 750mm to accommodate fenestration that formed part of the design competition winning scheme.  Side and rear boundaries in accordance with approved envelope.
5.1.6 Building exteriors	Yes	Selected materials reinforce the masonry character of Central Sydney.  Large expanses of glass avoided.  Materiality supported by competition jury.
5.1.10 Sun access planes	Refer to comment above.	Sun planes defined under cl 6.17 of SLEP 2012 and illustrated within the DCP.

## Draft Planning Controls

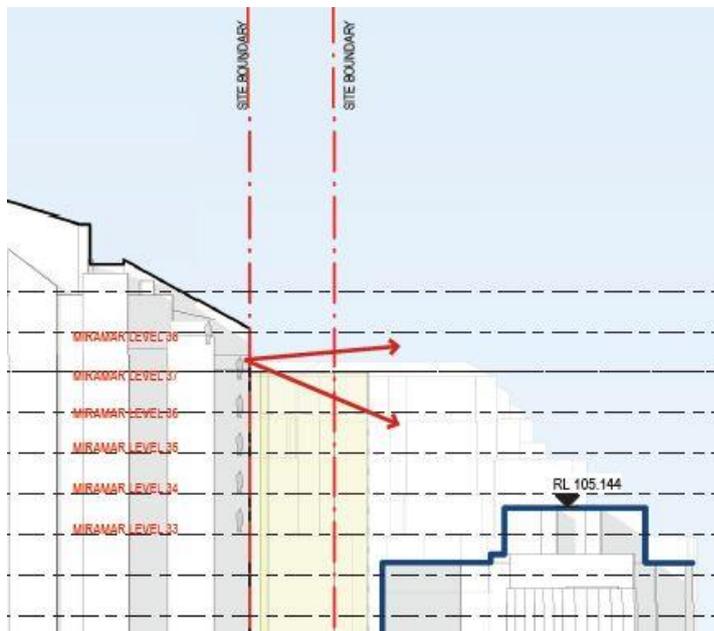
### Central Sydney Planning Framework

43. The 'Planning Proposal: Central Sydney 2020' and amendments to Sydney Development Control Plan 2012, have been publicly notified and endorsed by Council at its meeting on 14 December 2020, and are a matter for consideration for the subject application.
44. The proposal remains permissible within the B8 Metropolitan Centre Zone and remains consistent with the zone objectives.
45. The permitted maximum floor space for the proposal remains consistent with the concept approval.
46. The permitted maximum height remains governed by the Belmore Park Sun Access Plane.
47. The planning proposal includes an amendment to Clause 6.16 Erection of tall buildings in Central Sydney. The amendment would require buildings over a height greater than 55m be located on a site of more than 1,000 square metres in area. The subject site is less than 1,000sqm in area but remains consistent with the concept approval.

## Discussion

### View Loss

48. A number of objectors from the 'Miramar' apartments located at 398-408 Pitt Street to the north of the site raised concern that the proposal would result in view loss from south facing windows and balcony areas from apartments.
49. View loss assessment was undertaken in the assessment of modification application D/2015/661/B and the subject application.
50. The issue of view loss was addressed by the Commissioner in granting the concept approval as follows (in summary):
  - (a) View loss affects south-facing windows to only the upper levels of apartments from levels 33 to 36 and part of views from level 37.
  - (b) South-facing windows are located close to the boundary and are therefore vulnerable.
  - (c) Amenity of the Miramar Apartments borrowed from the undeveloped site should not reduce the building envelope otherwise able to be achieved and the loss of outlook from the apartments is not a reason for refusal.
51. Extracts from the view loss assessment study considered by the court are shown in the figures below.



