

Item 3.**Development Application: 169-173 Victoria Street and 92-98 Brougham Street, Potts Point - D/2021/927**

File No.: D/2021/927

Summary**Date of Submission:** 16 August 2021, amended 23 November 2021 and 28 July 2022**Applicant:** PG Capital Pty Ltd**Architect/Designer:** Woods Bagot**Developer:** PG Capital Pty Ltd**Owner:** Harrphil Pty Limited and the Owners - Strata Plan No 17354**Planning Consultant:** Ethos Urban**Heritage Consultant:** Urbis**Cost of Works:** \$22,299,401**Zoning:** The site is located in both the B4 Mixed Use and R1 General Residential zone.

The proposed development is a mixed use development, comprising 'food and drink premises' and 'hotel accommodation' uses, which are all permissible with consent in both zones, subject to site specific conditions under the Sydney Local Environmental Plan 2012.

Proposal Summary: The application seeks development consent for the adaptive reuse of the Piccadilly Hotel and terrace buildings fronting Victoria Street and Brougham Street.

The primary land use sought is hotel accommodation, with indicative food and drink premises uses depicted on the drawings submitted with the application. Works include demolition, alterations and additions, tree removal, landscaping and tree plantings.

The application is referred to the Local Planning Panel for determination as the proposed development contravenes the maximum height and floor space development standards imposed by the Sydney Local Environmental Plan 2012 by more than 10%. Specifically, the proposed development exceeds the maximum 12 metre height of buildings standard by between 1.05 metres (9%) and 2.99 metres (24.9%).

The proposal also exceeds the maximum 1.7:1 floor space ratio standard applicable to site by 0.23:1 (14%) or 310 square metres of gross floor area.

Written requests to vary both the height of buildings and floor space ratio development standards have been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012.

These statements demonstrate that compliance with the standards is unreasonable and unnecessary in the specific circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the standards.

The application was placed on public exhibition for a period between 23 August 2021 and 21 September 2021 in accordance with the City of Sydney Community Participation Plan.

As a result of the notification of the application, there were a total of 18 submissions received by the City. This included one submission in support, one comment and 16 submissions in objection to the proposed development, with two objections being made by same submitter.

The submissions in objection raised concerns in relation to visual privacy, structural impacts, safety and security, noise, dust, traffic and parking, public domain improvements, street tree protection, tree retention, site access, acoustic report accuracy, overdevelopment, unclear plant provision, dilapidation reports, tower crane encroachment, accessible amenities, anti-social behaviour and view sharing.

An assessment of the application by Council staff identified concerns relating to heritage conservation, demolition, contamination, deep soil provision, tree planting, flooding and stormwater, ecologically sustainable development, late night trading and acoustic privacy.

These issues have been largely addressed through the submission of an amended application, including amended drawings and additional information.

Subject to the recommended consent conditions, including deferred commencement conditions requiring the submission and approval of structural design details, a preliminary public art plan and fire hydrant and photovoltaic system details, the amended proposal presents an improved outcome to the existing condition of the site, will achieve a high standard of architectural design and comprises an acceptable response to the conditions of the site and locality.

It is generally satisfactory with regard to the objectives of the relevant planning controls, and results in a form and scale that achieves the desired future character of the area.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (ii) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (iii) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
- (iv) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
- (v) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
- (vi) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings
- (vii) City of Sydney Interim Floodplain Management Policy
- (viii) City of Sydney Guidelines for Waste Management in New Developments
- (ix) City of Sydney Public Art Policy
- (x) City of Sydney Public Art Strategy
- (xi) City of Sydney Guidelines for Public Art in Private Development

- (xii) City of Sydney Development Contributions Plan 2015
- (xiii) City of Sydney Affordable Housing Program
- (xiv) City of Sydney Community Participation Plan

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Requests
- D. Photomontages

Recommendation

It is resolved that:

- (A) the variations requested to Clause 4.3 'Height of buildings' and Clause 4.4 'Floor space ratio' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979, a deferred commencement consent be granted to Development Application Number D/2021/927, subject to the conditions set out in Attachment A to the assessment report.

Reasons for Recommendation

The application is recommended for deferred commencement consent for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979, in that, subject to the imposition of conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Sydney Local Environmental Plan 2012, that compliance with the 'Height of buildings' and 'Floor space ratio' development standards is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 and Clause 4.4 of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use and R1 General Residential zones and the 'Height of buildings' and 'Floor space ratio' development standards.
- (C) The proposal otherwise generally satisfies the objectives and provisions of the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012.
- (D) The proposal is consistent with the objectives of the B4 Mixed Use and R1 General Residential zones.
- (E) The proposal will conserve the heritage significance of the Piccadilly Hotel building and the surrounding Potts Point and Woolloomooloo heritage conservation areas, in accordance with Clause 5.10 of the Sydney Local Environmental Plan 2012.
- (F) The articulation, materiality and architectural contribution of the proposal combine to exhibit design excellence in accordance with the relevant provisions and matters for consideration in Clause 6.21 of the Sydney Local Environmental Plan 2012.

- (G) The proposed development will have a height, scale and form suitable for the site and its context, and subject to conditions, satisfactorily addresses the heights and setbacks of neighbouring developments, is appropriate in the streetscape context and setting of the broader locality.
- (H) The proposed development will result in a mix of compatible land uses which will support the vitality of the area and will not result in any significantly adverse environmental or amenity impacts on either the subject or surrounding properties, the public domain or the broader Potts Point locality, subject to the recommended conditions.
- (I) Subject to the recommended conditions of consent, the proposed development achieves an acceptable level of amenity for the existing and future occupants of the subject and adjoining sites.
- (J) The public interest is served by the approval of the proposal, as amendments to the proposed development have generally addressed the matters raised by the City and the community, subject to recommended conditions imposed relating to the appropriate management of the potential environmental impacts associated with the development.

Background

The Site and Surrounding Development

1. The development site includes a number of properties, with the following legal descriptions:
 - (a) Lot 1 in Deposited Plan 626468, which is commonly known as 169 Victoria Street, Potts Point (the former Golden Apple building), generally rectangular in shape, and approximately 185 square metres in area.
 - (b) Lot 1 in Deposited Plan 82775, which is commonly known as 171-173 Victoria Street, Potts Point (the Piccadilly Hotel building), generally rectangular in shape with a dog leg access handle to Hourigan Lane, and approximately 579 square metres in area.
 - (c) Lot 1 in Deposited Plan 724376, which is commonly known as 92 Brougham Street, Potts Point, generally rectangular in shape, and approximately 137 square metres in area.
 - (d) Lot 1 in Deposited Plan 904094, which is commonly known as 94 Brougham Street, Potts Point, generally rectangular in shape, and approximately 136 square metres in area.
 - (e) Lot 1 in Deposited Plan 904214, and Lots 1-3 in Strata Plan 17354, which is commonly known as 96 Brougham Street, Potts Point, generally rectangular in shape, and approximately 136 square metres in area.
 - (f) Lot 100 in Deposited Plan 613011, which is commonly known as 98 Brougham Street, Potts Point, generally rectangular in shape, and approximately 136 square metres in area.
2. The overall site is irregular in shape, with a total area of approximately 1,311 square metres.
3. It has primary street frontages of approximately 28.6 metres to Victoria Street and approximately 20 metres to Brougham Street, with a laneway frontage of approximately 3.6 metres to Hourigan Lane.
4. Levels on the site fall approximately 5.5 metres east to west across the site, with a cross fall from the south to the north along both street frontages.
5. The site does not accommodate any on-site parking facilities, or vehicle access and egress points.
6. The site contains a number of buildings, as follows:
 - (a) 169 Victoria Street, Potts Point is occupied by a three storey Victorian-era terrace, with a basement level, which is currently vacant but most recently used as a brothel trading as the 'Golden Apple'.

The terrace has its primary address to Victoria Street, with pedestrian access to the ground floor and basement levels, and alternate pedestrian access from Hourigan Lane to the lower ground and ground floor levels.

- (b) 171-173 Victoria Street, Potts Point is occupied by a heritage listed four storey Inter War-era functionalist style public house known as the 'Piccadilly Hotel', with a street awning and including a basement level, which is currently vacant but most recently used as a nightclub and bar trading as 'Soho'.

The hotel has its primary address to Victoria Street, with pedestrian access to the ground floor and first floor levels, and alternate pedestrian access from Hourigan Lane to the lower ground floor level.

- (c) 92 Brougham Street, Potts Point is occupied by a two storey Victorian-era terrace with an attic level, which is the northern-most building within a row of two terraces.

The terrace has its primary address to Brougham Street, with pedestrian access to the ground floor level.

- (d) 94 Brougham Street, Potts Point is occupied by a two storey Victorian-era terrace with an attic level, which is the southern-most building within a row of two terraces.

The terrace has its primary address to Brougham Street, with pedestrian access to the ground floor level.

- (e) 96 Brougham Street, Potts Point is occupied by a three storey Inter War-era residential flat building (formerly a terrace forming part of the row with 92, 94 and 98 Brougham Street) containing three dwellings, with one apartment on each level.

The flat building has its primary address to Brougham Street, with pedestrian access to the ground floor level.

- (f) 98 Brougham Street, Potts Point is occupied by a two storey Victorian-era terrace with an attic level.

The terrace has its primary address to Brougham Street, with pedestrian access to the ground floor level.

7. The surrounding area is characterised by a mixture of land uses, including residential, commercial and tourist and visitor accommodation land uses.
8. Immediately to the north of the site along Victoria Street at 165-167 Victoria Street, Potts Point, is a four storey Inter War-era mixed use building, with ground floor food and drink uses fronting Victoria Street, 22 residential apartments within the remainder of the building, and separate vehicle access at the rear to Hourigan Lane.
9. Immediately to the south of the site along Victoria Street at 175 and 177-179 Victoria Street, Potts Point, are a pair of two story Federation terraces, with commercial uses at the ground floor level fronting Victoria Street, and residential apartments within the remainder of the buildings.
10. Opposite the site, on the eastern side of Victoria Street, are a mix of residential and commercial terraces, including several retail premises, food and drink premises and backpackers' accommodation land uses.

11. Immediately to the north of the site on Brougham Street at 90 Brougham Street, Potts Point, is a three storey contemporary infill dwelling house, with separate vehicle access to Hourigan Lane.
12. Immediately to the south of the site on Brougham Street at 100-104 Brougham Street, Potts Point, is a four storey 1960s-era residential flat building containing 24 apartments, with ground floor car parking and vehicle access to Brougham Street.
13. Opposite the site, on the western side of Brougham Street, is a row of three storey Victoria-era residential terraces and a multi-storey Inter War residential flat building.
14. The subject site is identified in Schedule 5 and on Sheet 22 of the Heritage Map in the Sydney Local Environmental Plan 2012 as containing a heritage item of local significance at 171-173 Victoria Street, Potts Point, known as the 'Piccadilly Hotel including interior' (Item Number I1192).
15. The site is also identified in Schedule 5 and on Sheet 22 of the Heritage Map in the Sydney Local Environmental Plan 2012 as being located within both the Potts Point heritage conservation area (Reference Number C51) and the Woolloomooloo heritage conservation area (Reference Number C71).
16. All of the buildings on the site are identified on Sheet 22 of the Building contributions map of the Sydney Development Control Plan 2012 as being contributing buildings, with the exception of the residential flat building at 96 Brougham Street, Potts Point, which is identified as a neutral building.
17. The site is identified as being subject to flooding in the City of Sydney Woolloomooloo Catchment Floodplain Risk Management Plan.
18. Site inspection visits were carried out on 7 April 2022, 11 May 2022, 13 October 2022 and 31 October 2022.
19. Photographs of the subject site and the surrounding locality are reproduced in the figures provided below.



Figure 1: Aerial photographic view of the subject site (shown shaded in blue) and surrounding locality



Figure 2: The Piccadilly Hotel building viewed from Victoria St, facing north-west



Figure 3: The Piccadilly Hotel building viewed from Victoria St, facing south-west



Figure 4: The former Golden Apple building viewed from Victoria St, facing west



Figure 5: Existing development to the north of the site viewed from Victoria St, facing north-west



Figure 6: Existing development to the south of the site viewed from Victoria St, facing south-west



Figure 7: Existing development opposite the site viewed from Victoria St, facing south-east



Figure 8: Existing development opposite the site viewed from Victoria St, facing east



Figure 9: Existing development opposite the site viewed from Victoria St, facing north-east



Figures 10 & 11: Terraces at 92 and 94 Brougham St viewed from Brougham St, facing east (left), and the residential flat building and terrace at 96 and 98 Brougham St viewed from Brougham St, facing east (right)



Figure 12: Terraces at 92, 94 and 98 Brougham St and residential flat building at 96 Brougham St, viewed from Brougham St facing north-east



Figures 13 & 14: Terraces at 92, 94 and 98 Brougham St and residential flat building at 96 Brougham St, viewed from Brougham St facing south-east (left), and the existing development to the north of the site at 90 Brougham St, viewed from Brougham St facing east (right)



Figure 15: Existing development to the north of the site viewed from Brougham St, facing north-east



Figures 16 & 17: Existing residential flat building to the south of the site at 100-104 Brougham Street, viewed from Brougham St facing south-east (left), and existing residential flat building diagonally opposite the site at 147-151 Brougham St, viewed from Brougham St facing south-west (right)



Figure 18: Existing development to the south of the site viewed from Brougham St, facing south-east



Figure 19: Existing development opposite the site viewed from Brougham St, facing south-west



Figure 20: Existing terrace row at 141, 143 and 145 Brougham St opposite the site, viewed from Brougham St, facing north-west



Figures 21 & 22: Rear of the former Golden Apple building at 169 Victoria St viewed from Hourigan Ln, facing east (left) and rear of the Piccadilly Hotel building at 171-173 Victoria St viewed from Hourigan Ln, facing south-east (right)

History Relevant to the Development Application

Relevant Application History

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

- (a) **PDA/2019/123** – Pre-development application advice was provided to the applicant on 4 June 2019 in relation to the proposed redevelopment of the Piccadilly Hotel, former Golden Apple and Brougham Street terraces.

The advice raised concern with the proposed height of the development, retention of significant fabric, and recommended that detailed structural engineering drawings be provided with any future development application, coordinated with the architectural drawings, a conservation management plan and schedule of conservation works.

- (b) **PDA/2020/42** – Pre-development advice was provided to the applicant on 30 April 2020 in relation to the proposed redevelopment of the Piccadilly Hotel, former Golden Apple and Brougham Street terraces.

The advice provided raised concern in relation to the prohibition of tourist and visitor accommodation in the R1 General Residential zone, height and built form impacts, and site access and servicing issues.

- (c) **PP/2020/1128** – A planning proposal to amend the Sydney Local Environmental Plan 2012 to permit hotel and motel accommodation as a permitted use on the subject site, while retaining the overriding residential zoning, was approved on 1 December 2020 and published on 25 June 2021.

The intent of the proposal was to allow a development application to be submitted and assessed for a hotel development encompassing both the planning proposal sites and the adjoining Victoria Street sites.

Clause 9(2) of Schedule 1 of the Sydney Local Environmental Plan 2012 permits development for the purposes of hotel or motel accommodation on the land at 92 - 98 Brougham Street, Potts Point.

Compliance Action

21. The site is not subject to any current compliance actions or investigations which are of relevance to the subject application.

Amendments

22. Following lodgement of the application, preliminary information for assessment was requested from the applicant.
23. This information was submitted by the applicant at different points across September and October 2021, with the final submission received by 23 November 2021.
24. Additional information was received by the City in December 2021 and January 2022.

25. A request for an amended application was sent to the applicant on 19 January 2022. This correspondence raised a range of detailed concerns with the proposed development as follows:
- (a) the extent of demolition proposed to the Piccadilly Hotel and the Brougham Street terraces;
 - (b) the extent of alterations and additions proposed to the Piccadilly Hotel and the Brougham Street terraces, including the removal of significant heritage fabric and features, issues with the grading of significance in the conservation management plan, and lack of structural details;
 - (c) the extent of the rear addition to the Piccadilly Hotel into the rear yards of the Brougham Street terraces and lack of retention of an adequate area of deep soil;
 - (d) lack of adequate landscape details, provision of canopy coverage and structural details; and
 - (e) lack of an arboricultural impact assessment report to assess tree removal, retention and protection throughout the course of development works.
26. The letter also requested the provision of information and amendments to the proposed development, including structural details of the retained and proposed works.
27. Following an extensive period of consultation with City staff, including meetings and a site inspection, the applicant submitted an amended application and additional information to the City between 1 July 2022 and 27 July 2022.
28. A range of other information was requested by and submitted to the City across August and September 2022.

Proposed Development

29. The application, as amended, seeks development consent for:
- (a) adaptive reuse of the Piccadilly Hotel and terrace buildings fronting Victoria Street and Brougham Street for hotel accommodation and indicative food and drink premises uses; and
 - (b) associated demolition, alterations and additions, tree removal, landscaping and tree plantings.
30. Specifically, the proposal involves the following:
- (a) Partial demolition, excavation, removal of trees from the rear and front yards of the Brougham Street terraces and residential flat building, alterations and additions and retention of significant heritage fabric to all buildings on the subject site.

- (b) Reinstatement of the original built form to Brougham Street terraces, including:
 - (i) New and reinstated fenestration and balconies and other associated alterations and additions to street front elevations, including new fences and landscaping.
 - (ii) Construction of contemporary rear additions for hotel accommodation rooms and access, including internal ramping, stairs and lift.
 - (iii) Demolition and removal of existing additions to the residential flat building at 96 Brougham Street, Potts Point, to reinstate its original form as a terrace.
 - (c) Fit out and use of 17 hotel accommodation rooms within the Brougham Street terraces, and the former Golden Apple building, with hours of operation 24 hours per day, 7 days per week, subject to a plan of management.
 - (d) An indicative food and drink premises within the lower ground floor level of the former Golden Apple building.
 - (e) Alterations to the Piccadilly Hotel, including lower ground floor and basement level servicing, plant, storage, end of journey facilities and kitchen facilities, construction of new hotel reception, internal lifts, stairs and sanitary facilities, elevated rear terraces at level 1 and 2, with indicative food and drink premises throughout all levels, and associated plant constructed within a new roof.
 - (f) Construction of rear additions to the former Golden Apple building, and to the Piccadilly Hotel building. These additions will extend into the rear yards of the Brougham Street terraces, and include:
 - (i) Bicycle parking facilities for 15 bikes, and a courtyard addition containing an indicative food and drink premises use, with inaccessible green roofs and a screened pedestrian connection to the rear of the Brougham Street terraces over.
 - (ii) Landscape planters to the rear of the former Golden Apple building and Piccadilly Hotel.
 - (g) Four new tree plantings within the rear yard of the Brougham Street terraces.
31. The detailed fit out and operation of the indicative food and drink premises uses throughout the proposed development is proposed to be the subject of a future separate development application(s).
32. Demolition, plan, elevation, section, detail, finishes and photomontage drawing extracts of the proposed development are reproduced in figures provided below.



Figure 23: Proposed lower ground floor demolition floor plan drawing extract



Figure 24: Proposed ground floor demolition floor plan drawing extract



Figure 25: Proposed Brougham St level 2 demolition floor plan drawing extract



Figure 26: Proposed level 1 demolition floor plan drawing extract



Figure 27: Proposed level 2 demolition floor plan drawing extract

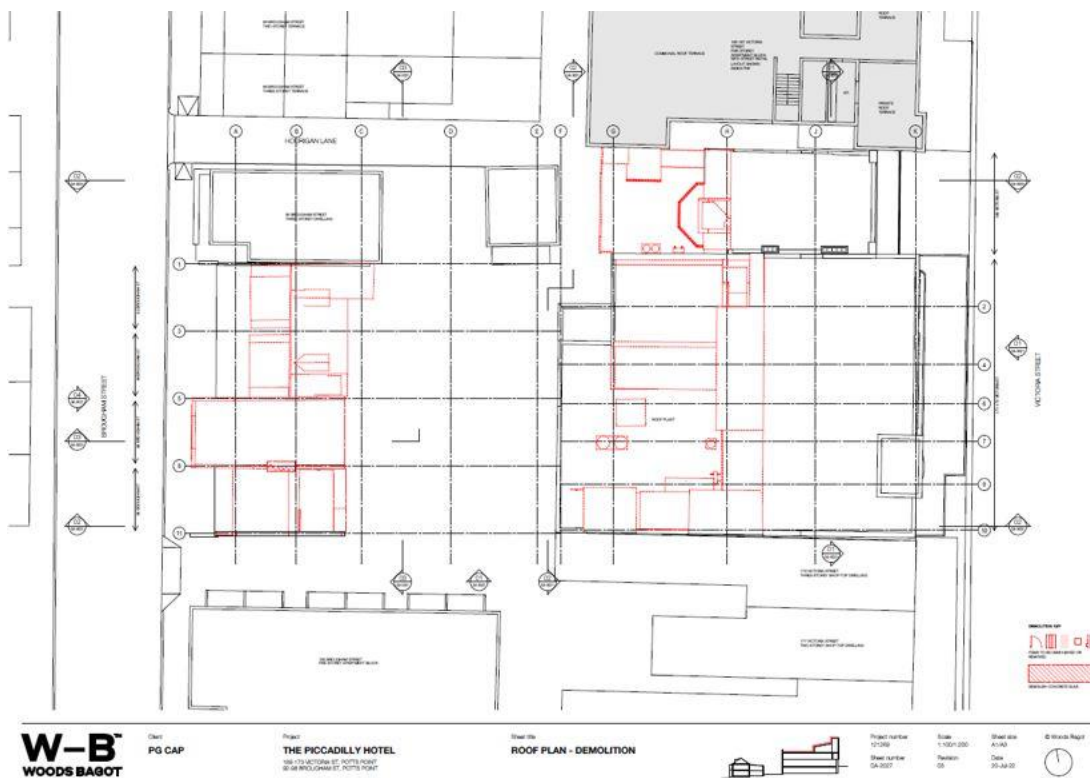


Figure 28: Proposed roof demolition plan drawing extract



Figure 29: Proposed east and west elevation demolition drawing extracts

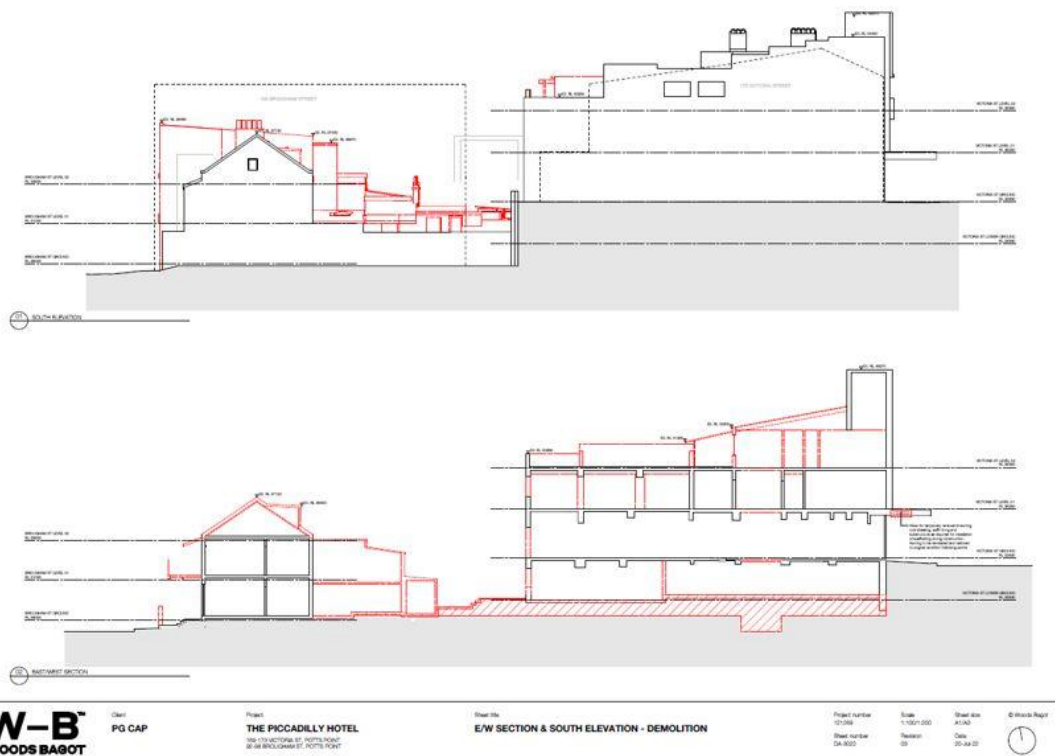


Figure 30: Proposed east-west section and south elevation demolition drawing extracts



