

Item 4.**Development Application: 331-337 Kent St, Sydney - D/2021/35**

File No.: D/2021/35

Summary**Date of Submission:** 2 February 2021

Amended plans received 27 May 2021

Applicant: 333 Kent St Pty Ltd C/- Urbis Pty Ltd**Architect/Designer:** WMK Architecture**Developer/Owner:** 333 Kent St Pty Ltd**Planning/Heritage Consultant:** Urbis**DAP:** 11 March 2021**Cost of Works:** \$61,475,979

Zoning: The site is zoned B8 Metropolitan Centre under the Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The proposed use is defined as a 'mixed-use development' comprising 'retail premises' and 'commercial premises', both of which are permissible with consent in the zone.

Proposal Summary: Approval is sought for alterations and additions to the existing 10-storey commercial building at 331-337 Kent Street, including significant demolition of existing building elements, structural upgrade works, and refurbishment of the existing four-storey historic warehouse facade. A new four storey addition is proposed resulting in a 15 storey commercial/retail building with a total building height of 61.73m (RL 80.125). Works to the existing ground level carpark are proposed, including new end of trip facilities, bicycle parking, loading and servicing bays, courier parking spaces, and building plant and services. Minor excavation to facilitate a new lift pit is proposed.

The proposal also includes alterations to the historic facade including infill of the existing open colonnade to extend the building frontage to Kent Street, with ground level retail tenancies and an extended foyer, and restoration works to the original Victorian warehouse facade.

The proposal is referred to Central Sydney Planning Committee for determination, as the proposal is a 'major development' for the purposes of the City of Sydney Act 1988.

The proposed height of development complies with the maximum height control of 80 metres permitted under Clause 4.3 of the Sydney LEP 2012.

The proposed Floor Space Ratio (FSR) of 10.01:1 complies with the maximum FSR permitted (10.185:1) under Clauses 4.4 and 6.4 of the Sydney LEP 2012, based upon the proportions of the mix of land uses.

As the site is located in Central Sydney, and the site area for the development is more than 1,500 square metres in size, the proposal triggers the requirement for the preparation of a site-specific development control plan (DCP) and the undertaking of a competitive design process under the provisions of Clauses 7.20 (2)(a) and 6.21(5)(a)(i) of the Sydney LEP 2012, respectively.

The applicant seeks a 'waiver' to both of these requirements. The applicant's request that these requirements are unreasonable and unnecessary in the circumstances of this application has merit in this particular case and is recommended for endorsement.

The proposal was notified for 28 days between 3 February 2021 and 4 March 2021. Three (3) submissions were received objecting to the application on the following grounds - amenity impacts to 110-116 Sussex Street, impact on commercial tenant and public amenity of 309-329 Kent Street, impact on commercial tenant amenity of 339-347 Kent Street, tower setbacks, grounds to waive the competitive design process, and adequacy of the development application.

The proposal was amended on 27 May 2021 in response to various issues raised by the Design Advisory Panel and Council officers during assessment. The amended proposal is considered to address the issues raised in submissions, subject to conditions.

Amendments and additional information have been provided in relation to facade design, setbacks, privacy screening, heritage, waste and loading arrangements, bicycle parking provision, landscaping, rooftop screening, sustainability, contamination, stormwater management, and glazing. The amended proposal was not required to be re-notified or advertised under Schedule 1 of the Environmental Planning and Assessment Act 1979, or the City of Sydney Community Participation Plan, given the amendments do not result in significant additional environmental impacts.

Subject to conditions, the revised proposal is considered to demonstrate design excellence in accordance with Clause 6.21 of the Sydney Local Environment Plan 2012, and generally complies with the various other applicable controls, including the relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.

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

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) Sydney Water Act 1994 and Sydney Water Regulation 2017;
- (v) State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) and the Managing Land Contamination Planning Guidelines (SEPP 55 Guidelines);
- (vi) State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP);
- (vii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP 2005);
- (viii) Sydney Local Environmental Plan 2012 (Sydney LEP 2012);
- (ix) Sydney Development Control Plan 2012 (Sydney DCP 2012);

- (x) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings;
- (xi) City of Sydney Interim Floodplain Management Policy;
- (xii) City of Sydney Guidelines for Waste Management in New Developments (Waste Guidelines);
- (xiii) Central Sydney Development Contributions Plan 2013; and
- (xiv) Planning Proposal: Central Sydney 2020.

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Demolition Plans

Recommendation

It is resolved that:

- (A) the requirement under Clause 6.21 of the Sydney Local Environmental Plan 2012 requiring a competitive design process is unreasonable or unnecessary in the specific circumstances;
- (B) the requirement under Clause 7.20 of the Sydney Local Environmental Plan 2012 requiring the preparation of a development control plan is unreasonable or unnecessary in the circumstances; and
- (C) consent be granted to Development Application No. D/2021/35 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 Section 4.15 of the Environmental Planning and Assessment Act 1979, in that it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.
- (B) The proposal generally satisfies the objectives and provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The proposal is consistent with the objectives of the B8 Metropolitan Centre zone.
- (D) The proposal complies with the maximum height of buildings development standard in Clause 4.3 of the Sydney Local Environmental Plan 2012.
- (E) The proposal complies with the maximum floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (F) The proposal exhibits design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (G) The proposal has a height and form suitable for the site and its context and satisfactorily addresses the heights and setbacks of neighbouring developments and is appropriate in the streetscape context and broader locality.
- (H) Subject to the recommended conditions of consent, the proposed development achieves acceptable amenity for the existing and future occupants of the subject and adjoining sites.
- (I) The proposed land uses do not result in any significant adverse environmental or amenity impacts on the subject or surrounding properties, the public domain and the broader Sydney Central Business District, subject to the recommended conditions.

- (J) The requirement for the preparation of a site-specific development control plan and the undertaking of a competitive design process is unreasonable and unnecessary in the specific and particular circumstances of the site and proposed development, pursuant to Clauses 7.20(3) and 6.21(6) of the Sydney Local Environmental Plan 2012.
- (K) The public interest is served by the approval of the proposal, as amendments to the development application have addressed the matters raised by the City and the community, subject to recommended conditions imposed, including those relating to materials, public art, landscape plans, and construction management.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 of DP 858647, known as 331-337 Kent St, Sydney. It is irregular in shape with area of approximately 1518sqm and has a street frontage of approximately 40m to Kent St. The site is located close to the intersection of Kent and King Streets.
2. The site is not a heritage item nor within a Special Character Area or locality, however it contains a four-storey original Victorian warehouse facade with a 1980s office tower behind, resulting in a 9 storey building containing offices and educational uses. It was redeveloped in 1985 and subsequently renovated in 1997 which included the provision of an additional storey. The c1889 Victorian facade has been substantially modified during the 1980s alteration, with the removal of doors and windows on the ground level, to create a colonnade behind the facade.
3. Vehicular access into the site is provided via an existing left-in only and left-out only driveway off Kent Street to the north of the site. The rear of the building adjoins a privately owned 'dead end' laneway accessed via Sussex Street. There is no vehicular access to the site from the laneway and no right of way in favour of the site.
4. The surrounding area is characterised by a mixture of land uses, primarily commercial and residential. Directly to the north is 'Lumley House' at 307-329 Kent Street whilst further north is the Cahill Expressway.
5. Directly to the east on the opposite side of Kent Street is a 12-storey commercial office building, a listed State Heritage Item known as Red Cross House, at 153-159 Clarence Street. To the south are residential, commercial and mixed-use buildings, including a locally listed heritage item at 339-347 Kent Street.
6. The site to the west at 110-116 Sussex Street ('Chelsea Towers') contains a mixed-use building, with residential apartments above.
7. A site visit was carried out on 23 April 2021. Photos of the site and surrounds are provided below:

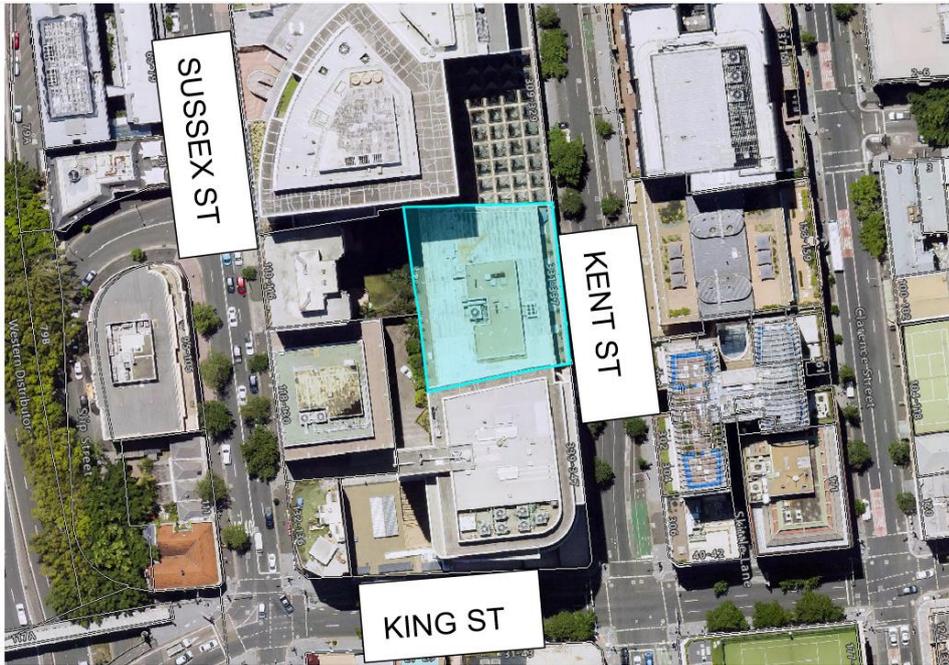


Figure 1: Aerial view of site and surrounds

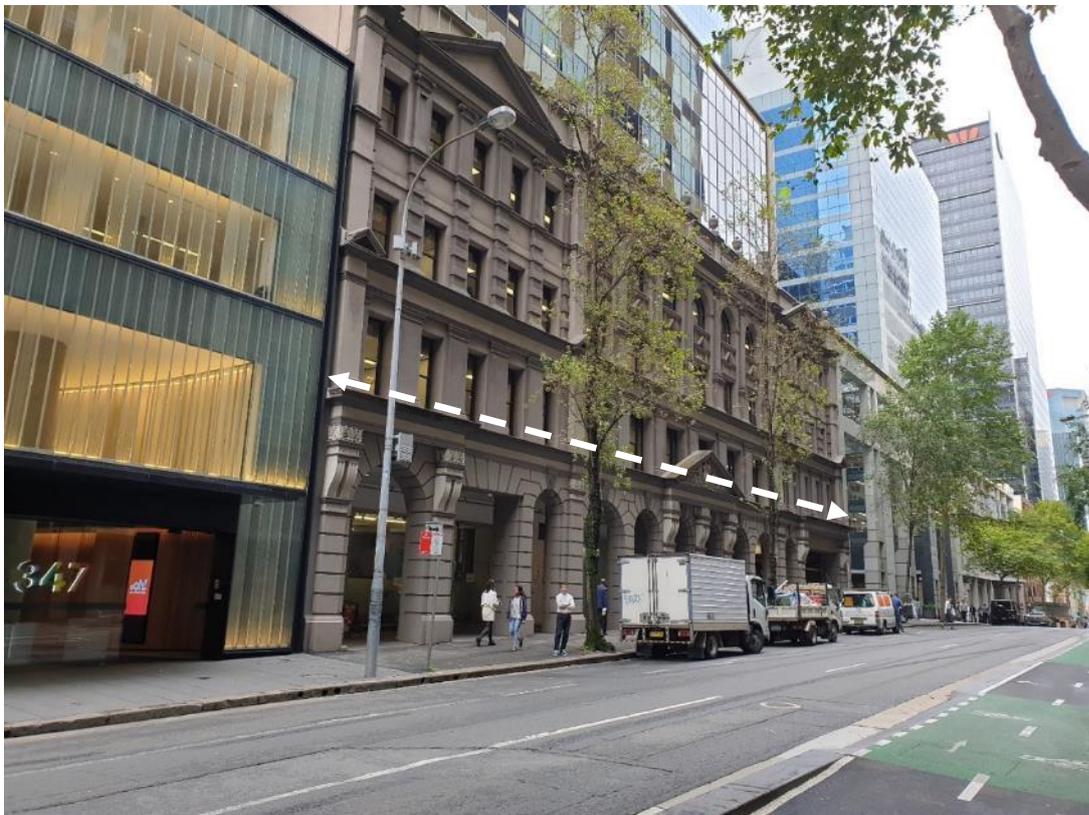


Figure 2: Site viewed from Kent Street, looking northwest



Figure 3: Site viewed from Kent Street, facing southwest



Figure 4: Site viewed from corner King and Kent Streets facing northwest



Figure 5: Existing Kent Street vehicular access to the site



Figure 6: Existing open facade (as part of 1980s redevelopment)



Figure 7: Existing carpark



Figure 8: Adjoining northern commercial site at 309-329 Kent Street



Figure 9: Adjoining northern site at 309-329 Kent Street

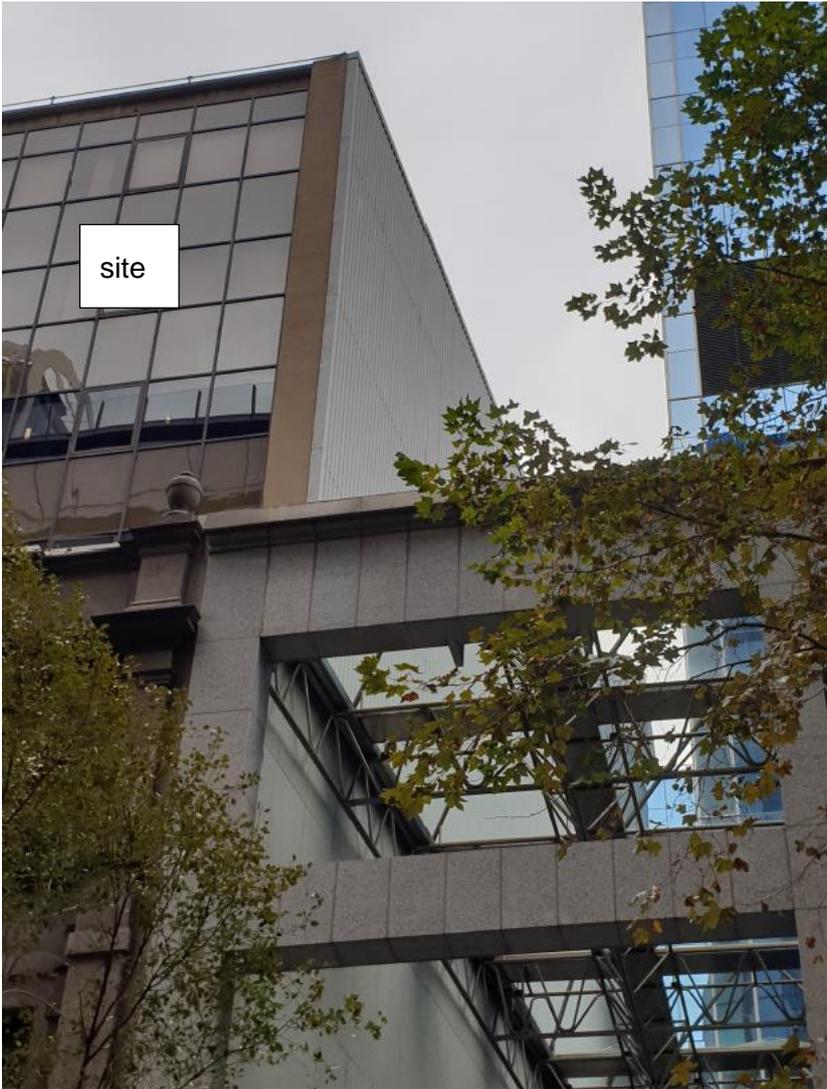


Figure 10: Canopy interface with northern neighbouring site at 309-329 Kent Street



Figure 11: Site viewed in context with site to the south at 339-347 Kent Street



Figure 12: Residential/serviced apartment development on the opposite side of Kent Street at 161 Clarence Street ('Arc')



Figure 13: Commercial development on the opposite side of Kent Street at 153-159 Clarence Street (State Heritage Item) known as 'Red Cross House'



Figure 14: Residential development to rear (west) of the site at 110-116 Sussex Street ('Chelsea Towers')



Figure 15: 110-116 Sussex Street



Figure 16: 110-116 Sussex St



Figure 17: 110-116 Sussex Street viewed from the roof of site facing west

Proposed Development

8. The application seeks development consent for alterations and additions to the existing building including conservation, refurbishment and fitout of the existing 10 storey building comprising a four storey Victorian warehouse facade, and construction of new tower addition, to result in a 15 storey commercial/retail building.
9. Demolition of the existing building including internal walls, stairways, sections of the existing floor plates, removal of facade and windows above the heritage podium is proposed. The entire roof slab, parapet, plant walls and columns on level 8 are proposed for demolition to facilitate the building extension.
10. The proposed works are confined to the 1980s additions/alterations, with an addition that extends the existing tower another 4 levels. The proposal includes minor internal additions and alterations to the existing fire stair, and the modification of the lift shaft to accommodate two new lifts. Minor excavation to the existing lift pits due to the extension of the lift service to additional levels is required.

11. The new building is proposed to have a maximum height of 15 storeys or 61.73m (RL 80.125) to top of plant and a total gross floor area (GFA) of 15,192.2sqm comprising two retail premises at ground level and 14 levels of commercial office on first floor and above. Rooftop plant and servicing is proposed, as well as solar PV panels and outdoor terraces/landscaping for commercial office uses at levels 1, 4 and 9.
12. Vehicular access/egress from the existing Kent Street driveway will be retained as will some of the existing carparking bays and loading dock with modifications for the end of trip facilities, bicycle parking, waste facilities, and building services plant and storage tanks.
13. The ground level frontage will be altered including infill of the existing open colonnade to extend the building frontage to the Kent Street boundary line, to accommodate an extended foyer, access to the building basement and consolidated servicing, and two retail tenancies.
14. Specifically, the works comprise:

Basement

- Hand excavation within the lift pits to add extra depth and facilitate a new fire egress path within a new tunnel;
- New lift pits, fire control room, servicing, new fire stairs exit to Kent Street;
- Existing fire stairs retained and capped with new slab over.

Ground Floor + Mezzanine

- Retention of the original Victorian warehouse facade;
- Infilling of the colonnade created in the 1980s with new retail tenancies and office lobby;
- Retention of vehicle access from Kent Street;
- Ground level loading dock and waste storage rooms;
- Demolition of existing street frontage and slabs and some carparking bays;
- Retention of 29 car parking spaces (3 courier spaces), 1 accessible car parking space and 3 motorcycle spaces;
- 140 bicycle storage spaces and 14 shower/change cubicle end-of-trip facilities;
- Two retail tenancies facing Kent Street, foyer, lift lobby;
- Rainwater tank and cold water and rainwater reuse pump room.

Level 1

- Retention of the original Victorian warehouse facade and restoration of historical window detailing;
- Demolish slab for new lift shaft, demolish internal walls and rear facade;

- New commercial GFA and associated amenities/servicing;
- New landscaping and paving to accessible outdoor terrace.

Levels 2-3

- Retention of the original Victorian warehouse facade and restoration of historical window detailing;
- Demolish slab for new lift shaft, demolish internal walls and rear facade;
- New commercial GFA and associated amenities/servicing.

Level 4

- Retention of the original Victoria warehouse facade parapet;
- Demolish slab for new lift shaft, demolish internal walls and rear facade;
- New commercial GFA and associated amenities/servicing;
- New paving and landscaping to accessible outdoor terrace.

Levels 5-8

- Demolish slab for new lift shaft, demolish internal walls and rear facade;
- New commercial GFA and associated amenities/servicing.

Level 9 (being a new floor)

- Commercial GFA and associated amenities/servicing;
- Two outdoor terraces (one non-accessible) and landscaping.

Levels 10-14 (being new floors)

- Commercial GFA and associated amenities/servicing.

Roof

- Cooling towers, lift overrun, chillers, hot water plant, solar array areas, condensers, generator room;
- Rooftop screening.

15. Demolition plans, photomontages, proposed plans and elevations of the development are provided below as well as in Attachments B and C.