**Figure 27:** View loss study section illustrating devastating view loss to apartments on levels 33 to 36

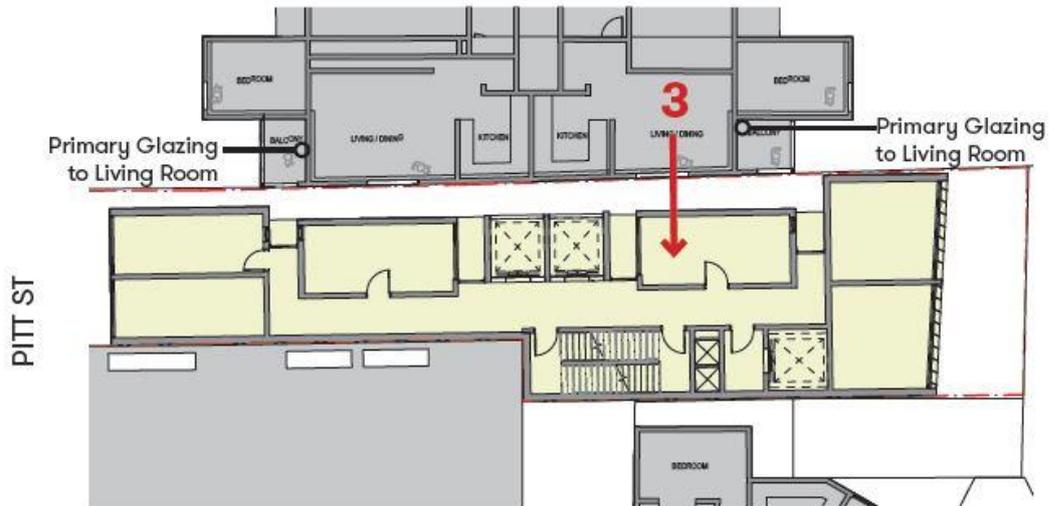


Figure 28: View loss study floor plan

52. The considered view loss study demonstrated that view loss to apartments on levels 33 to 36 would be total loss of views to the south. Views from apartments on levels 37 and 38 were retained with some affectation as shown in the images below.