Figure 31: Proposed north-south section and north elevation demolition drawing extracts

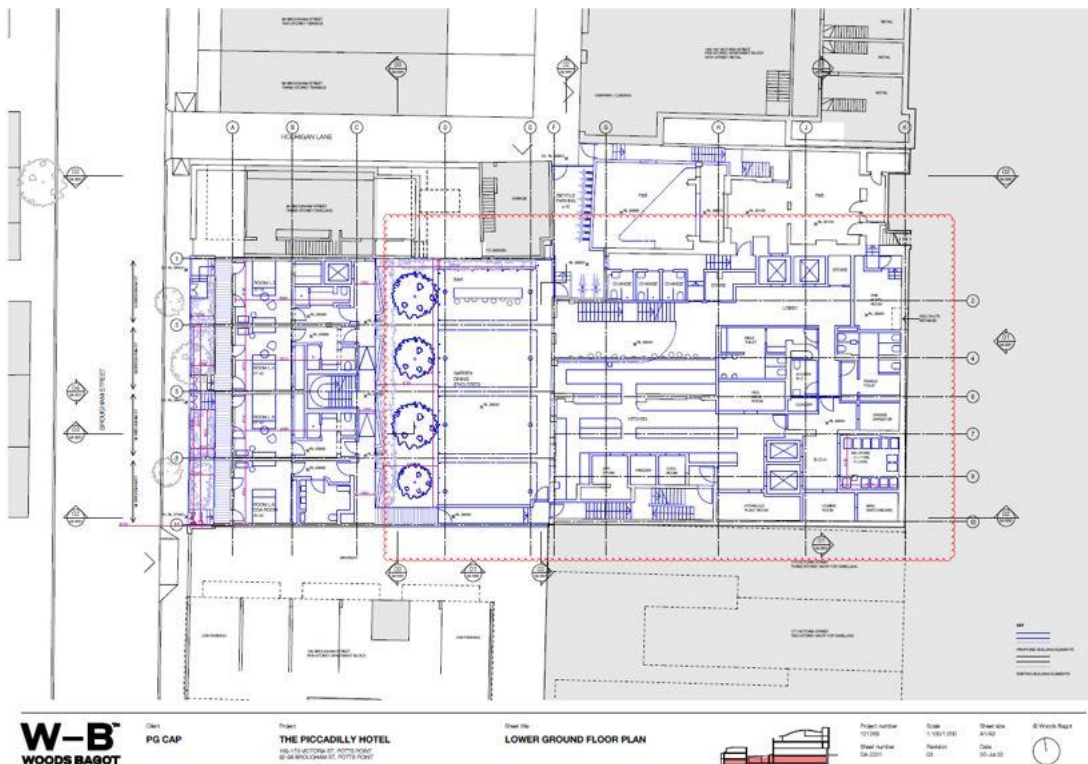


Figure 32: Proposed lower ground floor plan drawing extract

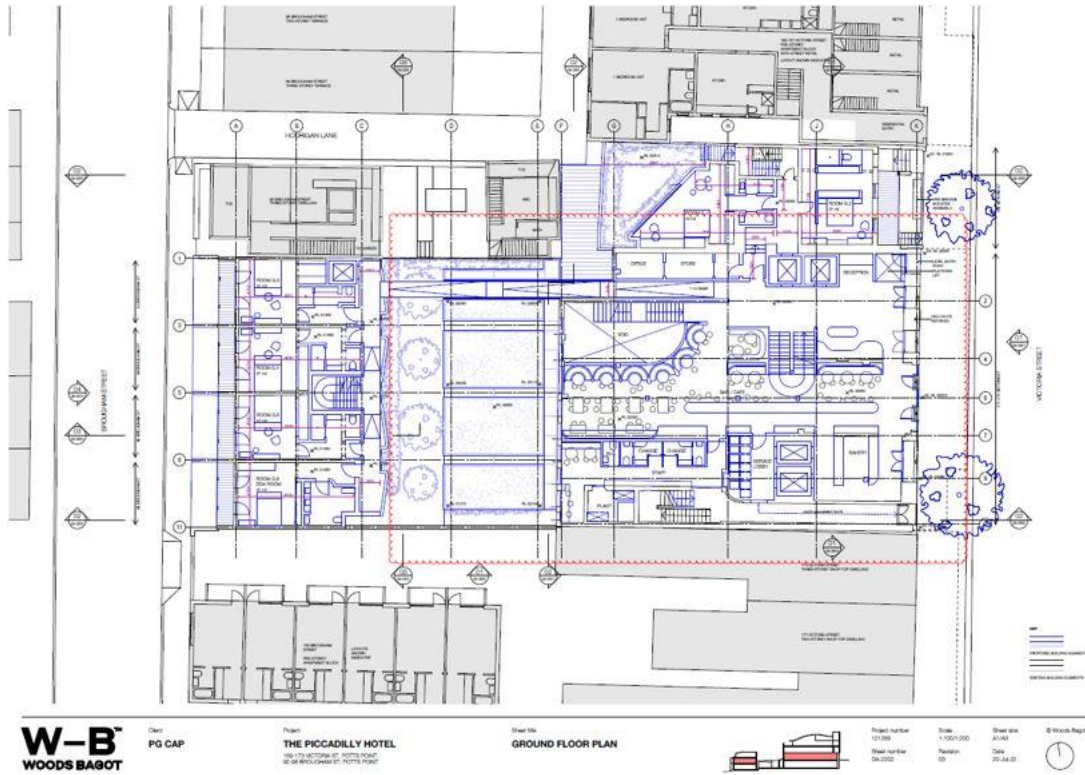


Figure 33: Proposed ground floor plan drawing extract



Figure 34: Proposed Brougham St level 2 floor plan drawing extract

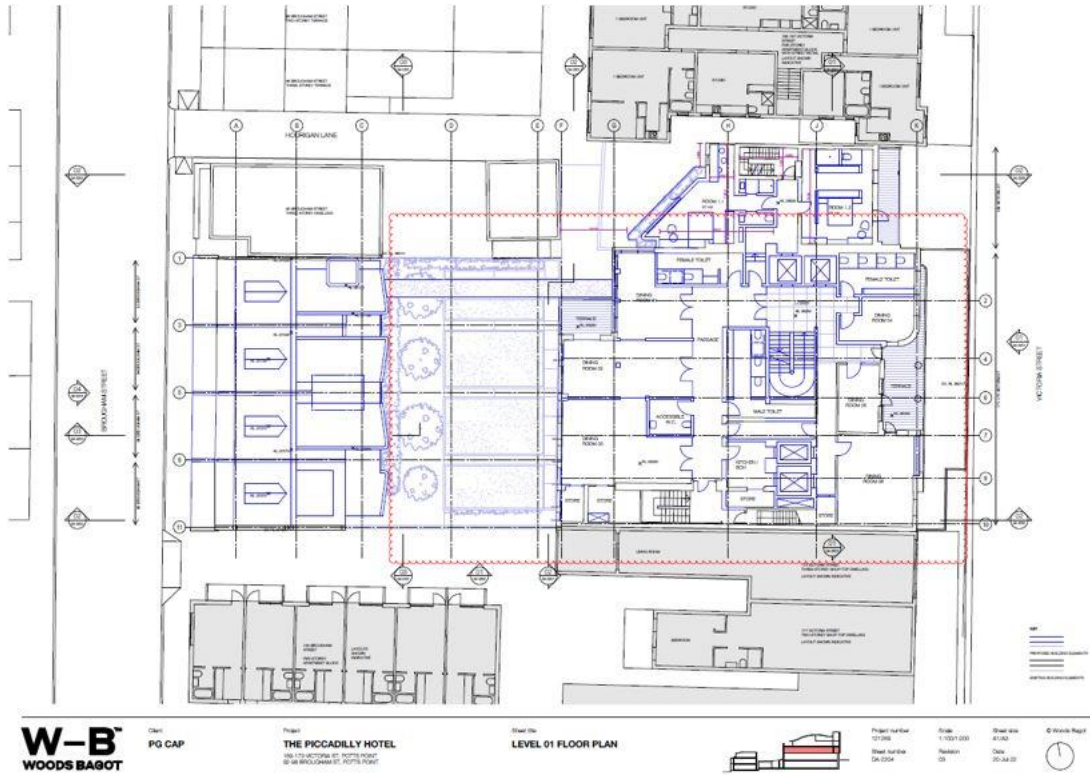


Figure 35: Proposed level 1 floor plan drawing extract

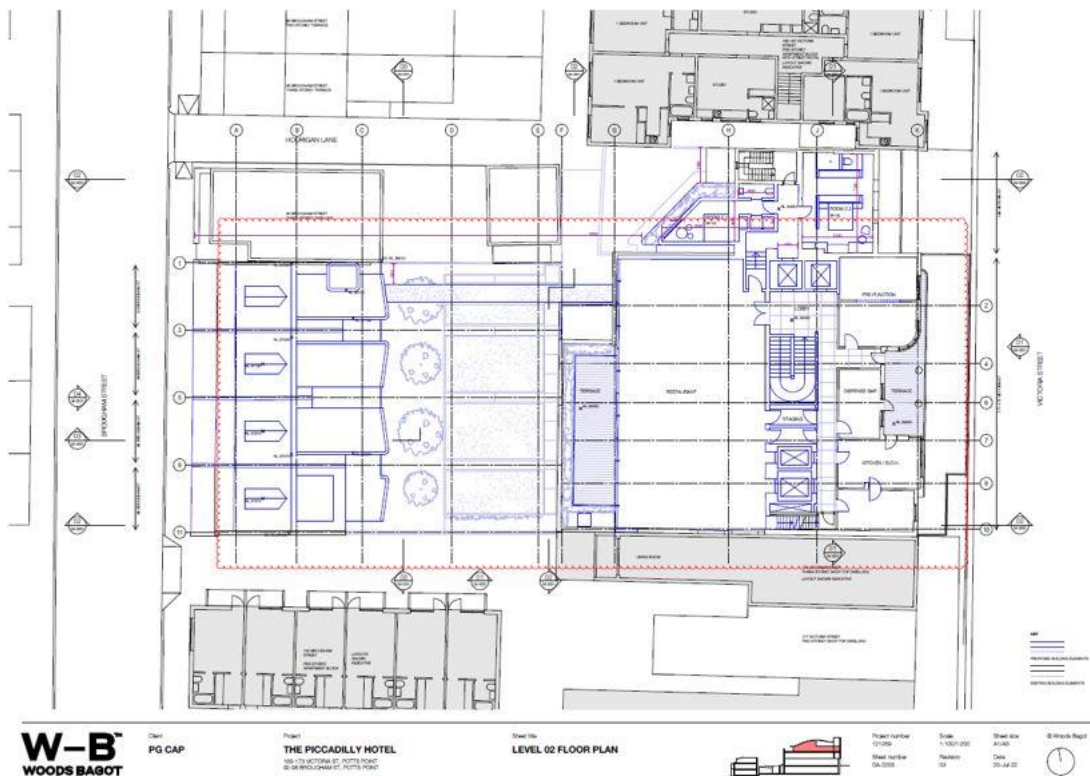


Figure 36: Proposed level 2 floor plan drawing extract

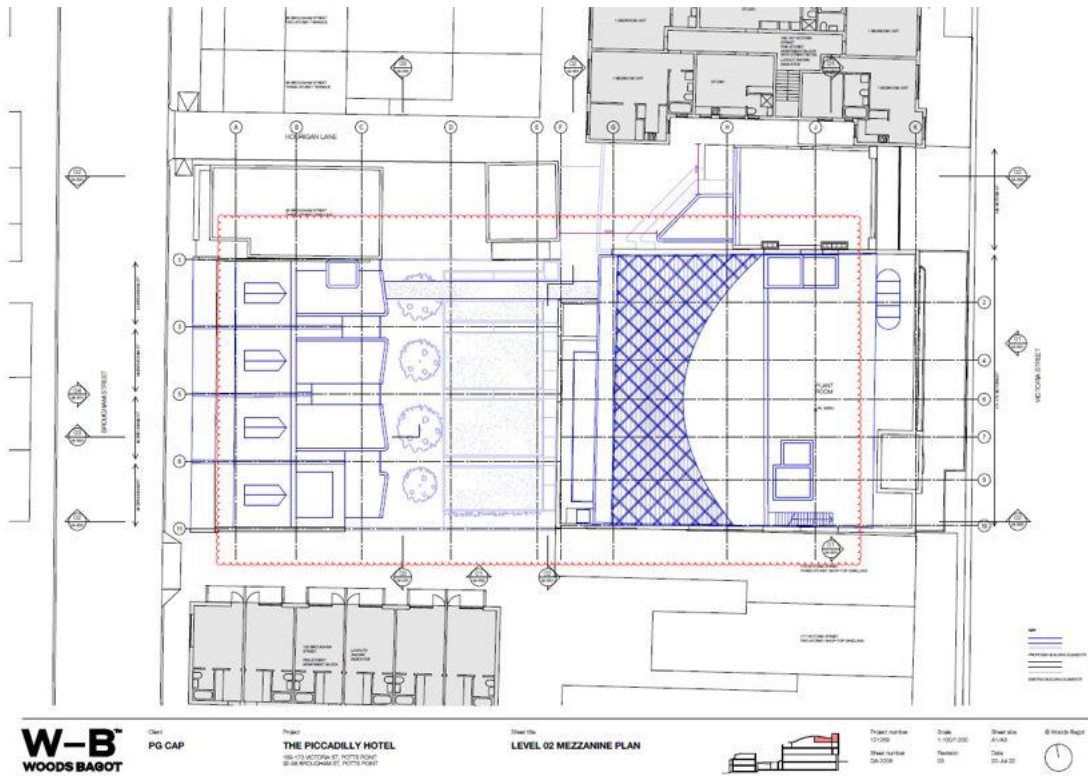


Figure 37: Proposed level 2 mezzanine plan drawing extract

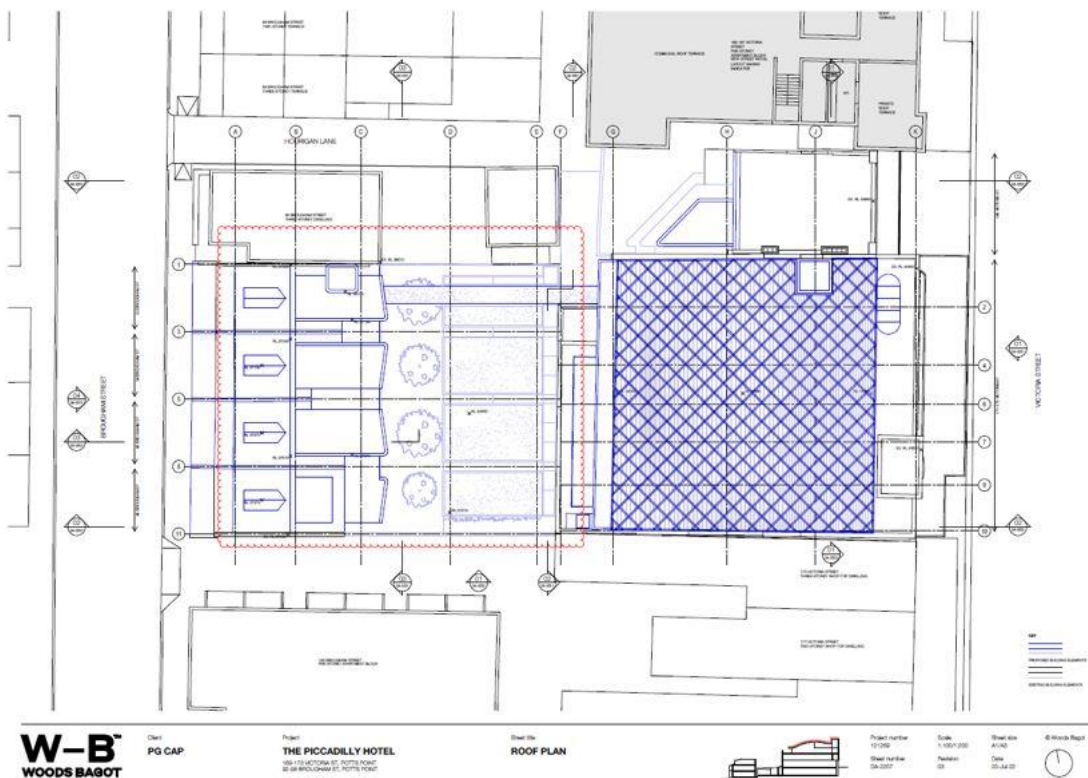


Figure 38: Proposed roof plan drawing extract

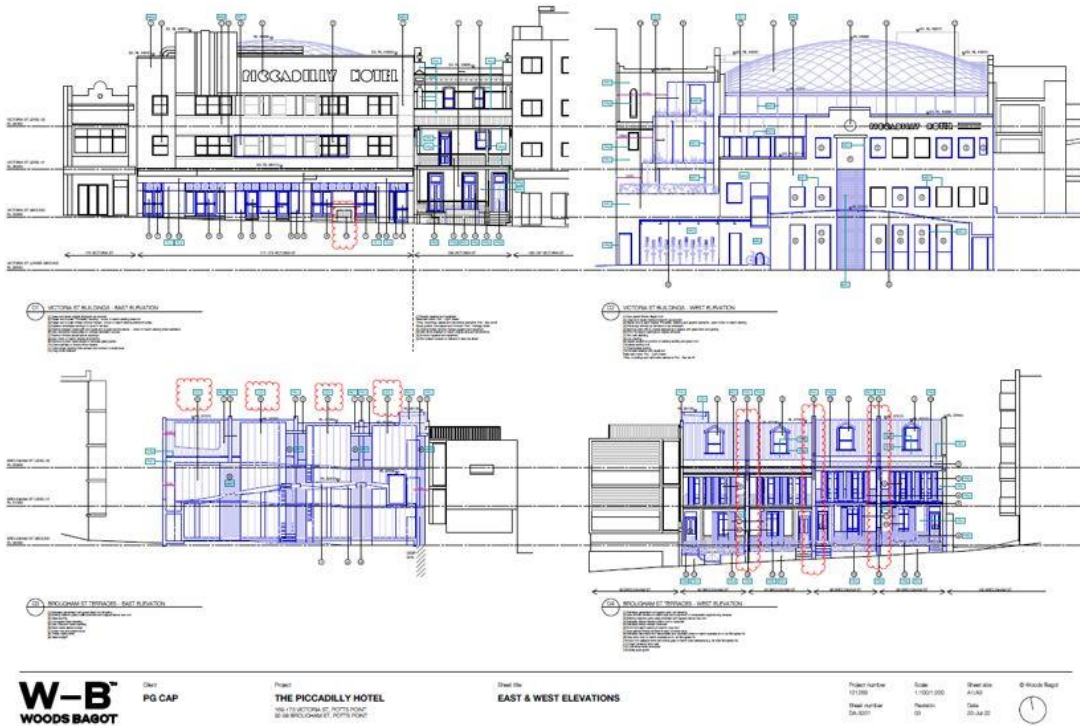


Figure 39: Proposed east and west elevation drawing extracts

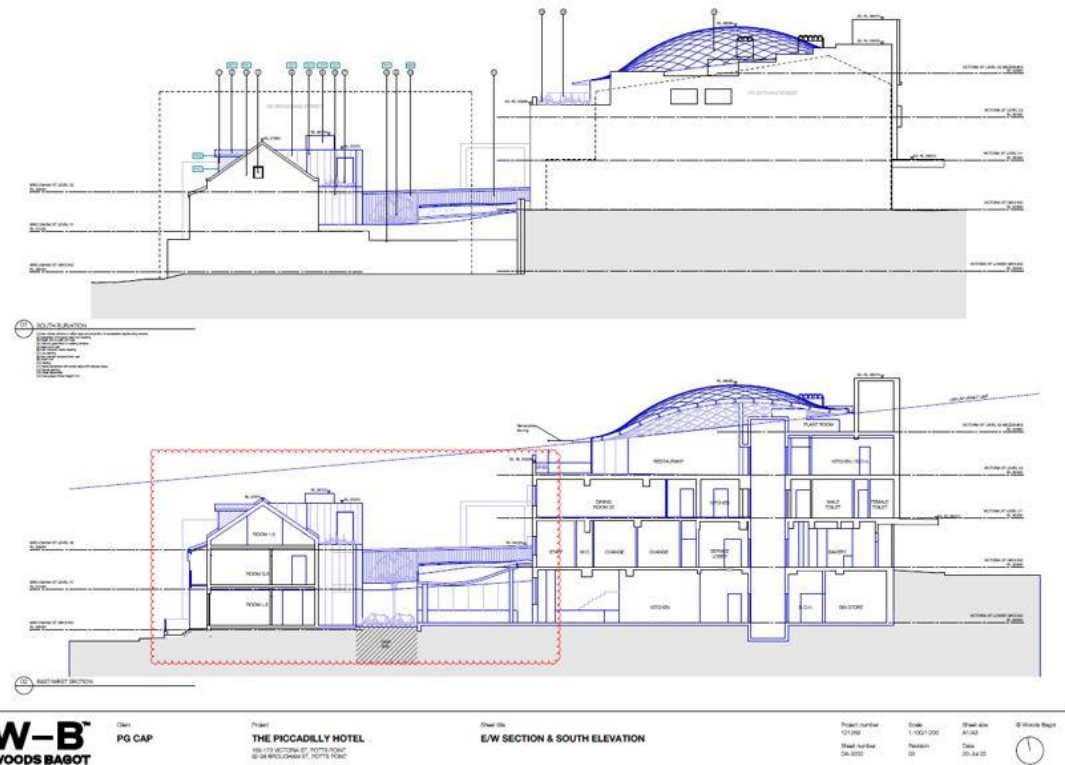


Figure 40: Proposed east-west section and south elevation drawing extracts

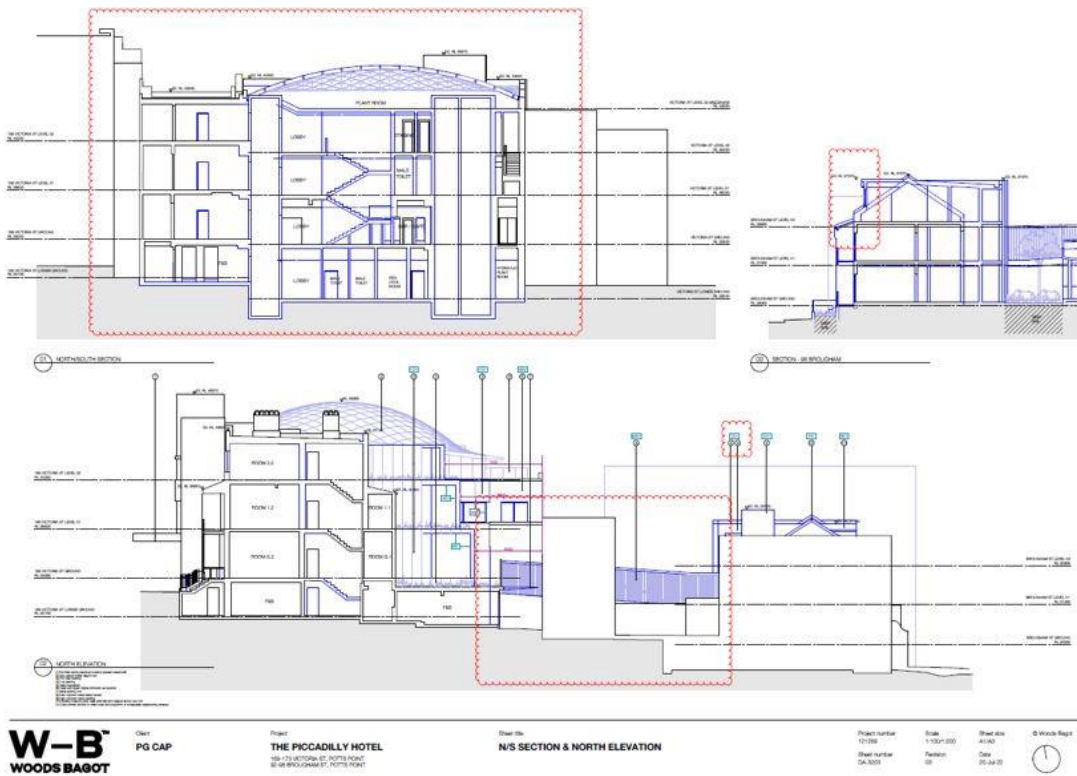


Figure 41: Proposed north-south section and north elevation drawing extracts

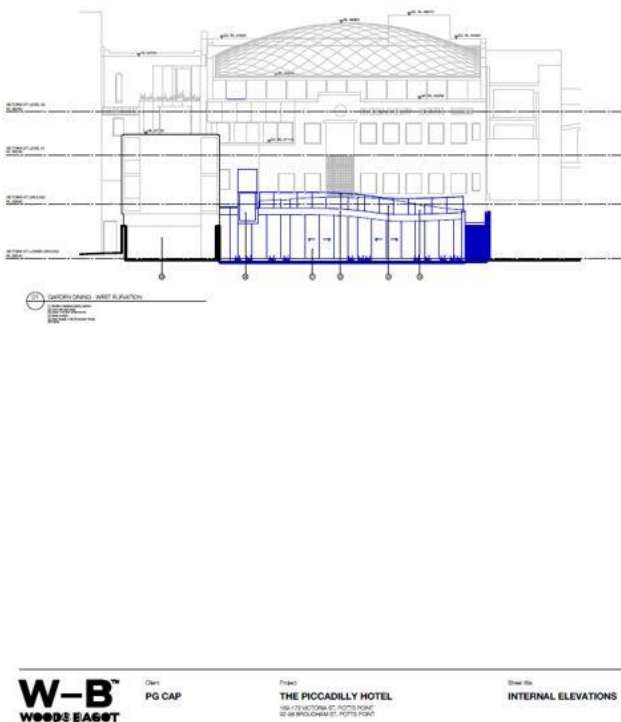
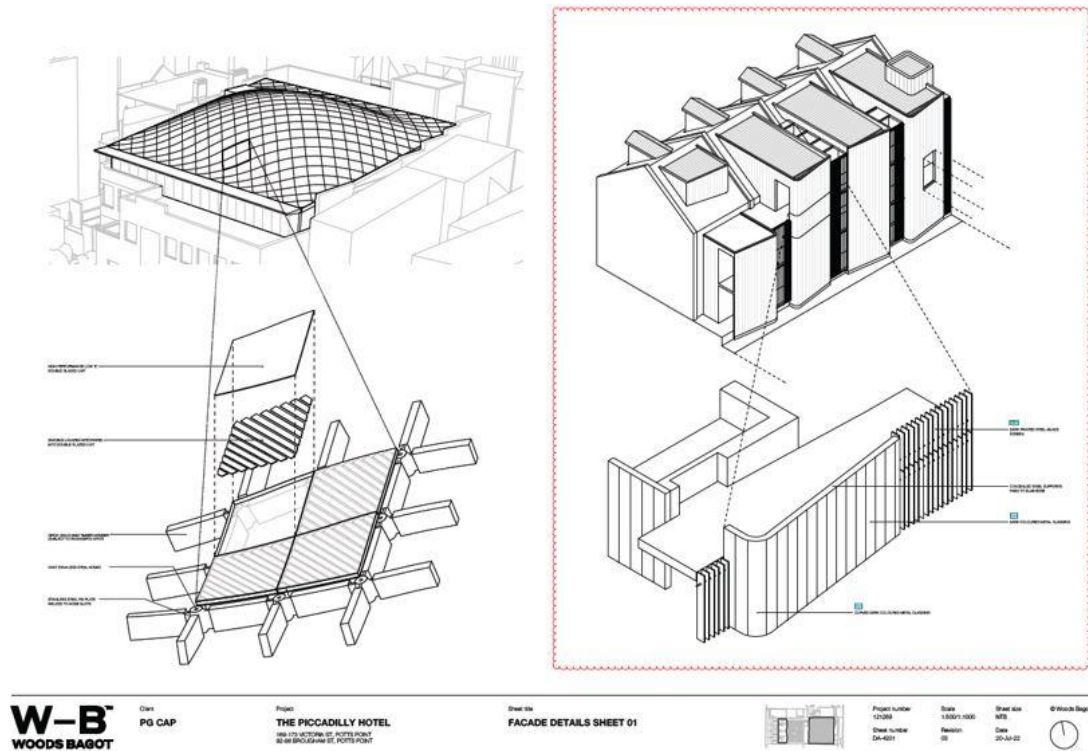
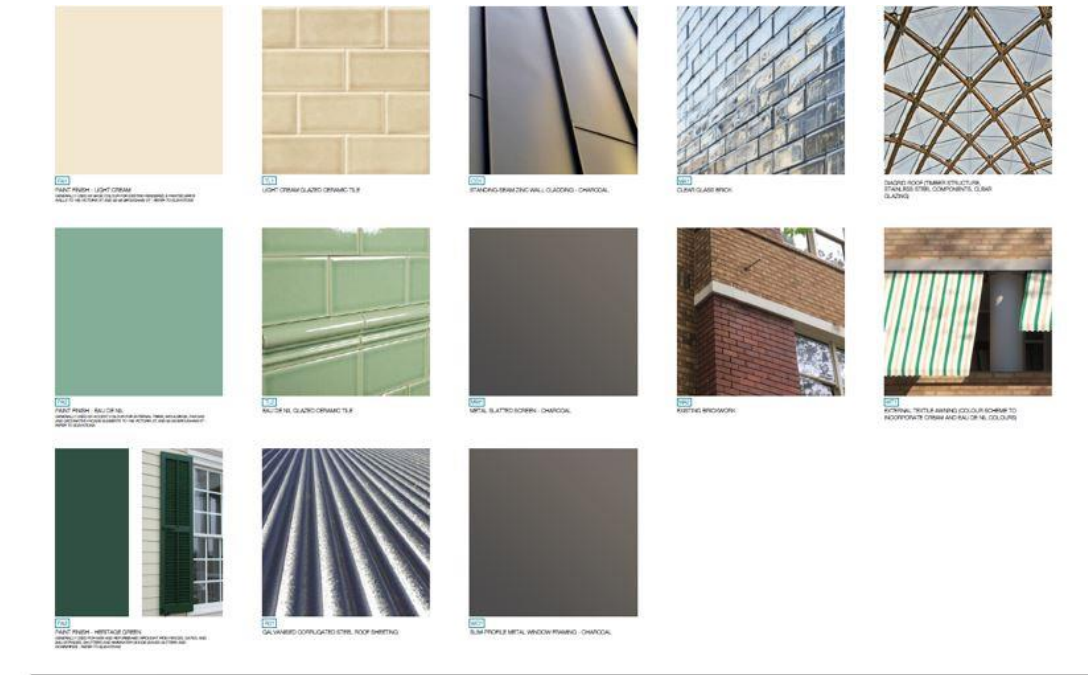


Figure 42: Proposed internal elevation drawing extract



W-B Woods Bagot
 Client: PG CAP
 Project: THE PICCADILLY HOTEL
 485-515 VICTORIA ST. POTTES POINT
 20-28 BRIDGEWAY ST. POTTES POINT
 Sheet title: FACADE DETAILS SHEET 01
 Project Number: 121289
 Scale: 1:500/1:1000
 Sheet Number: 24-601
 Revision: 01
 Date: 20-11-22
 © Woods Bagot

Figure 43: Proposed facade details drawing extract



W-B Woods Bagot
 Client: PG CAP
 Project: THE PICCADILLY HOTEL
 485-515 VICTORIA ST. POTTES POINT
 20-28 BRIDGEWAY ST. POTTES POINT
 Sheet title: FINISHES
 Project Number: 121289
 Scale: A1/A2
 Sheet Number: 24-601
 Revision: 01
 Date: 20-11-22
 © Woods Bagot

Figure 44: Proposed finishes drawing extract



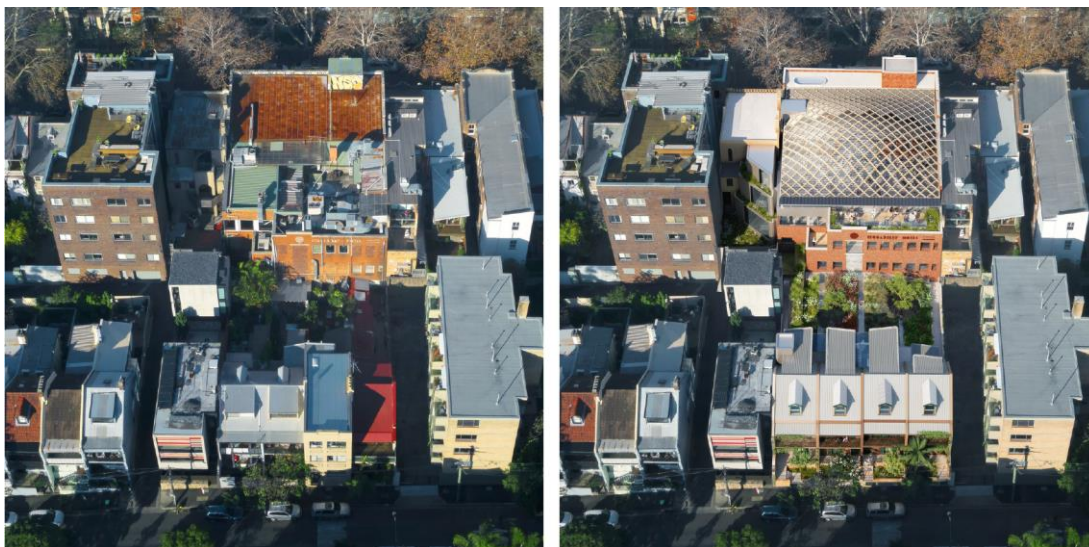
Figure 45: Proposed photomontage drawing extract of the development viewed from Victoria St



Figure 46: Proposed photomontage drawing extract of the development viewed from Brougham St



Figure 47: Proposed aerial photomontage drawing extract of the development and surroundings



Figures 48 & 49: Existing aerial photograph of the subject site and surroundings (left) and proposed aerial photomontage drawing extract of the development and surroundings (right)

Assessment

33. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Environmental Planning and Assessment Regulation 2021

34. Schedule 6, Part 1(3) of the Environmental Planning and Assessment Regulation, 2021 states that:

The 2000 Regulation continues to apply instead of this Regulation to a development application and an application for a complying development made but not finally determined before 1 March 2022.

35. The subject development application was made prior to 1 March 2022 and the Environmental Planning and Assessment Regulation, 2000 applies to the proposal as a result.

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)

36. The aim of Chapter 4 of the Resilience and Hazards SEPP 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.
37. A preliminary site investigation report, prepared in accordance with the Resilience and Hazards SEPP and the associated guidelines has been submitted with the amended application.
38. The City's Health and Building Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed mix of land uses, in accordance with Clause 4.6 of the Resilience and Hazards SEPP and the associated guidelines. The recommended conditions are included in Attachment A.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)

39. The relevant provisions of the Transport and Infrastructure SEPP have been considered in the assessment of the development application under the heading provided below.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network Clause 2.48 Determination of development applications – other development

40. The application is subject to Clause 2.48 of the Transport and Infrastructure SEPP as the development may affect existing electricity infrastructure within and adjoining to the site.
41. In accordance with the requirements of the Clause, the application was referred to Ausgrid.
42. Ausgrid provided a response, raising no objections to the proposed development subject to a condition, which has been included in Attachment A.

**State Environmental Planning Policy (Biodiversity and Conservation) 2021
(Biodiversity and Conservation SEPP)**

43. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to the relevant provisions in Chapter 2 of the Biodiversity and Conservation SEPP.
44. The Biodiversity and Conservation SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
45. The City's Tree Management Unit and Heritage Specialist have provided advice which does not raise objections to the proposed development, including removal of trees from the site, subject to conditions.
46. A range of conditions relating to the requirement for replacement tree plantings, street tree protection and landscape treatment have been included in Attachment A.
47. The site is also located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 10 Sydney Harbour Catchment of the Biodiversity and Conservation SEPP.
48. The Biodiversity and Conservation SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
49. The key relevant principles seek to:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
50. The site is not located in the Foreshores Waterways Area or adjacent to a waterway however and, with the exception of the objective of improved water quality, the objectives of Chapter 10 of the Biodiversity and Conservation SEPP are not applicable to the proposed development.
51. The proposal achieves the relevant objectives of the Biodiversity and Conservation SEPP, subject to the recommended conditions relating to erosion and sediment control, stormwater management, tree protection, tree plantings and landscaping, which are included in Attachment A.

Local Environmental Plans**Sydney Local Environmental Plan 2012 (Sydney LEP 2012)**

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in both the B4 Mixed Use zone along Victoria Street, and the R1 General Residential zone along Brougham Street.</p> <p>The proposed development is defined as a 'mixed use development', containing indicative 'food and drink premises' and 'hotel accommodation' land uses.</p> <p>While 'mixed use development' and 'food and drink premises' are permissible with consent in both zones, 'hotel accommodation' comprises a land use which is a subset of 'tourist and visitor accommodation', which is prohibited in the R1 General Residential zone.</p> <p>As discussed above under the 'Relevant Application History' heading, hotel accommodation is permissible given the site specific provisions applicable to the properties at 92-98 Brougham Street, Potts Point.</p> <p>Refer to the assessment provided in the table sections below addressing Clause 2.5 and Schedule 1 of the Sydney LEP 2012.</p>