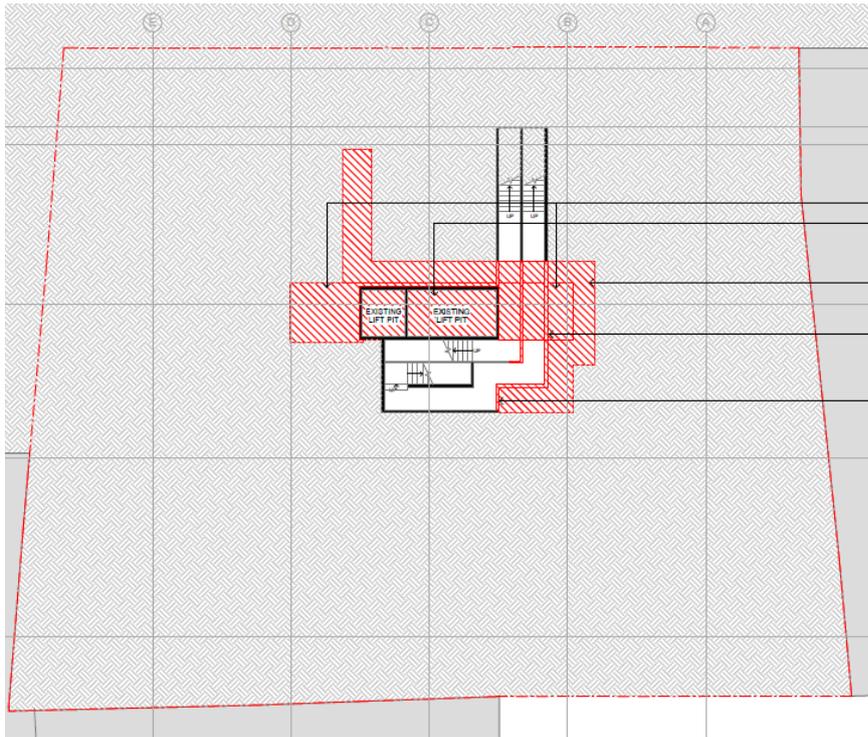


Figure 18: Proposed basement demolition plan

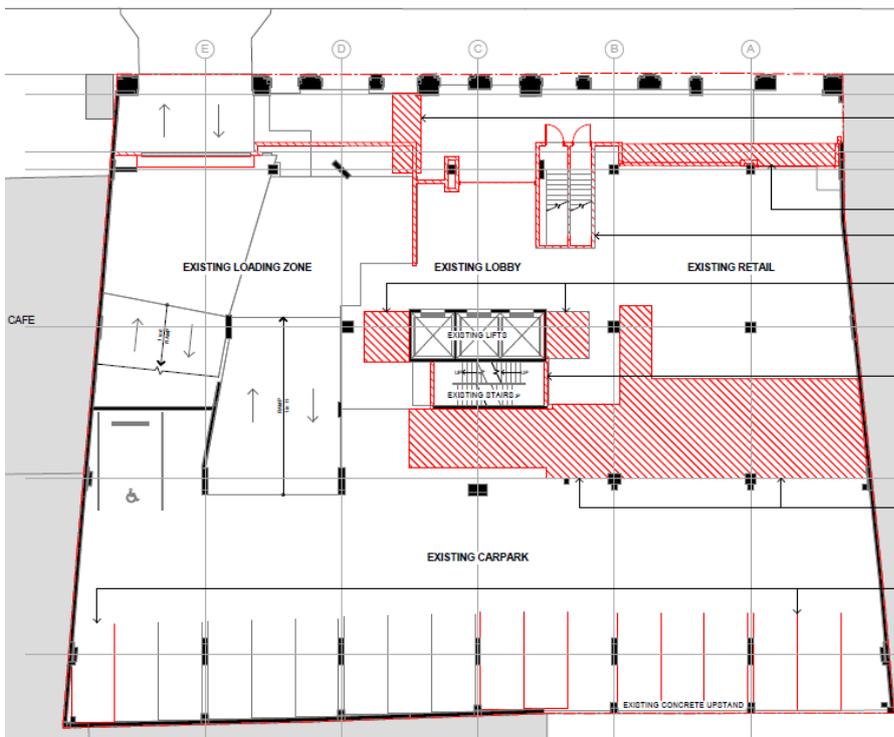


Figure 19: Proposed ground level demolition plan

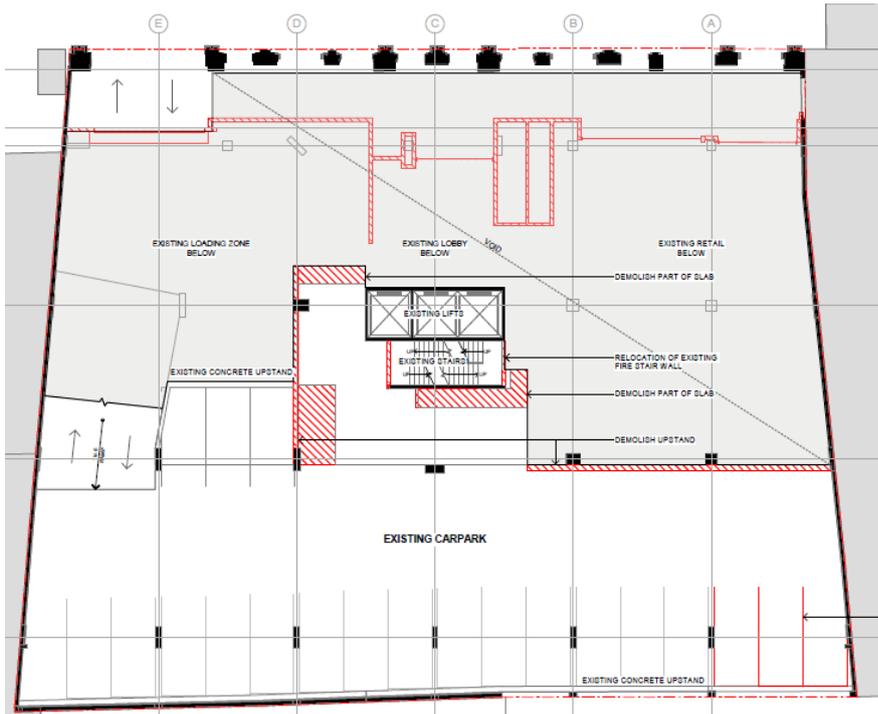


Figure 20: Proposed demolition plan - mezzanine level

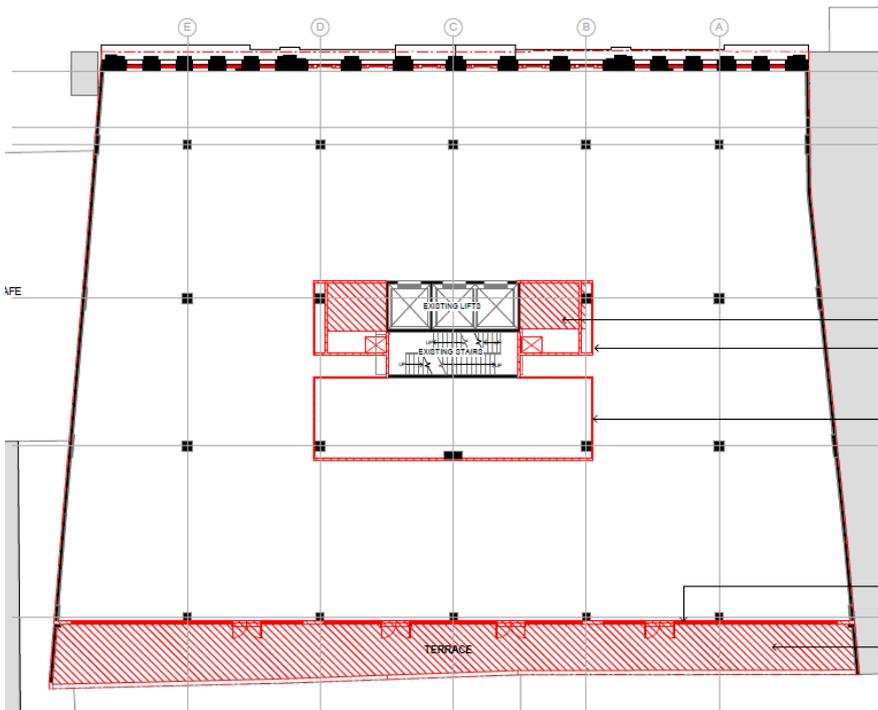


Figure 21: Proposed demolition plan - Level 1

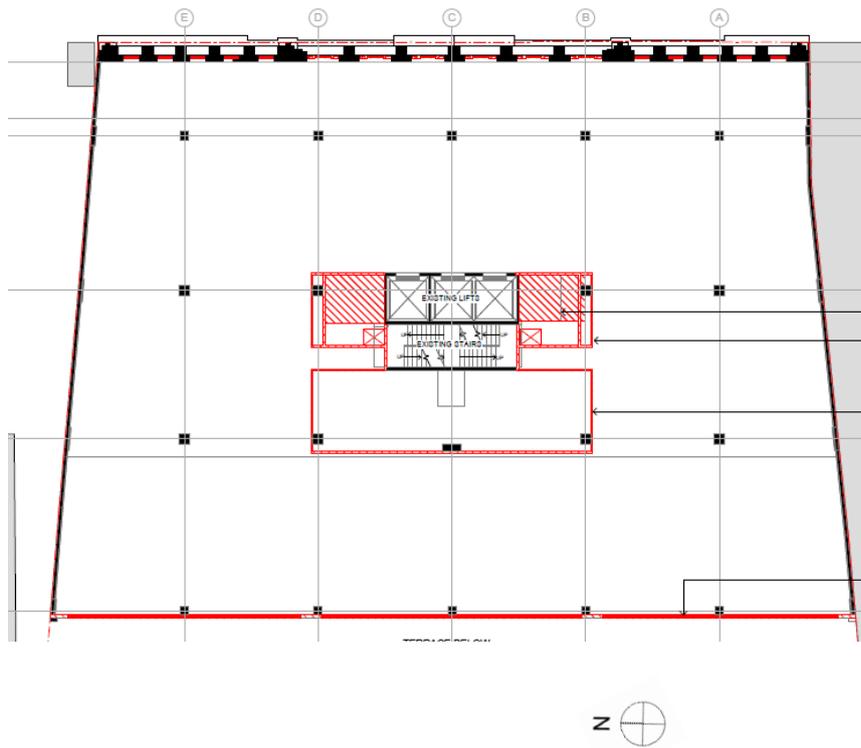


Figure 22: Proposed demolition plan - Level 2-3

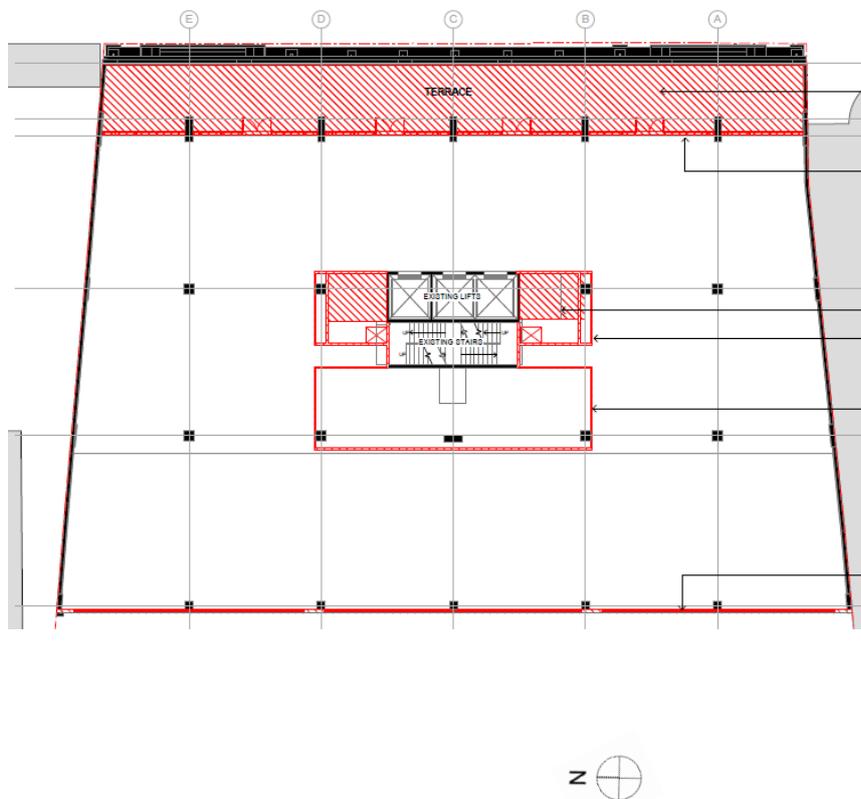


Figure 23: Proposed demolition plan - Level 4

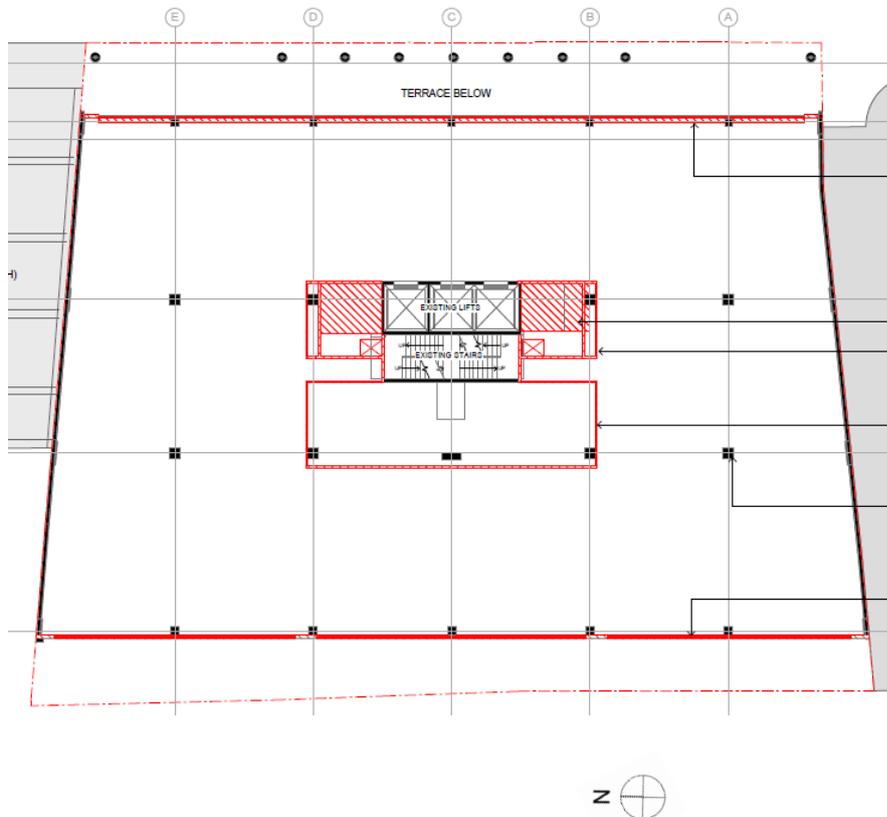


Figure 24: Proposed demolition plan - Level 5-8

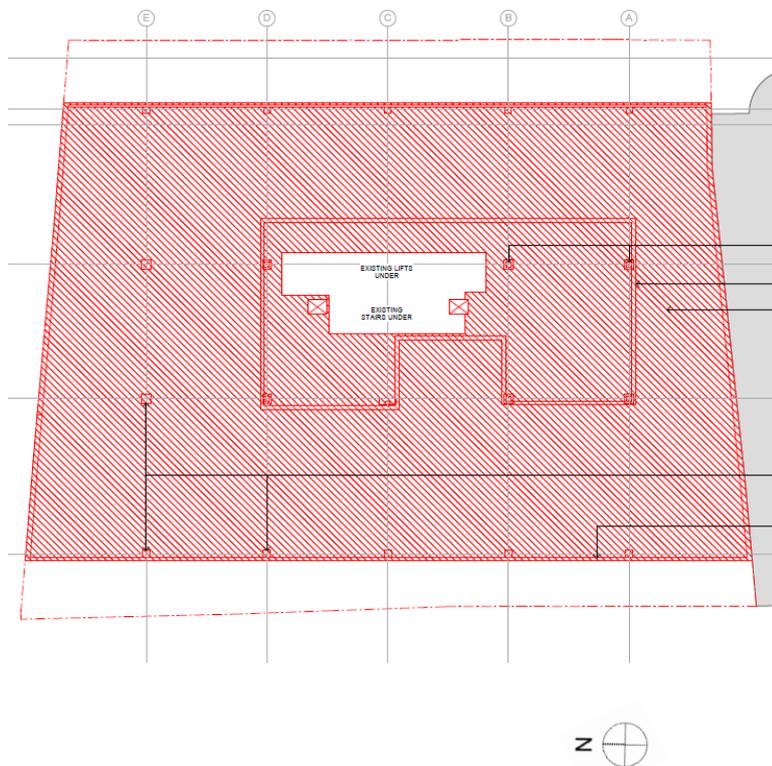


Figure 25: Proposed roof level demolition plan

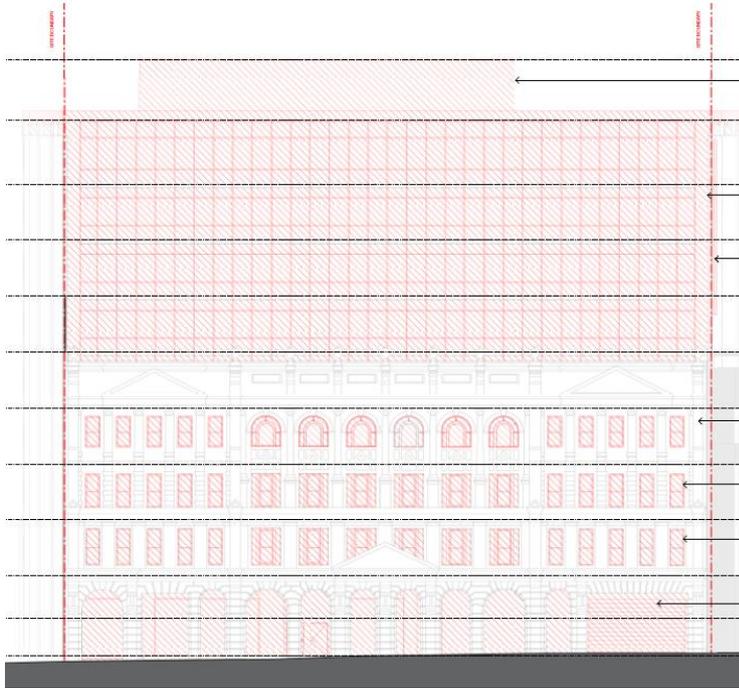


Figure 26: Proposed demolition plan - facade east

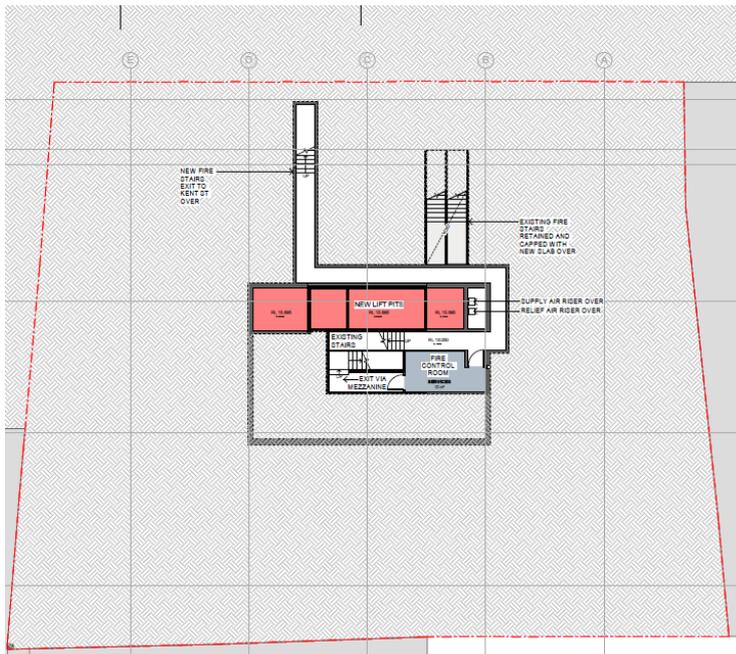


Figure 27: Proposed basement floor plan

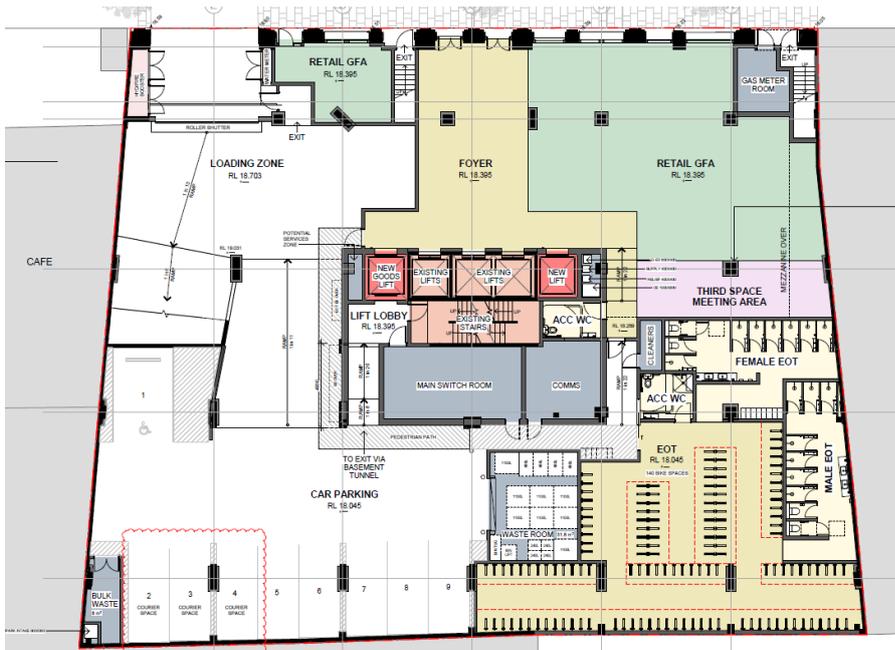


Figure 28: Proposed ground floor plan

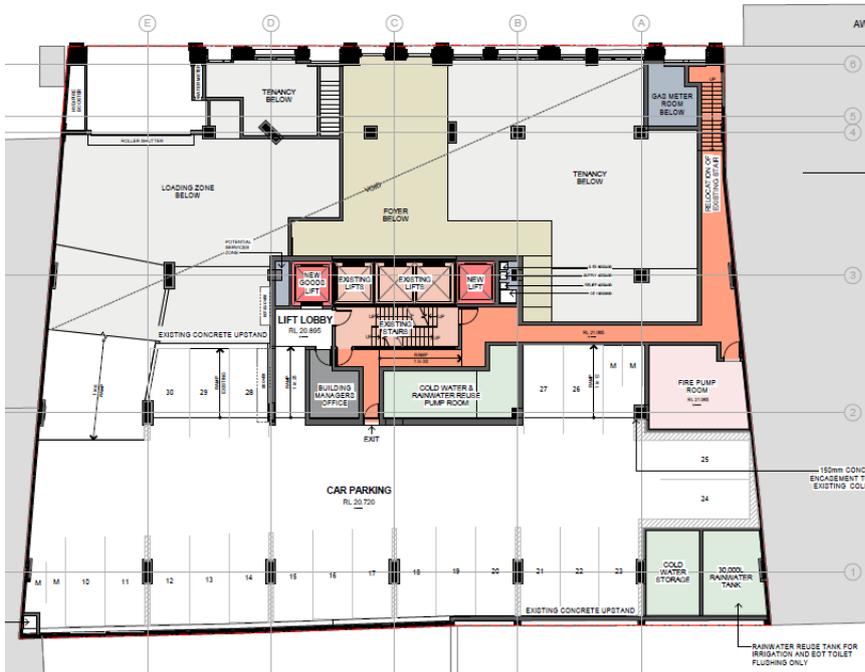


Figure 29: Proposed mezzanine floor plan



Figure 30: Proposed Level 1 floor plan



Figure 31: Proposed Level 2-3 floor plan



Figure 32: Proposed Level 4 floor plan

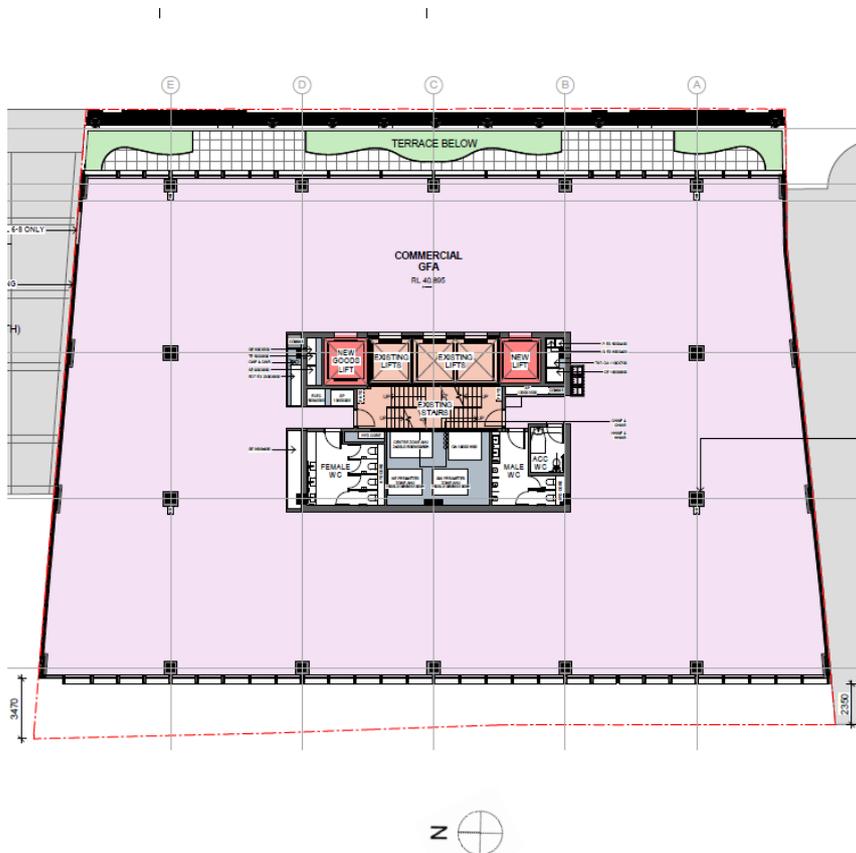


Figure 33: Proposed Level 5-8 floor plan



Figure 34: Proposed Level 9 floor plan

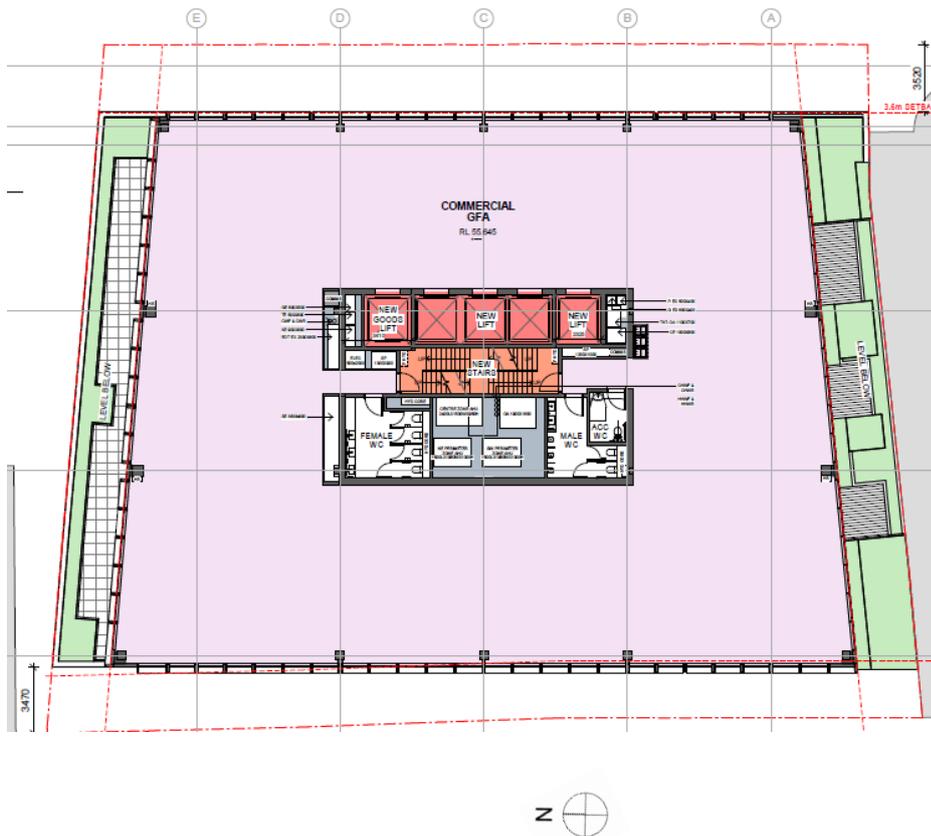


Figure 35: Proposed Level 10-14 floor plan

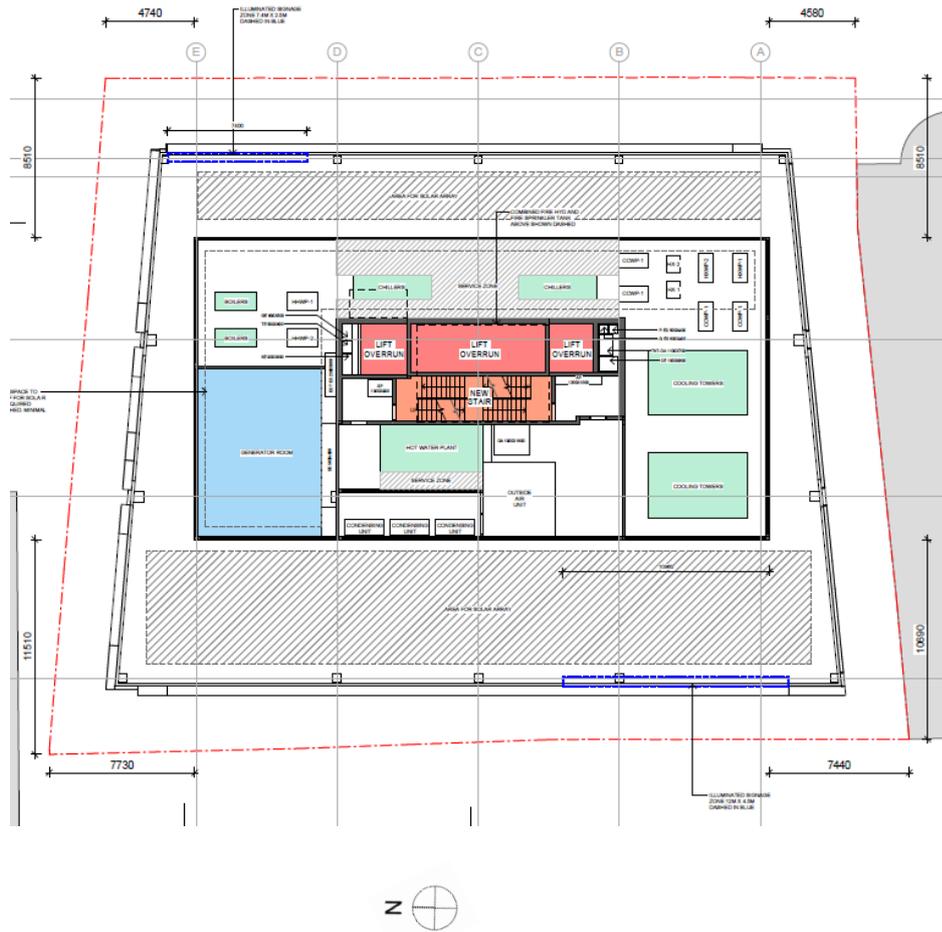


Figure 36: Proposed roof plan

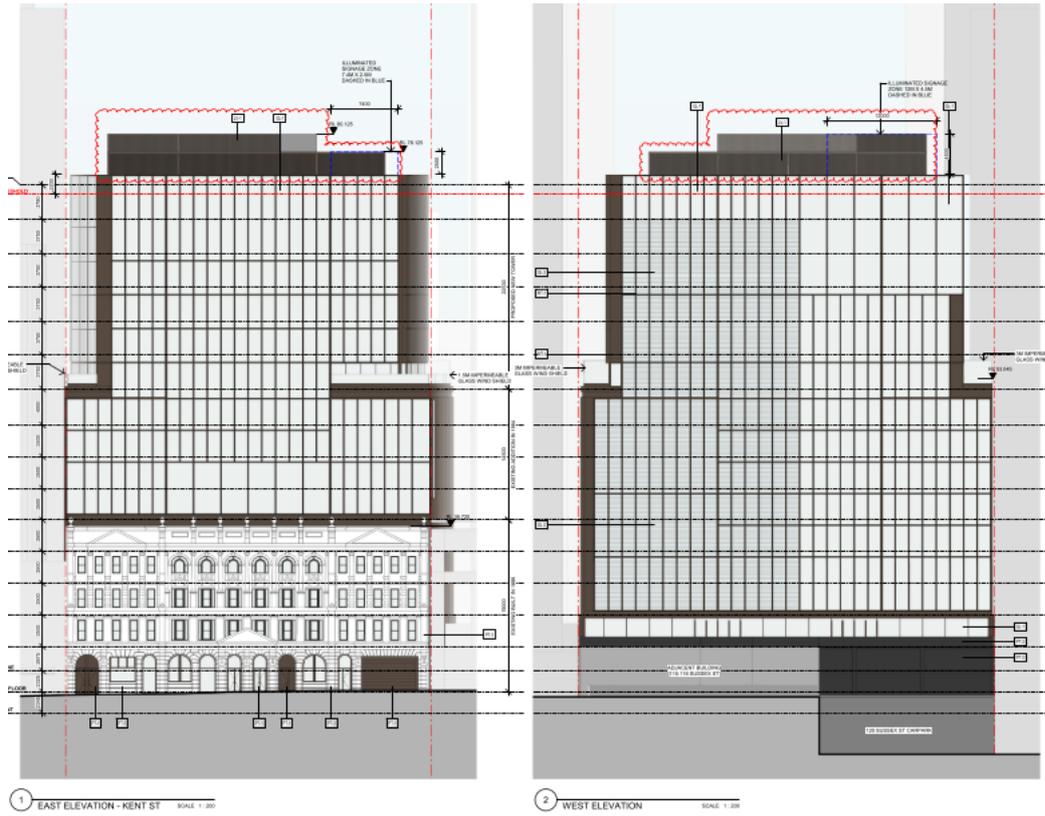


Figure 37: Proposed east (Kent Street) and west (rear) elevations

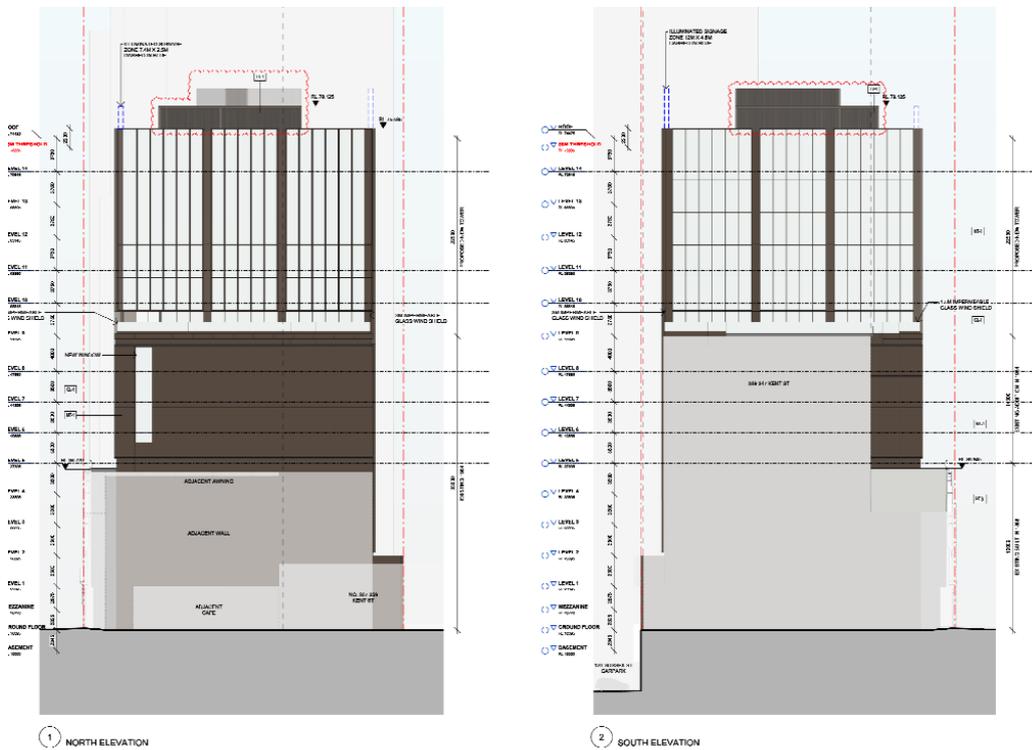


Figure 38: Proposed north and south (side) elevations

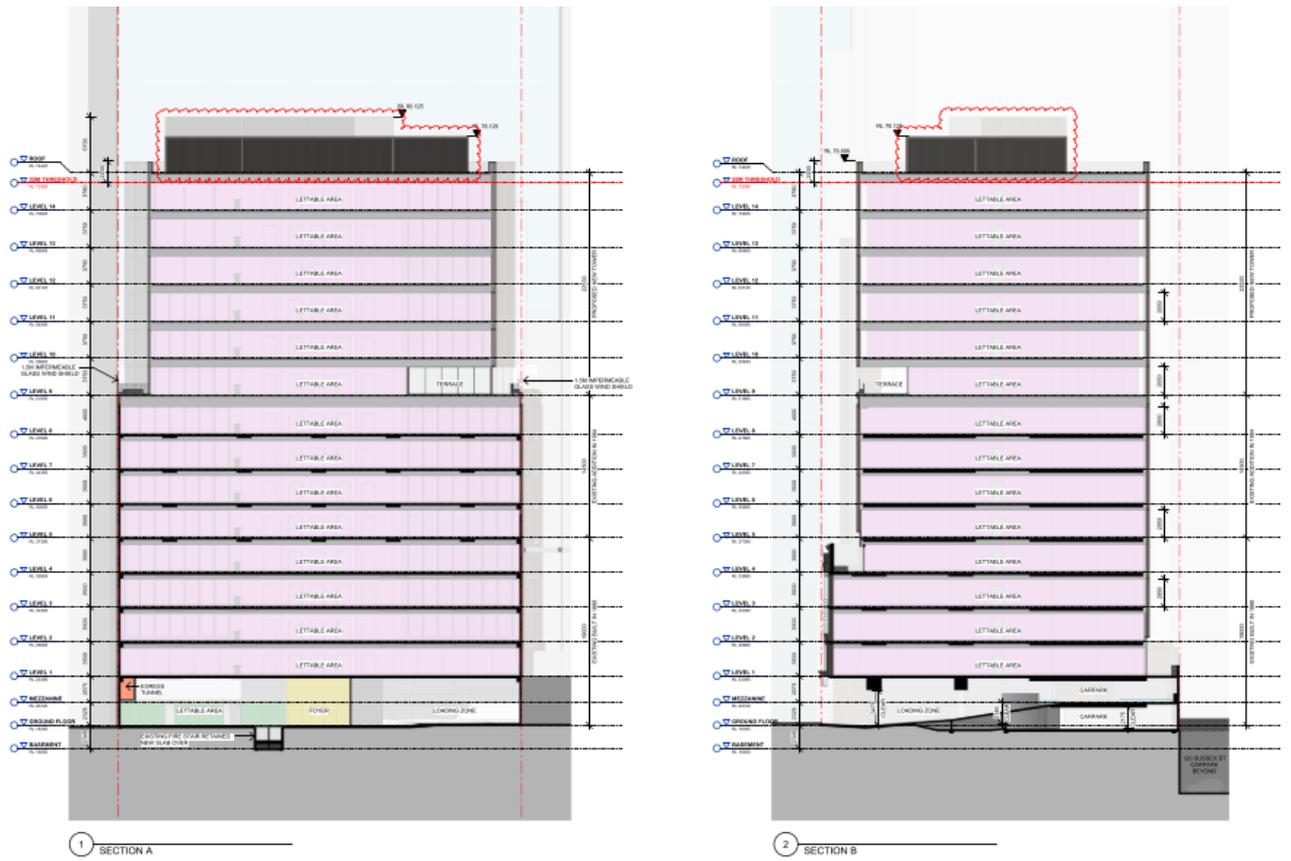


Figure 39: Proposed sections

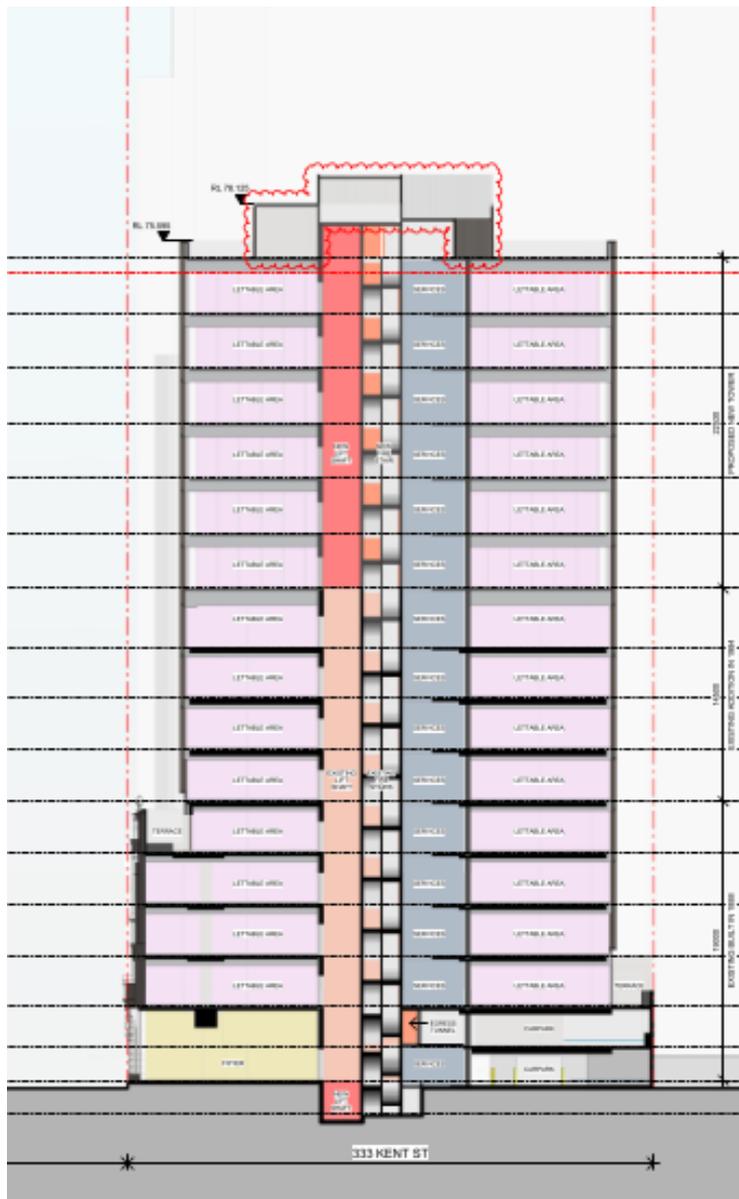


Figure 40: Proposed sections



Figure 41: Revised photomontages of proposal, facing south (left) and north (right) along Kent Street

History Relevant to the Development Application

Development Applications

16. The site has a c1889 Victorian four storey warehouse facade, which was used for commercial purposes until the 1980s. The original interior fabric has been extensively altered with the historic facade the only remaining heritage element.
17. The site was redeveloped in 1985 with an application approved for 'demolition of the existing building, retention of Victorian façade, and new nine storey commercial structure'. A condition of approval was a 3m colonnade to be provided behind the existing facade. The existing windows and doors were removed on the ground floor.
18. In 1997, an additional floor was added to the building and in 2001, internal modifications were undertaken to facilitate a change of use to educational establishment.
19. The following recent applications are relevant to the current proposal:
 - (a) **D/2013/1851** – Development consent was granted by the Central Sydney Planning Committee on 30 October 2014 for a Stage 1 DA for an 80m hotel with residential apartments above.

- (b) **D/2013/1851/A** – A modification under Section 4.55(1A) was granted on 31 August 2017 to make changes to the approved drawings, restrict residential uses above RL68 in height and approve a Design Excellence Strategy for the site.

As discussed further below, a Stage 2 DA was not lodged and D/2013/1851 lapsed on 30 October 2019. An extract of the approved plans is below in Figure 42.

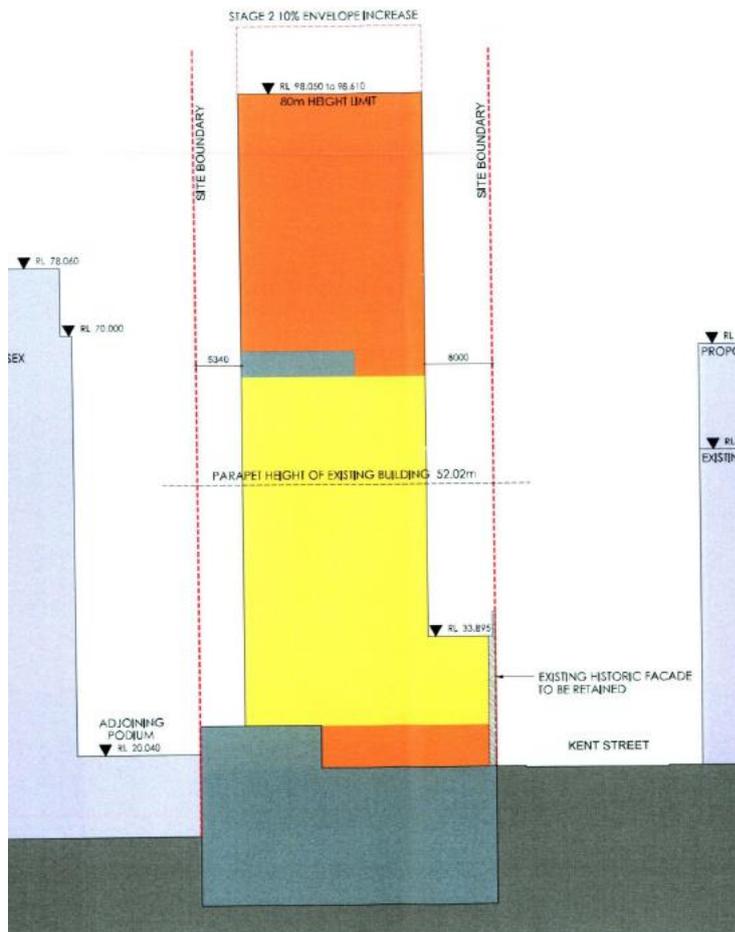


Figure 42: Approved Stage 1 D/2013/1851. The DA has lapsed.

Competitive Design Alternatives Process - 2015 and 2017

20. Following the Stage 1 development consent D/2013/1851, the applicant for the original Stage 1 DA commissioned a competitive design alternatives process for the site. Four architectural firms were invited to submit a design proposal in February 2015. In March 2015 the winning architect was announced (Lahz Nimmo Architects and SJB Architects consortium). No Stage 2 DA was lodged.