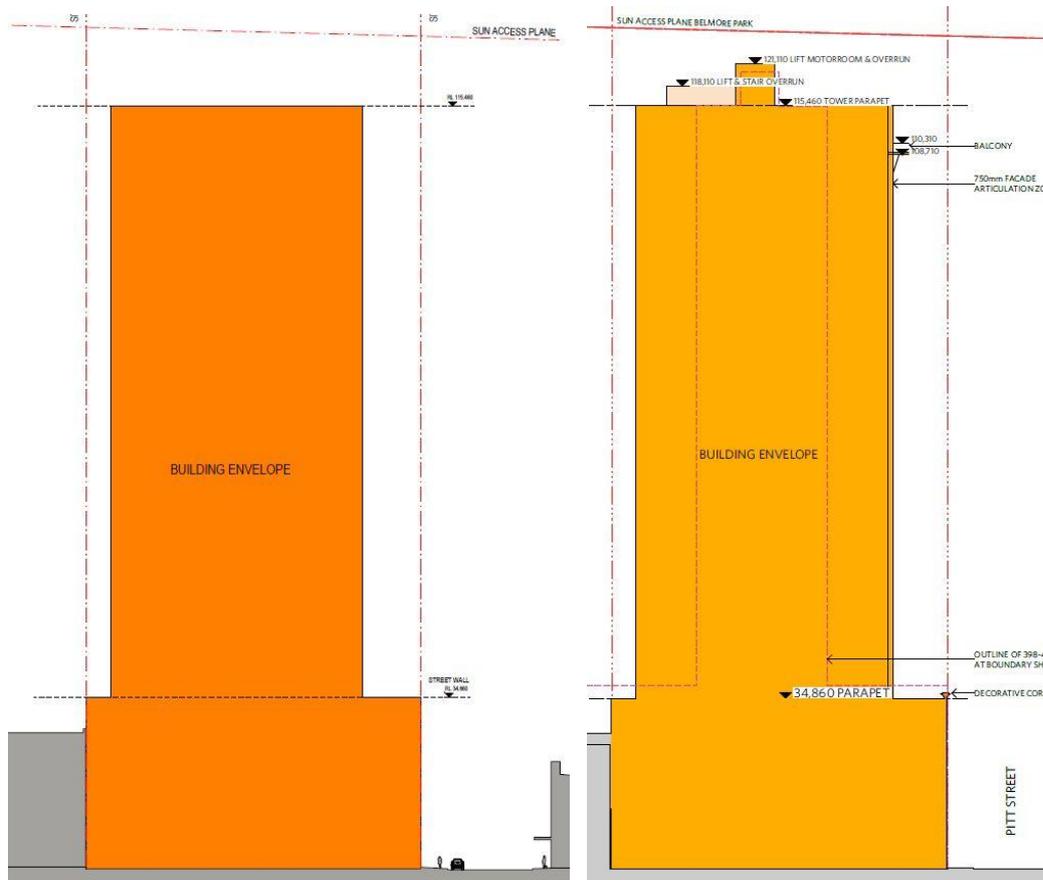


Figure 29: Appeal view loss study images eastern-facing apartment level 37



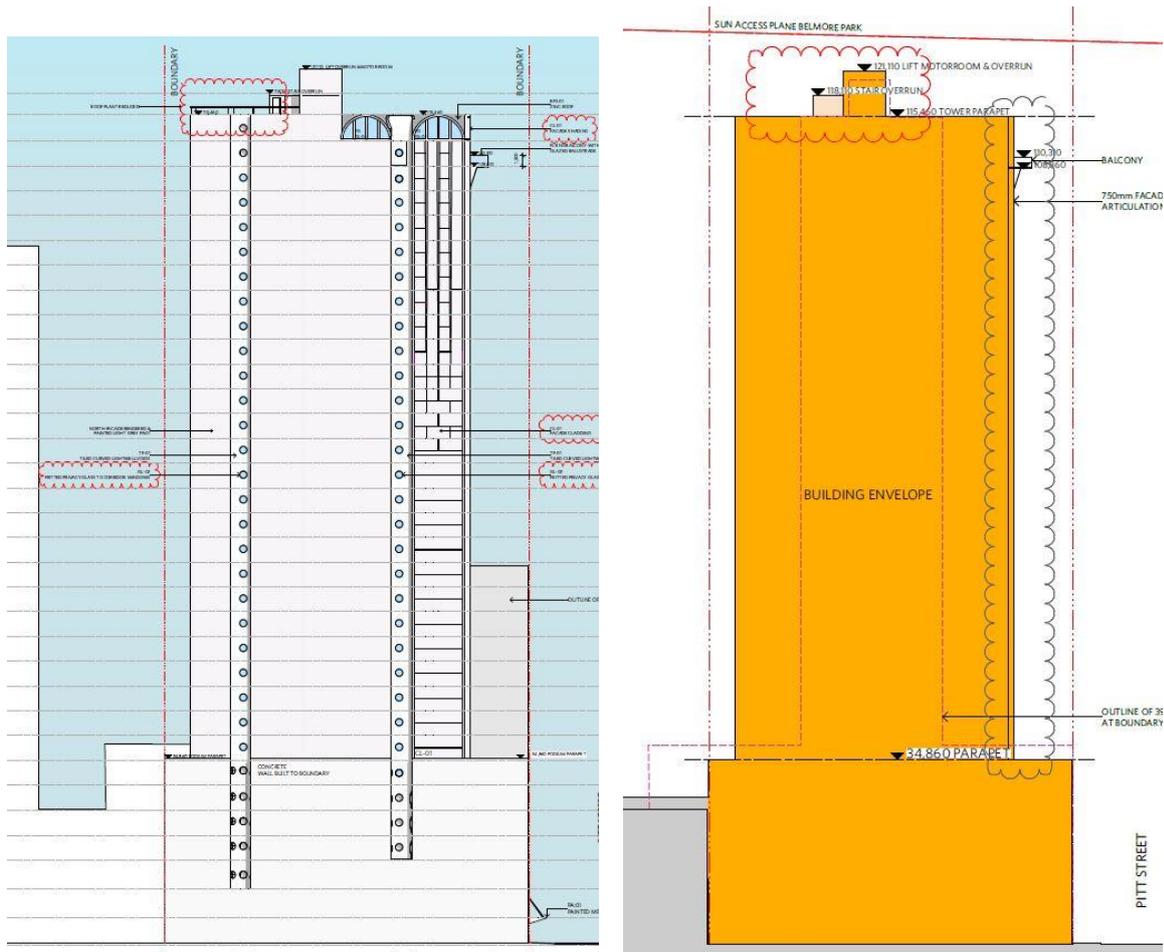
Figure 30: Appeal view loss study images western-facing apartment level 37

53. The subject application as lodged included an increase to the building height to accommodate lift and stair overruns. The proposed increased height is illustrated in the plans lodged as part of the related modification application D/2015/661/B.



**Figure 31:** Approved concept building envelope east west section (left), and as lodged to be modified in D/2015/661/B (right)

54. A view loss study was submitted as part of requested additional information for assessment of the application. As a result of feedback from the assessment of the view loss study and onsite inspections of a number of the affected upper level apartments of the 'Miramar' building, the application was modified to reduce the lift and stair overrun area. The application as amended is shown in the images below.