2.5 Additional permitted uses for particular land	Yes	<p>Clause 2.5 of the Sydney LEP 2012 allows for development to be carried out on particular land referred to in Schedule 1 of the Sydney LEP 2012 with development consent, having effect, despite the operation of the Land Use Table.</p> <p>Refer to the further assessment provided in the table section below addressing Schedule 1 of the Sydney LEP 2012.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 12 metres is permitted on the site.</p> <p>The height of the proposed additions to the buildings at 92, 94, 96 and 98 Brougham Street comply with the standard.</p> <p>A height of 13.05 metres is proposed to the building at 169 Victoria Street, Potts Point, and a height of 14.99 metres is proposed to the building at 171-173 Victoria Street, Potts Point.</p> <p>The proposed development does not comply with the maximum height of buildings development standard as a result.</p> <p>A request to vary the maximum height of buildings development standard in accordance with Clause 4.6 has been submitted with the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.4 Floor space ratio (FSR)	No	<p>A maximum FSR of 1.75:1, or 1,817 square metres of Gross Floor Area (GFA), is permitted to the properties at 169 and 171-173 Victoria Street, Potts Point, and the properties at 96 and 98 Brougham Street, Potts Point.</p> <p>A maximum FSR of 1.5:1, or 410 square metres of GFA, is permitted to the properties at 92 and 94 Brougham Street, Potts Point.</p> <p>A total GFA of 2,226 square metres to the total site area of 1,331 square metres results in an FSR of 1.7:1 permitted on the site.</p> <p>A total GFA of 2,536 square metres, or an FSR of 1.93:1 is proposed.</p> <p>The proposed development does not comply with the maximum FSR development standard as a result.</p>

Provision	Compliance	Comment
		<p>A request to vary the maximum FSR development standard in accordance with Clause 4.6 has been submitted with the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 and Clause 4.4 of the Sydney LEP 2012.</p> <p>Written Clause 4.6 variation requests have been submitted with the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.6 Architectural roof features	Not applicable	<p>The new roof proposed over the Piccadilly Hotel has been described as an architectural roof feature in the subject application.</p> <p>The objective of the clause is to permit 'minor' architectural roof features to exceed height limits.</p> <p>The new roof is not a 'minor' architectural roof feature in this regard and the clause does not apply to the proposal.</p>
5.10 Heritage conservation	Yes, subject to conditions	<p>The site contains a heritage item and is located within a heritage conservation area.</p> <p>The application was referred to the City's Heritage Specialist.</p> <p>The advice received is that the proposed development will not have detrimental impacts on the significance of the subject heritage item or the surrounding heritage conservation area.</p>

Provision	Compliance	Comment
		<p>This advice is subject to the conditions included in Attachment A relating to the conservation of the site's heritage significance.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
5.21 Flood planning	Yes, subject to conditions	<p>The site is identified as being located on land subject to flooding.</p> <p>The Stormwater Management Plan submitted with the application sets flood planning levels for the proposed development, which are in accordance with the relevant requirements of the City's Interim Floodplain Management Policy.</p> <p>The application was referred to the City's Public Domain and Water Assets Units.</p> <p>The advice received is supportive of the proposal, subject to conditions included in Attachment A to ensure that the recommendations made in the Stormwater Management Plan are carried through to the certification, construction and operational phases of the development so that the specific flood planning design criteria set out in Clause 7.15 of the Sydney LEP 2012 are met.</p> <p>In light of the above, the objectives of Clause 7.15 of the Sydney LEP 2012 are achieved by the proposal.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes, subject to conditions	The proposed development exhibits design excellence for the following reasons, subject to the conditions included in Attachment A:

Provision	Compliance	Comment
		<ul style="list-style-type: none"> <li data-bbox="852 271 1385 367">• It is generally of a high standard that proposes high quality materials and detailing. <li data-bbox="852 405 1385 667">• The form and external appearance of the proposed development will improve the quality and amenity of the public domain to its street and lane frontages, by restoring the heritage significance of the buildings and providing active uses. <li data-bbox="852 705 1385 801">• The proposal will not significantly impact any view corridors within the locality. <li data-bbox="852 840 1385 972">• The subject site is suitable for the proposed mix of land uses in light of the zoning and site specific provisions applying to the land. <li data-bbox="852 1010 1385 1173">• It is compatible with the heritage significance of the site, and with the existing development along Victoria Street and Brougham Street. <li data-bbox="852 1211 1385 1339">• It will contribute positively to the character of the locality and surrounding heritage conservation area. <li data-bbox="852 1377 1385 1541">• The bulk, massing, modulation and street frontage height of the proposed development does not present any significant visual or environmental impacts. <li data-bbox="852 1579 1385 1809">• It has generally acceptable environmental impacts with regard to the amenity of the neighbouring properties and the surrounding area in terms of overshadowing, solar access, visual and acoustic privacy, noise and reflectivity. <li data-bbox="852 1848 1385 1944">• It achieves the principle of ecologically sustainable development (ESD).

Provision	Compliance	Comment
		<ul style="list-style-type: none"> The proposed public domain interface between the site and the street frontages of the site is appropriate and acceptable. The transport, traffic and servicing requirements of the proposal can be accommodated within the development and within the existing loading zone to Victoria Street. The concept landscape design is integrated with the architectural scheme which will provide acceptable landscape amenity to the subject site and surroundings.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes, subject to conditions	<p>The site is located in the Residual Lands affordable housing contribution area and is subject to an affordable housing contribution.</p> <p>A condition is included in Attachment A to require payment of the applicable contribution.</p> <p>Refer to the further assessment provided under the 'Contribution under Clause 7.13 of the Sydney Local Environmental Plan 2012' heading below.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils.</p> <p>The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>

Provision	Compliance	Comment
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>While the proposal includes demolition of parts of the existing buildings on the site, it also includes construction of alterations and additions to the subject buildings under the same application.</p> <p>Council planning assessment staff are satisfied that the site will be comprehensively redeveloped under the subject development application.</p>
7.26 Public art	Yes, subject to conditions	<p>In accordance with Section 3.1.5 of the Sydney DCP 2012, new development is required to provide public art in accordance with the City's guidelines for public art and public art policy.</p> <p>The cost of the proposed development exceeds \$10 million and the provisions of the City of Sydney Interim Guidelines for Public Art in Private Developments apply.</p> <p>Neither a preliminary or detailed public art plan was submitted with the application.</p> <p>The application was referred to the City's Public Art Unit.</p> <p>The advice received is generally supportive of the proposal, subject to:</p> <ul style="list-style-type: none"> • A deferred commencement condition included in Attachment A to require the provision of a preliminary public art plan prior to the operation of consent. • A further condition requiring the provision of a detailed public art plan and public art within the proposed development in accordance with the above requirements. <p>Subject to these conditions, the proposal is satisfactory with regard to Clause 7.26(2) of the Sydney LEP 2012.</p>

Development Control Plans

Sydney Development Control Plan 2012 (Sydney DCP 2012)

53. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided under the following headings and table sections.