21. The ownership of the site changed, and a new Design Excellence Strategy for the development was endorsed by the City on 31 August 2017. This new Strategy and competitive proposal continued to rely on the same Stage 1 development consent (D/2013/1851). The Selection Panel granted Make architects the winning design. On 22 December 2017 the final Competitive Design Alternatives Report was noted as satisfying the requirements of the Brief and relevant City Policy. No Stage 2 DA was lodged.
22. As both competitive design processes related to the now lapsed Stage 1 DA consent for a hotel and residential apartments (D/2013/1851), they have no direct relevance to the application the subject of this report.

Pre-DA Discussions

23. The subject proposal in a draft form was discussed prior to lodgement with Council officers. General pre-DA advice provided between December 2019 to May 2020 included:
 - (i) Further investigation and analysis on the contextual setbacks above the predominant street wall height, heritage impacts, ESD, transport and building exteriors should accompany any future DA;
 - (ii) Waiver of site-specific DCP and competitive design process can be considered, but will be dependent on setback compliance, ground floor activation, and design excellence;
 - (iii) New front facade above Level 3 and the proposed addition must be designed to respond to the fine grain details and dividing pilasters of the retained heritage facade.
24. An assessment of the pre-DA issues raised above is discussed further within this report.

History Relevant to the Development Application

History and heritage significance of the site

25. As discussed above, the site comprises a four-storey c1889 Victorian warehouse front facade. The building was originally divided vertically into four parts and each section leased separately for commercial uses. From 1917 the central two sections became the head office of Tucker and Co Pty Ltd, spirit and wine merchants, who occupied the building for 65 years. Figure 43 shows this part of the building.
26. The Heritage Impact Statement (HIS) prepared by Urbis submitted with the application notes that the Victorian facade displays as a symmetrical alignment, with central paired entrance doors, protected by a deeply moulded pediment supported by oversized brackets and decorative mouldings. The central portion has rectangular and round-arched windows, with small decorative pediments.

27. The HIS further notes:

A colonnade on ground level was created as part of the c1980s development, with the removal of the original doors and window...

...The warehouse was subject to internal remodelling in the 1930s, including a timber panelled ground floor entrance and boardroom. By 1980 the interior had been extensively altered from its original layout. The warehouse was listed on the National Trust register in 1980. The listing noted the significance of the facade and the 1930s boardroom and ground floor entrance.

The Local Government Superannuation Board, which had purchased the subject site in 1984, engaged architects Frank Kolas and Partners to design the subject building. An application was made to the City of Sydney Council to demolish the existing building, retain the Victorian Facade, and to build a nine storey commercial structure behind the existing facade.' The windows and doors along the ground floor of the facade were removed and converted into openings with a colonnade behind. The new building with the retained facade was completed by 1985.



Figure 43: Historic 1917 image of the subject central portions of the building (source: Urbis - SLNSW, Small Pictures File).

Lodgement History

28. The application was lodged on 2 February 2021 and notified and advertised for 28 days between 3 February 2021 and 4 March 2021.