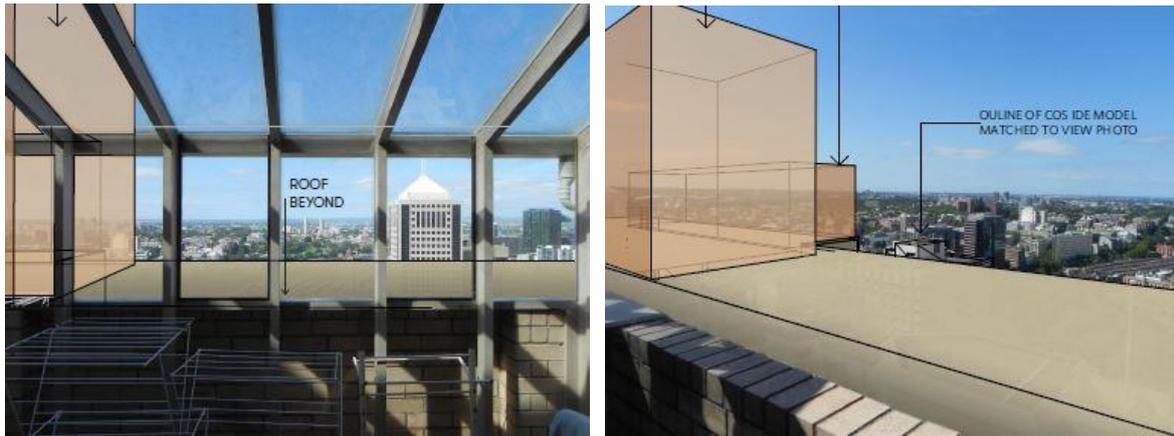


**Figure 32:** Amended north elevation plan (left) and building envelope east west section plan D/2015/661/B (right)

- 55. A view loss study of the amended plans was provided as part of additional information. Extracts from the study are provided in the follow figures below.



**Figure 33:** View loss study images eastern facing apartment level 37, proposal as amended



**Figure 34:** View loss study images western facing apartment level 37, proposal as amended

56. Applicable planning controls for the development do not provide a control for view loss assessment, therefore the planning principle established in Tenacity Consulting v Warringah Council [2004] NSWLEC 140 is a relevant methodology to assess the view loss assessment of the proposal as follows:

First step: assessment of views to be affected

57. Views impacted by the additional building height include district views of the city skyline to the south east and south and to water - land interfaces with Botany Bay and the ocean.

Second step: consider from what part of the property the views are obtained

58. Views are observed from living areas within apartments, wintergardens on level 37 and external balcony areas. Views are both standing and sitting with standing views observing more of the skyline.

Third step: assessment of the extent of the impact

59. On level 38 district and water views are retained for both east and west facing apartments with the central lift overrun obscuring some elements of the view. The additional view loss is rated as minor.
60. On level 37 from the east-facing apartment, district views to the southeast are retained. Views from the wintergarden and living area are impacted as shown in Figure 33. Views to the southeast are retained with views to the south impacted. The additional view loss is rated as moderate.
61. On level 37 from the west-facing apartment, views from the wintergarden, living area and balcony to the southeast are impacted, views to the south are retained as shown in Figure 34. The additional view loss is rated as minor.