Section 2 – Locality Statements

54. The site is located within the both the Woolloomooloo and Kings Cross locality areas.
55. It is therefore subject to the relevant provisions of both Section 2.4.3 and Section 2.4.7 of the Sydney DCP 2012.
56. The proposed development is generally in keeping with the character and the design principles of both locality areas in the following manner:
- (a) The proposal provides a new curved roof which forms a new skyline element, which sits comfortably within the existing height context of the Piccadilly Hotel building, but will not serve to set a precedent for future development given the particular circumstances of the site and surrounding development.
 - (b) The low scale residential character below the street tree canopy of Brougham Street is generally maintained by the proposal, given the retention and restoration of the terrace forms along the western edge of the site.
 - (c) The proposal does not significantly affect district views or view corridors across the site to the Domain and Art Gallery of NSW.
 - (d) The proposal relates to the topography of the neighbourhood, with additions proposed to the existing development on the ridge along Victoria Street and lower scale built form along Brougham Street.
 - (e) Subject to the conditions included in Attachment A, the proposal responds in a satisfactory manner to the heritage significance of the subject heritage item and contributory buildings within the surrounding heritage conservation area, including the streetscapes to Victoria Street, Brougham Street and Hourigan Lane.
 - (f) The proposal provides active commercial and retail services which provide all day activity for existing and future residents and visitors, in close proximity to a range of public transport services and which will serve the broader community's needs.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public art	Yes, subject to conditions	Section 3.1.5(3) of the Sydney DCP 2012 states that public art must be provided in new development in accordance with the both the City's guidelines for public art and public art policy.

Provision	Compliance	Comment
		<p>The cost of the proposed development exceeds \$10 million and the provisions of the City of Sydney Interim Guidelines for Public Art in Private Developments apply.</p> <p>Neither a preliminary or detailed public art plan was submitted with the application.</p> <p>The application was referred to the City's Public Art Unit.</p> <p>The advice received is generally supportive of the proposal, subject to:</p> <ul style="list-style-type: none"> • A deferred commencement condition included in Attachment A to require a preliminary public art plan. • A further condition requiring a detailed public art plan and provision of public art within the proposed development in accordance with the above requirements.
<p>3.2 Defining the Public Domain</p> <p>3.2.1 Improving the public domain</p>	Yes	<p>The proposal does not result in any significant additional overshadowing impacts to publicly accessible spaces, or significantly impede views from the public domain to highly utilised public places, parks, Sydney Harbour or heritage buildings and monuments.</p>
<p>3.2.2 Addressing the street and public domain</p>	Yes	<p>The proposed development positively addresses both Victoria Street and Brougham Street, in addition to Hourigan Lane, maintaining the existing points of access into the site and providing activity to the site street edges.</p>
<p>3.2.3 Active frontages</p>	Not applicable	<p>The site is not mapped on the Active frontages map in the Sydney DCP 2012 as being required to provide any active frontages, however the proposal will provide activity to the street edges of the site, particularly to Victoria Street.</p>

Provision	Compliance	Comment
3.2.4 Footpath awnings	Yes, subject to conditions	<p>The proposed development includes the retention of, and repair and replacement works to the existing awning to the Piccadilly Hotel.</p> <p>Appropriate conditions are included in Attachment A relating to the subject awning to ensure that this approach is successfully carried through to the certification, construction and operational phases of the development.</p>
3.2.7 Reflectivity	Yes, subject to condition	<p>A condition is recommended in Attachment A to ensure that light reflectivity from the proposed development does not exceed 20%.</p>
3.2.8 External lighting	Yes, subject to conditions	<p>No external lighting is proposed.</p> <p>Appropriate conditions are included in Attachment A to:</p> <ul style="list-style-type: none"> • Require any under awning illumination to comply with the relevant Australian Standard. • Require future external lighting to be the subject of a separate application.
<p>3.5 Urban Ecology</p> <p>3.5.2 Urban vegetation</p>	Acceptable, subject to conditions	<p>The proposed development includes landscape treatments and tree plantings on the site, including tree plantings in a deep soil area at the rear of the Brougham Street terraces, green roofs and planters.</p> <p>Although the proposed tree plantings will not provide 15% canopy cover of the site within 10 years in accordance with the applicable provisions, the proposal provides a significant improvement in terms of contribution to urban vegetation than that presented by the existing development.</p> <p>The application was referred to both the City's Landscape Assessment Officer and Tree Management Unit.</p>

Provision	Compliance	Comment
		<p>The advice received is generally supportive of the proposal, subject to a number of conditions included in Attachment A relating to the landscape treatment of the site.</p>
3.5.3 Tree management	Yes, subject to conditions	<p>The proposed development involves the removal of a number of trees from the rear yards of the Brougham Street terraces, and retention of the Frangipani tree in the front yard of 94 Brougham Street, Potts Point.</p> <p>The amended application was referred to the City's Tree Management Unit.</p> <p>The advice received is generally supportive of the proposal, subject to a number of appropriate conditions included in Attachment A relating to:</p> <ul style="list-style-type: none"> • The removal of the subject trees. • The protection of the retained tree and nearby street trees. • The planting of replacement trees on the subject site.
3.6 Ecologically Sustainable Development (ESD)	Yes, subject to conditions	<p>The proposed development will meet the sustainability requirements of Section J of the Building Code of Australia, which is applicable to the proposed land uses.</p> <p>The applicant has submitted a Design for Environmental Performance Report which identifies the relevant sustainable performance designs and targets.</p> <p>The application was referred to the City's Environmental Projects Unit.</p> <p>The advice received is supportive of the proposal, subject to a condition of consent included in Attachment A referencing the report commitments. Additional conditions are also included to ensure that ESD measures are implemented and carried through to the certification, construction and operational phases of the development.</p>

Provision	Compliance	Comment
		<p>These include a deferred commencement design modification condition requiring the depiction of the proposed photovoltaic system to the roofs above the rear additions to the Brougham Street terraces at 92, 94, 96 and 98 Brougham Street, Potts Point.</p> <p>Subject to these conditions, the proposal achieves the ESD objectives set out in Section 3.6 of the Sydney DCP 2012.</p>
3.7 Water and Flood Management	Yes, subject to conditions	<p>The site is identified as being on flood prone land.</p> <p>The application was referred to the City's Public Domain Unit.</p> <p>The advice received is supportive of the proposal, subject to appropriate conditions included in Attachment A relating to flooding, stormwater drainage management and stormwater quality.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes, subject to conditions	<p>The proposed development does not propose site subdivision, strata subdivision or consolidation of allotments.</p> <p>The application was referred to the City's Specialist Surveyor.</p> <p>The advice received is supportive of the proposal, subject to appropriate conditions included in Attachment A which preclude strata subdivision of the proposed hotel accommodation and require consolidation of the subject allotments.</p> <p>Consolidation is recommended given that the subject buildings are all proposed to be interconnected with one another and occupy all of the subject allotments. Window and door openings along internal boundaries may also result in associated Building Code of Australia compliance issues, particularly relating to the retention of significant heritage building fabric on the subject site.</p>

Provision	Compliance	Comment
3.9 Heritage	Yes, subject to conditions	<p>The site contains an item of local heritage significance, and is identified as comprising contributing buildings within the surrounding heritage conservation area, with the exception of the residential flat building at 96 Brougham Street, Potts Point, which is identified as a neural building.</p> <p>The application was referred to the City's Heritage Specialist.</p> <p>The advice received was generally supportive and that the application will not have detrimental impacts on the significance of the subject heritage item or the surrounding heritage conservation area, subject to the conditions included in Attachment A.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
<p>3.10 Significant Architectural Building Types</p> <p>3.10.3 Pubs and hotels older than 50 years</p>	Yes, subject to conditions	<p>The site contains a hotel building which is older than 50 years.</p> <p>The application was referred to the City's Heritage Specialist.</p> <p>The advice received was generally supportive and that proposed development generally satisfies the relevant objectives and provisions relating to alterations, additions and change of use of pubs and hotels, subject to the conditions relating to the conservation of remaining heritage significant building fabric included in Attachment A.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
<p>3.11 Transport and Parking</p> <p>3.11.1 Managing transport demand</p>	Yes, subject to conditions	The proposal comprises a mixed-use development including a non-residential development exceeding 1,000 square metres of GFA.

Provision	Compliance	Comment
		<p>As such, it generates a requirement for a Transport Impact Study and Transport Access Guide under the relevant provisions of Section 3.11.1 of the Sydney DCP 2012.</p> <p>A Transport Impact Study was submitted with the application.</p> <p>The application was referred to the City's Access and Transport Unit.</p> <p>The advice received was generally supportive, subject to a range of conditions included in Attachment A relating to the provision of a loading and servicing management plan, transport access guide and parking plan.</p>
3.11.3 Bike parking and associated facilities	Yes, subject to condition	<p>The Transport Impact Study submitted with the application in support of the proposed development identifies a minimum requirement for 28 bicycle parking spaces within the site, based upon the mix of proposed and indicative land uses.</p> <p>The proposal provides a secure bicycle parking facility with the capacity for 15 bicycle parking spaces.</p> <p>The non-compliance is not supported and a condition requiring a compliant bicycle parking facility is included in Attachment A.</p>
3.11.6 Service vehicle parking	Yes, subject to conditions	<p>The proposed development includes a mix of land uses which generates a range of servicing requirements for the site.</p> <p>No on-site service vehicle parking is proposed, largely due to the constraints posed by the heritage significance of the existing buildings on the site.</p> <p>All site servicing (including waste collection) is proposed to occur within the existing 17 metre loading zone on the Victoria Street frontage of the subject site.</p>

Provision	Compliance	Comment
		<p>The Transport Impact Study submitted includes an assessment of the site servicing requirements, which concludes that the above loading zone can accommodate the loading and servicing demand generated by the proposal.</p> <p>The application was referred to the City's Access and Transport Unit.</p> <p>The advice received was generally supportive of the proposed servicing arrangements, subject to a range of conditions included in Attachment A.</p> <p>These conditions require a loading and servicing management plan, transport access guide and parking plan.</p>
3.11.8 Bus parking	Yes, subject to conditions	<p>The proposal includes a hotel accommodation use with 17 rooms.</p> <p>No on site bus parking is proposed, largely due to the constraints posed by the heritage significance of the existing buildings on the site.</p> <p>The Transport Impact Study submitted with the application includes an assessment the provision of bus set-down and parking, stating that large coaches will not directly service the proposed hotel accommodation use.</p> <p>Hotel guests arriving by bus or by coach will be dropped off at a designated point (such as Central Station) and transported to the hotel via shuttle vans/ minibuses/taxis, which can utilise the existing 17 metre loading zone on the Victoria Street frontage of the site.</p> <p>The application was referred to the City's Access and Transport Unit.</p> <p>The advice received was generally supportive, subject to conditions included in Attachment A relating to the provision of a transport access guide and parking plan.</p>

Provision	Compliance	Comment
3.12 Accessible Design	Yes, subject to conditions	Appropriate conditions are included in Attachment A to ensure that the proposed development provides an appropriate level of access and facilities for persons with disabilities.
3.13 Social and Environmental Responsibilities	Yes, subject to conditions	<p>The safety and security of the public domain is enhanced by the proposed increase in activity within the site and casual surveillance of the surrounding streets from the development.</p> <p>The proposal provides separate and secure entrances to the different building uses, adequate passive surveillance and a range of other security measures.</p> <p>The proposal provides separate and secure entrances to the different building uses, adequate passive surveillance and a range of other security measures.</p> <p>The proposal has generally been designed in accordance with the 'Crime Prevention Through Environmental Design' (CPTED) principles, and is acceptable on this basis.</p> <p>Subject to the conditions included in Attachment A relating to the provision of CCTV and plans of management for the hotel accommodation and food and drink premises uses, the proposed development is acceptable with regard to considerations relating to social and environmental responsibilities.</p>
3.14 Waste	Yes, subject to conditions	<p>The proposed development was accompanied by a Waste Management Plan, which is generally in accordance with the objectives and provisions set out under Section 3.14 of the Sydney DCP 2012.</p> <p>The application was referred to the City's Cleansing and Waste Unit.</p> <p>The advice received was generally supportive with regard to waste management considerations.</p>

Provision	Compliance	Comment
		<p>This is subject to appropriate conditions included in Attachment A to ensure that the proposed development achieves compliance with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
<p>3.15 Late Night Trading Management</p>	<p>Yes, subject to conditions</p>	<p>The site is partly located within a Local Centre Area along Victoria Street, and partly within an area which is not identified as a late night trading area along Brougham Street.</p> <p>The proposal includes a hotel accommodation use, with hours of operation 24 hours per day, 7 days per week.</p> <p>The indicative food and drink premises uses depicted on the submitted drawings are proposed to be subject to a separate development application (or development applications) for their detailed fit out and use, including patron capacity and hours of operation. As such, no consent is recommended to be granted to these indicative uses.</p> <p>Appropriate conditions are included in Attachment A to require a separate development application or applications to be lodged to seek consent for the indicative food and drink premises uses, in addition to the submission of revised plans of management for the uses proposed on the site.</p>
<p>3.16 Signage and Advertising 3.16.1 Signage strategy</p>	<p>Yes, subject to conditions</p>	<p>No signage is proposed.</p> <p>Appropriate conditions are included in Attachment A to:</p> <ul style="list-style-type: none"> • Require a signage strategy to be submitted to the City for approval. • Require future signage to be the subject of a separate application and be consistent with the approved signage strategy.

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	Acceptable	<p>The site is permitted a maximum building height of four storeys along Victoria Street, and two storeys along Brougham Street, with a maximum street frontage height of two storeys along Brougham Street.</p> <p>The proposed development comprises four storeys in height to Victoria Street, and three storeys to Brougham Street with a street frontage height of two storeys.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.1.2 Building setbacks	Acceptable	<p>The proposed development generally maintains the existing setbacks of the subject buildings on the site, with the exception of the proposed:</p> <ul style="list-style-type: none"> • Rear lower ground floor addition to the Piccadilly Hotel located in the rear yards of the Brougham Street terraces. • Rear additions to the Brougham Street terraces. <p>Although the existing rear setback pattern is proposed to be varied, it is acceptable in the specific circumstances of the subject site and proposed development, as it:</p> <ul style="list-style-type: none"> • Does not give rise to any significantly adverse environmental impacts. • Does not affect the visual setting of the subject heritage item or the contributing buildings on the site within the heritage conservation area.

Provision	Compliance	Comment
<p>4.1.3 Residential amenity</p> <p>As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.</p>		
4.1.3.1 Solar access	Yes	<p>The application was accompanied by shadow diagrams and sun's eye view diagrams which demonstrate that the additional overshadowing resulting from the proposed development is generally in accordance with the minimum provisions set out in Section 4.2.3.1 of the Sydney DCP 2012.</p>
4.1.3.3 Landscaping	Yes, subject to conditions	<p>The application was accompanied by a set of landscape drawings prepared by an appropriately qualified landscape architect in accordance with the requirements set out in Section 4.1.3.3 of the Sydney DCP 2012 and the Sydney Landscape Code Volume 2: All Development Except for Single Dwellings.</p> <p>The application was referred to the City's Landscape Assessment Officer.</p> <p>The advice received was generally supportive, subject to appropriate conditions which are included Attachment A, relating to the provision of the detailed landscape treatment of the site, proposed green roofs and planters.</p>
4.1.3.4 Deep soil planting	Acceptable	<p>The proposed development provides a total of approximately 124 square metres of deep soil area, or 9.4% of the overall site area. The consolidated deep soil area in the rear yards of the Brougham is proposed with minimum dimensions of approximately 18.7 metres width by 4.1 depths depth.</p> <p>The non-compliance with the control is acceptable in the specific circumstances of the site and proposed development, subject to the conditions included in Attachment A relating to:</p>

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • landscaping of the site; • tree planting; and • stormwater management.
4.1.3.6 Visual privacy	Yes	<p>The proposed alterations and additions to the Brougham Street terraces rely on existing or new window and door openings facing the street, and do not include any new fenestration to the rear or sides of the buildings which would result in significant visual privacy impacts.</p> <p>The elevated ramp connection to the rear addition to these terraces from the Piccadilly is proposed to be treated with a slatted screen to address the potential for visual privacy impacts arising from its use. Green roofs are inaccessible and include a balustrade for maintenance purposes only.</p> <p>The proposed hotel rooms to the rear of the terrace at 169 Victoria Street, Potts Point. The hotel rooms proposed within the building at 169 Victoria Street, Potts Point, rely on existing windows facing the street, or windows facing north-west, which are provided with privacy screening and planters limiting opportunities for overlooking into adjoining residential properties.</p>
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	<p>The proposed development generally respects the form, scale and setbacks of the terraces on the site and provides additions which are acceptable with regard to the predominant rear building alignment within the immediate locality.</p> <p>The proposal reinstates significant building elements of the terraces which contribute to the significance of the surrounding heritage conservation areas.</p>

Provision	Compliance	Comment
4.1.4.6 Additional storeys	Acceptable	<p>The additional storey proposed at the rear of the Brougham Street terraces does not comply with the provisions in Section 4.1.4.6 of the Sydney DCP 2012.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.1.5 Roof alterations and additions		
4.1.5.4 Traditional front dormers	Yes, subject to condition	<p>The application proposes new dormer windows to the front roof plane of each of the Brougham Street terraces.</p> <p>The proposed dormers are generally consistent with Section 4.1.5.4 of the Sydney DCP 2012.</p> <p>A condition is included in Attachment A requiring compliance with the relevant dormer window design criteria and consistency with the streetscape to Brougham Street is carried through to the certification and construction phases of the development.</p>
4.1.7 Fences	Yes, subject to condition	<p>The application proposes new iron palisade and masonry front fences, and repair and reinstate existing front fences to the Brougham Street terraces.</p> <p>The proposed front fence works are generally consistent with Section 4.1.7 of the Sydney DCP 2012.</p> <p>A condition is included in Attachment A requiring compliance with the relevant front fence criteria and consistency with the streetscape to Brougham Street is carried through to the certification and construction phases of the development.</p>
4.1.8 Balconies, verandahs and decks	Yes, subject to condition	<p>The application proposes to reinstate and repair original front balconies and verandahs to the Brougham Street terraces.</p>

Provision	Compliance	Comment
		<p>The proposed balcony and verandah works are generally consistent with Section 4.1.8 of the Sydney DCP 2012.</p> <p>A condition is included in Attachment A requiring compliance with the relevant balcony and verandah criteria and consistency with the streetscape to Brougham Street is carried through to the certification and construction phases of the development.</p>

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	Acceptable	<p>The site is permitted a maximum building height of four storeys along Victoria Street, and two storeys along Brougham Street, with a maximum street frontage height of two storeys along Brougham Street.</p> <p>The proposed development comprises four storeys in height to Victoria Street, and three storeys to Brougham Street with a street frontage height of two storeys.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Acceptable	<p>The proposal does not achieve the following minimum floor to floor heights required within the mixed use development:</p> <ul style="list-style-type: none"> A minimum 4.5 metre floor to floor height at the ground floor level A minimum 3.6 metre floor to floor height for upper floor levels. <p>The non-compliance is acceptable in the specific circumstances of the subject site and proposed development, given that:</p>

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • The existing floor levels and structure of the subject buildings are generally proposed to be retained. • Requiring compliance with the controls would result in detrimental impacts to heritage significant building fabric.
4.2.2 Building setbacks	Acceptable	<p>The proposed development generally maintains the existing setbacks of the subject buildings on the site, with the exception of the proposed:</p> <ul style="list-style-type: none"> • Rear lower ground floor addition to the Piccadilly Hotel located in the rear yards of the Brougham Street terraces. • Rear additions to the Brougham Street terraces. <p>Although the existing rear setback pattern is proposed to be varied, it is acceptable in the specific circumstances of the subject site and proposed development, as it:</p> <ul style="list-style-type: none"> • Does not give rise to any significantly adverse environmental impacts. • Does not affect the visual setting of the subject heritage item or the contributing buildings on the site within the heritage conservation area.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The application was accompanied by shadow diagrams and sun's eye view diagrams which demonstrate that the additional overshadowing resulting from the proposed development is generally in accordance with the minimum provisions set out in Section 4.2.3.1 of the Sydney DCP 2012.</p>

Provision	Compliance	Comment
4.2.3.5 Landscaping	Yes, subject to conditions	<p>The application was accompanied by a set of landscape drawings prepared by an appropriately qualified landscape architect in accordance with the requirements set out in Section 4.2.3.5 of the Sydney DCP 2012 and the Sydney Landscape Code Volume 2: All Development Except for Single Dwellings.</p> <p>The application was referred to the City's Landscape Assessment Officer.</p> <p>The advice received was generally supportive, subject to appropriate conditions which are included Attachment A, relating to the provision of the detailed landscape treatment of the site, proposed green roofs and planters.</p>
4.2.3.6 Deep Soil	Acceptable	<p>The proposed development provides a total of approximately 124 square metres of deep soil area, or 9.4% of the overall site area. The consolidated deep soil area in the rear yards of the Brougham is proposed with minimum dimensions of approximately 18.7 metres width by 4.1 depths depth.</p> <p>The non-compliance with the control is acceptable in the specific circumstances of the site and proposed development, subject to the conditions included in Attachment A relating to:</p> <ul style="list-style-type: none"> • Landscaping of the site. • Tree planting. • Stormwater management.
4.2.3.10 Outlook	Yes	<p>The application was accompanied by a view analysis, which demonstrates that views and outlook from the adjoining residential development have been considered in the site planning and massing of the proposed development.</p>