29. Following an assessment of the application and presentation to Design Advisory Panel on 11 March 2021, a request for revisions and additional information was submitted to the applicant on 22 March 2021 requesting:
- (a) Revisions to the historic facade to ensure the alterations and new additions at street level are recessive so that masonry arches read as the dominant form. The proposed detailing of metal frame and the central vertical mullion is not supported;
 - (b) Updated GFA diagrams as the submitted diagrams exclude some areas that should be counted. This includes the 'bin room', 'Acc WC' and 'Building Manager's Office';
 - (c) The upper level setbacks to Kent St (including vertical blades) must be at least 3.7m from the street boundary (the existing setback);
 - (d) Privacy screening to the rear is to be amended and additional information required as it only covers half the rear facade. It is unclear how the privacy is controlled or glass will be maintained;
 - (e) Side setbacks to be a minimum of 3m with no encroachments from vertical blades as per the Sydney DCP 2012;
 - (f) The vertical fins should be amended to be more closely spaced and more commensurate in scale with the elements of the original facade. The floor slabs should be aligned with the horizontal breaks in the vertical fins. 1:10 scale design details of the building facade are to be provided to show how the fins, floor slabs and glass are assembled, along with a glazing sample;
 - (g) The proposed two tone grey colour scheme to the warehouse is not supported. A more suitable colour scheme is required to the warehouse facade;
 - (h) A reconstruction of the ground level facade joinery is required, either faithfully or interpretatively. The original window openings should be reused as shop windows and the original door openings should remain as entrances;
 - (i) The new framing (plate steel lining) is not supported as it would obscure the ashlar joints featured at the corner of the arches. 1:10 scaled design details of the proposed ground level joinery is required;
 - (j) The top of building signage zone on top of the vertical fins is not supported and a parapet or spandrel for signage is to be considered, or the signage should comprise individual letters in between the fins at the glass line.
 - (k) Landscape planting to levels 1, 4 and 9 must incorporate the required wind treatments in the Wind Report, in particular the screens to Level 9. The wind report should be updated to consider the access to southern terrace at Level 9, which it notes as non-accessible when it is identified as trafficable on the plans;
 - (l) Clarification on the loading and servicing including largest vehicle that can be accommodated, reversing arrangements, access to the goods lift/s, access arrangements to the waste storage and loading facility. Additional smaller spaces for loading and servicing (courier spaces) required in lieu of loading bay shortfall;

- (m) Increased bike parking required to comply with Sydney DCP 2012 (minimum 100 for staff and 40 for visitors). Clarification on access to End of Trip Facilities (EOTF) in context of reversing bays to loading area;
 - (n) Clarification on GreenStar Certification sought. The architectural drawings do not align with the ESD report in regard to rainwater tanks and other recommended sustainability initiatives;
 - (o) A Detailed Environmental Site Investigation (DESI) required;
 - (p) An amended Waste Management Plan required to show compliance with the Sydney DCP 2012 and relevant City waste guidelines.
30. A meeting was held between Council Officers and the applicant and consultants on 26 April 2021, with a follow up request made in regard to the vertical shadows and details on the spandrels. On 27 April 2021 a request for additional overshadowing plans to the balcony of residential apartments at 110-116 Sussex St Sydney was sent to the applicant.
31. Revised plans and information in response to Council's requests in Paragraph 29 above were provided on 27 May 2021 and included amended architectural drawings, Waste Management Plan, landscaping plan, preliminary site investigation, supplementary design report, transport and traffic statement, and a response to Council's letter.
32. Further requests for additional information/amendments were made to the applicant after 27 May 2021 with additional information as per the below submitted:
- (a) Memo from Surface Design regarding the tint of the glazing proposed received 4 June 2021;
 - (b) Further clarification on the proposed waste collection was forwarded to the applicant on 7 June 2021, relating to the calculations for the retail use in the case that the premises may be used as a restaurant (and waste storage provisions would be inadequate) and the non-compliant ramp gradient (ramp gradient of 1:11 does not comply with the City's minimum standards (1:14)). The applicant has responded to these items on 10 June 2021;
 - (c) Revised section and elevations showing the 3m wind shield received 10 June 2021;
 - (d) Revised landscape plans and amended swept path diagrams received 20 June 2021;
 - (e) Revised physical model received 21 June 2021;
 - (f) Revised Ground Floor Plan on 24 June 2021 allocating three additional small loading bays in the existing car park on ground level;
 - (g) A MUSIC E-Link Report and Stormwater Quality Assessment Report received 22 June 2021 and additional information provided on 25 June 2021;
 - (h) Physical sample of the proposed glazing received 23 June 2021 and additional glazing information provided on 1 and 2 July 2021;

- (i) Detailed section of the opaque spandrel proposed annotated on 6 July 2021;
- (j) Revised roof top screening received 8 July 2021; and
- (k) A revised north-facing photomontage provided 14 July 2021.

Assessment

33. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

City of Sydney Act 1988

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

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

- (1) The Planning Committee must consult the CSTTC before it exercises a function under Part 4 that will result in the making of a decision that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD.
- (2) The Planning Committee must take into consideration any representations made by the CSTTC within the period of 21 days (or such other period as is agreed to by the CSTTC and the Planning Committee in a particular case) after consultation takes place.
- (3) The Planning Committee may delegate to a subcommittee of the Planning Committee, or the general manager or another member of the staff of the City Council, any of its functions under this section other than this power of delegation. A delegation can be given subject to conditions. A delegation does not (despite Section 38) require the approval of the Minister administering that section.
- (4) The failure of the Planning Committee to comply with this section does not invalidate or otherwise affect any decision made by the Planning Committee.
35. The original proposal was considered to potentially have impact on traffic in the Central Sydney Business District and required consultation with the CSTTC. The application and its associated transport and traffic issues was discussed with the CSTTC on 25 February 2021. It was actioned to Transport for NSW (TfNSW) to provide comment.
36. Submissions received by the City from TfNSW are considered in the assessment of the application and the recommended conditions are included in Attachment A.

State Environmental Planning Policies

State Environmental Planning Policy No 55 - Remediation of Land

37. 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.
38. A Preliminary Site Investigation (PSI) for contamination was submitted with the application, noting that the site can be rendered suitable for the proposed development, subject to further investigations, though past activities on site have a low potential for environmental impacts on soil and groundwater.
39. The PSI was referred to the City's Environmental Health Unit who initially recommended the preparation of a Detailed Environmental Site Investigation (DESI) be carried out, which was conveyed to the applicant on 22 March 2021.
40. In correspondence dated 27 May 2021, the applicant advised there are site constraints in preparing a DESI due to the intrusive sampling requiring significant access to parts of the building utilised by existing essential services equipment within an occupied building.
41. The PSI was revised, particularly in relation to the recommendations which previously included reference to the preparation of a Hazardous Building Materials survey, which has already been completed for the site. The applicant noted that the site has been cleared of high-risk hazardous materials.
42. The City's Environmental Health Unit has reviewed the additional information provided including the revised PSI and notes that the proposal is acceptable subject to recommended conditions of consent. As there is no change of use associated with the application, minimal excavation is proposed for strengthening supports and the lift core, and the environmental consultant has noted that the site is low risk for ground and water contamination, the proposal, subject to conditions, is appropriate and the site can be made suitable for the proposed use.

State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64)

43. Two top of building signs are proposed, their location revised during the assessment, as concerns were raised by the City's Urban Design unit in regards to the original DA's signage location and setting within the architectural facade. An amended location for the signage was provided in the revised drawings dated 27 May 2021 and the signage can be shown in Figure 44 below.

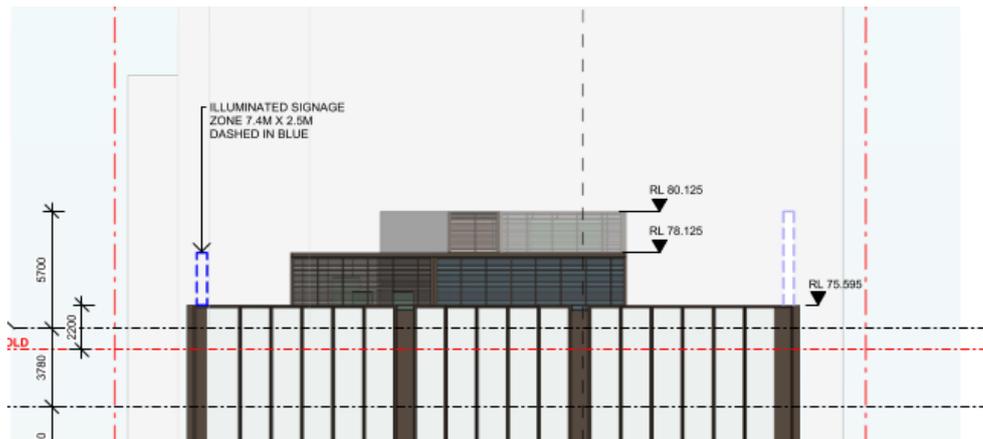


Figure 44: Amended top of building signage

44. The amended top of building signage has been considered against the objectives of the policy and does not comply with the objectives of SEPP 64. In particular, it is considered to have a detrimental impact on the character of the area due to its size and location, protruding above the parapet, and therefore does not have a positive contribution to the streetscape and setting of the area.
45. The proposed signage is inconsistent with the objectives of SEPP 64 as set out in Clause 3 (1) (a) and does not satisfy the assessment criteria specified in Schedule 1.
46. A condition to not approve this part of the application is recommended. A signage strategy condition is also recommended to require all future signage to be submitted and approved prior to issue of Construction Certificate. In this regard, top of building signage will be assessed in the context of the approved architecture of the facade.

State Environmental Planning Policy (Infrastructure) 2007

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 45 Determination of development applications – other development

48. The application is subject to Clause 45 of the SEPP as the development involves the penetration of ground within 2m of an underground electricity power line.
49. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised. The recommendations in Ausgrid's referral response are included in the conditions of consent in Attachment A.

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Clause 85 – Development adjacent to rail corridors

50. The application is within 25m of the Rail Corridor - CBD Rail Link and CBD Metro and was subsequently referred to Transport for NSW (TfNSW) for comment. TfNSW have recommended conditions which are included in the conditions of consent in Attachment A.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

51. 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.
52. 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 SREP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

53. 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 'mixed-use' (retail and commercial) 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	Yes	A maximum building height of 80m is permitted. A height of 61.73m is proposed.

Provision	Compliance	Comment
		The proposed development complies with the maximum height of buildings development standard.
<p>4.4 Floor space ratio</p> <p>6.4 Accommodation floor space</p> <p>6.6 End of journey floor space</p>	Yes	<p>The site has a base permitted maximum floor space ratio of 8:1. Additional FSR of 2:1 is permitted under the accommodation floor space provisions of Clause 6.4 as the site is located on 'Area 3' of the FSR Map. As such, the permitted maximum FSR is 10:1.</p> <p>The application also proposes 280sqm of EOTF in the existing ground floor carparking area of the building.</p> <p>The application originally proposed a FSR of 9.92:1. In amending the proposal the applicant seeks to utilise the provisions of Clause 6.6 for additional floor space for the proposed 280sqm of end-of-trip facilities GFA. This equates to 0.185:1.</p> <p>The revised proposal has a FSR of 10.01:1 which complies with the maximum FSR development standard being 10.185:1.</p> <p>Refer to the further discussion and assessment provided under the Discussion heading below.</p>
5.10 Heritage conservation	Yes	<p>The site is not a heritage item or within a heritage conservation area, however the amended proposal responds appropriately to the heritage items in the vicinity and the c1889 historic facade on site, which is the only remaining historic element.</p> <p>The proposal maintains the historic elements of the facade, including timber windows, and overall results in a positive heritage response to the site and surrounds in accordance with Clause 5.10 subject to conditions recommended by the City's Heritage Specialist, which are included in Attachment A.</p>

Provision	Compliance	Comment
		Refer to the further discussion and assessment provided under the Discussion heading below.

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 6.6 End of journey floor space	Yes	Refer to discussion under Clause 4.4 above and under 'Discussion' below.
6.5 Car parking reduction	N/A	Clause 6.5 states that a basement carparking area that is changed to 'any other use' is eligible for additional floor space equal to the amount of the new use. The proposal seeks to convert some of the existing 40 car parking spaces to end of journey facilities and loading/servicing bays. However, the car parking spaces are located at the ground and mezzanine floor levels rather than the basement. In this regard, Clause 6.5 does not apply.
6.11 Utilisation of certain additional floor space requires allocation of heritage floor space	Yes	The height of the building exceeds 55m, the site is in Central Sydney and in Area 3 and the development seeks to utilise accommodation floor space. Under the provisions of Clause 6.11, an amount of heritage floor space is required to be allocated to the site. A condition is recommended in Attachment A to require this HFS to be purchased and allocated to the development. Refer to the further discussion and assessment provided under the Discussion heading below.
Division 3 Height of buildings and overshadowing		
6.19 Overshadowing of certain spaces	Yes	The proposal does not overshadow any spaces listed in Clause 6.19.

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The revised proposal has regard to the heritage issues and streetscape constraints and the existing street frontage heights along the western side of Kent Street and predominant 4-6 storey podium heights. Subject to conditions, including a revised materials sample board, revised location of the shadow line, and heritage reconstruction details, the proposal addresses the provisions of Clause 6.21(4).</p> <p>The building has a height over 55m and a waiver to the requirement for a competitive design process under Clause 6.21(5) is proposed and supported as the application involves only alterations and additions to the existing building, does not significantly increase the height or GFA of the building, does not have significant adverse impacts on adjoining buildings and the public domain, and does not significantly alter any aspect of the building when viewed from public spaces. Further, the additional height above 55m relates primarily to rooftop plant - no habitable floor space is located above a height of 56.1m (roof of Level 14).</p> <p>The site has been subject to a previous Stage 1 DA consent (D/2013/1851) which was approved with a height of 80m. Though lapsed, the approval is relevant as it demonstrates that a taller built form may be acceptable in principle, given the context of the surrounding amenity has been adequately assessed.</p> <p>Significant improvements to the existing building facade and street / ground floor plane have been demonstrated and the design provides activation along Kent Street, with fine grain retail premises provided at street level.</p>

Provision	Compliance	Comment
		<p>The proposal addresses the heritage issues and streetscape constraints, the existing street frontage heights along the western side of Kent Street, achieves ESD principles and an appropriate interface between the building and the public domain.</p> <p>As such, it is considered that the amended proposal demonstrates design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
<p>7.6 Office premises and business premises</p> <p>7.7 Retail premises</p>	Yes	<p>The existing site has 40 car parking spaces, and it is proposed to convert 11 car parking bays to end of journey facilities. Of the 29 car bays remaining, 3 are to be converted to courier spaces for smaller loading and servicing purposes.</p> <p>A maximum of 30 car parking spaces are permitted. 26 car parking spaces are proposed, plus 3 servicing bays and 1 accessible car bay. The proposed development complies with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulphate Soils	Yes	<p>The site is located on land with class 5 Acid Sulphate Soils. A preliminary investigation report was submitted with the application and was amended with the revisions. The report notes that the past activities on site have a low potential for environmental impacts on soil and groundwater.</p> <p>Council's Environmental Health Officer has reviewed the application and noted that there is a low risk of ASS at the site, and as such, ASS Management Plan is not required at this stage.</p>

Provision	Compliance	Comment
7.15 Flood planning	Yes	The site is not identified as being flood affected. The proposal was reviewed by the City's Public Domain team with no objections raised subject to conditions.
7.16 Airspace operations	Yes	The site is subject to a maximum height of 156m AHD under the Obstacle Limitation Surface Map for Sydney Airport. The proposed development will not penetrate the Obstacle Limitation Surface.
7.20 Development requiring or authorising preparation of a development control plan	No, but assessed as acceptable	<p>The site has an area over 1500sqm (1518sqm) and the height of the building is over 55m (61.73m). Therefore, the preparation of a site-specific DCP is required under Clause 7.20(2) of the Sydney LEP 2012.</p> <p>The proposed development is not subject to either a site specific DCP or current concept development consent.</p> <p>However, under the provisions of Clause 7.20(3) a waiver may be granted if the proposal satisfies certain requirements.</p> <p>Refer to the further discussion and assessment provided under the Discussion heading below.</p>

Development Control Plans

Sydney Development Control Plan 2012

54. 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

55. The site is not located within an area subject to a Locality Statement under Section 2 of the Sydney DCP 2012.

Section 3 – General Provisions

Provision	Compliance	Comment
<p>3.1 Public Domain Elements</p> <p>3.1.5 Public Art</p>	Yes	<p>The proposal makes a positive contribution to the public domain as it provides an appropriate response to the ground floor through retail uses and restoration works to the facade. Though the proposal utilises the existing Kent St vehicular access, given the site only has one frontage this is considered acceptable.</p> <p>A public art strategy has not been submitted. A condition to require the contribution of public art in accordance with the provisions of the Sydney DCP 2012 is recommended.</p> <p>The proposal has been referred to the City's Public Domain team with no objections raised subject to conditions, which are included in Attachment A.</p>
<p>3.2. Defining the Public Domain</p> <p>3.2.2 Addressing the street and public domain</p> <p>3.2.6 Wind effects</p>	Yes	<p>An awning and active frontage for the site is not required under the Sydney DCP 2012.</p> <p>However, the proposal positively addresses Kent Street, with clearly legible entries, and retention of the heritage facade glazing along the street frontage to allow for views into the tenancy at ground floor and provide opportunities for direct surveillance. The vehicular access has been maintained at its existing width to minimise impacts to the public street. The proposal enhances the public domain as it ensures sun access to publicly accessible places is maintained, and does not unreasonably impede public views.</p> <p>The building has a height over 45m and therefore wind control testing is required as per Section 3.2.6 of the SDCP 2012. The Wind Report prepared by Windtech submitted with the application does not conclude that adverse wind impacts will arise because of the development, largely due to the existing high-density context of the Sydney CBD.</p>

Provision	Compliance	Comment
3.2.7 Reflectivity		<p>Recommendations in the wind report including wind shields to the Level 9 terraces are incorporated into the architectural drawings.</p> <p>The new building exceeds 35 metres in height and is a 'tall building' in accordance with the Glossary of Terms in the Sydney DCP 2012. The objectives and provisions relating to reflectivity apply to the proposed development as a result. A reflectivity report prepared by Surface Design has been submitted and the report concludes that the risk of rogue reflections causing disability glare are limited and acceptable where materials are limited to a maximum normal specular reflectivity of 20%. A condition to this effect is recommended in Attachment A.</p>
3.3 Design Excellence and Competitive Design Processes	No, but acceptable	<p>The application seeks to 'waive' the requirement to undertake a competitive design process.</p> <p>Refer to the further discussion and assessment provided under the Discussion heading below.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology subject to conditions to protect three street trees outside the site.</p> <p>The proposal includes small tree planting in the outdoor terraces in raised garden planters. A condition to require the trees to be grown to Australian Standard and planted by appropriate staff to ensure that they grow to maturity and contribute canopy cover in the local area is included in Attachment A, as recommended by the City's Tree Management Specialist.</p>

Provision	Compliance	Comment
<p>3.6 Ecologically Sustainable Development</p> <p>3.6.3 Photovoltaic solar panels</p>	<p>Yes, subject to conditions</p>	<p>A sustainability report accompanies the DA. The application proposes a formal Green Star 5 Star rating and a NABERS Energy 5.5 star rating. In addition, the project targets a 10% improvement upon NCC Section J building envelope performance baseline.</p> <p>The application proposes a 20sqm area for rainwater tank (30,000L) and a rainwater pump room to provide EOT toilet flushing and landscape irrigation reuse. The proposed PV panels have consideration to the potential building form on adjacent properties.</p> <p>The proposal was reviewed by the City's ESD officer who noted that the revised proposal satisfies provisions in the Sydney DCP 2012 in relation to energy and water efficiency subject to recommended conditions of consent. Though it was encouraged that the applicant replace the proposed PV panels on the roof with a non-trafficable green roof, or add a non-trafficable green roof as well as PV panels, the applicant has advised that, due to the significant overshadowing of the roof top area, the PV panels are a more appropriate solution.</p> <p>Given the restricted available space for additional green roof the proposal is considered acceptable subject to standard conditions in relation to water efficiency and NABERS.</p> <p>The City's Urban Design team have raised concerns with the uncertainty of the glazing VLT and U-value required. During assessment, details of the glazing were requested. A physical sample was submitted however not supported due to the proposed tint.</p>

Provision	Compliance	Comment
		<p>The requirement for physical samples of glazing to be submitted and approved by Council prior to Construction Certificate is recommended as a condition of consent. The glazing choice will be dependent on cumulative Section J and environmental requirements of NABERS, therefore will be determined in the detailed design phase of the building.</p>
3.7 Water and Flood Management	Yes	<p>The site is not identified as being on flood prone land. As discussed below in referrals, the City's Public Domain Unit supports the proposal subject to conditions.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The subject site has not been strata subdivided however it is affected by two easements - an Easement for Footway, and an Easement for Support. The proposal was referred to the City's Specialist Surveyor who supported the proposal subject to conditions, noting that:</p> <ul style="list-style-type: none"> - The Easements for Footway and Support appear to relate to a pedestrian bridge at the rear of the site that provides access to and from an adjoining building. It is not clear if the bridge still exists however its location indicates that it has no effect on this application; - The site is also benefitted by an Easement for Overhang, which permits part of the building to overhang the adjoining site along its northern boundary. The proposal is well within the boundaries of the land, so conditions relating to set-out are not necessary. - The window proposed to be installed on the northern (side) wall of the existing building on levels 6-8 is on the boundary so it should not be permitted to open and must comply with the BCA. Further, a Boundary Window Covenant should be imposed.

Provision	Compliance	Comment
		The recommended conditions are included in Attachment A.
3.9 Heritage	Yes	<p>While the existing site and c1889 Victorian facade is not a heritage item, its significance lies in its contribution to the overall streetscape on Kent St.</p> <p>The application has been amended to result in a more recessive design so that the masonry arches of the Victorian facade read as a dominant form, and to reinstate the facade expression of the original warehouse building.</p> <p>Revised plans were referred to the City's Heritage Specialist for comment, with no further issues in relation to the reconstructed facade subject to conditions relating to materials and colours, reinstatement of transoms of the two wide arch windows, setback of the window sills and details of the facade joinery. A heritage interpretation plaque is required. Conditions to address these items are included in Attachment A.</p> <p>Subject to conditions, the amended design appropriately responds to the heritage items in the vicinity and the historic facade in accordance with Section 3.9.1 of the Sydney DCP 2012.</p>
<p>3.11 Transport and Parking</p> <p>3.11.1 Managing transport demand</p> <p>3.11.3 Bike parking and associated facilities</p>	Yes, subject to conditions	<p>The proposal seeks to reduce the number of existing car parking bays and increase the number of bike and end of trip facilities, providing 14 showers, lockers and bike storage for 140 bikes. The proposal does not change the existing vehicle access arrangements, including driveway, vehicle height, and ramps.</p> <p>The proposal seeks to convert 11 out of 40 existing car parking spaces. Of the 29 car parking spaces 3 are proposed as loading service bays for small vehicles.</p>

Provision	Compliance	Comment
		<p>The proposal comprises a non-residential mixed-use development, which is greater than 1,000sqm and therefore generates a requirement for a Transport Impact Study and Transport Access Guide under Section 3.11 of the Sydney DCP 2012.</p> <p>Transport Impact Study reports were submitted with the original and amended applications. The reports have been reviewed by the City's Transport and Access Unit who have advised the transport arrangements are acceptable subject to conditions.</p> <p>Adequate bike parking and EOTF are provided at ground floor level, subject to standard conditions for the arrangements to comply with Australian Standards.</p>
3.11.6 Service vehicles	Yes, subject to conditions	<p>The proposed development for commercial and retail uses requires a minimum of 5 loading and servicing vehicle parking spaces. Two (2) small vehicles or 1 x 7.2m vehicle can be accommodated into the dock area. On recommendation of the City's Transport and Access Unit, the application has been amended to also nominate three regular car parking bays in the ground floor parking area as 'courier bays'. No further issues are raised by the City's Transport and Access unit subject to conditions.</p> <p>The existing vehicle access from Kent Street is proposed for retention. Concerns were initially raised with the provision of loading and servicing for the additional retail and commercial tenancies, and the swept path analysis plans which showed potential conflict points. As the proposal will intensify uses at the site, a condition requiring a loading dock management plan is recommended.</p>

Provision	Compliance	Comment
		<p>Revised swept path analysis plans were submitted on 2 June 2021 and reviewed by the City's Transport and Access team with no further queries.</p> <p>Subject to conditions for a loading management plan and other transport related conditions the proposal complies with the provisions of the Sydney DCP 2012.</p>
3.11.10 Vehicle access for developments greater than 1000sqm GFA	Yes	The proposed vehicle arrangements utilize the existing access from Kent St which has a width of 7m. It is not considered that the safety of those using the street or access will be compromised.
3.11.13 Design and location of waste collection points and loading areas	Yes, subject to conditions	<p>Waste collection is proposed from within the building on the existing ground floor level of the site, as it does not propose a basement level.</p> <p>The waste collection will require use of an existing ramp with a non-compliant gradient when assessed against the provisions of the City of Sydney Waste Management Guidelines for New Development.</p> <p>However, the submitted Waste Management Plan outlines that a mechanical tug is proposed to assist with bin collection. On re-review, the City's Waste team do not object to the method of waste collection and support the proposal subject to conditions.</p>
3.12 Accessible Design	Yes	The application is accompanied by a report by Morris Goding Access Consulting which details that the design is capable of complying with accessibility requirements under the BCA, DDA standards and Council's DCP. A condition is recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.