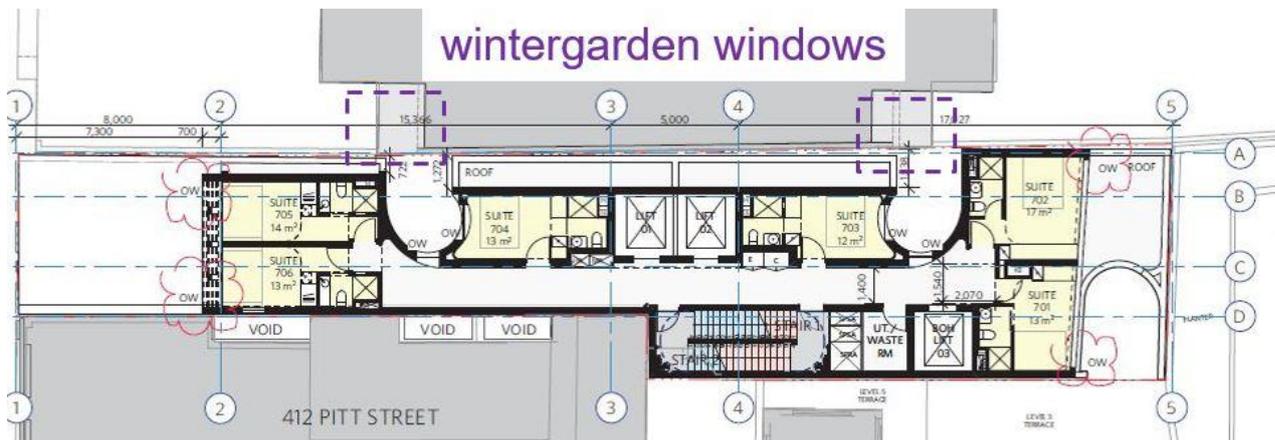
Fourth step: reasonableness of the proposal.

62. As noted in the assessment above, the proposal remains compliant with the maximum height and FSR controls for the development. The additional height sought above the approved concept building envelope is located centrally within the building for lift and stair overruns. Views to the southeast and southwest of the city skyline and land water interface are retained for a number of apartments, with the east-facing level 37 apartment most affected. Views to the south east are retained from areas of this apartment as shown in Figure 33.
63. The assessment comments of the Commissioner in the assessment and approval of the building envelope are relevant in terms of the close relationship of the Miramar building to the southern boundary and its current borrowing of amenity from the undeveloped site at 410 Pitt Street.
64. In conclusion, the proposal as amended is considered to provide an acceptable level of view loss impact with reference to the matters to be considered within the view loss planning principle.

### **Design Excellence**

65. The application seeks to utilise additional floor space for the development pursuant to Clause 6.27(7)(b) of SLEP 2012, being a building that demonstrates design excellence. A competitive design process has been undertaken for the development in accordance with a design excellence strategy as required under the concept approval for the site. The application has been prepared as a development of the winning scheme.
66. The subject application was considered by the Design Advisory Panel (DAP) on 11 March 2021. The panel made the following comments on the application:
  - (a) The podium design of the proposal differs from the competition winning scheme. A design statement is needed to explain the rationale for the departure including the removal of the original façade.
  - (b) Privacy issues for the adjoining apartments in relation to internal light wells be reviewed.
  - (c) Further information is needed on materiality.
  - (d) The panel recommends the design changes be referred to the judging panel for their review and recommendations.
67. The competition jury reconvened on the 12 April 2020 to review the proposal. A summary of the jury comments is provided as follows:
  - (a) Where areas of the façade do not receive much light (lightwells and voids) materials would need to provide necessary reflectivity to allow light to penetrate lower levels of the tower.
  - (b) The success of smaller hotel room sizes would come down to the quality of joinery and design.
  - (c) The panel are satisfied with the materials and samples presented in the meeting.

- (d) The panel recognise that due to the constraints of the site, the original façade would have been difficult to retain. The development needs to be buildable. An alternative design solution is supported. The proposed contemporary podium design sits comfortably within the context of the site.
- (e) The panel are satisfied with the progression of the design and are satisfied that it has retained the potential for design excellence. Further design revisions can revert to the City for resolution.
68. Further amendments and additional information have been provided as part of assessment of the application to address:
- View loss
  - Overshadowing
  - Confirmation of not requiring a substation
  - Wind tunnel testing
  - Visual privacy details
  - Glazing details
  - Landscaping
69. The provided details are considered to address the majority of design issues raised. Visual privacy from corridor windows remains one outstanding issue. Operable windows are located within the lightwells at each end of the corridor within proximity of the south-facing corner windows of the Miramar apartment building to the north as shown on the typical level 7 to 29 floor plans in the figure below.



**Figure 35:** Typical floor plan levels 7 to 29 with location of wintergarden windows on adjoining building dashed

70. These windows are proposed to include fritted glass as a privacy measure and also allow for light to the corridor. Details of the operability of the windows are not included and may result in privacy impacts to the adjoining building where windows are in the open position. It is recommended that further design details be provided as a condition of consent to ensure privacy will be retained whilst any windows are opened.