Provision	Compliance	Comment
		Refer to the further assessment provided under the 'Discussion' heading below.
4.2.3.11 Acoustic privacy	Yes, subject to conditions	<p>An acoustic report was submitted with the application in support of the proposed development.</p> <p>The application was referred to the City's Health and Building Unit.</p> <p>The advice received is that the conclusions and recommendations of the report are generally acceptable.</p> <p>Conditions are included in Attachment A to ensure that appropriate noise control measures are implemented in relation to the proposed uses of the site.</p> <p>The use of the indicative food and drink premises, including the associated outdoor areas and garden dining room, are proposed to be subject to a separate development application (or development applications) for their detailed fit out and use, including patron capacity and hours of operation. As such, no consent is recommended to be granted to these indicative uses.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The proposed development provides a generally acceptable built form with fine grain architectural character.</p> <p>The proposed scale, modulation and facade articulation of the development has been designed to respond appropriately to its context on Victoria Street, Brougham Street and Hourigan Lane.</p>
4.2.6 Waste and recycling management	Yes, subject to conditions	<p>The proposed waste and recycling management facilities generally accord with Section 4.2.6 of the Sydney DCP 2012.</p> <p>The application was referred to the City's Cleansing and Waste Unit.</p>

Provision	Compliance	Comment
		The advice received was supportive subject to conditions included in Attachment A to ensure compliance with the City of Sydney Guidelines for Waste Management in New Development.
4.2.7 Heating and cooling infrastructure	Yes, subject to conditions	<p>The proposed heating and cooling infrastructure is generally indicated to be consolidated within centralised locations, including within the level 2 mezzanine level beneath the new roof sitting over the Piccadilly Hotel.</p> <p>This will assist in achieving energy efficiency outcomes and allow for the accommodation of future technologies.</p> <p>Appropriate conditions are included in Attachment A to preclude the provision of air conditioning units to the facades and balconies and require the screening of plant in accordance with the recommendations of the submitted acoustic report.</p>
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes, subject to conditions	<p>The proposed development includes non-residential uses within proximity to existing residential uses within the B4 Mixed Use zone.</p> <p>The proposed development will not result in any significantly adverse impacts upon the amenity of neighbouring residential properties, subject to the conditions included Attachment A.</p>

4.4 Other Development Types and Uses

4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1 General	Yes, subject to conditions	<p>The proposed development includes a visitor accommodation use.</p> <p>The application was accompanied by both an acoustic report, and an indicative Plan of Management.</p>

Provision	Compliance	Comment
		<p>These documents outline general management practices for the proposed hotel accommodation use, including those relating to hotel management, guest services, and security.</p> <p>No hotel room contains triple-tier bunks or cooking facilities, and all toilets and shower facilities are partitioned off within each room.</p> <p>The application was referred to the City's Health and Building Unit.</p> <p>The advice received was generally supportive, subject to the conditions included in Attachment A relating to the provision of a hotel accommodation Plan of Management and compliance with the submitted acoustic report.</p>
4.4.8.3 Additional provisions for hotels, private hotels and motels	Yes, subject to conditions	<p>The proposed hotel rooms exceed the minimum areas prescribed by the Sydney DCP 2012, with adequate storage areas provided in each room.</p> <p>Appropriate conditions are included in Attachment A to ensure compliance with the key provisions, including limiting the maximum length of stay to 3 months, and no more than 2 adults and 1 child permitted per room where accommodation is provided for more than 28 consecutive days.</p>

Discussion

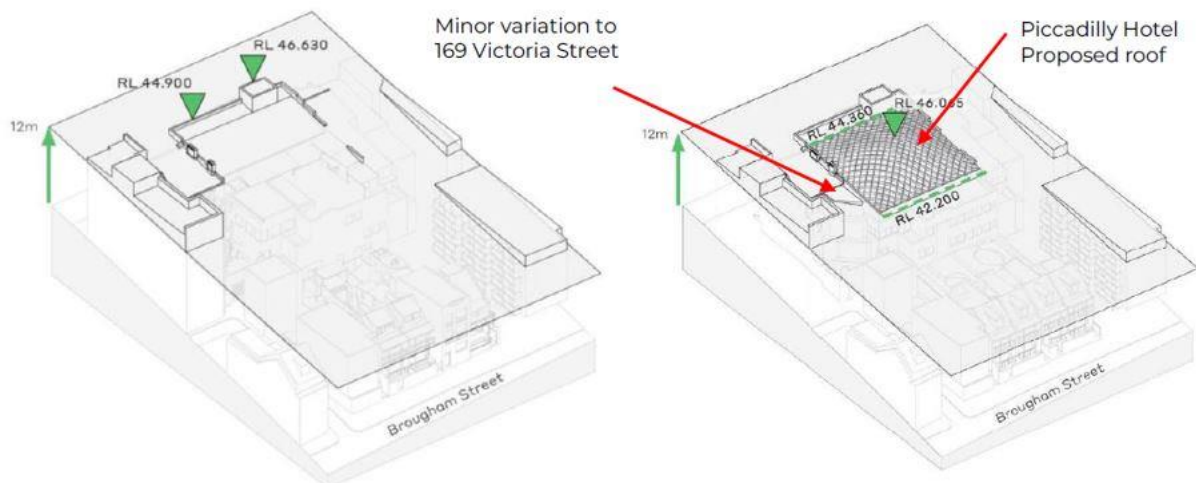
Clause 4.6 Request to Vary a Development Standard - Height of Buildings

57. The site is subject to a maximum height of buildings control of 12 metres.
58. The height of the proposed additions to the buildings at 92, 94, 96 and 98 Brougham Street, Potts Point, comply with the standard.
59. A height of 13.05 metres is proposed to the building at 169 Victoria Street, Potts Point, and a height of 14.99 metres is proposed to the building at 171-173 Victoria Street, Potts Point, which is a variation of the standard ranging between 1.05 metres (9 per cent) and 2.99 metres (24.9 per cent).

60. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
 - That there are sufficient environmental planning grounds to justify contravening the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

61. The applicant seeks to justify the contravention of the maximum 12 metre height of buildings development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, in that the proposed development will meet the objectives of the standard, zone and Act in the following manner:
 - The proposed exceedance of the maximum height of buildings development standard is appropriate for the condition of the site. The proposed exceedance arises as a result of reconstructing and extension to the rear of the existing uppermost storey of the Piccadilly Hotel with a new roof sitting over, as indicated in the three dimensional axonometric drawing extracts reproduced in figures 50 and 51 below.



Figures 50 & 51: Three dimensional axonometric drawing extract depicting the 12 metre height plane and existing non-compliant building elements (left), and a three dimensional axonometric drawing extract of the proposed non-compliant building elements, including the new roof over the Piccadilly Hotel (right)

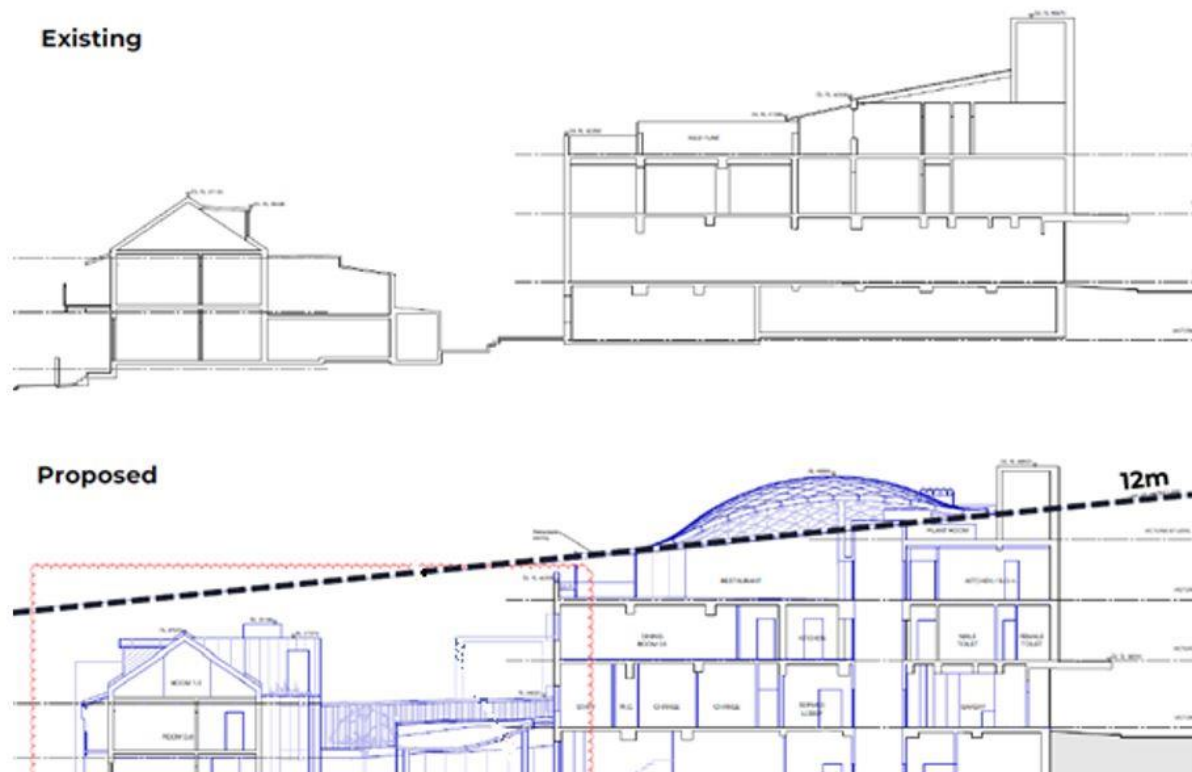
- This contemporary roof form has been carefully considered in terms of its visual and heritage impacts, and is integrated with the form of the existing building to ensure that the proposed height exceedance remains compatible with the existing buildings.
- The proposed addition has been designed to sit-behind and be screened by the existing 1.4 metre tall building parapet that protrudes above the topmost storey of the Piccadilly Hotel.

- (iv) Utilising the existing building parapet, ensures that the portion of the building exceeding the maximum building height remains generally imperceptible when viewed from the public domain to Victoria Street and will have no significant impact on the streetscape or existing street frontage height of the existing Piccadilly Hotel building
- (v) The proposal is generally consistent with the objective of the maximum height of buildings in storeys control nominated under the Sydney DCP 2012. The proposed height is consistent with the prescribed character, and therefore appropriate for the condition of the site as considered in the Sydney DCP 2012.
- (vi) The proposed exceedance of the maximum height of buildings development standard is also appropriate for the context of the site.
- (vii) The proposed variation enables the development to support and reinforce this desired future character for the site and surrounding context to reactive the site.
- (viii) The proposal is appropriate for the site's context as it will not adversely impact the enjoyment of views and daylight from surrounding development and will not undermine the transition in height between development, and as such is compatible with the scale of development in the immediate surrounding context.
- (ix) The proposed height variation does not undermine the transition between buildings on the Victoria Street frontage of the site.
- (x) As seen by the existing buildings and planning controls for Victoria Street there are varied building heights and forms. The proposal will contribute positively to this mix of undulation, without having adverse environmental impacts.
- (xi) The proposed building height and form are supported by the Conservation Management Plan and Heritage Impact Statement submitted with the application.
- (xii) The building elements which are proposed to exceed the maximum building height development standard do not result in any significantly adverse impacts on view lines from surrounding developments, nor will they compromise or impact what are considered to be important views (such as the CBD skyline). A detailed view analysis assessment has been submitted with the application
- (xiii) The additions to the Piccadilly Hotel have been designed to promote the sharing of views, including from Kings Cross looking west, and will substantially improve the visual amenity of the roofscape, from what is currently an ad hoc and unkempt area of roof plant and additions.
- (xiv) The proposed development incorporates a hotel accommodation use that will have a mixture of rooms (within the R1 and B4 zoning of the site), as well as food and drink uses available to the public. The uses proposed within the development, and the physical configuration those uses are compatible with other uses in the area.

- (xv) The proposal provides additional capacity in a highly accessible and well serviced location by public and private transport modes and other associated services for residential and guests.
- (xvi) The proposal integrates with the existing buildings, ensuring it does not impact significant heritage fabric and serves to enhance their character, opening them up for access. The reactivation of the site, including the reactivation of the ground floor to Victoria Street will go towards supporting the viability of the centre.
- (xvii) The proposed development, including the variation to the height of building standard will promote the economic and social welfare of the community through adaptive reuse and revitalisation of an abandoned and dilapidated site.
- (xviii) The proposal will respond appropriately to the local heritage item while delivering additional hotel and food and beverage floor space in area in close proximity of the CBD and Kings Cross Centre.
- (xix) The proposed development will provide for new construction and operational jobs in close proximity of public transport. Adaptive reuse of the Piccadilly Hotel, currently unused and redundant, is strongly encouraged and will ultimately assist in supporting the on-going prosperity of this area.
- (xx) The proposed development will facilitate ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings (including Section J of the Building Code of Australia).
- (xxi) The proposed development is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land.
- (xxii) The proposed development does not impact on any existing affordable housing.
- (xxiii) The proposed development will have no impact on threatened species or ecological communities.
- (xxiv) The proposed development maximises and enhances the heritage characteristics of the site and represents the unique opportunity to remove unsympathetic built form elements and provide additional capacity without impacting the heritage fabric or significance of the Piccadilly Hotel.
- (xxv) The development promotes high quality architectural design excellence. The proposed variation to the height limit will result in a development that is compatible with the scale of the surrounding development on both frontages of the site and will not result in an additional adverse environmental impact on the surrounding area as detailed above.
- (xxvi) The proposed development complies with all relevant Building Code of Australia requirements and will promote the health and safety of occupants.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The nature of the existing development and the sloping topography results in a scenario that is likely to result in a minor non-compliance as floor plates extend west from the high point of the site on Victoria Street.
 - (ii) This significant topographical change on the site impacts the ability to adaptively reuse the existing building without breaching the maximum building height development standard (given the height of the existing uppermost level of the Piccadilly Hotel. As mentioned previously, while this could theoretically be delivered with technical building height compliance, it would be a suboptimal floor to ceiling height and be a poor planning outcome.
 - (iii) A design alternative was explored to provide additional capacity in the centre of the site, beneath the existing maximum building height line and in-line with the slope of the site. This 'compliant' outcome, however, would result in far greater environmental impacts, including:
 - i. Impacted views from development to the south at 175 and 183 Victoria Street, which rely on views through the centre of the site to the Harbour Bridge, Opera House and city skyline.
 - ii. Impacted solar access for development to the south at 175 and 183 Victoria Street, and more importantly 100-104 Brougham Street, which include windows overlooking the southern boundary of the site.
 - iii. Significantly increased bulk and scale when viewed from Brougham Street, with the addition in the centre being visible from this frontage and effecting the desired three storey residential character.
 - iv. Degraded architectural and visual quality of the development and reducing the legibility of the historic lot configuration or building enveloped.
 - (iv) The proposed development, new roof over the Piccadilly Hotel, and overall design allows for the internal amenity (outlook, views, daylight etc) to be maximised from the site, whilst having no adverse impacts to surrounding development. As such, the design is appropriate and supports orderly development of the site. The contemporary addition has also been designed to accentuate the heritage item below, creating a juxtaposition between old and new. Requiring compliance with the technical height of building control would be a substandard result for the site, precinct and city.
 - (v) Crucial to all of the items listed above is that the proposal does not result in any significantly perceptible change to the building envelope, no exceedance of the overall existing building height, and no significant changes to overshadowing, privacy/outlook or view lines. This is due to the specific circumstance of the case being the location on the building where the works are occurring, the height of the building and the surrounding development.

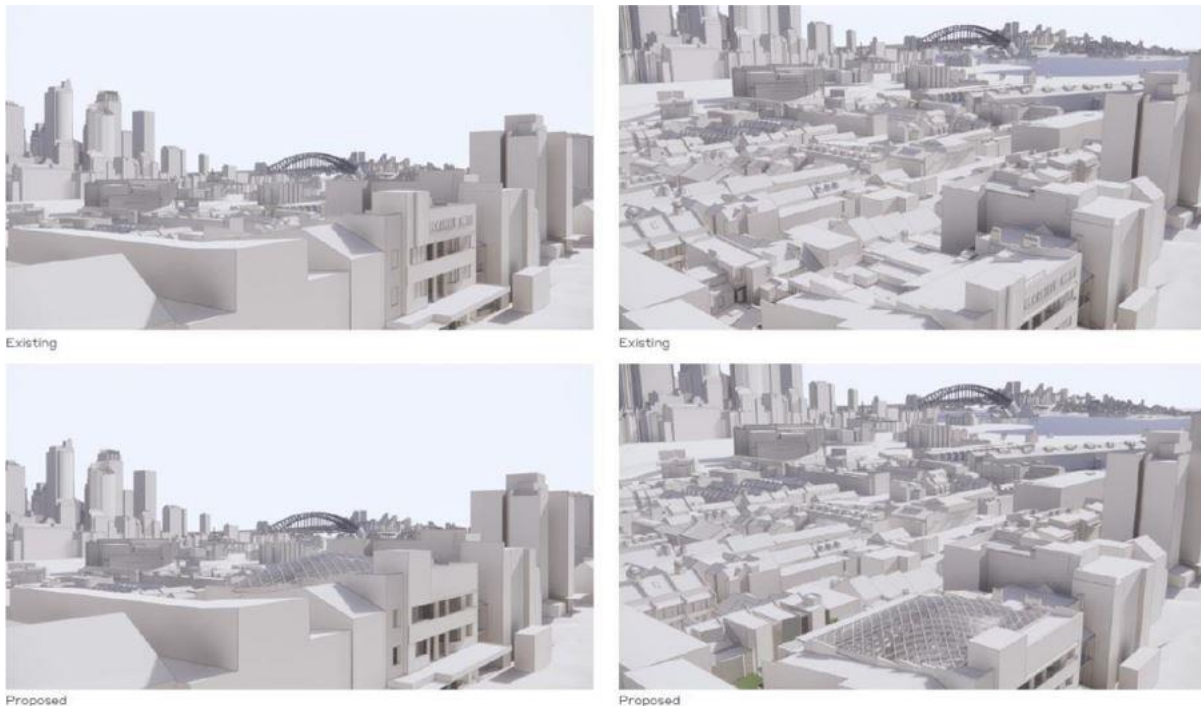
- (vi) It should be noted that, as depicted in the section drawing extracts reproduced in figures 52 and 53 below, the proposed roof addition takes the form of a new roof at a location of the site capable of being designed to strictly complying with the building height control (as a plane across the site). This design for compliance would result in a substandard and poor design outcome for the site, as the proposal does not result in any significantly adverse environmental impacts.



Figures 52 & 53: Existing section drawing extract (top) and proposed section drawing extract depicting the 12 metre height plane and both existing and proposed non-compliant building elements (bottom)

- (vii) The proposed changes will have no significant environmental or amenity impacts. Specifically, there will be no significant change to solar access and overshadowing, visual and acoustic privacy or views.
- (viii) As detailed in the overshadowing and sun's eye view diagrams submitted with the application, the new roof over the Piccadilly Hotel and minor extension to 169 Victoria Street, will have no significantly adverse impacts to overshadowing to surrounding properties, particularly the north facing balconies of 100-104 Brougham Street, Potts Point.
- (ix) The proposal incorporates privacy measures throughout the development to minimise impacts to overlooking between the site and surrounding sites. The proposal also seeks to improve the historic arrangement of privacy impacts that exists on site today. As it relates to the area of the proposal that exceeds the height of building controls, there will be no additional privacy impacts.

- (x) The buildings that are proposed to exceed the maximum building height development standard will not result in significantly adverse impacts on view lines from surrounding developments, nor will they compromise what are considered to be iconic aspects of these views (such as the Sydney Harbour Bridge and the sails of the Opera House), as indicated in the drawing extracts reproduced in figures 54 and 55 below.
- (xi) The adopted design response will serve to improve views from 100-104 Brougham Street, Potts Point by reinstating the terrace form of 96 Brougham Street, Potts Point.



Figures 54 & 55: Existing three dimensional axonometric drawing extracts (top) and proposed three dimensional drawing extracts depicting the proposed development and views across the site (bottom)

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

62. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.
 - (b) The proposed development will be in the public interest because it is generally consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

63. The applicant's written request has adequately addressed Clause 4.6(3)(a) in that they demonstrate the objectives of the development standard are achieved notwithstanding non-compliance with the standard, hence the standard is unreasonable or unnecessary.
64. The written request has therefore satisfied methods for establishing a development standard is unreasonable or unnecessary in the circumstances of the case as set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

Does the written request adequately address those issues at clause 4.6(3)(b)?

65. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify varying the development standard.
66. The justification provided in the written request, as described in detail above, is acceptable. The breach of the maximum permitted height of buildings standard will not result in significantly adverse environmental planning impacts. There are sufficient environmental planning grounds to vary the development standard.

Is the development in the public interest?

67. The proposed development will be in the public interest because it is consistent with both the objectives of the particular standard and the objectives for development within the zones in which the development is proposed to be carried out, as outlined in detail above.
68. Clause 4.6(4)(b) sets out that the concurrence of the Planning Secretary must be obtained. In their letter to the City dated 19 October 2020, the Planning Secretary has provided Council with assumed concurrence for Clause 4.6 variation requests on an ongoing basis.

Conclusion

69. For the reasons provided above the requested variation to the maximum height of buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is generally consistent with the objectives of standard and the zoning of the site.

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

70. As discussed elsewhere in this assessment report, the site is subject to two separate maximum FSR controls.
71. A maximum FSR of 1.75:1, or a combined total of 1,817 square metres of GFA based on a site area of 1,038 square metres, is permitted to the properties at 169 and 171-173 Victoria Street, Potts Point, and the properties at 96 and 98 Brougham Street, Potts Point.
72. A maximum FSR of 1.5:1, or a combined total of 410 square metres of GFA based on a site area of 273 square metres, is permitted to the properties at 92 and 94 Brougham Street, Potts Point.

73. A total GFA of 2,226 square metres, with a total site area of 1,311 square metres, results in an averaged FSR of 1.7:1 permitted across the whole site site.
74. A total GFA of 2,536 square metres, or an FSR of 1.93:1 across the whole site is proposed.
75. The overall variation of the standard across the whole site is therefore 0.23:1, or 14 per cent.
76. A breakdown of the existing site area, maximum FSR and GFA, and the proposed GFA and FSR, by each property address within the site, inclusive of totals, is reproduced in figure 56 below.