Provision	Compliance	Comment
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, subject to conditions	<p>An amended Waste Management Plan was requested on 22 March 2021 following a preliminary assessment where various non-compliances with the Sydney DCP 2012 and the City of Sydney Guidelines for Waste Management in New Development were identified.</p> <p>The amended proposal has increased the size of the waste storage area and nominated a bulky waste storage room.</p> <p>The City's waste team is satisfied that proposal is acceptable subject to conditions as recommended in Attachment A.</p>
3.16 Signage and Advertising	No	<p>Two signage zones are proposed to the top of building on the eastern (Kent Street) and western (rear) facades. The applicant was advised during the assessment that the top of building signage zone should be amended so that a spandrel or parapet is considered, designed to accommodate a top of building sign consistent with Section 3.16.5.2(8) of the Sydney DCP 2012, which requires top of building signage to achieve a high level of integration into the architectural design of the building.</p> <p>In the amended drawings a revised location for the signage, above the parapet, was proposed. The revised signage is not consistent with Section 3.16.5.2(2) of the Sydney DCP 2012 which requires top of building signs to not project vertically above the roof.</p>

Provision	Compliance	Comment
		The signage is considered to have an adverse impact on the surroundings including the immediate neighbours and is not compatible with the architectural design of the building. As such, a condition to not approve the top of building signage, and require a separate Signage Strategy to be submitted and approved by Council is recommended in Attachment A.
3.1.7 Contamination	Yes, subject to conditions	<p>As discussed above in relation to SEPP 55, the City's Health and Building Unit has reviewed the revised preliminary site investigation report submitted to satisfy both the SEPP and Section 3.17 of the Sydney DCP 2012.</p> <p>The advice received advises that, subject to recommended conditions relating to contamination in Attachment A, the site can be made suitable for the proposed development.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed-Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>A predominant 4 storey existing street wall height exists along the western side of Kent Street between King and Erskine St. The proposal is generally consistent with the street frontage height of the adjacent buildings.</p> <p>See Section 5.1.1 of the Sydney DCP 2012 below for further assessment.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, but acceptable	Buildings with a commercial or retail use are required to have a minimum floor to floor height of 4.5m on the ground floor. Upper floors require a minimum floor to ceiling height of 2.7m which equates to a minimum floor to floor height of 3.1m.

Provision	Compliance	Comment
		<p>Though the application proposes to utilise part of the existing building, the proposal generally complies, with floor to floor heights of 3.5m to 3.7m. Variations to the required heights of the ground and mezzanine levels are considered acceptable given the proposal seeks to retain some of the existing building.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The proposal has a minor overshadowing impact on neighbouring properties however complies with the height and FSR controls for the site. On balance, the impacts are considered acceptable in the context of the CBD environment and can be supported.</p> <p>Refer to the further discussion and assessment provided under the Discussion heading below.</p>
4.2.3.5 Landscaping	Yes	<p>The proposal includes accessible outdoor terraces for use by the commercial staff during hours of operation. The applicant was requested to submit landscape plans.</p> <p>Wind mitigation methods have been incorporated into the design to Level 9 to ensure the conditions of the terraces are comfortable for occupants. This includes a wind shield, which was requested to be relocated during the assessment to outside of the planting, to be safer for maintenance purposes. Revised landscape plans were reviewed by the City's landscape officer.</p> <p>Subject to a condition for detailed landscaping plans prior to issue of Construction Certificate, the proposal is consistent with the requirements of this provision.</p>

Provision	Compliance	Comment
4.2.3.10 Outlook	Yes	<p>The proposed tenancies have adequate outlook and views and outlook from the surrounding development has been considered in the site planning of the development. The proposal complies with the height and FSR controls prescribed by the Sydney LEP 2012.</p> <p>The proposal does not impact on views from public places, for example, from Darling Harbour, as the majority of views to the east are obscured by buildings directly to the north, south and east of the site.</p> <p>Minor impacts on views towards Darling Harbour may occur to residential properties at 161 Clarence St (facing Kent St) to the east of the site. However, on balance, the impacts are considered reasonable given the CBD context and compliance with the relevant controls, particularly height and FSR.</p>
4.2.3.11 Acoustic privacy	Yes, subject to conditions	<p>An Acoustic Report prepared by ADP was submitted and has been reviewed by the City's Health and Building unit. The report notes that the development is capable of complying with various standards however this will be determined in detailed design (in particular, mechanical plant).</p> <p>Conditions are recommended in Attachment A to ensure that appropriate noise management measures are implemented in relation to the proposed uses of the site.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The amended proposal demonstrates a scale, modulation and façade articulation that responds appropriately to its context on Kent St.
4.2.6 Waste and recycling Management	Yes, subject to conditions	Refer to the discussion and assessment provided in relation to waste management in Section 3.14 of the Sydney DCP 2012 in the table above.

Section 5 – Specific Areas

Provision	Compliance	Comment
Central Sydney 5.1.1 Street frontage heights	Yes	<p>A street wall height of between 20 to 45 metres is required. The existing street wall height is approximately 20m.</p> <p>The proposal generally retains the existing street wall height and therefore complies.</p>
5.1.2 Building setbacks 5.1.2.1 Front setbacks	No, but acceptable	<p>An upper level setback for buildings over 45m is required with a minimum weighted average of 8m above the street frontage height. The proposal has upper level setbacks of between 3.52 and 4.19m. The rooftop plant is setback by 8.5m.</p> <p>However, the existing building (up to level 8) has an upper level setback of 3.7m to Kent Street. On balance the proposed upper level setbacks are acceptable given the setback of the existing building to Kent Street.</p> <p>Refer to the further discussion and assessment provided under the Discussion heading below.</p>
5.1.2.2 Side and rear setbacks	No, but acceptable	<p>Windows of commercial buildings require a 3m setback above 45m to the side and rear property boundaries.</p> <p>The application generally proposes setbacks of 3m to the glass lines of the rear and sides of the building however amendments were requested to ensure no encroachments of vertical fins into the setback area were proposed.</p> <p>The amended scheme reduces the fin depth however still has a minor encroachment into the setback zone on the rear and northern (side) boundary which is considered acceptable. The projection of the facade articulation blades is minor and relates to an architectural feature of the building and does not cause adverse amenity impacts.</p>

Provision	Compliance	Comment
		Refer to the further discussion and assessment provided under the Discussion heading below.
5.1.5 Building bulk 5.1.5.1 Commercial buildings	Yes	The proposal utilises the existing building, which has a width of 39m, and the additions are not considered to have adverse impacts on the public domain in terms of visual bulk.
5.1.6 Building exteriors	Yes, subject to conditions	<p>Subject to conditions, the revised proposal will contribute positively to the streetscape with high quality architecture and materials that are compatible with the character of the historic facade and surrounding Central Sydney. The distinction between the old and new elements of the building are supported subject to conditions.</p> <p>The roof level plant and equipment has been designed to integrate with the architecture of the building and is recessive, being setback over 8m from Kent Street. Subject to a parapet height condition to increase the height from 1.1m to 1.4m, the plant and equipment are suitably located to be concealed.</p> <p>The revisions have been supported by the City's Urban Design and Heritage unit subject to conditions, in particular relating to the glazing tint and positioning of the shadow line, which is recommended to be located one level higher to more appropriately address the historic warehouse façade levels below, by being more visible from the street.</p> <p>Section 5.1.6(2)(b) of the Sydney DCP 2012 requires the materials used, including glass, to be predominantly light in colour to reflect better quality light into the streets and respond to the characteristic light colours of Central Sydney. The proposed glazing sample submitted with the application was not supported due to the proposed tint. A condition to require further details of glazing has been included in Attachment A.</p>

Provision	Compliance	Comment
		<p>A condition is also recommended in Attachment A to require an amended materials and samples board in order to ensure that the design quality intent of the proposed building exteriors is carried through to the certification and construction phases.</p> <p>On balance, and subject to conditions, the proposal will not result in significant environmental impacts and the proposal does not include extensive use of blank glazing or solid walls, with no projections into the public domain. The proposal is consistent with the provisions of this section.</p>
<p>5.1.9 Award and allocation of heritage floor space</p> <p>5.1.9.5 Calculating the heritage floor space to be allocated</p>	Yes	<p>Heritage Floor Space (HFS) is to be allocated as the development utilises specified additional floor space, namely, accommodation floor space (Area 3).</p> <p>As such 50% of the Accommodation Floor Space is to be allocated as HFS. This is discussed above under Clause 6.11 of the Sydney LEP 2012.</p> <p>The applicant has requested a waiver to this requirement.</p> <p>Refer to the further discussion and assessment provided under the Discussion heading below.</p>

Discussion

Design Advisory Panel

56. The application was presented to the Design Advisory Panel (DAP) at its meeting held on 11 March 2021. The DAP concerns have been responded to by the applicant and are considered addressed, subject to conditions, as discussed underneath each statement.

57. The DAP noted the following issues with the original proposal:

- (a) ***While the existing facade is not a heritage item, its significance lies in its contribution to the overall streetscape on Kent Street. The alterations and new additions at street level should be recessive so that masonry arches read as the dominant form. The proposed detailing of metal frame and the central vertical mullion is not supported;***
- (i) ***Response:*** Subject to conditions, the revised architectural design addresses this comment. It is considered the dominance of the vertical addition has been reduced through the modifications to the layout, depth and quantity of facade bays. Greater alignment with the ground floor building facade has been proposed. The proposal was re-referred to the City's Urban Design and Heritage Unit who raised no further concerns subject to conditions including a requirement for revised materials and samples board, use of timber for the heritage windows, and a relocated shadow line.
- (b) ***The detail drawing does not match the photomontage provided;***
- (i) ***Response:*** An amended photomontage was provided with the revised drawings which matches the architectural drawings.
- (c) ***The upper level setback should apply to the face of the facade blades, not the glazing line.***
- (i) ***Response:*** The amended plans have reduced the encroachment from the facade blades. A minor setback encroachment from the vertical blades remains but is considered acceptable. Refer to Discussion below for further assessment.
- (d) ***The facade treatment of the new addition is very heavy and doesn't resolve the privacy issues satisfactorily. The designers should investigate smaller scale blades with smaller pitches for the louvres to provide better privacy. This should also result in a finer grain and more calm expression for the facade.***
- (i) ***Response:*** The amended plans propose additional facade bays at smaller elements - 300mm deep at 1.5m centres instead of 600mm deep at 2.5m centres as originally proposed. The density of the mullions has been increased. Instead of the previously proposed external louvres to the rear, obscure glazing is now proposed to address privacy issues. The City's Urban Design Specialist supports the amended proposal subject to conditions.

(e) **Further design refinement is needed. There should be clear separation between old and new elements. The new additions should be recessive in nature, and the upper addition should be more neutral in materials and colour.**

- (i) **Response:** As discussed elsewhere in this report, the separation between the retained warehouse facade and the additions above are recommended to be enhanced by the relocation of the proposed shadow line higher above the parapet, to be more visible from the street level. The proposal has otherwise been amended to resolve the balance of this issue, as the revised facade fin locations and colour scheme have been reviewed by the City's Urban Design and Heritage team with no further issues raised subject to conditions.

58. Subject to conditions, the amended proposal generally addresses DAP comments. It is considered the revisions provide a more appropriate addition to the existing heritage facade, privacy treatments are improved, and the reduced depth of the blades brings the majority of the addition compliant with the required setbacks prescribed by the Sydney DCP 2012.

Upper Level Setback

59. Section 5.1.2.1 of the Sydney DCP 2012 requires the front setback of buildings to be a minimum weighted average of 8m above the required street frontage height, with no part of the building is to be setback less than 6 metres.
60. The proposal in its original form did not comply with the upper level setback controls in the Sydney DCP 2012 and the applicant was advised to amend the proposal to provide an upper level setback of at least 3.7m to Kent Street to match the existing upper level setback of the 1980s tower addition.
61. The amended proposal provides the following upper level setback (measured from the edge of the vertical blades rather than the glass line):
- (a) To Kent Street, the additions above the retained warehouse facade / street frontage height (Level 4 and above) are setback between 3.52m and 4.19m;
 - (b) The setback from the Kent Street boundary to the glass line is 3.6m;
 - (c) The setback from the Kent Street boundary to the roof plant is 8.51m.
62. The existing built form of the site has a front setback of 3.7m above the predominant street wall height, before continuing to an overall height of approximately 33m. The applicant was advised in the RFI dated 22 March 2021 to modify the building facade, including the vertical blades, so that the upper levels are setback a minimum of 3.7m from the street boundary. This ensures the existing upper level setback to Kent Street is maintained.
63. The applicant submits the proposed front setback in the amended plans aligns with the existing structural grid, with the location of the new columns on the new levels 10 to 14 located directly above the encased columns below. To further setback the facade would disrupt this clear continuation of the grid line and would require a significant setback of the vertical addition to the central core structure.

64. It is considered the proposed Kent Street setback in the amended proposal is acceptable in the context of the surrounding buildings and the siting of the existing building setbacks which vary significantly, as shown in Figure 45. The neighbouring site immediately to the south at 339-347 Kent Street, is a corner site with heritage items at street level. The tower above has varied upper level setbacks. To the north, 301 Kent Street, maintains the predominant street wall height along the western side of Kent Street, with a tower setback 6m from the street wall to match the tower location at 309-329 Kent Street.



Figure 45: 3D CAD model of proposal and existing setbacks in Kent St

65. As a result of the existing built form of the subject site and surroundings, the reduced upper level setback does not result in any significant overshadowing to the surrounding streets, does not cause unacceptable wind conditions or an overwhelming sense of enclosure, and will not have significant adverse impacts on growing conditions of street trees.

Side and rear setbacks

66. Section 5.1.2.2 of the Sydney DCP 2012 requires that, above a height of 45m, windows or balconies of commercial buildings are to be setback at least 3m from side and rear property boundary. The Sydney DCP 2012 also allows solid boundary walls (with no windows) to be built to the boundary. Following a preliminary assessment, the applicant was requested to amend the side and rear setbacks above Level 8 to be at least 3m with no encroachments from facade blades.
67. The amended application proposes the following setbacks:
- (a) Nil setbacks to the side boundaries between Levels 5-8 (consistent with the existing built form) as shown in Figure 46;

- (b) Above Level 8, side setbacks of 3.82m and 3.04m are provided to the south and north respectively, with minor encroachments from the facade blades on the northern boundary on Levels 10-14 (approximately 0.3m, reduced from 0.6m in original proposal). The proposal has been amended so there is no encroachment to the southern boundary into the 3m setback;
- (c) The rear (western) setback varies between 2.35m and 3.47m due to the shape of the site, and again has minor encroachments from the vertical blades (approximately 0 - 0.6m encroachment due to angled boundary line) (see Figure 49).

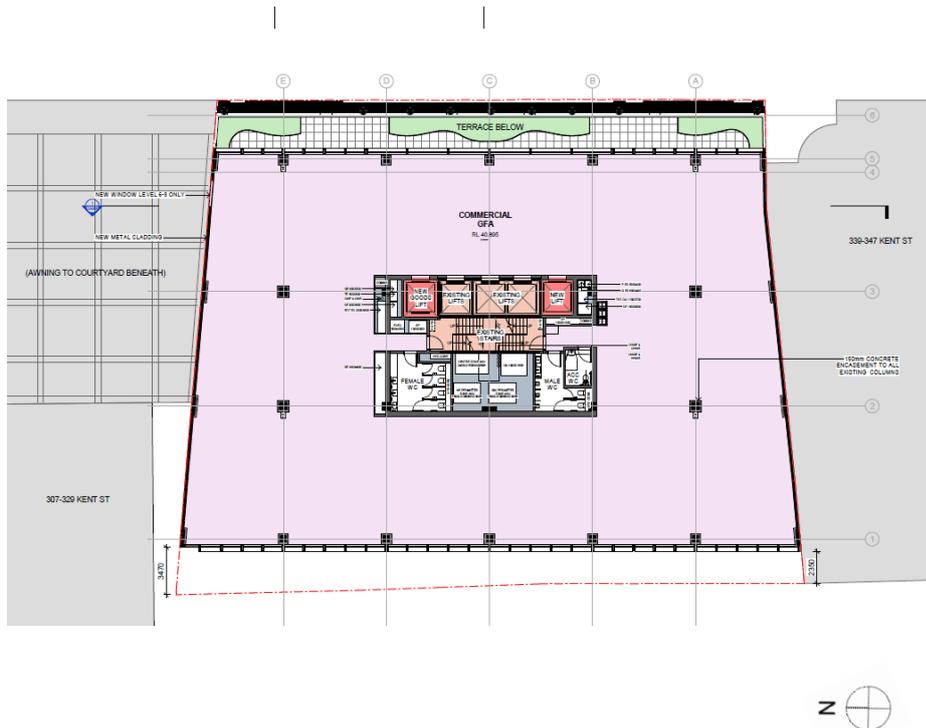


Figure 46 - Floor plan of Levels 5-8 - nil setback to north and south

68. Up to Level 9, the building is built to the northern side boundary (see Figure 46). As this part of the building comprises a solid boundary wall (with the exception of a new large window between Levels 6 to 8 near the Kent Street frontage), this setback largely complies with the DCP. This arrangement is considered to be acceptable as:
- (a) The window is located above the neighbouring forecourt canopy and does not result in unreasonable amenity impacts;
- (b) The window provides visual interest and relief to what would otherwise be a large boundary wall on the prominent north-east corner of the building as viewed from Kent Street;
- (c) The non-essential window (from a Building Code of Australia perspective) is recommended to be subject to a boundary window covenant condition requiring it to be blocked up if and when the neighbouring site redevelops.

69. The balance of the proposal generally complies with this control however due to the angled boundary lines, there is a minor encroachment from the facade blades at the southern boundary, to the western side of the building. A minor encroachment on the northern boundary into the 3m setback from the vertical blades also occurs, on Levels 10-14 only, so that the actual setback to the boundary is between 2.7m and 2.8m (See Figure 48). As shown in Figure 49 no encroachment to Level 9 northern boundary into the 3m setback is proposed.

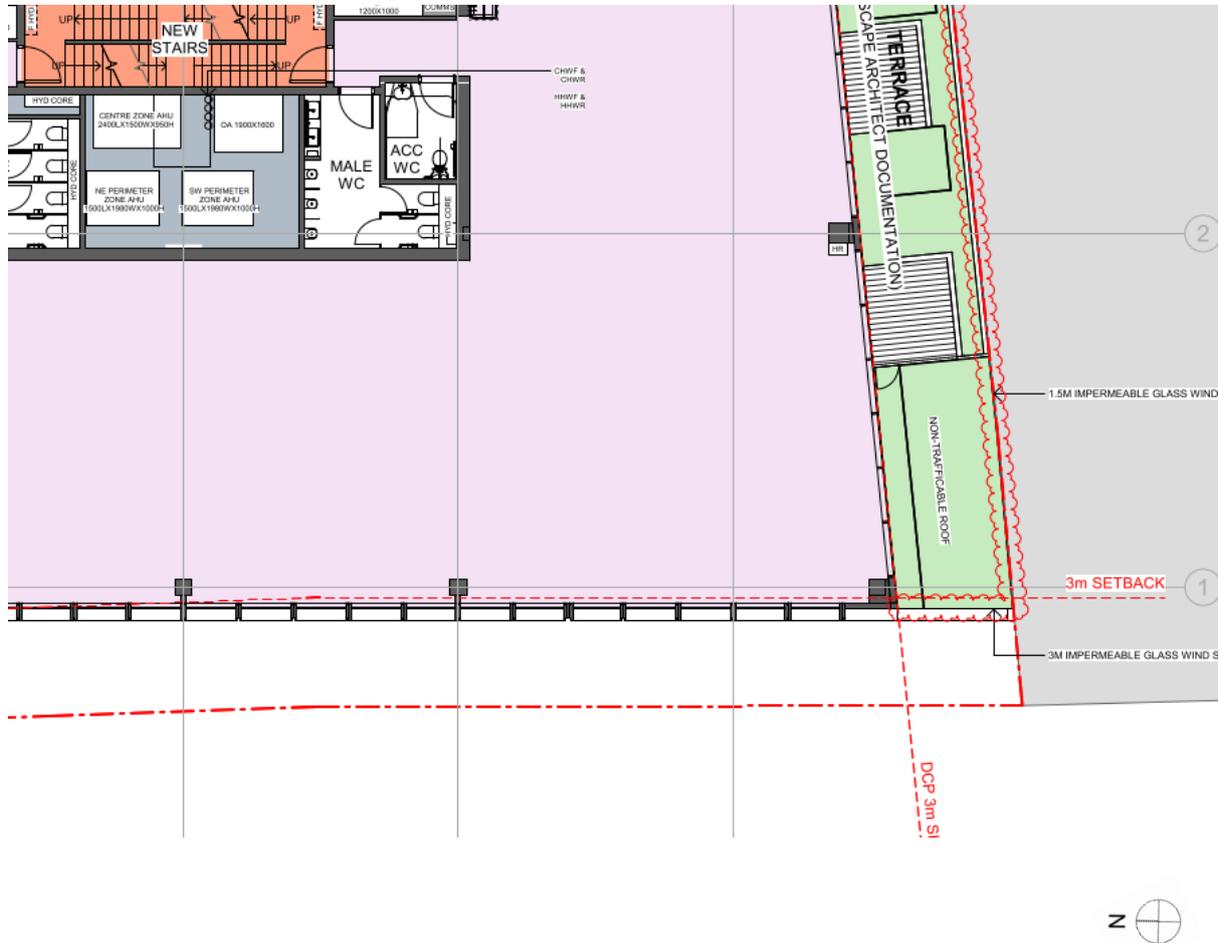


Figure 47 - Encroachment of vertical blades into 3m rear (western) setback area on Level 9

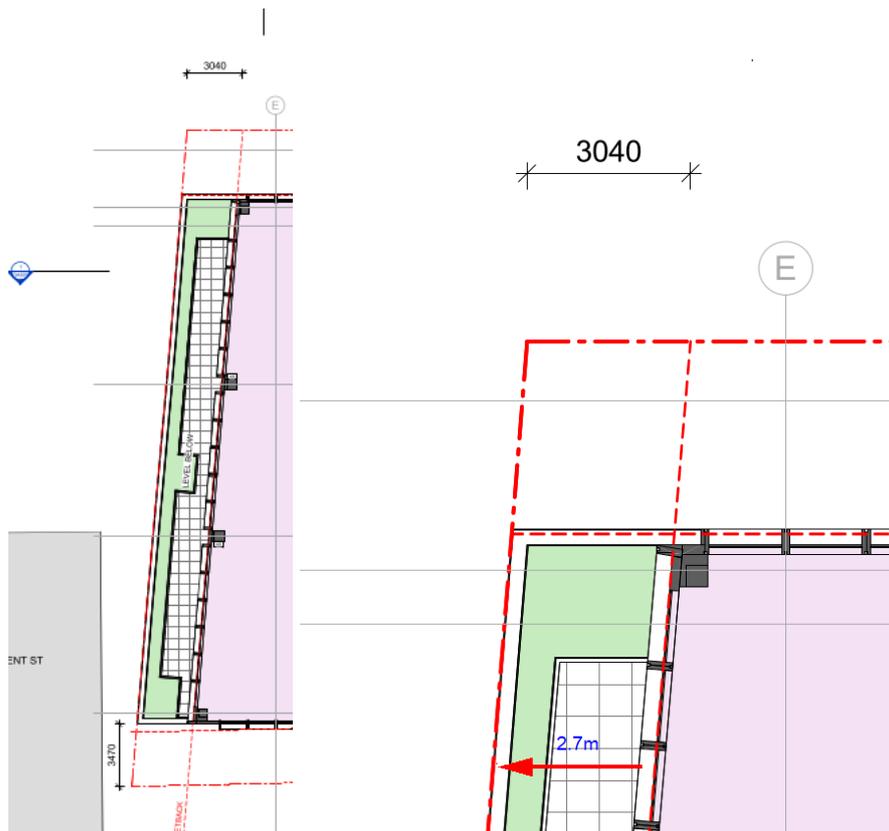


Figure 48 - Encroachment of vertical blades into setback area to the north on Levels 10-14



Figure 49 - No encroachment of vertical blades into setback area to the north on Level 9

70. The variation to the required setbacks is considered acceptable as no significant amenity impacts arise as a result of the non-compliant setbacks. The proposal does not result in additional overshadowing to the public domain or impact outlook, views, or ventilation of neighbouring residential buildings. Privacy impacts to nearby residential properties have been addressed and the applicant has submitted a wind impact statement that does not conclude that significant wind impacts are likely to occur.
71. The amended proposal was re-referred to the City's Urban Design team who raised no further issues with the upper level setbacks, subject to conditions relating to the shadow line and glazing, discussed further elsewhere in this report.