71. Subject to the resolution of issues through conditions of consent. The proposal is considered to demonstrate design excellence as recommended by the competition jury and is eligible for additional floor space up to 10% for the base FSR and accommodation floor space as detailed in the FSR calculation above in accordance with Clause 6.21(7) of SLEP 20212.

## Consultation

### Internal Referrals

72. The application was discussed with Council's Building Services Unit, Environmental Health Unit, Heritage and Urban Design Unit, Public Domain Unit, Safe City Unit, Surveyors, Transport and Access Unit, Tree Management Unit and Waste Management Unit who advised the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the recommended conditions.

### External Referrals

#### NSW Police

73. The application was notified to NSW Police for any comment. No response was received.

## Advertising and Notification

74. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified between 22 December 2020 and 2 February 2021. A total of 1928 properties were notified and 40 submissions were received.

75. The submissions raised the following issues:

(a) **Issue:** View Loss

Concerns have been expressed that the proposal would result in view loss to apartments in the adjoining apartment building.

**Response:**

View loss has been considered in the assessment of the application and the application was amended to address this issue. Discussion of view loss is included above and the impacts are considered to be acceptable in the circumstances of the application.

(b) **Issue:** Additional height and FSR

Concerns have been expressed that the proposed increases in height are not in accordance with the concept approval and would contravene an undertaking given by the applicant during the court case for the concept approval D/2015/661.

**Response:**

A separate concurrent modification application D/2015/661/B was lodged to amend the building envelopes approved in the concept approval. This modification application has been approved.

Details of the undertaking made during the Land and Environment court case are not known. The applicant for the concept application and court case differs to that of the subject application. The merits of the application are considered within this report.

(c) **Issue:** Design Excellence

Concerns have been expressed that the proposal does not exhibit design excellence as required under cl 6.21 of Sydney LEP 2012.

**Response:**

Design excellence of the proposal has been considered including a review by the Design Advisory Panel and the reconvened competition jury. The proposal is considered to exhibit design excellence as discussed within this report.

(d) **Issue:** Privacy Impacts

Concerns have been expressed that the proposal would result in privacy impacts to adjoining apartments.

**Response:**

Privacy impacts of the proposal have been considered in the assessment of the proposal with minor amendments to address some lower level windows on the southern boundary. Subject to further details to address privacy of operable corridor windows the proposal is considered to provide appropriate privacy measures.

(e) **Issue:** Impact on character of area

Concerns have been expressed that the proposal would result in negative impacts to the character of the area.

**Response:**

The proposal is considered to align with the concept approval and will not result in negative impacts to the character of the area.

(f) **Issue:** Solar impacts

Concerns have been expressed that the proposal would result in the loss of ambient light to adjoining apartments and that the solar access planning principle should be applied to the proposal.

**Response:**

The solar impacts of the proposal align with the concept approval with only minor additional overshadowing resulting from additional height from lift and stair overruns. The shadowing impacts have been assessed against the relevant controls. The solar access planning principle does not apply in this instance.

(g) **Issue:** Building separation

Concerns have been expressed that insufficient building separation is provided from the adjoining apartment building and that a separation in accordance with the apartment design guidelines (ADG) should be provided.

**Response:**

Building separation is provided in accordance with the concept approval. The ADG does not apply to the proposal.

(h) **Issue:** Building code compliance

Concerns have been expressed that the proposal relies on a number of performance solutions to achieve building code compliance and that the proposed material may not be BCA compliant.

**Response:**

The proposal includes a BCA report that has been reviewed by Council's Health and Building Unit who have supported the proposal subject to conditions. BCA compliance of all materials will be required to be confirmed at the construction certificate stage and any changes to materials will require approval.

(i) **Issue:** Waste

Concerns have been expressed that the proposed arrangements are inadequate and would result in amenity and noise impacts to surrounding neighbours.

**Response:**

General waste arrangements including use of the public domain for collection were approved as part of the concept approval granted by the Land and Environment Court. The details of waste facilities have been reviewed by Council's Waste Unit and recommendations have been included as part of the provided amended plans.

(j) **Issue:** Traffic and pedestrian impacts

Concerns have been expressed that the proposal would result in traffic and pedestrian impacts within the local street network.

**Response:**

The general traffic impacts of the proposal including the use of the public domain for servicing of the hotel were approved as part of the concept approval granted by the Land and Environment Court. The details of this application align with the concept approval.