EXISTING & PROPOSED GFA & FSR (FLOOR SPACE RATIO) CALCULATIONS

Name	Address	Site Area (m2)	Legislated FSR	Max. Area (m2)	Ex. GFA (m2)	Ex. FSR	Proposed GFA (m2)	Proposed FSR
Piccadilly	171-173 Victoria St	579	1.75	1013	1045	1.80	1513	2.61
Golden Apple	169 Victoria St	185	1.75	324	342	1.85	382	2.06
Terrace	92 Brougham St	137	1.50	206	116	0.85	175	1.28
Terrace	94 Brougham St	136	1.50	204	119	0.88	162	1.19
Terrace	96 Brougham St	136	1.75	238	164	1.21	160	1.17
Terrace	98 Brougham St	138	1.75	242	125	0.91	145	1.05
TOTAL		1311		2226	1911		2536	

Figure 56: Breakdown of existing and proposed GFA and FSR calculations

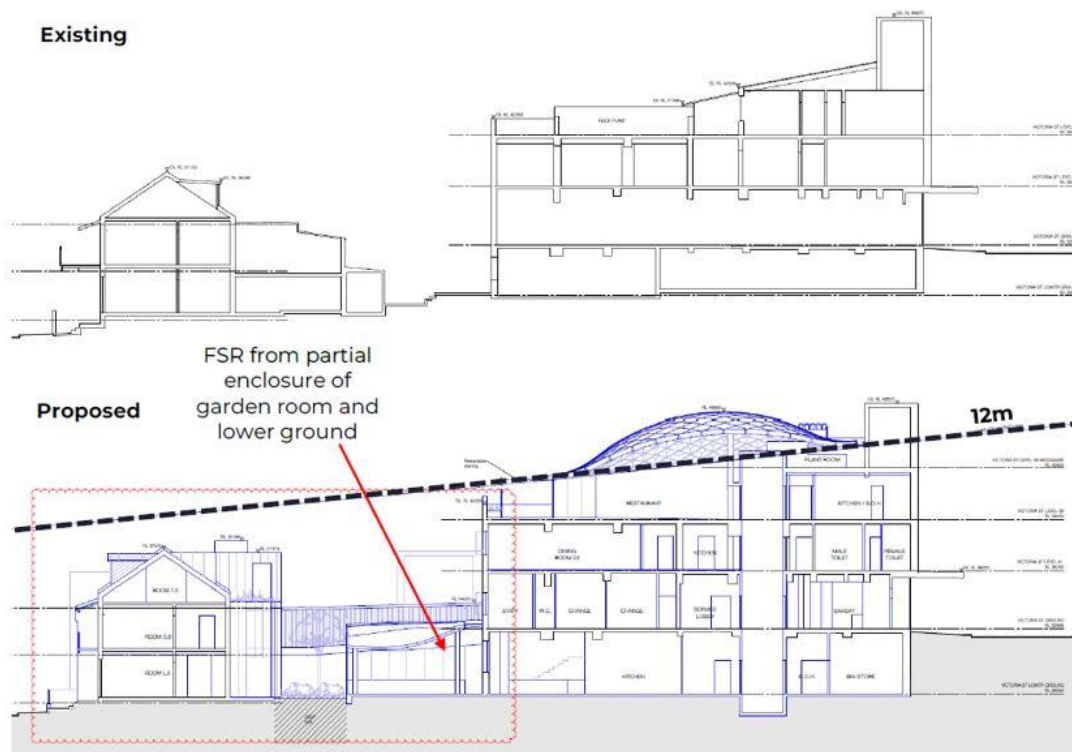
77. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
 - That there are sufficient environmental planning grounds to justify contravening the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

78. The applicant seeks to justify the contravention of the maximum FSR development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, in that the proposed development will meet the objectives of the standard, zone and Act in the following manner:
 - The increase in FSR for the overall site arises from the adaptive reuse of the existing building and conversion of basement space to GFA for Building Code of Australia and health reasons. The enclosure of the garden room is proposed in order to manage acoustic and privacy issues and provide an improved amenity situation than the existing for 100-104 Brougham Street, Potts Point.
 - The proposal does not change the perceived density of the existing development (height, setbacks/built form etc.) and does not result in significantly additional environmental impacts from that of a compliant FSR.

- (iii) The generation of vehicle traffic for the proposed use, particularly in relation to servicing and loading is assessed in the Transport Impact Assessment submitted with the application. It is noted that the relatively minor exceedance to FSR does not have any material change to loading, servicing and waste collection vehicle trips.
- (iv) The proposal will be serviced by the necessary infrastructure for the site, as outlined in the Services Report submitted with the application.
- (v) The proposed development seeks to return the original built form of the Brougham Street terraces to reflect the desired future character of Woolloomooloo, presenting to the street as two storeys with an attic level.
- (vi) Similarly, the desired future character is retained and enhanced via the retention and refurbishment of the Piccadilly Hotel facade to Victoria Street.
- (vii) The proposed development incorporates a hotel accommodation use that will have a mixture of rooms (within the R1 and B4 zoning of the site), as well as food and drink premises uses available to the public. The uses proposed within the development, and the physical configuration of those uses are compatible with other uses in the area.
- (viii) The proposal provides additional capacity in a highly accessible and well serviced location by public and private transport modes and other associated services for residential and guests.
- (ix) The proposal integrates with the existing buildings, ensuring it does not impact significant heritage fabric and serves to enhance their character, opening them up for access. The reactivation of the site, including the reactivation of the ground floor to Victoria Street, will go towards supporting the viability of the centre.
- (x) The proposed development, including the variation to FSR will promote the economic and social welfare of the community through adaptive reuse and revitalisation of an abandoned and dilapidated site. It will respond appropriately to the local heritage item while delivering additional hotel and food and beverage floor space in area in close proximity of the CBD and Kings Cross Centre.
- (xi) The proposed development will provide for new construction and operational jobs in close proximity of public transport. Adaptive reuse of the Piccadilly Hotel, currently unused and redundant, is strongly encouraged and will ultimately assist in supporting the on-going prosperity of this area.
- (xii) The proposal will facilitate ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings, including Section J of the Building Code of Australia.
- (xiii) The proposed development is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of the use of land.
- (xiv) The proposal does not impact any existing affordable housing.
- (xv) The proposal will not impact threatened species or ecological communities.

- (xvi) The proposed development maximises and enhances the heritage characteristics of the site and represents the unique opportunity to remove unsympathetic built form elements and provide additional capacity without impacting the heritage fabric or significance of the Piccadilly Hotel.
 - (xvii) The development promotes high quality architectural design excellence.
 - (xviii) The proposed variation to the FSR control will result in a development that remains compatible with the scale of the surrounding development on both frontages of the site, and will not result in an additional adverse environmental impact on the surrounding area.
 - (xix) The proposed FSR does not drive an expansion of the building envelope in a way that generated additional bulk and scale, particularly from the public domain, that in turn would impact surrounding development and amenity.
 - (xx) The proposal complies with all relevant Building Code of Australia requirements and will promote the health and safety of occupants.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) As indicated in the section and plan drawing extracts reproduced in figures 57, 58 and 59 provided below, a large proportion of the additional GFA is created within an area at the lower ground level within the Piccadilly Hotel building and former Golden Apple building, which does not add to the bulk and scale of the development but allows for a more functional and effective adaptive reuse of the heritage item and contributory buildings.



Figures 57 & 58: Existing section drawing extract (top) and proposed section drawing extract depicting additional FSR (150.2 square metres of GFA) in the rear ground floor addition within the rear yard of the Brougham St terraces (bottom)

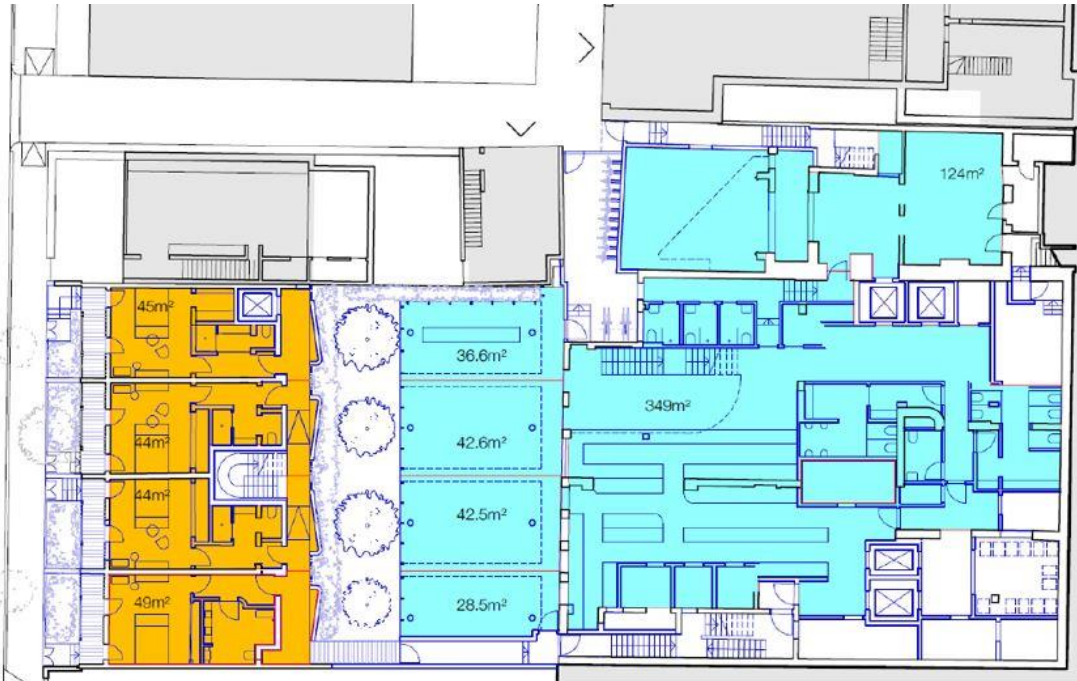


Figure 59: GFA calculation lower ground floor drawing extract, depicting additional GFA within the basement of the former Golden Apple building, the Piccadilly Hotel and within the rear yard of the Brougham Street terraces

- (ii) When assessed in relation to each individual property within the site, the non-compliance with the development standard is restricted to the buildings at 169 Victoria Street, Potts Point and 171-173 Victoria Street, Potts Point, with the remainder of the sites at 92, 94, 96 and 98 Brougham Street being well below the maximum permissible FSR for the respective sites.
- (iii) The extent of additional GFA when compared to the existing buildings on the site is primarily due to the creation of usable space within the extension of the existing upper level of the Piccadilly Hotel which is covered with a new contemporary, lightweight roof, the basement level, which becomes calculatable for FSR purposes, and the partial enclosure of the lower ground floor rear yard.
- (iv) In the process of utilising GFA generally within the existing envelope of the site, there are no significantly adverse impacts on streetscapes, heritage fabric, or subdivision patterns, while ensuring that the desired future character of Potts Point, Kings Cross and Woollahooloo respectively is maintained.
- (v) As detailed in the overshadowing and sun's eye view diagrams submitted with the application, the new roof over the Piccadilly Hotel and minor extension to 169 Victoria Street will have no significantly adverse impacts to overshadowing to surrounding properties, particularly the north facing balconies of the residential flat building at 100-104 Brougham Street, Potts Point.

- (vi) The proposal incorporates privacy measures throughout the development to minimise impacts to overlooking between the site and surrounding sites.
- (vii) The proposal also seeks to improve the historic arrangement of privacy impacts that exists on site today. As it relates to the area of the proposal that exceeds the height of building controls, there will be no additional privacy impacts.
- (viii) The buildings that are proposed to exceed the maximum FSR development standard will not result in significant or adverse impacts on view lines from surrounding developments, nor will they compromise what are considered to be iconic aspects of these views (such as the Sydney Harbour Bridge and the sails of the Opera House). These components of the development are not the driver for additional FSR in the development. The adopted design response will serve to improve views from 100-104 Brougham Street, Potts Point, by reinstating the terrace form of 96 Brougham Street, Potts Point.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

79. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

80. The applicant's written request has adequately addressed Clause 4.6(3)(a) in that they demonstrate the objectives of the development standard are achieved notwithstanding non-compliance with the standard, hence the standard is unreasonable or unnecessary.
81. The written request has therefore satisfied methods for establishing a development standard is unreasonable or unnecessary in the circumstances of the case as set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

Does the written request adequately address those issues at clause 4.6(3)(b)?

82. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify varying the development standard.
83. The justification provided in the written request, as described in detail above, is acceptable. The breach the maximum permitted FSR standard will not result in significantly adverse environmental planning impacts. There are sufficient environmental planning grounds to vary the development standard.

Is the development in the public interest?

84. The proposed development will be in the public interest because it is generally consistent with both the objectives of the particular standard and the objectives for development within the zones in which the development is proposed to be carried out, as outlined in detail above.
85. Clause 4.6(4)(b) sets out that the concurrence of the Planning Secretary must be obtained. In their letter to the City dated 19 October 2020, the Planning Secretary has provided Council with assumed concurrence for Clause 4.6 variation requests on an ongoing basis.

Conclusion

86. For the reasons provided above the requested variation to the maximum FSR development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is generally consistent with the objectives of standard and the zoning of the site.

Heritage Conservation

87. The proposed development is assessed against the relevant objectives and provisions in Section 5.10 of the Sydney LEP 2012 and Sections 3.9 and 3.10 of the Sydney DCP 2012 relating to heritage conservation and significant architectural building types under each of the headings provided below.

Conservation management plan

88. It is not clear why all side and rear walls at the basement level are graded as high significance in the conservation management plan (CMP) for the Piccadilly Hotel building submitted with the application, but not on other levels.
89. The CMP grades most of the original internal fabric as moderate which is then proposed to be demolished.
90. The original fabric directly contributes to the authenticity and integrity of the heritage item and the proposal needs to adapt to the existing fabric, rather than propose substantial demolition of the fabric to achieve open plan spaces.
91. An appropriate condition is included in Attachment A to require the amendment of the CMP to address the above issues.

The former Golden Apple building at 169 Victoria Street, Potts Point

92. The proposal includes the following works to the former Golden Apple building:
 - (a) **Internal and rear demolition of later fabric:**
 - (i) The interiors of the terrace are highly altered and the proposed demolition of non-original fabric is supported.
 - (ii) The main walls of the front two rooms at the ground floor level are proposed to be retained, along with the original staircase, which is supported.

(b) **Rear additions:**

- (i) The proposed rear additions retain the principle built form and roof form intact, as depicted in the photographic and drawing extracts reproduced in figure 60 below, which is supported.

(c) **Front facade, entry and front yard:**

- (i) The front facade of the terrace is proposed to have its original Victoria detailing restored and second floor windows replace, as depicted in the photographic and drawing extracts reproduced in figure 60 below, which is supported.

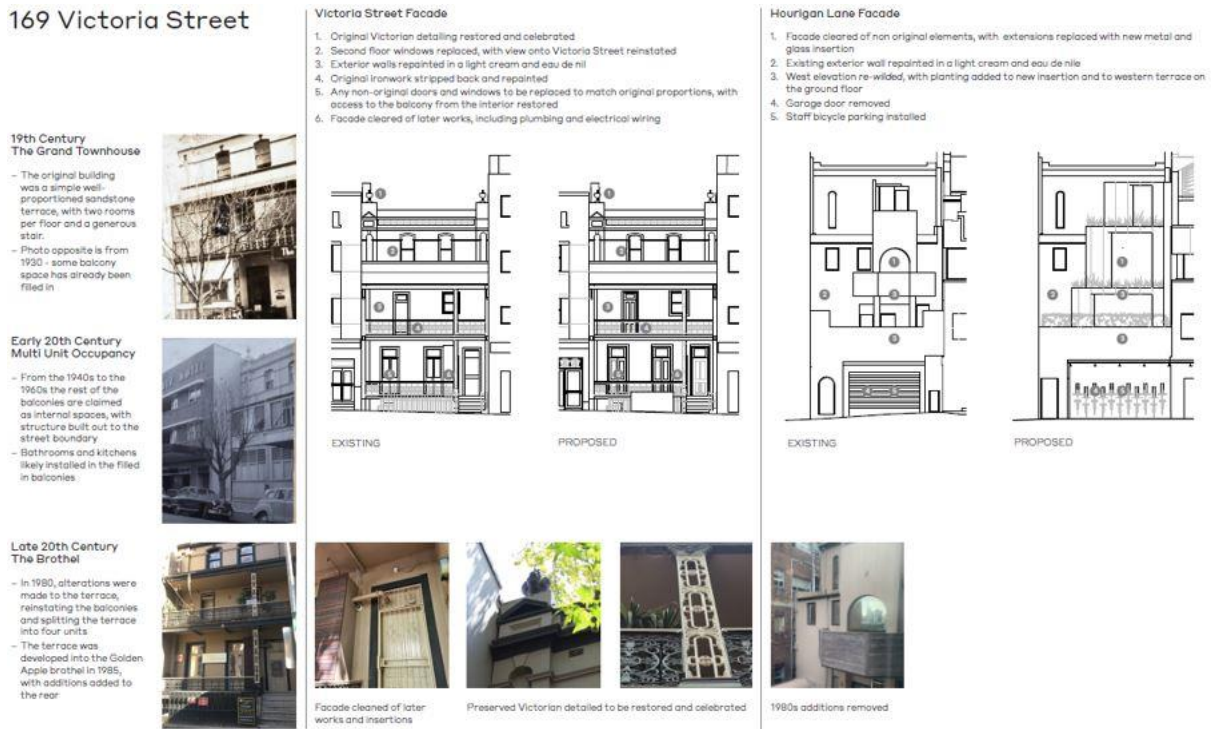


Figure 60: Photographic, eastern (Victoria St) and western elevation drawing extracts of the proposed external works to the facades of the former Golden Apple building

- (ii) The front entry of the terrace will be restored to a characteristic traditional timber door but will be fixed shut, which is supported.
- (iii) The design of the fire hydrant booster cupboard in the front yard is not supported and a deferred commencement design modification condition is included in Attachment A requiring its amendment to a design which is more sympathetic with the contributing building.

The Piccadilly Hotel at 171-173 Victoria Street, Potts Point

93. Substantial internal and external demolition and alterations and additions is proposed to the heritage listed Piccadilly Hotel building, including demolition of fabric graded as having moderate significance. This will result in some erosion of heritage significance and loss of original heritage significant building fabric.

94. The extent of the demolition is supported in the specific circumstances of the subject site and proposed development. This is because the design retains rare, intact original building fabric, in addition to spaces of heritage significance, while allowing the building to return to the use of the site in its original hotel function.
95. The proposal includes the following works to the Piccadilly Hotel:
- (a) **Lower ground floor:**
- (i) The existing basement is a highly modified space and the only original fabric it has are the original windows to the west, a staircase leading to ground level at the centre, original bathroom floor tiles and the original keg chute to the east.
 - (ii) There are original internal walls within the lower ground floor, with some proposed to be retained to interpret the original layout.
 - (iii) The windows are proposed to be retained but the staircase and floor are proposed to be demolished. The staircase and floor demolition is supported subject to archival recording. The keg chute is proposed to be retained, conserved, and restored, as it is an important feature of a heritage listed hotel building.
 - (iv) Although a number of revised structural statements have been submitted with the application, no structural details have been submitted with the application. The application is recommended to be subject to a deferred commencement consent condition requiring final structural solutions to be provided in relation to fire resistance, excavation, seismic stability and vertical load capacity prior to the operation of the consent.
 - (v) A further condition is recommended in Attachment A to ensure further geotechnical investigations are carried out in relation to the proposed excavation of the basement, and the integrity of retained footings and foundations, as they relate to provision of subfloor drainage and laying of new slabs.
- (b) **Ground floor:**
- (i) The only original fabric at ground level is the original staircase and some internal walls, with original interiors otherwise completely lost.
 - (ii) The front facade to Victoria Street at the ground level is also highly altered.
 - (iii) The proposal retains the original staircase and some original internal walls and restores the front facade at ground level, which is supported.
- (c) **First floor:**
- (i) The CMP submitted with the application mentions that the original configuration of this level remains.
 - (ii) Some of the internal walls are proposed to be demolished at the rear to provide for dining rooms, which is supported.

- (iii) The configuration of the new connecting staircase between the ground floor lobby and the upper floors has been designed to reduce impacts on the significance of the front rooms and to provide a continuous travel path.
 - (iv) The lift configuration has been designed to reduce the amount of demolition of walls and floors. The proposed location of the toilets and amenities have been proposed within areas of lesser significance.
 - (v) Limited demolition and reconfiguration of the principal existing front rooms of the first floor, which are identified in the heritage inventory as having a high level of integrity and intactness. These works do not adversely impact the significance of these spaces.
- (d) **Second floor:**
- (i) The design of the proposal has retained the front rooms almost intact, and as much of the remaining second floor level as possible.
 - (ii) The central staircase has been designed to align with the proposed second floor configuration.
 - (iii) Subject to appropriate conditions included in Attachment A, including requirements for salvage and reuse of fabric, and heritage interpretation, the proposal is supported.
- (e) **Roof:**
- (i) The proposed demolition of the existing roof and the proposed contemporary design of the new roof (depicted below) are supported, as they do not impact on significant heritage building fabric, or result in unacceptable visual impacts to the appearance of the heritage item from Victoria Street, or to the rear from Brougham Street and Hourigan Lane.