Floor Space Ratio

72. The site has an area of 1518sqm. The permissible 'base' floor space ratio (FSR) for the site under Clause 4.4 of the SLEP is 8:1 (12,144sqm).
73. The proposed Gross Floor Area (GFA) is 15,192.9sqm (FSR 10.01:1) which includes 280sqm of end of trip facilities (End of Journey Floor Space) which is not specifically excluded in the definition of Gross Floor Area under the Sydney LEP 2012 Definitions.
74. The proposed FSR of the development is therefore above the base FSR by 2.01:1 or 3,048.9sqm.
75. The applicant seeks to rely on additional floor space available under Clause 6.3 of the Sydney LEP 2012 including accommodation floor space and end of journey floor space. The clause notes that additional FSR may be permitted on land in Central Sydney:

'by an amount no greater than the sum of any one or more of the following for which the building may be eligible -

 - (a) any accommodation floor space,[...]
 - (c) any car parking reduction floor space, end of journey floor space, entertainment and club floor space, lanes development floor space or opportunity site floor space.
76. The site is located in "Area 3" for accommodation floor space for the purposes of Clause 6.4 of the Sydney LEP 2012. An additional 2:1 FSR is available under Clause 6.4(1)(e) of the Sydney LEP 2012 for office premises, business premises or retail premises. This brings the maximum permitted FSR to 10:1.
77. There is additional floor space available under the relevant provisions of Clause 6.6 for end of journey floor space up to a maximum of an extra 0.3:1 FSR. The proposal includes 280sqm of End of Journey GFA (0.185:1).
78. Accordingly, the proposal complies with the maximum allowable FSR for the development.

Heritage Floor Space

79. The height of the building exceeds 55m and the site is in Area 3 in accordance with the FSR map. The development is therefore required to allocate an amount of heritage floor space as per Clause 6.11(1) of the Sydney LEP 2012 which states that:

Despite any other provision of this part, development consent must not be granted to development in respect of a building on a site in Central Sydney that utilises any amount of additional floor space specified in paragraph (a), (b), (c), (d) or (e) unless the consent authority is satisfied that an amount of heritage floor space will be allocated to the site (whether because of a condition of consent or otherwise) in accordance with the following relevant paragraphs-

(a) accommodation floor space in respect of a building (the height of which will exceed 55 metres following the development) on a site in Area 1, 2 or 3 - unless an amount of heritage floor space is allocated to the site that is equal to 50 per cent of the accommodation floor space to be utilised.

80. The required HFS contribution is 1,381.35sqm calculated as per the below:

- (a) Base FSR = 8:1
- (b) Proposed FSR = 10.01:1
- (c) Proposed EOTF GFA = 0.185:1
- (d) Total FSR excluding EOTF = 9.82:1 (being 1.82:1 above base FSR)
- (e) GFA above base FSR = 2762.7sqm
- (f) 50 per cent of above GFA = 1,381.35sqm.

81. There is no further reduction available under Clause 6.11(3) of the Sydney LEP 2012:

(3) in the case of development that is an alteration or addition to an existing building, the amount of heritage floor space required to be allocated to the site of the building under subclause (1) is to be no more than the difference between-

(a) the amount of heritage floor space that would be required to be allocated to the site if the building (as altered or added to) were to be constructed as a new building, and

(b) the amount of heritage floor space that would be required to be allocated to the site if the building (without the alteration or addition) were to be constructed as a new building. (0sqm HFS required as the height < 55m).

82. The amount of HFS due is no more than the difference between the amount if it were constructed as a new building with the additions (1,381.35sqm) and the amount if it were to be constructed as a new building without the additions (0sqm as the height of the existing building is less than 55m).

83. The applicant has requested a waiver to this requirement via email on 9 June 2021 on the basis the proposal utilises the existing building, and therefore there are limitations to the height with regard to the lift and plant servicing and existing floor to floor heights, which exceed the required controls. Though noted, there are no waivers to the requirement for Heritage Floor Space available as discussed above. It is also noted that the LEP requirements for the allocation of HFS cannot be varied under Clause 4.6 (Exceptions to Development Standards).
84. The proposal, subject to conditions, is therefore consistent the relevant provisions of Clauses 4.4, 6.3, 6.4, 6.6, and 6.11 of the Sydney LEP 2012.

Facade Expression

85. Following a preliminary assessment, the applicant was requested to amend the architectural design of the facade to address comments from DAP and the City's Urban Design and Heritage Specialists in regards to the relationship of the new facade with the lower levels of the historic former warehouse facade.
86. The originally submitted facade design was considered to compete too heavily with the historic existing facade proposed for retention. In addition, the encroachment of the facade blades within the 3m setback area was considered to reduce the perceived relationship to the site boundaries.
87. As shown in Figures 50 and 51, the facade design has been amended to include facade blades at 300mm depth placed at 1.5m centres along the northern, eastern and western elevations, and fritted glazing along the northern-most portion of the western elevation.



Figure 50: Superseded photomontages of original DA facing south (left) and north (right)

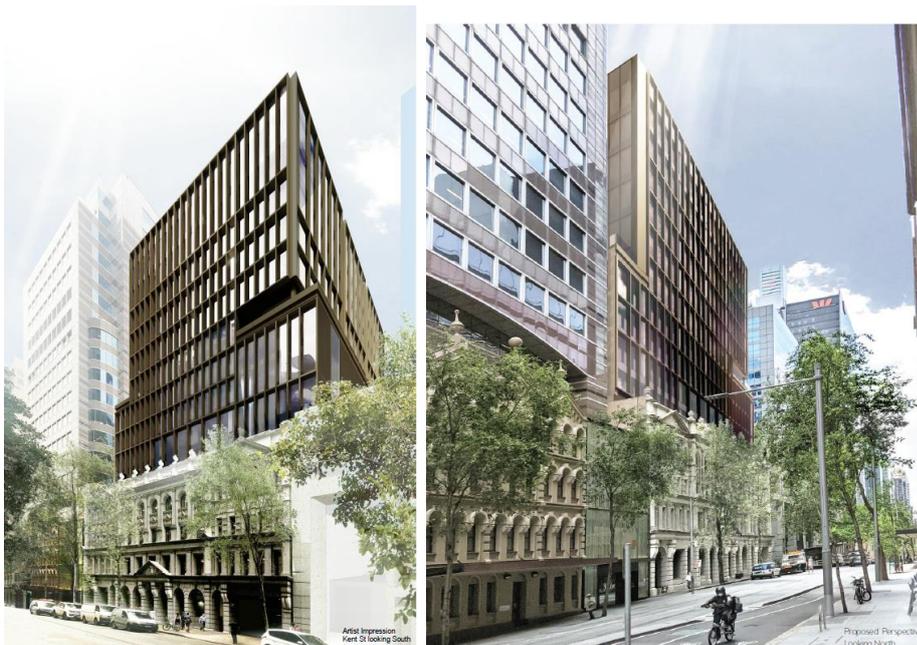


Figure 51: Updated photomontages of amended DA facing south (left) and north (right)

88. To separate between old and new elements, the revised plans include a horizontal shadow line at the existing facade parapet constructed in bronze materiality to distinguish the new vertical addition.
89. The City's Heritage and Urban Design Specialists recommended that the height of the shadow line be moved from Level 5 to Level 6 as it was noted that the shadow line appears to be difficult to discern from Kent Street, as the shadow line RL is too close to the RL of the parapet - the visual benefit and relationship with the parapet is only achieved when the shadow line is presented on top of the heritage parapet, so that it is visible from the street.
90. To address this, a recommended condition of consent in Attachment A is included to require the shadow line RL to be moved from Level 5 to Level 6. Subsequently the glazing line at Level 5 will be required to be realigned to match Level 4.

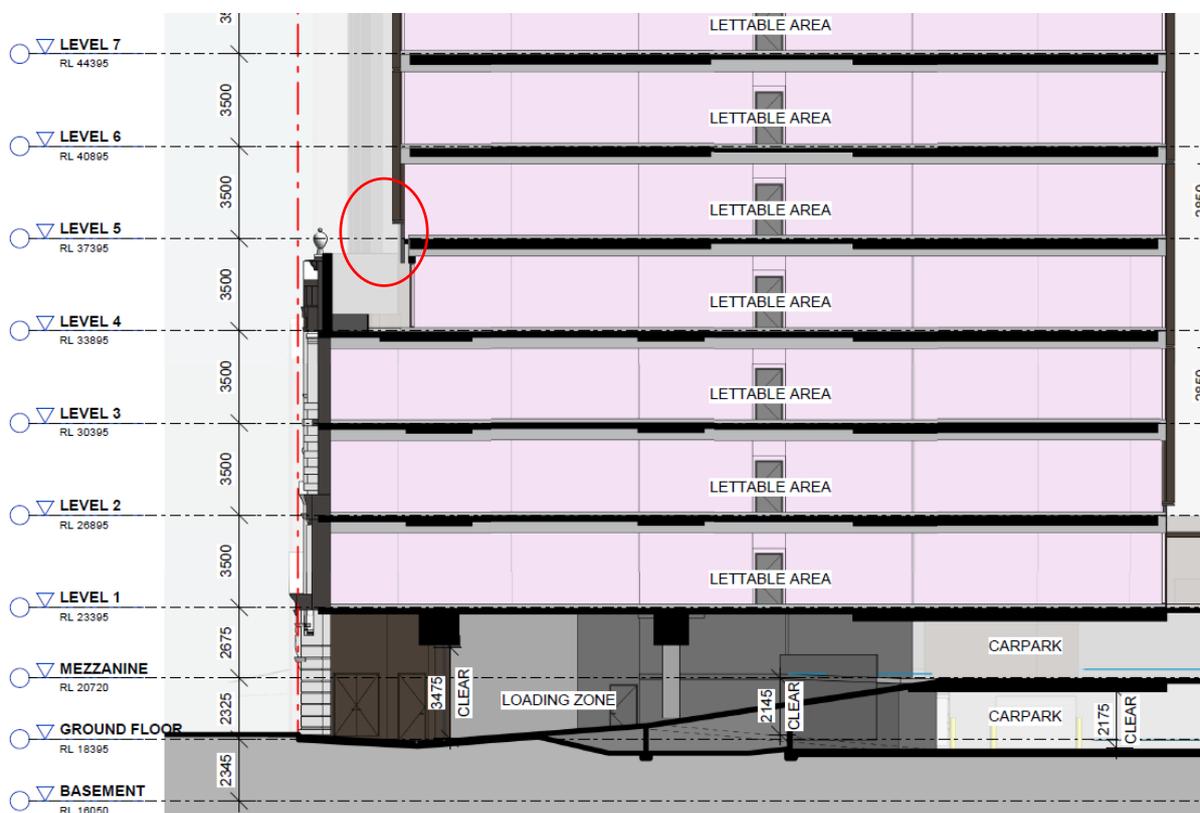


Figure 52: Proposed section plan and location of shadow line, recommended to be shifted upwards to Level 6.

Opaque spandrel

91. The City's Urban Design officer noted that an opaque spandrel to conceal the slab and the ceiling cavity was required. Details at a scale 1:10 have been provided in the Amended Design Report but do not form part of the DA Plans. As such, a condition of consent is recommended for these plans to be provided and approved by Council's Director City Planning Development and Transport prior to Construction Certificate.

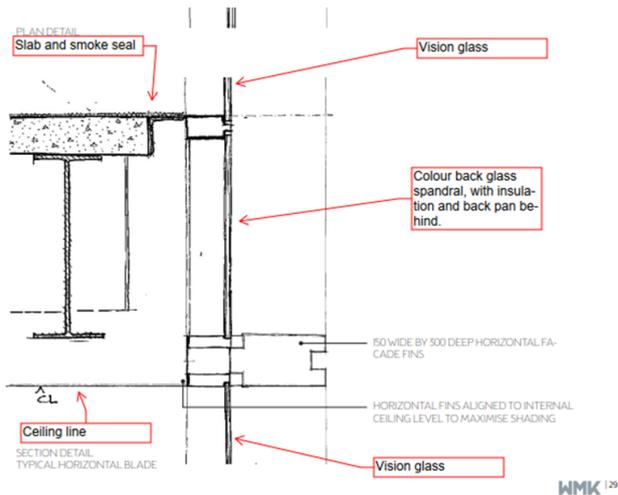


Figure 53: Details in the Design Report. An opaque spandrel is required to conceal the slab and the ceiling cavity.

Materials and finishes

92. Section 5.1.6 of the Sydney DCP 2012 requires building exteriors to reinforce the character and avoid extensive dark glazing. The proposed materials included bronze metal cladding, tinted solar glazing, and bronze and grey finishes. In the preliminary assessment, concerns were raised with the dark tinted glazing in the photomontage of the proposal.
93. A physical sample of the glazing to the facade of the tower was requested and delivered to Council on 23 June 2021. The sample was indicative only; however it proposes the following specifications:
 - (a) 53 per cent Visible Light Transmission (VLT);
 - (b) U-value between 1.27 (summer daylight) and 1.37 (winter night).
94. The City's Urban Design team advised the submitted sample was not supported due to the darkness of the tint, and a VLT of at least 60 per cent was required. The applicant responded to the concerns noting that the final tint and glazing of the tower would be dependent on factors including detailed modelling, compliance with updated 2019 Section J requirements, and GreenStar rating systems. In addition, the applicant's ESD consultant notes that deeper shading would be required to protect against over-lighting the workplace and creating glare conditions in the perimeter zones. A VLT of 65 per cent could be used if the external shading depth were extended to 600mm. The depth of the facade blades has been modified for aesthetic reasons as discussed elsewhere in this report.
95. For comparison, the applicant notes that 60 Martin Place has a VLT of 50 per cent - however it has been built using the 2016 Section J requirements.

96. It is considered that the historic facade should also have clear glass, to ensure activation of the Kent Street frontage is achieved, and passive surveillance maintained. To this regard, details of the final glazing choice to the Kent Street frontage, including the historic facade, can be conditioned to design development with a sample required for submission and approval by Council in the conditions of consent. To ensure the final choice in glazing is not heavily tinted a condition to require all glazing to be as clear as possible, and for detailed information regarding the glazing in the context of Section J/GreenStar requirements, to be submitted prior to the issue of a Construction Certificate has been recommended.

Original Warehouse Facade Treatment

97. The site is not a heritage item or within a Special Character Area or heritage conservation area. However, the building has an original c1889 warehouse facade as shown in Figure 54, with a ground floor colonnade which was developed as part of the 1980s development works. The proposal seeks to remove the colonnade and undertake refurbishment works to the facade.
98. Concerns were raised with the originally submitted proposal in Figures 55 and 56 as follows:
- (a) The infill of ground level arched openings was not supported and a reconstruction of the ground level facade joinery is to be considered. The current design does not present a proper interpretation of the original form. The original window openings should be used as shop windows and the original door openings should remain as entrances. The configuration of the joinery should respond properly to the arch openings;
 - (b) Impact of proposed plate steel framing to ground floor shown in Figure 56 which would obscure the ashlar joints featured at the corner of the arches; and
 - (c) Impact of the proposed colour scheme of warehouse façade - though no specific colours are specified it appears that the window joinery and spandrels will use the same dark grey colour and the facade is painted in one light grey colour without articulating the details.
99. The applicant has addressed items a) through c) in the amended plans which include reconstruction of the ground level facade window joinery and masonry sills where possible, though it is noted the intervention of fire egress and service access restricts full restoration of each of the original facade bays. A singular off-white finish across the entire elevation is proposed as shown in Figure 57.



Figure 54: Historic 1917 image of the subject central portions of the building (source: Urbis - SLNSW, Small Pictures File).



Figure 55: Superseded facade design to Kent St

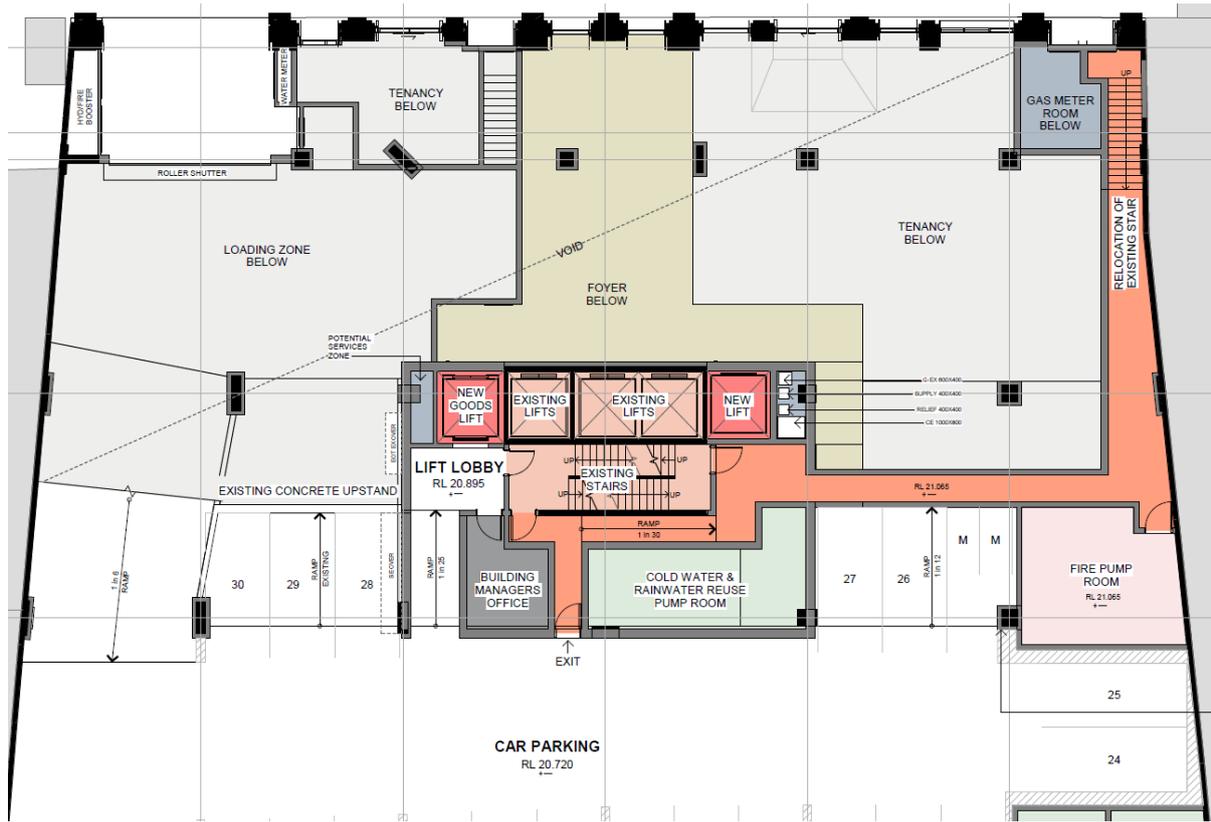


Figure 56: Superseded mezzanine floor plan showing plate steel lining to Kent Street openings in red



Figure 57: Amended facade design to Kent Street

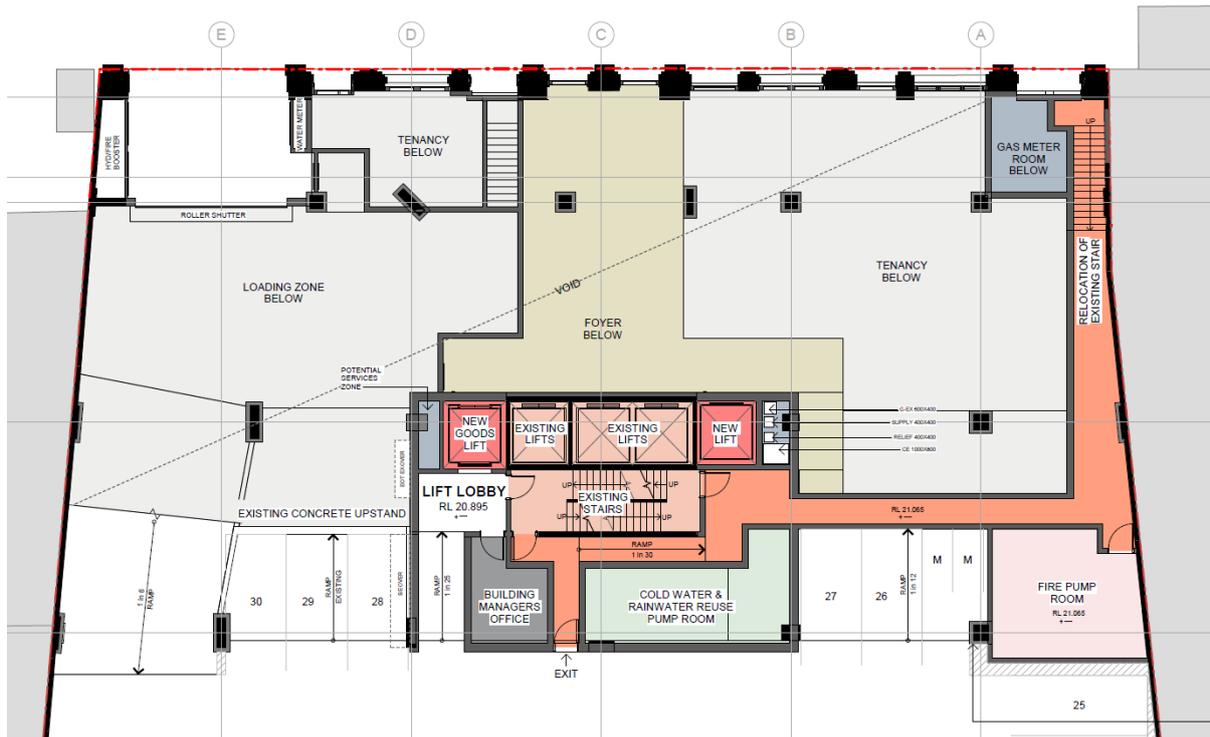


Figure 58: Amended mezzanine floor plan omitting the plate steel lining to Kent Street

100. Officers have reviewed the proposed amendments to the historic facade treatment, noting that the reconstruction of the ground level joinery and upper level window joinery have been largely addressed, so the reconstructed facade better reflects the historic photographs from 1917.
101. Subject to conditions, the facade work is considered acceptable. The conditions recommended are contained in Attachment A and relate to:
 - (a) Upper level reconstructed windows to be made of timber;
 - (b) Ground level door and windows to use timber joinery;
 - (c) Transoms of the two wide arch windows are to be reinstated, the top section of these two openings above transoms should be fixed fan lights;
 - (d) The reconstructed window sills at ground level are to be setback (no less than 150mm) from the outer surface of the rendered masonry piers;
 - (e) A suitable colour scheme of the heritage facade required;
 - (f) A heritage interpretation plaque to be erected on the facade;
 - (g) Details of the facade joinery to be submitted prior to Construction Certificate.
 - (h) Standard archaeological discovery condition.
 - (i) A schedule of conservation work to the facade is to be provided.

Rooftop Plant

102. The applicant was advised to amend the proposed rooftop screening to be more commensurate with the architecture of the building, as the rooftop level plant would be visible from various vantage points including neighbouring buildings both commercial and residential.