(k) **Issue:** Safety and egress

Concerns have been expressed that in an emergency situation there would be an unsafe number of guests and residents existing onto the street.

**Response:**

Emergency egress is to be provided for the proposal in accordance with the BCA.

(l) **Issue:** Anti-social behaviour

Concerns have been expressed that the proposal would result in anti-social from guests. Concern was also expressed that guests may use a roof top bar.

**Response:**

There is no roof top bar proposed. An operation plan of management has been included as part of the proposal that includes strategies to minimise anti-social behaviour.

(m) **Issue:** Loss of property value

Concerns have been expressed that the proposal would result in a loss in property values to neighbouring property owners.

**Response:**

No evidence has been provided that demonstrates the proposal would result in a loss to property value.

(n) **Issue:** Construction Impacts

Concerns have been expressed that the proposal would result in unacceptable construction impacts to neighbouring sites.

**Response:**

The application has included an assessment of construction noise and vibration impacts and measures to be implemented to minimise impacts to surrounding sites. This report has been reviewed by Council's Health Unit and the proposal is supported subject to conditions to minimise construction impacts.

(o) **Issue:** Amenity Impacts

Concerns have been expressed that the proposal would result in amenity impacts including noise, odour and smoke to adjoining residents.

**Response:**

Amenity impacts of the proposal have been considered and conditions have been included where appropriate to minimise issues.

(p) **Issue:** Wind Impacts

Concerns have been expressed that the proposal would result in wind tunnelling impacts in the local area.

**Response:**

Wind impact analysis included wind tunnel testing has been provided as part of the application and has demonstrated that appropriate wind conditions will be achieved in the public domain.

(q) **Issue:** Displacement of existing residents of Cosy Hotel

Concerns have been expressed that insufficient consideration has been given to the displacement of existing residents of the Cosy Hotel who currently reside within the existing premises.

**Response:**

The application included a proposed relocation plan to assist existing residents of the hotel to be relocated prior to demolition of the existing building. The plan was reviewed by Council's Safe City Unit, Social Unit and Homelessness Unit. Meetings were also held with the applicant to discuss the issue including updates regarding the current building condition and issues with the sewer line over the adjoining property.

An updated relocation plan has been provided outlining a framework to assist residents relocate prior to demolition. It is recommended that a more detailed plan be prepared that caters to individual needs of the residents prior to the issues of any construction certificate for demolition, with ongoing consultation with residents and support networks.

## Financial Contributions

### Levy under Section 61 of the City of Sydney Act 1988

76. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013.
77. A condition requiring payment of the levy has been included in the recommend conditions of consent.

**Contribution under SEPP (Affordable Rental Housing) 2009**

78. A contribution is not required having regard to the matters for consideration under cl 51 of SEPP ARH. Refer to discussion above.

**Relevant Legislation**

79. Environmental Planning and Assessment Act 1979.
80. City of Sydney Act 1988.

**Conclusion**

81. This detailed development application for the demolition of the existing building and construction of a new 33 storey hotel accommodation building has been considered against the relevant planning controls and the stage 1 concept approval approved by the Land and Environment Court (as amended).
82. The development application was notified between 22 December 2020 and 2 February 2021. Forty submissions were received in response to the proposal. Issues raised in submissions include objections to additional height, view loss, privacy and amenity impacts, solar impacts, building separation, BCA compliance, waste arrangements, pedestrian and traffic impacts, safety and anti-social behaviour, noise impacts, construction impacts, and social impacts. The impacts of the proposal are largely considered to align with the concept approval. Amended plans have been submitted to address issues associated with additional height. Conditions of consent have been recommended to address operational and construction aspects of the proposal where appropriate.
83. The application was considered by the Design Advisory Panel on 11 March 2021. The panel noted that the podium design of the proposal differed from the competition winning scheme and recommended the competition jury be reconvened to consider the application.
84. The reconvened competition jury met on 12 April 2021 to consider the application. The jury advised that the design has retained the potential for design excellence.
85. Additional information was requested from the applicant on the 23 March 2021 and 15 June 2021 relating to view loss and overshadowing, wind impacts, landscaping, ESD, waste management, and social impacts. The application has been amended and further information provided to address these assessment issues.
86. The application is recommended for approval subject to conditions.

**ANDREW THOMAS**

Executive Manager Planning and Development

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