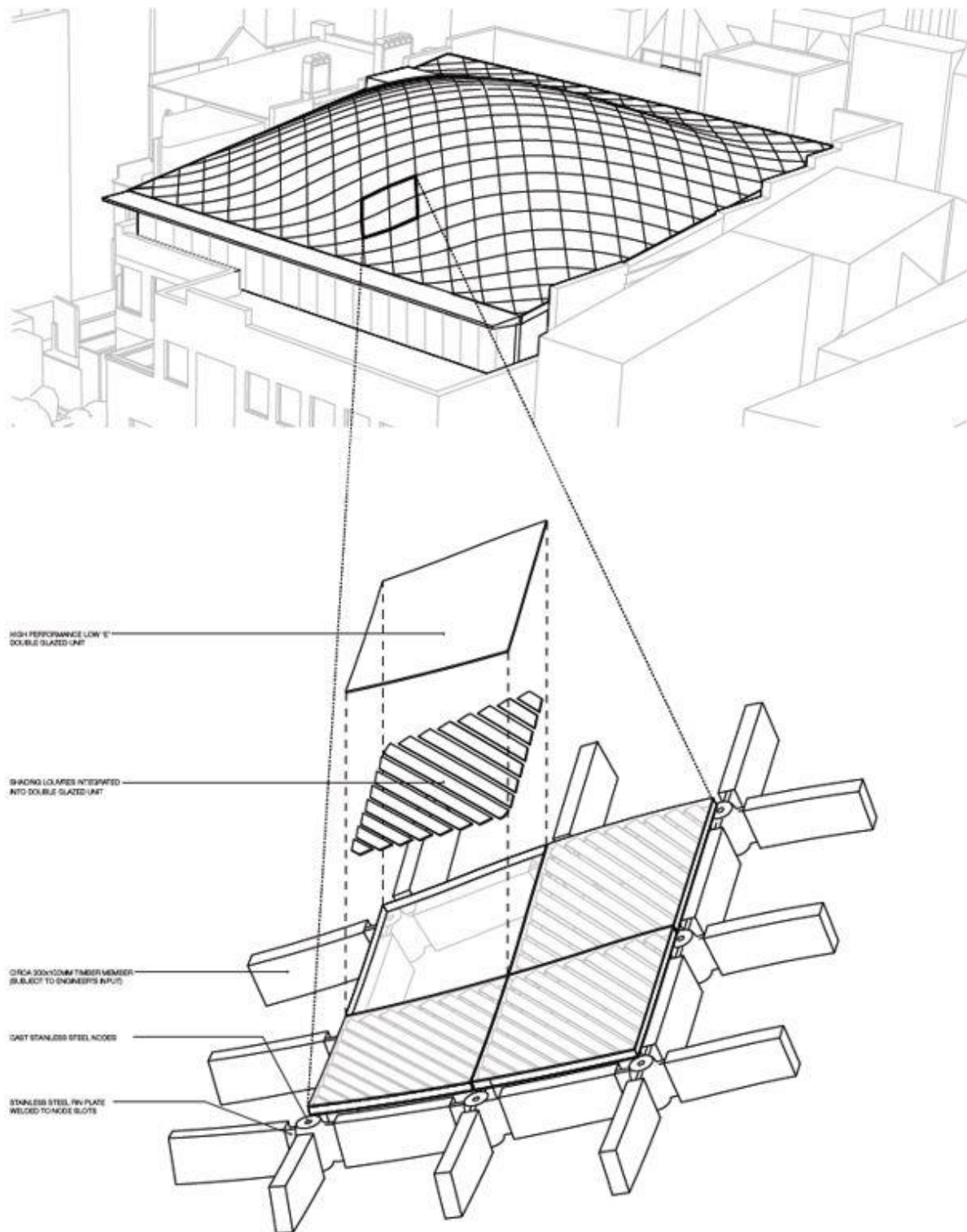


Figure 61: Axonometric detail drawing extract of the proposed roof to the Piccadilly Hotel

(f) **Front awning:**

- (i) It is proposed to temporarily remove part of the front awning to install scaffolding, and reinstate and restore the awning to its original condition after construction.

- (ii) This is supported subject to an appropriate condition included in Attachment A requiring a strategy to be prepared for careful dismantling, storing and reinstatement works.

(g) **Front facade:**

- (i) The fabric retractable awnings to the front Level 1 balcony will be replaced in an appropriate striped canvas, as depicted in the photographic and drawing extracts reproduced in figure 62 below, which is supported.



Figure 62: Photographic and eastern (Victoria St) elevation drawing extracts of the proposed external works to the facade of the Piccadilly Hotel

- (ii) The colours selected for paint, canvas tiles and other finishes are generally acceptable, however an appropriate condition is included in Attachment A which requires the preparation of a physical materials and samples board, including the manufactures and specifications for finishes and materials.

(h) **Rear facade:**

- (i) The proposal includes substantial reinstatement of the original rear facade and removal of services, as depicted in the photographic and drawing extracts reproduced in figure 63 below, which is a positive heritage outcome and is supported.

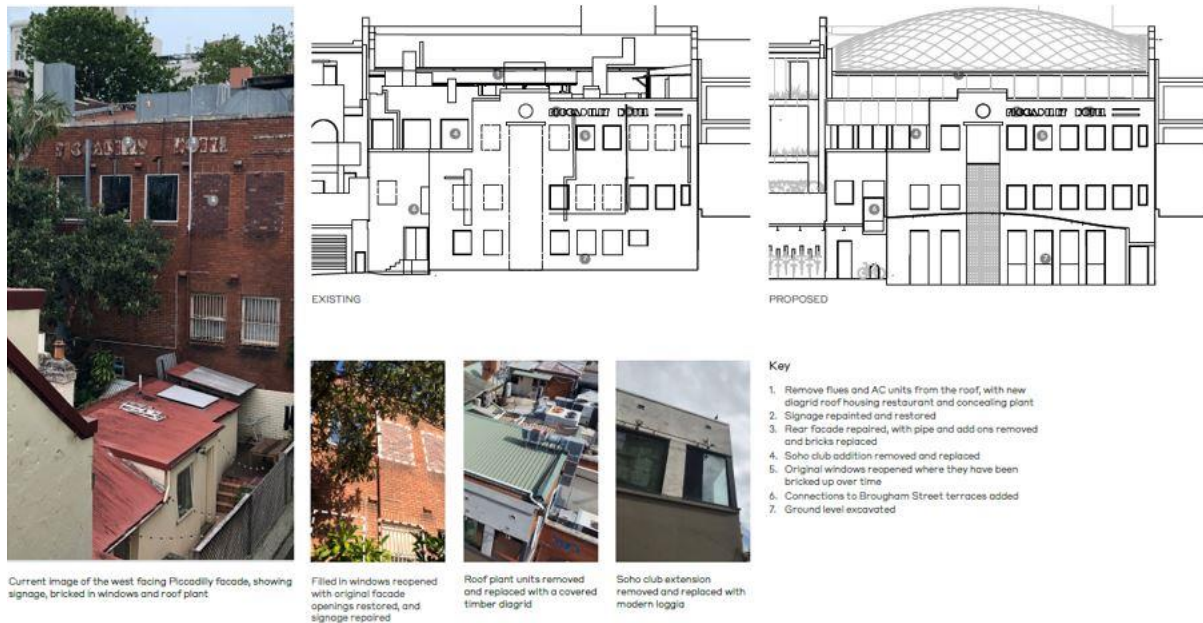


Figure 63: Photographic and western elevation drawing extracts of the proposed external works to the facade of the Piccadilly Hotel

- (i) **Construction of a rear addition between the Victoria and Brougham Street buildings incorporating trees within the courtyard:**
 - (i) The proposed spatial relationships between buildings on the site resulting from the rear addition within the rear yards of the Brougham Street terraces is acceptable subject to appropriate conditions included in Attachment A relating to landscaping of the site, tree planting, deep soil and green roof design.

The Brougham Street terraces at 92, 94, 96 and 98 Brougham Street, Potts Point

96. The proposal includes the following works to the Brougham Street terraces:

- (a) **Alterations to the front of the contributory terraces, front fences and front yards:**
 - (i) The front alterations include removal of non-original later alterations and reinstating the original verandahs and balconies, as depicted in the photographic and drawing extracts reproduced in figure 64 below, which is supported.
 - (ii) Existing front terrace windows are proposed to be retained and reinstated where missing. The front dormers will be compliant with the relevant provisions in the Sydney DCP 2012, subject to an appropriate condition included in Attachment A. Front filigree works are proposed to be in traditional style cast iron.
 - (iii) Front fences are proposed in traditional cast iron palisade style and will be compliant with the relevant provisions in the Sydney DCP 2012, subject to an appropriate condition included in Attachment A.



Figure 64: Photographic and western elevation drawing extracts of the proposed external works to the Brougham St terraces

(b) **Substantial internal demolition:**

- (i) The front room sizes, proportions and extent are generally retained on both levels.
- (ii) Internally staircases are being removed to provide for a common rear staircase and in the specific circumstances of the site and proposed development, this is supported.
- (iii) Fireplaces are proposed to be reinstated in the front rooms on both levels, which is supported.

(c) **Substantial external demolition including demolition of the principal roofs of the contributory terraces fronting Brougham Street:**

- (i) The demolition of the rear wings is supported the rear wings are already in a highly altered form. They are inconsistent and have lost the original repetition and rhythm of the terrace row.
- (ii) Demolition is also consistent with the requirement in the Sydney DCP 2012 to locate new development in areas of lesser significance. The loss of the highly altered rear fabric is also significantly mitigated by the conservation works proposed to the front of the terraces.
- (iii) The removal of the original main roofs is supported as the replacement roofs is generally proposed to be like for like reinstatement, including construction details levels, roof pitch and materials.

(d) **Two and three storey rear additions to the terraces:**

- (i) The design proposes circulation and services outside of the original terrace building envelopes, as indicated in the axonometric drawing extract reproduced in figure 65 below.

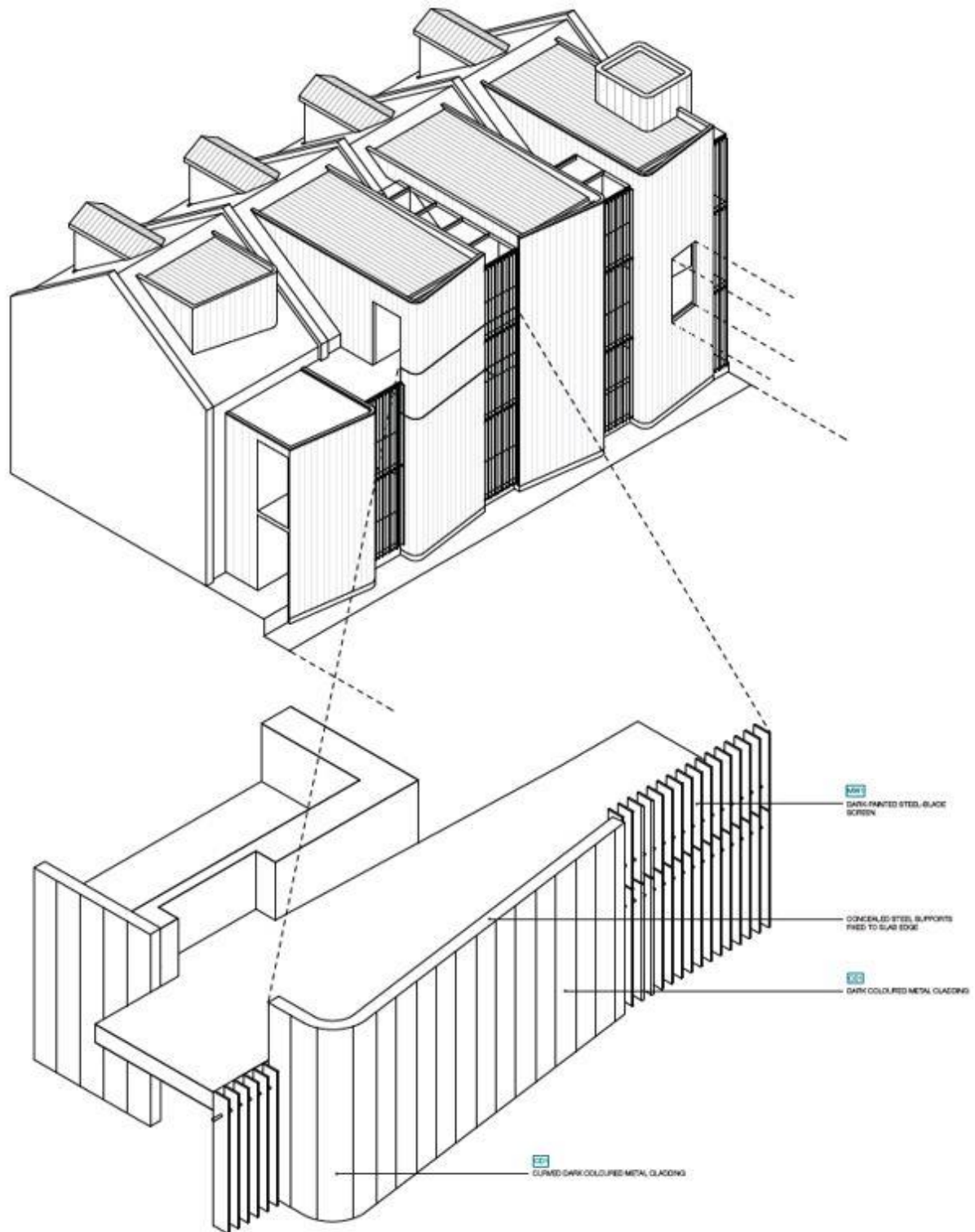


Figure 65: Three dimensional axonometric detail drawing extract of the proposed rear additions to the Brougham St terraces

- (ii) This is acceptable for the reasons provided below under the 'Storey Height' heading.

View Sharing

97. View sharing and view loss has been considered in the assessment of the proposed development.
98. A view impact study was submitted with the application which assesses views from the following nearby properties:
 - (a) The northern elevation of dwellings within the building at 100-104 Brougham Street, Potts Point, directly to the south of the site.
 - (b) The southern elevation of dwellings within the building at 165-167 Victoria Street, Potts Point, directly to the north of the site.
 - (c) The western elevation of dwellings within the building at 175 Victoria Street, Potts Point, directly to the south of the site.
 - (d) The western elevation of dwellings within the building at 177-179 Victoria Street, Potts Point, to the south of the site.
 - (e) The northern elevation of dwellings within the building at 181-183 Victoria Street, Potts Point, to the south of the site.
 - (f) The western elevation of dwellings within the building at 204-212 Victoria Street, Potts Point, to the south-east of the site.
 - (g) The western elevation of dwellings within the building at 226 Victoria Street, Potts Point.
99. The analysis provided indicates that the proposed development results in generally acceptable view sharing across the subject site from the properties outlined above.
100. A submission received by the City has raised concern regarding the potential loss of private views from a first floor apartment within the nearby building at 181-183 Victoria Street, Potts Point, as a result of the proposed development.
101. The views are across the side boundary with the subject site and adjoining sites, primarily toward the north-west toward the Sydney Central Business District skyline, the Sydney Harbour Bridge and Sydney Opera House.
102. The aerial photograph reproduced in figure 66 below shows the location of the subject site, the submitters building and its proximity to the site, and the surrounding locality.

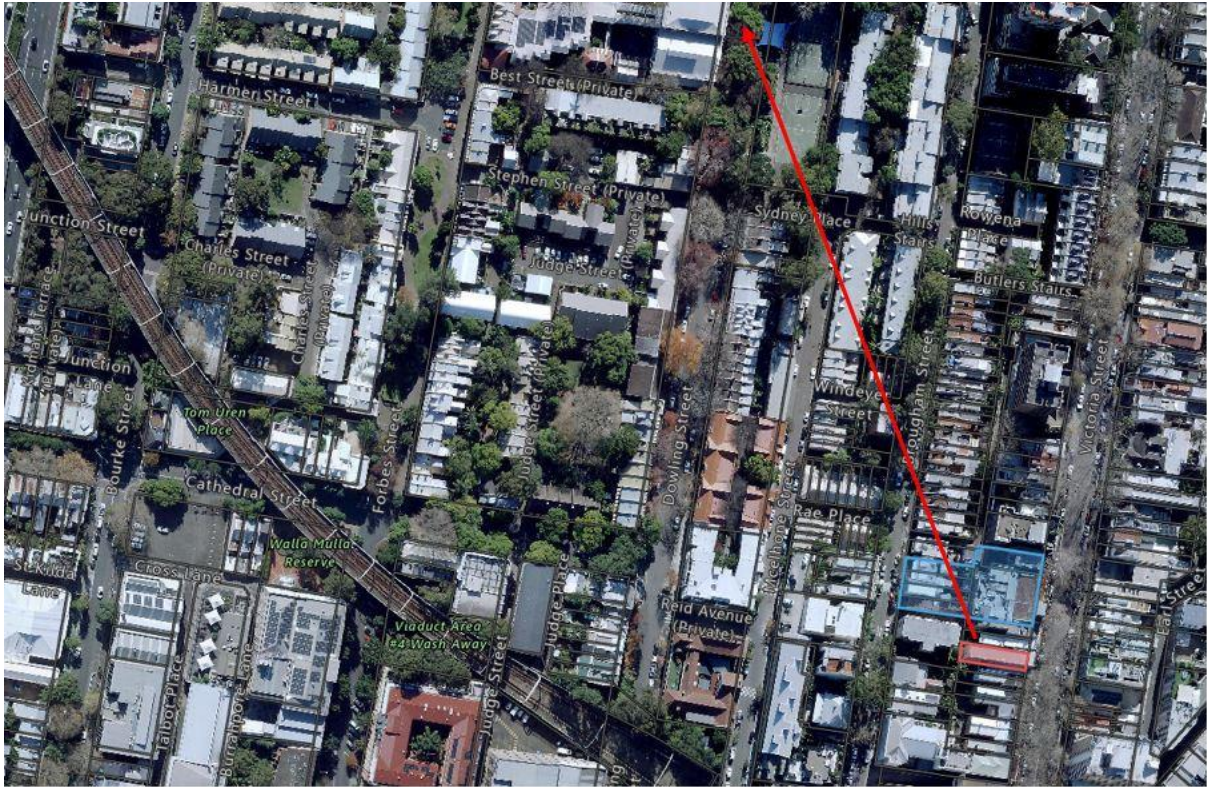


Figure 66: Aerial photograph of the subject site (shown shaded in blue), the nearby building at 181-183 Victoria St (shown shaded in red) and the surrounding area, with the direction of iconic views from the submitter's property toward the Sydney Opera House and Sydney Harbour Bridge depicted with a red arrow

103. While the concern raised by the neighbouring resident is acknowledged, the assessment to determine the degree and reasonableness of view impacts must be made against the relevant planning controls and the extent to which the development complies.
104. The relevant planning controls in the Sydney LEP 2012 and Sydney DCP 2012 make no specific provisions for the preservation of private views.
105. An assessment is provided below, demonstrating that the proposal is acceptable with regard to view loss and view sharing considerations, as follows.

View Impact Study

106. The application was accompanied by a view impact analysis study comprising three dimensional digital modelling and perspectives of existing and proposed views from indicative locations within the subject apartment in the nearby development.
107. Although the view loss analysis did not provide specific heights, levels or camera angles, the view images have been reviewed by Council staff and are a generally acceptable depiction of views.
108. These views are from the north-facing windows serving a sunroom and lounge room within the submitter's apartment in the nearby building at 181-183 Victoria Street, Potts Point, as illustrated in the photographs and three dimensional axonometric drawing extracts reproduced below in figures 67 and 68.

- 109. The iconic views from the subject apartment at 181-183 Victoria Street, Potts Point will remain largely unchanged.
- 110. The proposed roof is setback from its western edge to improve views from the apartments within the nearby building at 181-183 Victoria Street, Potts Point.
- 111. The roof form is proposed to increase in height further to the east, but has been designed with a gently curving form, constructed of relatively light weight materials.

View Analysis - 181-183 Victoria Street



Figure 67: Photographs and existing and proposed view study image extracts from the western-most north-facing window which serves a sunroom at Unit 4, 181-183 Victoria St, Potts Point

View Analysis - 181-183 Victoria Street

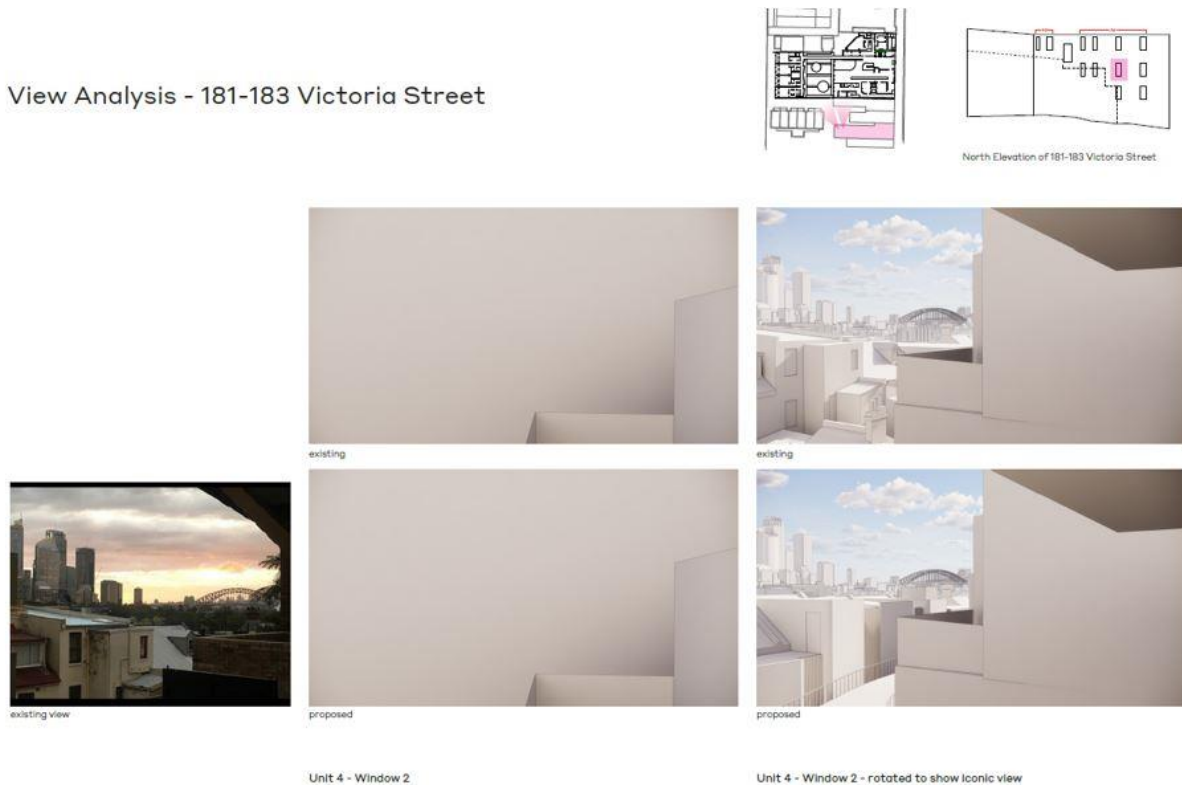


Figure 68: Photographs and existing and proposed view study image extracts from the second western-most north-facing window which serves a lounge room at Unit 4, 181-183 Victoria St, Potts Point

Planning Principle

112. In order to assess the impact of the proposed development on existing views, an assessment has been made against the planning principle established by Senior Commissioner Roseth in the Land and Environment Court decision *Tenacity Consulting v Warringah* [2004] NSWLEC 140 in relation to view sharing.
113. The principle specifies that the notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment which may, in some circumstances, be reasonable. The below four step assessment is adopted to determine whether view sharing is reasonable in the case of the proposal:
- (a) Assessment of views to be affected:
 - (i) Views with the potential to be affected consist of views of the built environment and skyline of the Sydney Central Business District, the Sydney Harbour Bridge and Sydney Opera House in a north-western direction.
 - (ii) These views are enjoyed from windows of the residential apartment on level 1 in the north-western portion of the building at 181-183 Victoria Street, Potts Point, as depicted in figures 67 and 68 above.