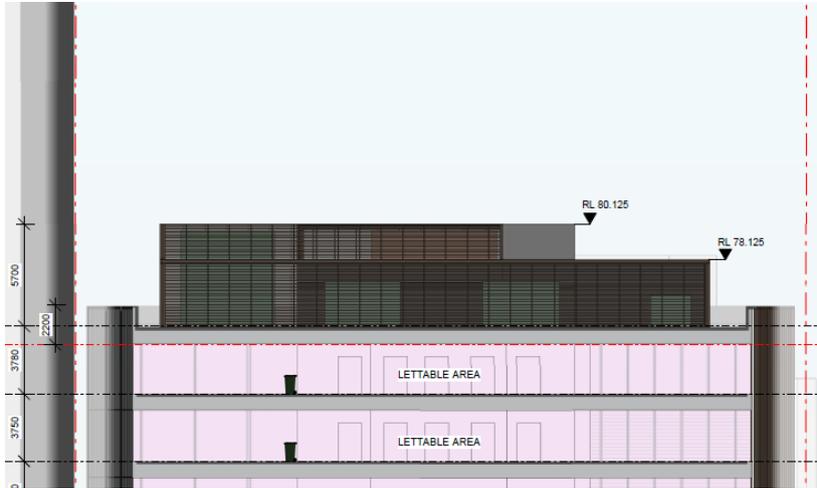


Figure 59: Superseded rooftop plant screening design

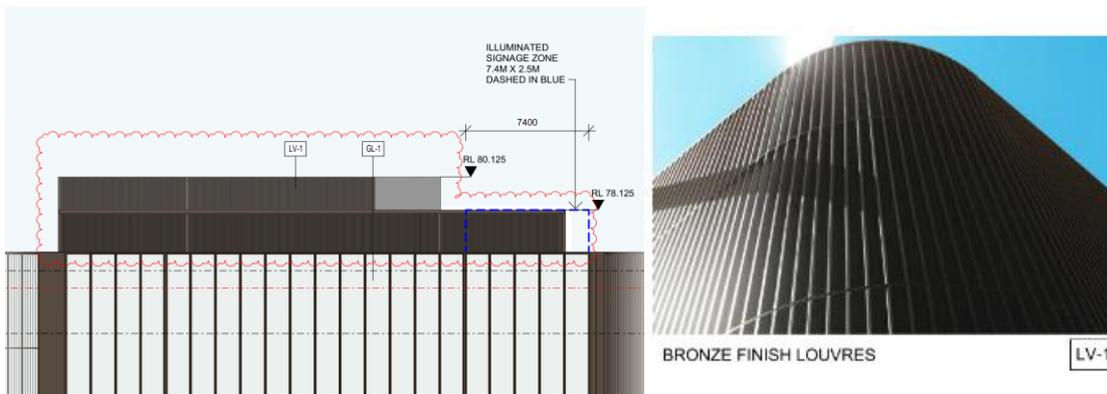


Figure 60: Amended rooftop plant screening and example of vertical louvres proposed

- 103. The proposal has been amended to change the proposed bronze metal cladding (MT-1) to bronze finish louvres. A parapet height of 1.1m is proposed to the top of building as shown in Figure 59.
- 104. The proposed screening is supported in principle, however it is considered that the parapet height should be increased to 1.4m to further improve the appearance of the servicing and plant when viewed from the street.
- 105. As the final design of the servicing and equipment to the rooftop area is subject to further detailed design once DA consent has been issued, conditions to require details of the screening and an increased height of 0.3m to the parapet are recommended in Attachment A.

Privacy

- 106. A mixed-use building containing residential apartments at 110-116 Sussex Street sits approximately 15m to the west (rear) of the subject site.
- 107. The original proposal included external privacy screens (attached to the vertical fins) to less than half of the rear (western) elevation facing the affected neighbouring mixed-use building. Concerns were raised with the privacy screening in terms of it only covering less than half of the rear facade, and it was unclear how privacy is controlled where there is no screening provided along the southern half of the rear boundary. Clarification was also sought on how the façade would be maintained.
- 108. In response, the applicant has removed the external privacy screens and now proposes to ameliorate any overlooking opportunities with the use of obscure glazing.



Figure 61: Superseded rear privacy screens



Figure 62: Superseded western elevation showing privacy screening (left) and updated scheme (right) with obscured glass

109. The treatment is considered a suitable solution in mitigating privacy impacts, however, a condition is recommended for a physical materials and samples board to be submitted to ensure the choice of glazing is suitable for privacy mitigation.
110. The applicant submits that there are no direct sight lines from this portion of the floor plate into the residential dwellings at 110-116 Sussex Street. In addition, the vertical facade blades will further obscure the sightlines into the residential dwellings. On this basis, the proposal is considered acceptable subject to conditions.

Overshadowing

111. Regarding additional overshadowing of surrounding properties, the impact of the proposed envelope is minimal, largely due to the existing form of the building, the broader surrounding CBD context, and the presence of larger scale buildings including at 309-329 Kent Street.
112. There are minimal overshadowing impacts to residential properties nearby, including to 110-116 Sussex Street Sydney. Minor overshadowing is shown to occur between 9am - 9.15am on 21 June as shown in Figure 63 below.

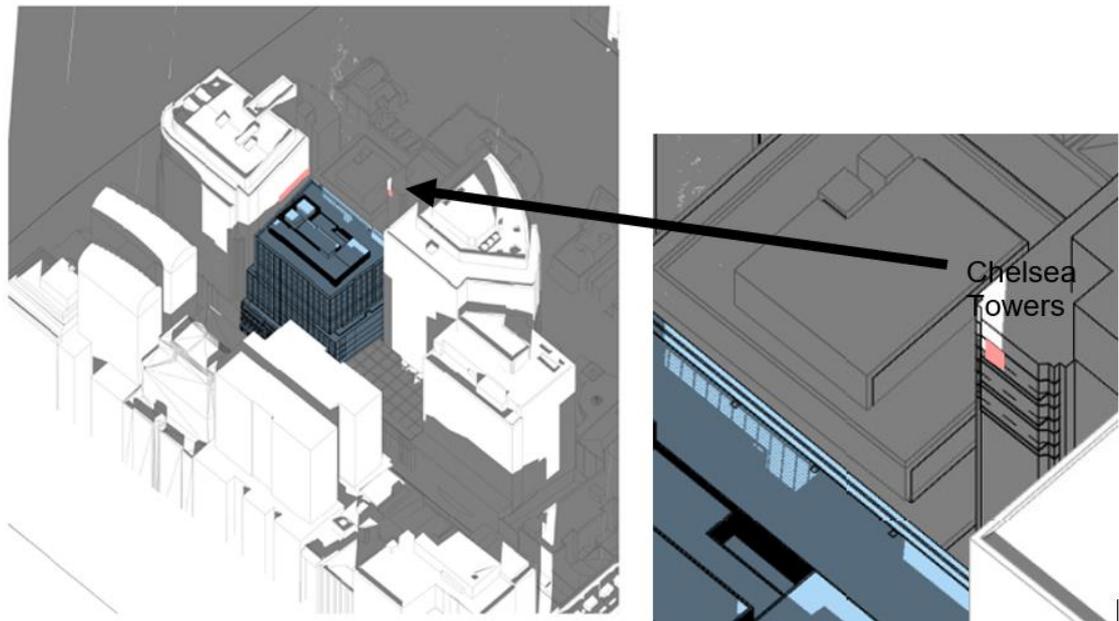
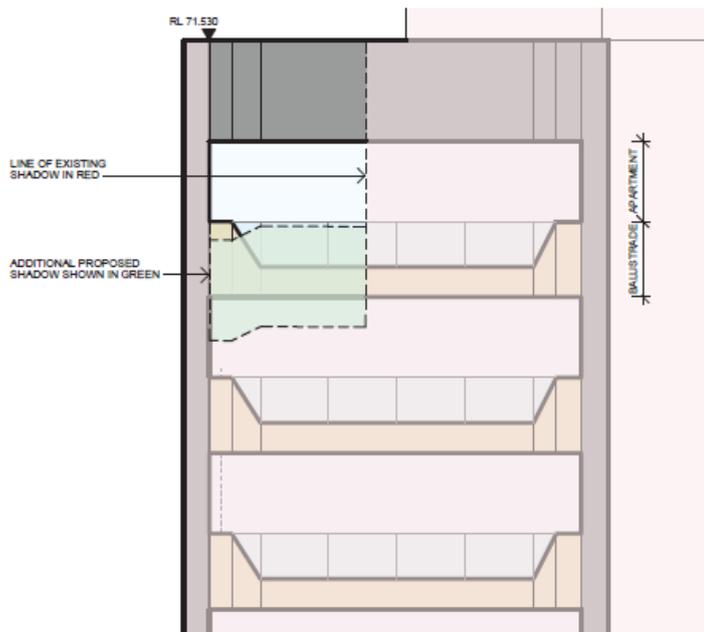


Figure 63: Overshadowing diagram - 21 June 9.00am-9.15am - additional overshadowing to top balcony in red

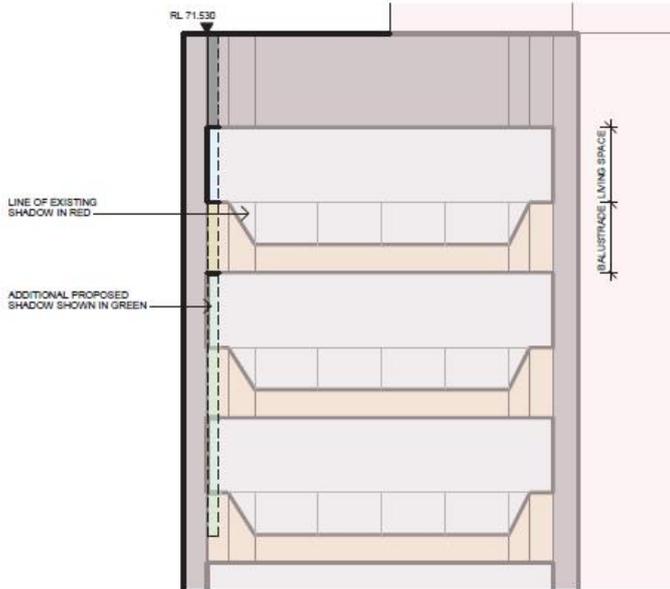
113. The applicant was asked to clarify the overshadowing impacts to this property, and more detailed overshadowing diagrams were submitted, showing the solar access impacts in green below, between 9am and 9.15am, to the balustrade of the balcony of the top unit.
114. The diagrams show that the subject proposal may affect the solar access to the private balconies and bedroom windows of the two top southern apartments between 9am and 9.15am on June 21. These openings are largely in shadow for the rest of the day between 10am and 3pm on June 21 and the proposal reduces the sunlight received so that the resultant solar access between 9am and 9.15am is nil.

115. However, given the proposal's consistency with the relevant height, FSR and setback controls, and the context of the site in a dense urban environment, it is considered that the overshadowing impact caused by the subject building is reasonable and thus supported. The measurable impact of 15-30 minutes loss of sunlight to a bedroom window and bedroom balcony between 9am and 9.30am is minor in the context of the site and the proposal's compliance with the FSR and height controls. Further, given the dual-facing layout of the apartments it is likely they would rely on most of their solar access from the western facade.

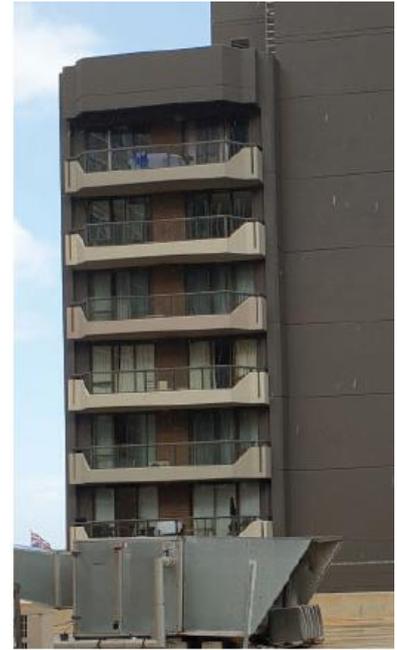


110 SUSSEX ST - ELEVATION - 9.00AM 21st JUNE

Figure 64: Overshadowing diagrams 21 June - 9.00am - 110-116 Sussex Street



110 SUSSEX ST - ELEVATION - 9.15AM 21st JUNE



Chelsea Tower Eastern Facade

Figure 65: Overshadowing diagrams 21 June - 9.15am - 110-116 Sussex Street



Figure 66: Approved layout of apartments at 110-116 Sussex Street (level 6 plan, matches approved levels 2-18 inclusive (File Ref D/1980/642) and affected unit in red

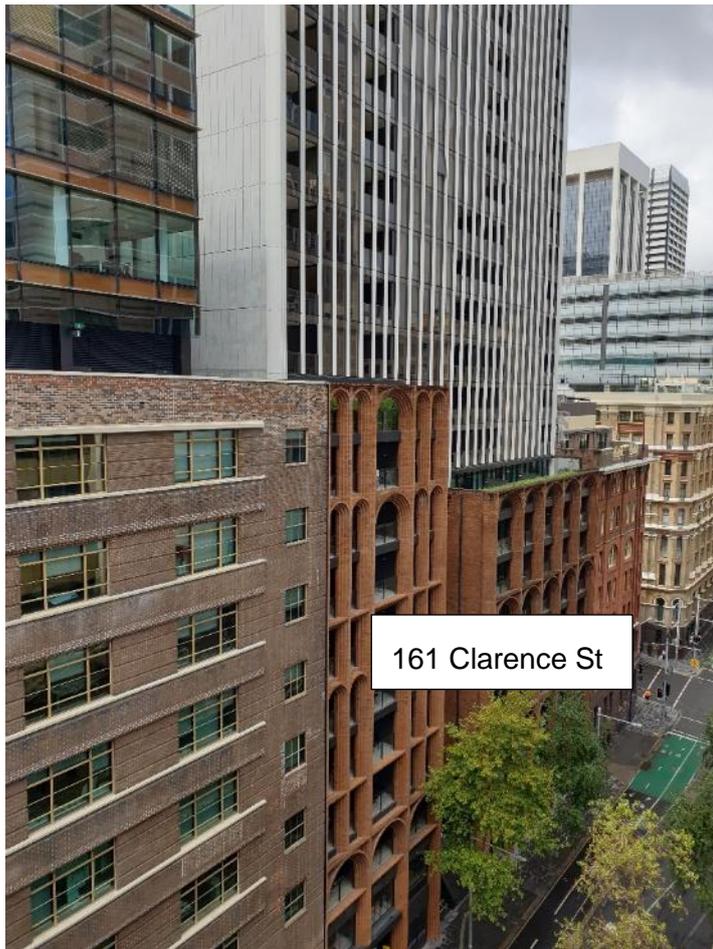


Figure 68: Residential development opposite the site at 161 Clarence Street

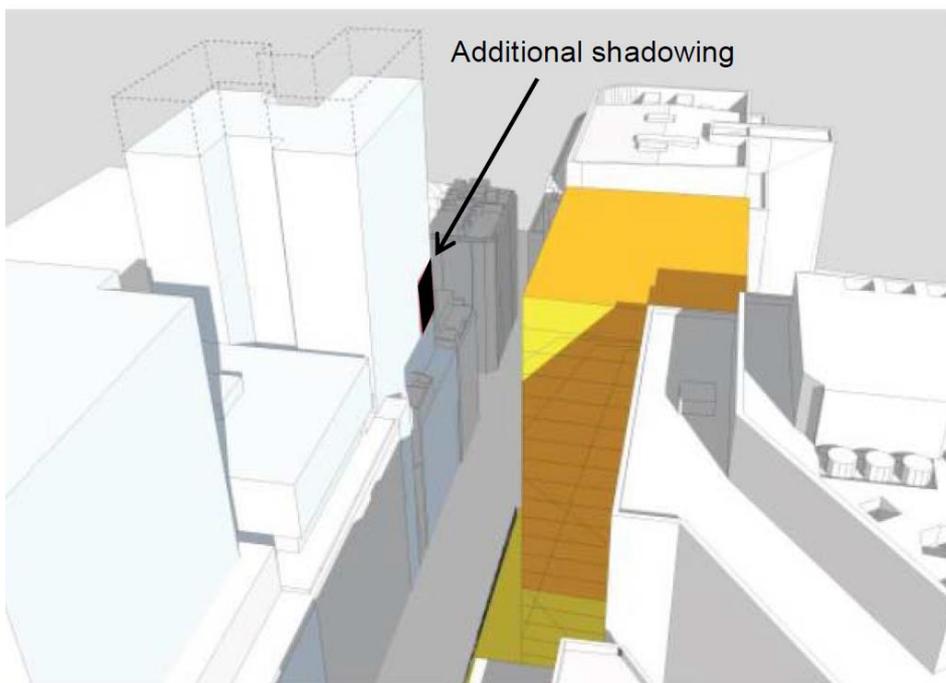
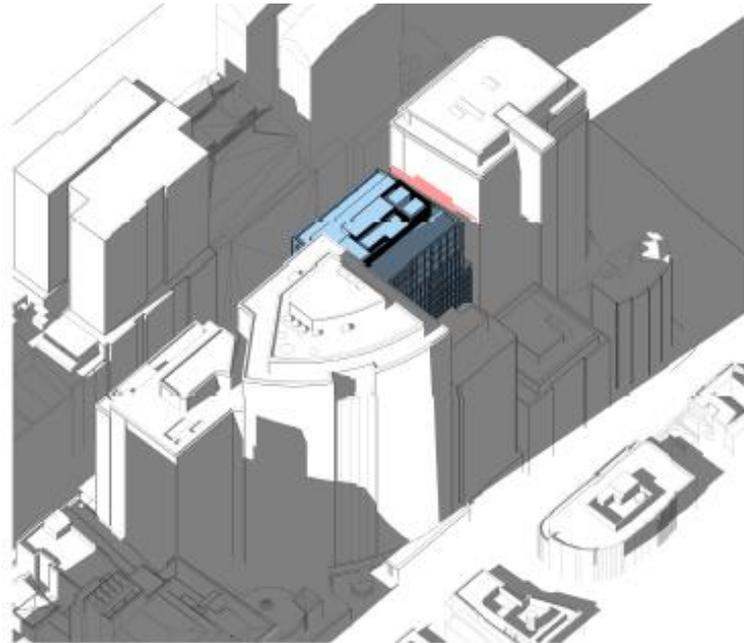
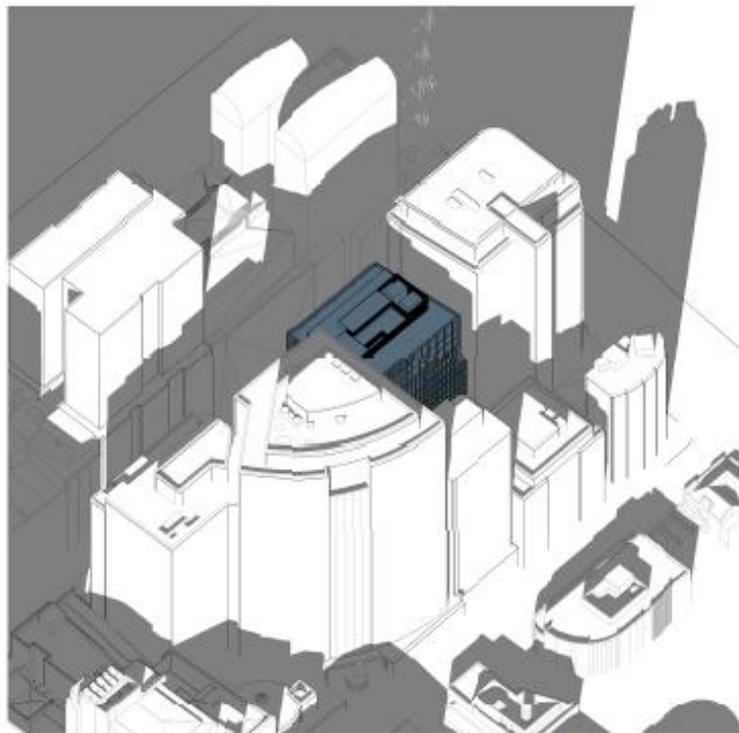


Figure 69: Overshadowing diagram from CSPC Report for D/2013/1851 - 2pm June 21

117. The sun's eye diagrams provided by the subject applicant demonstrate that the proposal does not cause additional overshadowing to 161 Clarence St between 12pm and 3pm on June 21, as the building is overshadowed by the existing tower at 309-329 Kent St.
118. Regardless, the conclusions drawn under D/2013/1851 were that the minor overshadowing to 161 Clarence Street was acceptable. In addition, the height approved under the concept DA D/2013/1851 was almost 20m higher than the subject DA. In this regard, the overshadowing impact from this proposal is likely to be less than that resultant under D/2013/1851.



PROPOSED SOUTH EAST VIEW - 12PM 21st JUNE



PROPOSED SOUTH EAST VIEW - 3PM 21st JUNE

Figure 70: Overshadowing diagrams 21 June - 12pm to 3pm

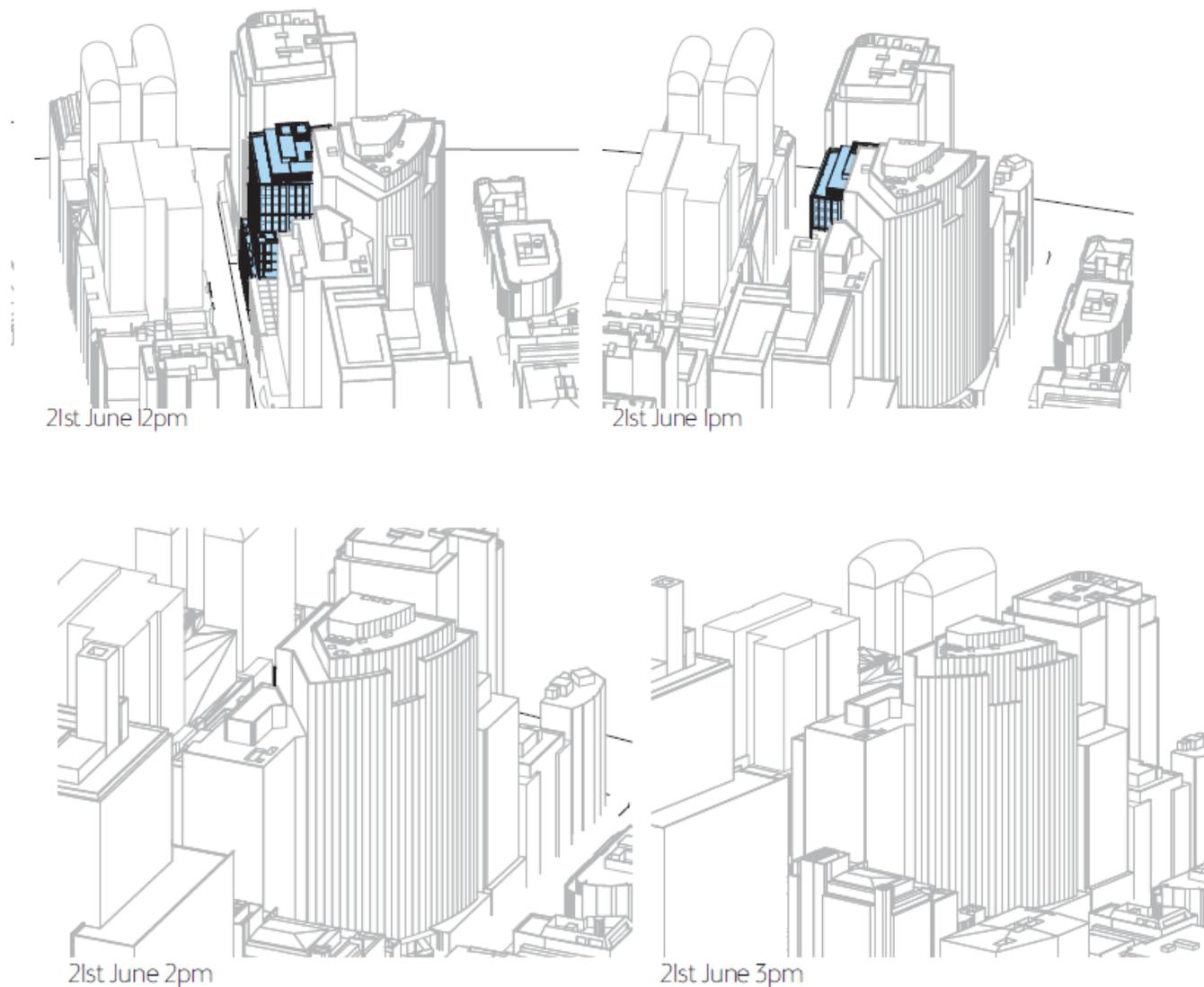


Figure 71: Sun eye diagrams 21 June 12pm-3pm

119. On balance, there are no significant overshadowing impacts to neighbouring residential properties or the public domain. The proposal is consistent with Section 4.2.3 of the Sydney DCP 2012, and Clauses 6.19 and 6.21 of the Sydney LEP 2012.

Site Specific Development Control Plan and Competitive Design Process

120. The site is located in Central Sydney and the site area exceeds 1500 square metres. The proposed building also has a height greater than 55m. The proposal triggers requirements for a site-specific development control plan (DCP) and competitive design process, under the provisions of Clauses 7.20(2)(a) and 6.21(5)(c) of the Sydney LEP 2012, respectively.
121. Clause 7.20(3) and Clause 6.21(6) of the Sydney LEP 2012 also specify that these requirements can be waived if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances of the development.

122. The applicant has requested that the requirements for the preparation of a site specific DCP and competitive design process be waived for the following reasons:

The proposal retains the existing structure and there are limitations to lower the building height. Should complete demolition be sought there would be possibility to design the building to lower than 55m in height;

There is a negligible exceedance of the 55m height requirement which predominantly relates to non-habitable plant and lift cores.

123. In the specific circumstances of the proposed development, the requirement for the preparation of a DCP and competitive design process are unreasonable or unnecessary for the following reasons:
- (a) The works comprise alterations and additions to the existing building which has a height of 33m. The proposal seeks a height of 61.73m and is compliant with the maximum height and FSR development standards applicable to the site;
 - (b) The proposed development satisfies the design excellence criteria in Clause 6.21 of the Sydney LEP 2012 as discussed elsewhere in this report, subject to the recommended conditions in Attachment A;
 - (c) The proposal does not seek any award of up to 10 per cent additional height or FSR available under the City's design excellence provisions;
 - (d) The proposal does not exceed a capital investment value of \$100,000,000 which is a separate trigger for the preparation of a development control plan and competitive design process;
 - (e) The trigger for the requirement for a site-specific DCP and a competitive design process is Clause 7.20(2)(a) where the land is in Central Sydney and the site area for the proposed development exceeds 1,500 square metres. The site area of 1518sqm only marginally exceeds this trigger. The proposed height of 61.73m also only marginally exceeds the 55m trigger;
 - (f) The proposal subject to conditions satisfies the relevant provisions of Clause 6.20(3)(a), (b), (c) and (d) and Clause 6.21(6)(a),(b), (c) and (d) given that it:
 - (i) includes only additions and alterations to the existing building;
 - (ii) does not significantly increase the height or gross floor area of the existing buildings;
 - (iii) does not result in any significantly adverse impacts on adjoining buildings or the public domain; and
 - (iv) does not significantly alter views of the building from public places.
 - (g) The development proposes a building height that is appropriate and compatible for the site, designed in accordance with the heritage context of the locality, ensuring building elements achieve an appropriate transition in height to neighbouring buildings;
 - (h) The density of the proposal is proportionate with the existing development within the locality;

- (i) Shadow diagrams demonstrate that it will not result in any overshadowing of the nominated public spaces in accordance with Clause 6.19 of the Sydney LEP 2012;
- (j) The proposal is generally compliant with other planning controls prescribed in the Sydney DCP 2012 as outlined in the tables above;
- (k) The development provides an acceptable degree of amenity for future occupants and does not result in significantly adverse impacts on the neighbouring properties and the locality.

124. Clause 7.20(4) of the Sydney LEP 2012 sets out matters that must be addressed in a site-specific development control plan. The proposal satisfies the criteria in Clause 7.20(4) as detailed below:

(a) requirements as to the form and external appearance of proposed development so as to improve the quality and amenity of the public domain

The proposed form and external appearance of the new building will provide a positive contribution to the public domain. The proposal is appropriate to its context and is compatible with the surrounding development. The proposal will contribute to the activation of Kent Street.

(b) requirements to minimise the detrimental impact of proposed development on view corridors

The proposed development is located approximately 19 metres below the potential maximum height control and the siting, massing and setbacks of the new building are contained within the extent of the bulk of the former addition to the site. Overall, the proposal will not result in any significant detrimental impacts on view corridors.

(c) how proposed development addresses the following matters -

- (i) ***The suitability of the land for development***
- (ii) ***The existing and proposed uses and use mix***
- (iii) ***Any heritage issues and streetscape constraints***
- (iv) ***The location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form.***
- (v) ***The bulk, massing and modulation of buildings,***
- (vi) ***Street frontage heights***
- (vii) ***Environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,***
- (viii) ***The achievement of the principles of ecologically sustainable development,***

- (ix) ***The impact on, and any proposed improvements to, the public domain,***
- (x) ***The impact on any special character area,***
- (xi) ***Achieving appropriate interface at ground level between the building and the public domain,***
- (xii) ***The excellence and integration of landscape design,***
- (xiii) ***The incorporation of high quality public art into the fabric of buildings in the public domain or in other areas to which the public has access.***

125. The proposal addresses the above matters in the following manner:

- (a) It comprises a mixed-use development including retail premises and commercial office uses which are permissible in the B8 Metropolitan Centre.
- (b) The proposed uses will increase the commercial floor space at the site which is consistent with the objectives by providing employment generating uses.
- (c) The proposed bulk, scale and massing of the development including its street frontage height responds appropriately to the existing adjoining development and is consistent with the character of the streetscape.
- (d) Subject to the recommended conditions in Attachment A, it will not have adverse environmental impacts by way of overshadowing, visual and acoustic privacy, noise, wind and reflectivity.
- (e) The application is accompanied by an ESD report which identifies a range of sustainability measures to be incorporated into the development, including the target of a 5.5 Star NABERS energy rating and 5 star GreenStar rating.
- (f) The proposed development is sympathetic to and compatible with nearby heritage items and the historic Victorian warehouse facade on site.
- (g) It will provide a positive contribution to the public domain, as well as visual interest and activation to Kent Street.
- (h) On-site loading and servicing within the proposed ground floor will improve amenity to Kent Street allowing it to continue to safely be used by pedestrians, bicycles and other vehicles.
- (i) In addition, the new building will provide better passive surveillance of Kent Street through the infill of the existing colonnade for retail tenancies.
- (j) The outdoor terraces on levels 1, 4 and 9, subject to conditions, contain appropriate plantings and will provide amenity for commercial tenancy employees.
- (k) The site will provide public art by way of conditions in Attachment A with the final location and type of artwork to be determined and endorsed by the City of Sydney.

126. Clause 6.21(4) of the Sydney LEP 2012 sets out matters which are required to be addressed for a development to be considered to exhibit design excellence, which are consistent with the provisions in Clause 7.20(4) set out above.
127. As discussed in the assessment provided in the compliance table and with regard to Clause 7.20(4) of the Sydney LEP 2012, the proposed development is suitable for the site and demonstrates a high standard of architectural design, materials and detailing appropriate to the building type and location, subject to the recommended conditions in Attachment A.
128. In terms of form, bulk, and scale, the proposal does not result in any significant impacts on view corridors and responds positively to both the public domain, adjoining development and heritage items and the surrounding land uses. It incorporates appropriate Ecologically Sustainable Development (ESD) measures and provides a suitable, pedestrian permeable, ground level interface with Kent Street. The predominant part of the building that exceeds 55m is roof plant and servicing only and no habitable floor space exists above 56.1m or the roof of Level 14.
129. In light of the above, there are sufficient reasons as to why a site-specific development control plan and a competitive design process is unreasonable or unnecessary in the circumstances of this application. Pursuant to Clauses 7.20(3) and 6.21(6) of Sydney LEP 2012, it is recommended that these requirements are waived in this instance.

Draft Planning Controls

Planning Proposal: Central Sydney 2020

130. The Planning Proposal: Central Sydney 2020 progresses key aims and objectives of the City of Sydney's Draft Central Sydney Planning Strategy, which is currently under consideration by the NSW Department of Planning Industry and the Environment. This will be achieved by a range of amendments to the Sydney LEP 2012.
131. These include updating the objectives for B8 Metropolitan Centre Zone, including the addition of the following:
 - To promote uses with active street frontages within podiums that contribute to the vitality, life and existing character of the street.
 - To promote the efficient and orderly development of land in a compact urban centre.
 - To promote a diversity of commercial opportunities varying in size, type and function, including new cultural, social and community facilities.
 - To recognise and reinforce the important role that Central Sydney's public spaces, streets and their amenity play in a global city.
 - Promote the primary role of the zone as a centre for employment and permit residential and serviced apartment accommodation where they complement employment generating uses.
132. The proposed development is consistent with the new objectives, as it will provide an appropriate level of activation to Kent St, in addition for providing for a range of commercial, cultural and social opportunities and employment generating uses on the site.

133. The proposal does not result in any significant detrimental impacts to the surrounding public domain within the Sydney CBD subject to conditions.
134. The Planning Proposal also amends Objective (1)(c) of the height of buildings development standard in Clause 4.3 of the Sydney LEP 2012 relating to views, to clarify that view sharing and protection of private views will only be promoted outside of Central Sydney where this can be reasonably achieved.
135. Further, the proposal revises the maximum permissible height of buildings development on the site from 80m to 110m as a result of the changing form and character of the area and the additional Metro rail infrastructure committed to by the State government.
136. The Planning Proposal was exhibited between 1 May 2020 and 10 July 2020 and must be given weight in the assessment of the proposed development as there is imminence in relation to its future gazettal.

Amendments to the Sydney Development Control Plan 2012 - Central Sydney Planning Strategy Amendment

137. The Planning Proposal: Central Sydney 2020 also incorporates proposed amendments to the Sydney DCP 2012. The amendments relevant to the proposed development include:
 - (a) The built form and related controls for Central Sydney, including those related to:
 - (i) street frontage heights;
 - (ii) street, side and rear setbacks;
 - (iii) building form separations;
 - (iv) built form massing, tapering and maximum dimensions;
 - (v) development outlook and amenity;
 - (vi) building exteriors;
 - (vii) sun protection of public parks and places; and
 - (viii) managing wind impacts.
138. With regard to the amended built form and related controls for Central Sydney, the proposed development:
 - (a) complies with the street frontage height control;
 - (b) does not fully comply with the setback provisions but remains acceptable for the reasons outlined under the Discussion heading above;
 - (c) generally satisfies the built form massing, tapering and maximum dimension controls;
 - (d) provides acceptable outlook and amenity from the proposed use;

- (e) provides a high quality architectural design, including its articulation, materials and finishes;
- (f) does not result in any overshadowing of public parks or spaces; and
- (g) does not result in any significantly adverse wind effects on the surrounding public domain or within the development.

Other Impacts on the Development

139. The application can comply with the Building Code of Australia.
140. It is considered the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to the recommended conditions in Attachment A.

Suitability of the Site for the Development

141. The proposal is in keeping with the desired future character for the site and locality.
142. The site is in the Sydney CBD and located amongst other uses to the proposed and therefore is suitable for the proposed development.

Consultation

Internal Referrals

143. The application was referred to or discussed with the following referral officers and bodies for review. Subject to conditions, no major objections have been raised by these internal referral agencies and the issues raised are discussed elsewhere in this report.
- Central Sydney Traffic and Transport Committee (CSTTC)
 - Design Advisory Panel
 - City Model Unit
 - Health and Building Unit
 - Public Domain Unit
 - Urban Design and Heritage Specialist
 - Tree Management Officer
 - Building Approvals Unit
 - Landscaping Assessment Officer
 - Transport and Access

- Waste Management
- Sustainability Officer
- Specialist Surveyor

External Referrals

Ausgrid

144. Pursuant to Section 45 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment. A response was received raising no objections to the proposed development subject to conditions included in Attachment A.

Transport for NSW

145. As the proposal is adjacent to the Rail Corridor - CBD Rail Link and CBD Metro, the application was referred to Transport for NSW (TfNSW) for comment. Comments were received on 19 February 2021 noting that additional bike parking and loading spaces should be provided to meet the requirements in the DCP. This has been addressed as discussed above.

146. Conditions of consent were recommended which are included in Attachment A.

Advertising and Notification

147. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified and advertised for a period of 28 days between 3 February 2021 and 4 March 2021. A total of 901 properties were notified and three (3) submissions were received.

148. The submissions raised the following issues:

- (a) **Issue:** Impact on residential amenity of 110 Sussex Street (outlook, overshadowing, reflectivity, impact on cleaner's lights being on overnight). The impacts have not been addressed in the SEE. In summer the ground floor courtyard receives sunlight which will be impacted.

Response: The applicant has provided overshadowing diagrams on request in relation to 110-116 Sussex St as part of the amended proposal. As covered above under **Discussion** the diagrams do not suggest that significant overshadowing impacts are likely to occur to the residential apartments. A condition to restrict hours of operation of the commercial tenancies between 7am and 10pm is considered reasonable to address late night cleaner's lighting concerns. The amended proposal complies with the height and FSR controls for the site, and generally complies with the setback provisions in the context of the existing built form. Considering the CBD context of the site, the amenity impacts from the proposal in terms of outlook and overshadowing are acceptable, particularly as the lower 10 floors of 110-116 Sussex Street are approved for commercial uses under D/1985/400. The existing ground floor courtyard at 110-116 Sussex Street is overshadowed by surrounding buildings on June 21 which is the date referenced in the relevant control (Section 4.2.3 of the Sydney DCP 2012) - impacts in summer months are not required to be assessed. The reflectivity of the building is discussed above. A relevant condition will ensure the glare is limited to protect nearby amenity of residents. A materials and samples board will be required as a condition of consent to be assessed by the Council prior to issue of Construction Certificate.

- (b) **Issue:** Non-compliant Kent Street above podium setback and concern regarding of impact to amenity of neighbouring buildings. Non-compliance with the draft DCP (5.1.1.3 reference to the quality of 'public places') and draft Central Sydney Planning Strategy (CSPS) with regards to side setbacks for tall buildings (4m required). Amenity impacts on the forecourt area of 309-329 Kent Street to the north.

Response: The variation to the Kent Street setback is accepted for reasons discussed above. The application has been amended to reduce the encroachments into the setback area which are considered minor and supported in this instance. Any potential amenity impacts as a result of the additional storeys are to a commercial building and therefore not protected by the relevant in-force legislation. Regardless, no overshadowing impact to the forecourt because of the proposal is shown to occur as it sits to the north of the site. The forecourt area of the neighbouring buildings for commercial uses is not a 'Public Place' ("has the same meaning as in the Local Government Act and includes streets, lanes (i.e. narrow streets) and public open space"). A discussion on the proposal's compliance with the draft CSPS and draft DCP has been provided earlier in the report.

- (c) **Issue:** Concern regarding waiving both the preparation of a Development Control Plan (DCP) and competitive design process given height exceeds 55m. 161 Clarence Street was required to pursue a competitive design competition in 2012.

Response: In accordance with Clause 6.21(6) and 7.20(3) of the Sydney LEP 2012, the consent authority is able to consider the preparation of a development control plan or undertaking of a competitive design process unreasonable and unnecessary. The waiver to the preparation of a competitive design process and/or Development Control Plan is accepted as discussed above under **Discussion**. In response to the assessment of 161 Clarence Street, the officer's report for the Stage 1 (D/2012/1425) has been reviewed. The assessment of these provisions varies based on the context and specifics of the DA, and the proposal for various reasons did not satisfy the requirements of 6.21(6) of the Sydney LEP 2012, including the proposed use as residential (thereby requiring additional design considerations to meet internal amenity standards), and significant design issues with the built form. An additional 10 per cent uplift in FSR was ultimately sought in the Stage 1 DA. Further, it is noted in 2008 the CSPC waived the requirement for a development plan (Stage 1 DA) for a new 13 storey commercial building with 3 basement levels at the same site (D/2008/150), thereby demonstrating the contextual application of this control.

- (d) **Issue:** Concern regarding the adequacy of acoustic and wind reports with respect to environmental conditions on 321 Kent Street, particularly the forecourt area.

Response: The acoustic and wind reports have been reviewed by Council's technical experts with no significant concerns raised subject to amendments/conditions. The forecourt is a private area for commercial uses, and its amenity is not protected by the DCP or LEP. Regardless, the area is covered by a glass canopy which would largely mitigate wind impacts from the proposed additions.

- (e) **Issue:** Request to delete the northern terrace on Level 9 due to privacy and amenity impacts to 309-329 Kent Street commercial building.

Response: The terrace is proposed for use by office workers and is not a public space. Conditions to mitigate amenity impacts from use of the terraces are recommended in Attachment A including hours of use and no use of speakers or music outside. Suitable height planting/screening to minimise wind impacts is included to the northern boundary, which is considered to prevent overlooking to the commercial tenancies at the neighbouring site. Further, the terrace is situated some 20m above the existing canopy of the neighbouring site, which is considered to be an adequate distance so as to minimise overlooking opportunities.

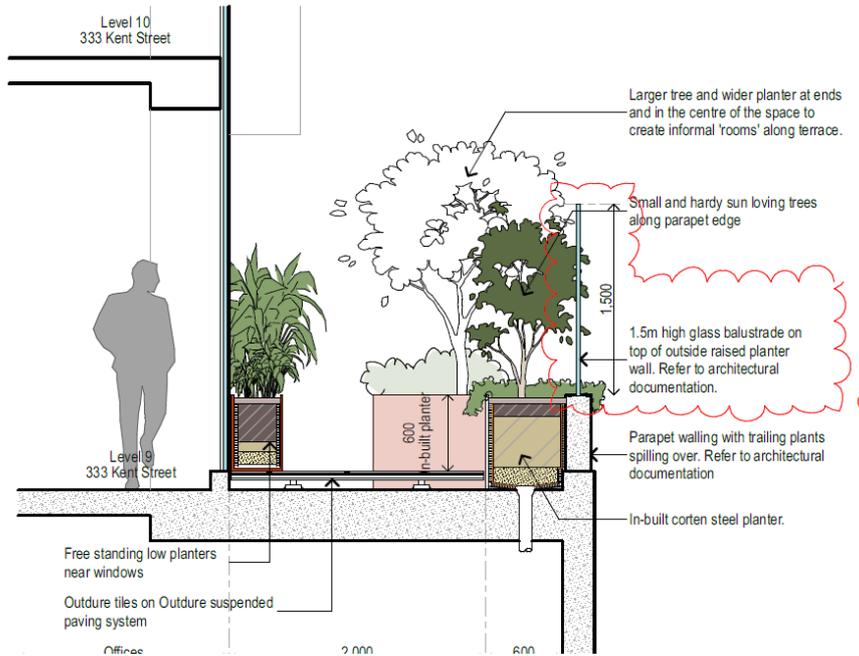


Figure 72: Amended landscape section - Level 9 terrace

- (f) **Issue:** Request for adequate construction and acoustic conditions protecting the amenity of the Dexu building at 309-329 Kent Street, including conditions regarding intrusive work and noisy appliances in order to protect the amenity of the Dexu tenants and the forecourt area.

Response: Standard construction conditions including the requirement for a Demolition, Excavation and Construction Noise and Vibration Management Plan have been included in Attachment A to address potential demolition/construction works impacts. Restricting the hours of the use of high noise emission appliances outside of commercial working hours would result in potential disturbance to residential receivers instead, therefore it would be inappropriate to condition certain times outside of commercial office hours to use the appliances. The applicant submits that construction noise will not exceed 71db(A) at the boundary to the site and that lunchtime respite periods will occur.

- (g) **Issue:** Amenity impacts to 339-347 Kent Street as a result of height and non-compliant setbacks. Visual impact of the rooftop plant.

Response: 339-347 Kent Street is a commercial building located to the south of the site comprising a 22 storey building with lower level retail premises, and upper level commercial offices with windows on the northern boundary. Section 5.1.2.2 of the DCP does not outline specific setback requirements between commercial buildings below 45m and above 45m, the proposal generally complies with the setback requirements (3m) from side and rear boundaries, proposing a setback of up to 3.8m, with the facade blades removed from the amended proposal to this boundary. In addition, the proposal complies with the height, and FSR requirements of the Sydney LEP 2012, and the terrace to this side of the building is non-accessible. Privacy impacts are therefore not likely to be significant, and the proposal therefore results in an acceptable built form subject to conditions. A condition for a materials sample board and for the height of the parapet to increase to 1.4m will assist in ensuring the rooftop screening adequately mitigates any visual impact of servicing and plant.

(h) **Issue:** Fire separation and treatment not addressed in the DA

Response: A fire engineering statement dated 17 December 2020 prepared by Stantec was submitted with the DA noting that the building is able to comply with the Performance Requirements of the BCA without major changes to the current design. The proposal was referred to the City's Building Surveyors who supported the proposal subject to conditions. It is acceptable for fire separation and treatment to be addressed by the certification process more thoroughly in the detailed design phase of the development (post- DA consent).

Public Interest

149. The proposal will have no significant detrimental effect on the public interest, subject to the recommended conditions in Attachment A.

Financial Contributions

Affordable Housing Contributions under Clause 7.13 of the Sydney LEP 2012

150. The application was lodged prior to 1 July 2021 and therefore there is no requirement for affordable housing contributions to be paid.

Levy under Section 61 of the City of Sydney Act 1988

151. 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.

152. A condition relating to this levy has been included in the recommended conditions of consent in Attachment A. The condition requires the contribution to be paid prior to the issue of a Construction Certificate.

Relevant Legislation

153. Environmental Planning and Assessment Act 1979.
154. City of Sydney Act 1988.
155. Roads Act 1993.
156. Sydney Water Act 1994.

Conclusion

157. The application seeks consent for alterations and additions to the existing commercial building at 331-337 Kent Street, including significant demolition of existing building elements, structural upgrade works, and refurbishment of the existing four-storey historic warehouse façade, resulting in a 15 storey commercial building with a total building height of 61.73m (RL 80.125).
158. The development will comprise two new retail premises at ground floor and 14 levels of commercial office uses above. The existing vehicular access from Kent Street will be retained along with the carpark and loading dock, with modifications for new end of trip facilities, bicycle parking, and building services plant and storage tanks. Minor excavation of the site is proposed to facilitate the new lift pits and fire egress.
159. The ground level frontage will be altered including infill of the existing open colonnade to extend the building frontage to the Kent Street boundary line, to accommodate an extended foyer, access to the building basement and consolidated servicing, as well as the retail tenancies.
160. The proposal was amended and additional information has been provided to address Council's concerns relating to facade design, setbacks, privacy screening, heritage, waste and loading arrangements, bicycle parking provision, landscaping, rooftop screening, ESD, contamination, stormwater management, and glazing. Subject to conditions, the revisions and additional information adequately address the concerns raised by Council officers during the assessment.
161. The applicant has submitted a request to waive the requirements in Clause 7.20 and 6.21 of the Sydney LEP 2012 for the preparation of a site-specific development control plan and a competitive design process. This request is supported in the specific circumstances of this proposed development.
162. The proposed development, as amended, is generally compliant with the relevant planning controls in the Sydney LEP 2012 and Sydney DCP 2012. Proposed variations to the controls have been identified in the assessment report above and are considered acceptable, subject to conditions.

163. The proposal is consistent with the permitted height and FSR controls outlined in the Sydney LEP 2012 and does not result in significant adverse impacts in terms of amenity to the existing developments in the vicinity.
164. The proposal will provide for new commercial/retail uses in the Sydney CBD in a site highly accessible to existing and planned employment, services, public transport infrastructure and community facilities. The proposal is consistent with the objectives of the land use zone.
165. The proposal demonstrates design excellence as required by Clause 6.21 of the Sydney LEP 2012 and is recommended for approval, subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Amy-Grace Douglas, Senior Planner