- (b) Consider from what part of the property the views are obtained
 - (i) The views under assessment are available from the living room and sunroom of the above-mentioned apartment.
 - (ii) The principle holds that the loss of views from living room windows from a standing position is considered to be of greater impact than the loss of views from bedrooms, bathrooms, or other service areas, or from a sitting position. It further states that it is unrealistic to expect that existing views across side boundaries can be protected.
- (c) Extent of the impact in relation to views available
 - (i) The principle provides that the extent of impact should be assessed for the whole of the property, rather than just for the affected view.
 - (ii) The proposed development will have no significant additional impacts to the subject apartment beyond that arising from the existing development on the site.
 - (iii) This impact is considered to be negligible in scope as a result, as the views will remain largely unaffected by the proposal, as indicated in figures 67 and 68 above.
- (d) Reasonableness
 - (i) The degree to which an impact is considered to be reasonable depends on the extent to which the development complies with the relevant planning controls, and whether impacts could be mitigated by a more skilful design.
 - (ii) In the case of the proposed development, the view impact is not to be significant and the existing views are generally maintained by the proposal.

Conclusion

- 114. Having regard to the dense urban context of Potts Point, it is likely that new development will not significantly affect views and outlook to existing neighbouring development.
- 115. The view sharing assessment of the proposed development which has been undertaken concludes that it has acceptable view impacts.
- 116. The proposal does not significantly or unreasonably reduce the view amenity enjoyed by surrounding residential land uses. It provides for adequate view sharing and is acceptable as a result.

Storey Height

- 117. The provisions in Section 4.1.1 and Section 4.2.1.1 of the Sydney DCP 2012 permit a maximum building height of four storeys along Victoria Street, and two storeys along Brougham Street, with a maximum street frontage height of two storeys along Brougham Street.
- 118. The proposed development comprises four storeys in height to Victoria Street, and three storeys to the Brougham Street terraces, with a street frontage height of two storeys.

119. The relevant objectives of the maximum storey height control for terraces in Section 4.1.1 of the Sydney DCP 2012 state the following:
- (a) Ensure development reinforces the existing and desired neighbourhood character with an appropriate height in storeys and street frontage height in storeys.
 - (b) Ensure development in heritage conservation areas relate to the existing neighbourhood character in terms of height in storeys and street frontage height in storeys.
 - (c) Retain and conserve the principle building form and its relationship to the street for heritage items and contributory buildings in heritage conservation areas.
120. The relevant objective of the maximum storey height control for mixed use and commercial development in Section 4.2.1.1 of the Sydney DCP 2012 states the following:
- (a) Ensure the height in storeys and street frontage height in storeys reinforces the existing or future neighbourhood character.
121. The variation of the maximum two storey height control along Brougham Street is only acceptable with regard to these objectives in the specific circumstances of the site and proposed development for the following reasons:
- (a) The existing row of four terraces at 92 to 98 Brougham Street, Potts Point, has been seriously disrupted by a mid-twentieth century addition to the front of the building at 96 Brougham Street, Potts Point, that is three stories high, projects forward of the adjacent terraces in the row, and obliterates any perception of the integrity of the row from the public domain.
 - (b) Accordingly, this building is shown as being neutral on the Building contributions map in the Sydney DCP 2012 for the Woolloomooloo heritage conservation area.
 - (c) The provision in Section 3.9.8(3)(a) of the Sydney DCP 2012 supports the removal of unsympathetic additions to neutral buildings.
 - (d) The terraces at 92 and 94 Brougham Street, Potts Point, have poorly proportioned and uncharacteristic dormers facing the street.
 - (e) Given that the relevant provisions in Section 3.9 and Section 4.1 of the Sydney DCP 2012 privilege views of the form of contributing buildings from the public domain, the optimal heritage outcome for the terrace group is:
 - (i) Removal of detracting fabric viewed from the public domain.
 - (ii) Reconstruction of lost architectural elements to 96 Brougham Street, Potts Point.
 - (iii) Construction of well proportioned, well detailed dormer windows in a uniform way to all of the terraces in the row to create and established pattern as required by the provision in Section 4.1.5.4(2) of the Sydney DCP 2012.

- (f) The significant benefit of the proposed conservation and alterations to the public's appreciation of the newly unified street front justifies the non-compliant storey height of the proposed rear additions to the terraces for the following reasons:
- (i) The rear additions are discernible from the base building as they use a deliberately contrasting light weight cladding and appear to plug-in to the retained and conserved fabric of the primary front wings of the terraces, allowing appreciation of the main roof forms and party wall parapets when viewed from above.
 - (ii) The additions establish a language of repetition that, while novel, maintains the sense of a row of terraces.
 - (iii) The rear additions contain circulation space and services that facilitates the retention of the fabric and proportions of the primary front rooms of the terraces and will also provide equitable access and additional seismic and structural bracing to the group.
 - (iv) The raising of the ridges of the terraces is only acceptable because it does not result in any unreasonable amenity impacts and is uniformly applied across the group and so maintains the consistency of form. Importantly, it includes the reversal of the very intrusive third floor at 96 Brougham Street, Potts Point
- (g) The approval of the proposed three storey rear forms is very specific to this site and use and is only acceptable because it applies to the whole row and is offset by a very substantial reversal of intrusive fabric on the street elevations that restores the original integrity of the row.
- (h) It will not form a precedent that could or should be applied to individual or other groups of terraces.

Future Use and Operation

122. As discussed above under the 'Proposed Development heading, the detailed fit out and operation of the indicative food and drink premises uses throughout the proposed development is proposed to be the subject of a future separate development application, or applications.
123. The drawings submitted with the application are not precise with regard to the specific parts within the development that this requirement will apply.
124. An appropriate condition has therefore been included in Attachment A to ensure that separate development consent (via the lodgement of a separate development application, or applications with Council) is required to be obtained for the fitout and specific use of the following areas:
- (a) The area denoted as 'F&B' at the lower ground level of the former Golden Apple building at 169 Victoria Street, Potts Point.
 - (b) The area denoted as 'Garden Dining (Enclosed)' and 'Bar' at the lower ground level in the rear yards of the properties at 92, 94, 96 and 98 Brougham Street, Potts Point.

- (c) The area denoted as 'Kitchen', the adjacent dining area and bar, and the associated 'Keg Cool Room', 'Dry Store', 'Freezer', 'Cool Room' and 'Toilets' at the lower ground floor level of the Piccadilly Hotel building at 171-173 Victoria Street, Potts Point.
- (d) The areas denoted as 'Bakery' and 'Bar/Cafe' and the associated 'Service Lobby' and 'Staff' areas at the ground floor level of the Piccadilly Hotel building at 171-173 Victoria Street, Potts Point.
- (e) The areas denoted as 'Dining Room 01', 'Dining Room 02', 'Dining Room 03', 'Dining Room 04', 'Dining Room 05' and 'Dining Room 07' and the associated 'Terrace', 'Kitchen/BOH', 'Store' and 'Toilets' at level 1 of the Piccadilly Hotel building at 171-173 Victoria Street, Potts Point.

Consultation

Internal Referrals

125. The application was referred to, or discussed with the following Council Units and City Officers:
- (a) City Access and Transport Unit.
 - (b) Cleansing and Waste Unit.
 - (c) Construction and Building Services Unit.
 - (d) Environmental Projects Unit.
 - (e) Health and Building Unit.
 - (f) Heritage and Urban Design Unit.
 - (g) Landscape Assessment Officer.
 - (h) Model Unit.
 - (i) Public Art Unit.
 - (j) Public Domain Unit.
 - (k) Specialist Surveyor.
 - (l) Tree Management Unit
126. These Units and Officers generally advised that the proposal is acceptable, subject to conditions.
127. Where appropriate, these conditions have been included in Attachment A. Where concerns were raised with the proposed development, these matters are either addressed in the table sections provided throughout the body of this assessment report, or outlined in detail under the 'Discussion' heading above.

External Referrals

Ausgrid

128. As discussed elsewhere in this assessment report, pursuant to Section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid for comment.
129. A response was received raising no objections to the proposed development, subject to a condition which has been included in Attachment A.

Advertising and Notification

130. In accordance with the City of Sydney Community Participation Plan, the original application was notified for a period between 23 August 2021 and 21 September 2021.
131. The amended applications submitted on 23 November 2021 and 28 July 2022 were not required to be notified or advertised under the City of Sydney Community Participation Plan, given the amendments do not result in significant additional environmental impacts.
132. A total of 1,381 owners and occupiers were notified and 18 submissions were received by the City in response to the public exhibition of the application.
133. The submissions comprise the following:
 - (a) One submission in support.
 - (b) One submission comment from the owner of the subject site.
 - (c) Sixteen submissions in objection to the proposed development, with two being made by the same submitter.
134. The submissions made in objection to the proposal raised a range of issues of concern, which are summarised and addressed below.
 - (a) **Issue:** Lack of activation to Brougham Street and associated safety and security concerns.
 - (b) **Issue:** Pedestrian access to the site from Brougham Street will result in noise and traffic impacts.

Response: Each of the proposed hotel rooms to the ground floor level fronting Brougham Street is proposed to have pedestrian access and egress to the street. Casual surveillance of the street is also provided via the provision of glazed door openings to the ground and first floor hotel rooms, and dormer windows to the upper level hotel rooms.

Given that there is no requirement for the provision of an active street frontage to Brougham Street under Section 3.2.3 of the Sydney Development Control Plan 2012, the proposed design response is considered to provide adequate activation to Brougham Street similar to that provided by the existing residential uses, and is acceptable on CPTED grounds as a result.

Noise and traffic impacts arising from guests utilising these points of access and egress from hotel rooms fronting Brougham Street is not expected to create noise or traffic impacts significantly above and beyond those associated with the existing terrace houses.

Furthermore, retention of the terraces provides the most appropriate contextual response to the surrounding heritage conservation area.

- (c) **Issue:** Potential impacts to the structural stability of an existing retaining wall at the rear of the properties at 175 Victoria Street and 177-179 Victoria Street, Potts Point.

Response: The original and amended applications were referred to the City's Health and Building Unit, which advised that the proposed development is acceptable, subject to conditions requiring the preparation, submission, approval and compliance with a site specific Demolition, Excavation and Construction Noise and Vibration Management Plan.

Additionally, the City's standard condition requiring the preparation and submission of dilapidation reports in relation to the above-mentioned properties, in addition to conditions requiring the preparation, submission and approval of a heritage protection plan for the adjoining properties have been included in Attachment A.

- (d) **Issue:** Noise impacts arising from demolition, excavation and construction works.
- (e) **Issue:** The locality is a residential area and the development work is expected to be accompanied by considerable noise both from machinery and workers on site.
- (f) **Issue:** Working hours should be limited to between 9.00am and 5.00pm, Mondays to Fridays, and between 9.00am and 12.00pm noon on Saturdays. At the very least, those hours should be specified for any works involving noise producing machinery. We have no objection to work, such as painting, which produces no noise.

Response: The construction management plan submitted with the application has not been approved.

The City's standard condition for hours of work and noise outside of the Sydney Central Business District has been included in Attachment A, which is based upon the City's Code of Practice for Construction Hours/Noise 1992.

This condition permits hours of work between 7.30am and 5.30pm on Mondays to Fridays inclusive, and between 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, with no work to be carried out on Sundays or public holidays. It requires all work to comply with Australian Standard 2436 – 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.

The original and amended applications were also referred to the City's Health and Building Unit, which advised that the proposed development is acceptable, subject to conditions.

These conditions require the preparation, submission, approval and compliance with a site specific Demolition, Excavation and Construction Noise and Vibration Management Plan. These conditions have been included in Attachment A.

- (g) **Issue:** Dust impacts arising from demolition, excavation and construction works.
- (h) **Issue:** Conditions should be imposed to require building practices be put in place which eliminate any dust/debris floating into adjacent properties from demolition/building.

Response: The City's standard condition relating to demolition, excavation and construction management has been included in Attachment A. This condition contains requirements for the minimisation of dust emissions from development sites.

The City's standard erosion and sediment control conditions are also included in Attachment A. These conditions require a range of soil conservation measures to be implemented to ensure that the surrounding environment is adequately protected.

- (i) **Issue:** The proposed development warrants a larger upgrade of the public domain than depicted on the submitted drawings and should include works in front of the adjoining residential buildings.

Response: The public domain works depicted on the drawings submitted with the application are indicative only and no consent has been granted in this regard.

The original and amended applications lodged with Council have been referred to the City's Public Domain Unit for review, which has advised that the proposed development is acceptable, subject to a range of conditions of consent, including the requirement for public domain works to both the Victoria Street and Brougham Street frontages of the site. The extent of works required to the public domain will be determined by the City's Public Domain Unit, in accordance with Public Domain Manual and Sydney Streets Code and Technical Specifications published on Council's website. These conditions have been included in Attachment A.

- (j) **Issue:** There is no indication that the street trees on Victoria Road will be retained during the course of the construction of the proposed development. All care must be taken to preserve these trees to ensure that the canopy along Victoria Street is maintained.

Response: The original and amended applications lodged with Council have been referred to the City's Tree Management Unit for review, which has advised that the proposed development is acceptable, subject to a range of conditions of consent, including standard street tree protection conditions. These conditions have been included in Attachment A.

- (k) **Issue:** Given there is little to no green space in the locality, the inaccessible green roofs should be made publicly accessible.

Response: There are no planning controls applicable to the proposed development which require the provision of publicly accessible space within the subject site.

The green roofs are not proposed to be accessible, in order to achieve a landscape outcome for the site which achieves design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012, and consistency with the objectives and provisions in Section 4.2.3.5 of the Sydney Development Control Plan 2012 and Volume 2 of the Sydney Landscape Code relating to site landscaping for commercial developments.

The original and amended applications lodged with Council have been referred to the City's Landscape Assessment Officer for review, who has advised that the proposed development is acceptable, subject to a range of conditions of consent, including a condition relating to the design of the inaccessible green roofs. These conditions have been included in Attachment A.

- (l) **Issue:** It is not clear as to when major construction will commence, which would involve significant noise and disruption.

Response: Decisions relating to the timing of development works lie outside the scope of the assessment of a development application.

As discussed above, there are a range of the City's standard conditions included in Attachment A to address potential environmental impacts arising during the demolition, excavation and construction works associated with the proposed development.

- (m) **Issue:** It appears as though the Frangipani tree in the front yard of the terrace at 94 Brougham Street, Potts Point, is proposed to be retained. Could this be ensured to occur or, if not, relocated somewhere else?

Response: The existing Frangipani in the front yard of 94 Brougham Street, Potts Point is proposed to be retained. Conditions have been included in Attachment A to ensure that it is retained and protected throughout the course of development works on the subject site.

- (n) **Issue:** No notification received of the development application which is for the adjoining property. An extension of time for should be permitted.

Response: Council's records indicate that a notification letter was posted to the submitter's Post Office Box. Nonetheless, the submitter made a second submission, which is summarised and addressed below.

- (o) **Issue:** The proposed development will render the adjoining residential building on Brougham Street uninhabitable due to unacceptable privacy and noise impacts. Noise from the previous nightclub use and rooftop plant was previously found by Council to be excessive.
- (p) **Issue:** The proposed restaurant and balcony on the upper level will be used as a bar and will operate into the night. The proposal includes dining areas on the levels below and there is no need for the restaurant area.
- (q) **Issue:** The acoustic report claims that there is an acceptable level of noise, which is impossible for a lay person to analyse, and with the variability in parameters and inputs to acoustic modelling it appears easy to get the desired results.

- (r) **Issue:** Brougham Street is a narrow, one way street, with residential properties located directly adjacent and the impact of noise will be dramatic and constant day and night due to the use being a hotel.
- (s) **Issue:** Noise will occur associated with the increase in occupancy across four levels of the hotel, from the rear of the terraces, from the restaurant and bar, from the food and beverage functions, and from the kitchen.
- (t) **Issue:** The acoustic report has not assessed noise from mechanical ventilation, openings for trees in the roof of the 'garden room', or noise from the external and internal areas over four levels of the proposed development.
- (u) **Issue:** The acoustic report indicates that outdoor areas will be limited in operation until 10pm. The hours of operation should be until 9pm only.

Response: The indicative food and drink premises uses depicted on the submitted drawings will be subject to a separate development application (or development applications) for their detailed fit out and use, including patron capacity and hours of operation. Appropriate conditions have been included in Attachment A to require this to occur.

The original and amended applications, including the submitted acoustic report and statement and the potential for noise impacts from the hotel accommodation portion of the development, were referred to the City's Health and Building Unit. The advice received was that the proposed development is acceptable, subject to conditions relating to noise from entertainment, commercial plant and equipment, and compliance with the recommendations of the submitted acoustic report and statement. These conditions have been included in Attachment A.

- (v) **Issue:** Concern is raised in relation to Council's approval of the change to residential zoning to allow for the development to proceed on Brougham Street.

Response: The planning proposal to permit development for the purposes of hotel or motel accommodation (subject to development consent) on the land at 92-98 Brougham Street, Potts Point, was subject to public exhibition between 11 January 2021 and 8 February 2021. Nineteen submissions were received by the City during this exhibition period, which were addressed in detail in an assessment report to a meeting of Council's Transport, Heritage, Environment and Planning Committee on 10 May 2021.

The planning proposal was determined by the NSW Department of Planning and Environment on 1 December 2020, with the associated amendment to Schedule 1 of the Sydney Local Environmental Plan 2012 was published on 25 June 2021.

- (w) **Issue:** The hotel and food and drink uses, deliveries from trucks and additional services will result in noise, traffic and parking impacts along Brougham Street.

Response: Servicing of the site will occur from Victoria Street, given that there is no capacity to service the site from Brougham Street or Hourigan Lane, either through individual hotel rooms, or through a bicycle parking facility.

The application, including the submitted Transport Impact Assessment, was referred to the City's Access and Transport Unit for review, which advised that the proposed development is acceptable, subject to a range of conditions of consent.

These include requirements for the preparation, submission and approval of a review of on-street parking restrictions, a loading and servicing management plan, and a transport access guide.

- (x) **Issue:** The hotel rooms will result in visual privacy and overlooking impacts to surrounding residential properties.

Response: The hotel rooms proposed within the buildings at 92-98 Brougham Street, Potts Point, have window and door openings facing the street, which will not give rise to any significant impacts above those arising from the existing dwelling houses and apartments.

The hotel rooms proposed within the building at 169 Victoria Street, Potts Point, rely on existing windows facing the street or windows facing north-west, which are provided with privacy screening and planters, which limit opportunities for overlooking into adjoining residential properties.

- (y) **Issue:** The density of development is excessive, with 1,791 square metres of food and drink premises, a potential capacity for in excess of 1,500 people and use as a function centre.

Response: The proposed density of the development is supported, as discussed elsewhere in this assessment report, in relation to the proposed exceedance of the maximum Floor Space Ratio development standard and the written Clause 4.6 variation request submitted with the amended application made on 28 July 2022.

As mentioned above, the indicative food and drink premises uses depicted on the submitted drawings will be subject to a separate development application (or development applications) for their detailed fit out and use, which will include a merit assessment of the proposed patron capacity.

No use of the site as a function centre, as defined in the Dictionary of the Sydney Local Environmental Plan 2012, is proposed under the subject application.

- (z) **Issue:** It is not clear that the 'garden room' at the rear of the terraces to Brougham Street will be entirely enclosed for noise management, given that trees are shown within the space protruding through the roof and the space is provided with operable glazing, to allow for passive ventilation.

Response: The design of the 'garden dining' addition at the rear of the lower ground level of the Piccadilly Hotel has been amended to reduce its extent, delete the tree plantings within the addition, and allow for four new tree plantings between the addition and the rear addition to the Brougham Street terraces. While the addition proposes openings along its western elevation, these will be designed to incorporate acoustic privacy treatments in accordance with the submitted acoustic report.

- (aa) **Issue:** Provision of mechanical ventilation and air conditioning plant for the 'garden room' and three levels of food and drink premises within the former Piccadilly Hotel building is unclear and noise has not been assessed.

Response: As discussed above, the original and amended applications, including the submitted acoustic report and statement, were referred to the City's Health and Building Unit.

The advice received was that the proposed development is acceptable with regard to mechanical ventilation and acoustic privacy considerations, subject to the City's standard conditions relating to mechanical ventilation and noise from commercial plant and equipment.

Additionally, Council's standard conditions relating to rooftop plant and air conditioning units have been included Attachment A, which require air conditioning plant to be contained within the proposed roof design and preclude any air conditioning units from being installed to the facades or balconies of the buildings on the site.

- (bb) **Issue:** Dilapidation reports are requested to be carried out for the whole of the building at 100-104 Brougham Street, Potts Point, including each individual apartment. Consultation should include all key stakeholder groups, including neighbouring residents.

Response: The City's standard condition requiring the preparation and submission of dilapidation reports in relation to the above-mentioned properties, in addition to conditions requiring the preparation, submission and approval of a heritage protection plan for the adjoining properties have been included in Attachment A.

- (cc) **Issue:** The proposed development will require the erection of a tower crane which may swing over adjacent properties.

Response: Tower cranes cannot encroach on adjoining properties without the consent of the owners of the adjoining properties for the encroachment.

- (dd) **Issue:** A works zone along Brougham Street will result in traffic and parking impacts within the locality.

Response: Any future application for a works zone along Brougham Street or Victoria Street will be assessed by the City's Traffic Operations Unit and be subject to review by the City's Local Pedestrian Cycling and Traffic Calming Committee. The City's standard condition requiring the preparation, submission to, approval of a Construction Traffic Management Plan by the City's Traffic Operation Unit is included in Attachment A.

- (ee) **Issue:** There is no accessible toilet at the ground floor level, or at the uppermost level, with the toilets at level 1 accessible by the external eastern terrace.

Response: The application has been amended to alter the originally proposed arrangements in relation to sanitary facilities within the development.

Additionally, the City's standard condition is included in Attachment A requiring the provision of access and facilities for persons with disabilities in accordance with the provisions of the Building Code of Australia.

- (ff) **Issue:** The proposed development may result in anti-social behaviour and associated impacts on the residential amenity of the surrounding locality.

- (gg) **Issue:** A large scale nightclub or bar should not be supported as there is a high density of pubs and large bars within the locality, and this type of use will exacerbate impacts associated with the existing concentration of licenced premises.
- (hh) **Issue:** Boutique hotels, quality restaurants and offices are supported with trading hours consistent with other restaurants in the locality, however 24 hour trading is strongly objected to.

Response: The original and amended applications, including the plans of management for the premises, were referred to the City's Licenced Premises Unit. The advice received was that the proposed development is satisfactory, subject to the conditions included in Attachment A, including a condition requiring the preparation, submission to and approval by Council of an amended Plan of Management.

As discussed above, the indicative food and drink premises uses depicted on the submitted drawings will be subject to a separate development application (or development applications) for their detailed fit out and use, including patron capacity and hours of operation. Appropriate conditions are included in Attachment A to require this to occur.

- (ii) **Issue:** It is unclear as to whether there will be any view sharing impacts from the proposed development on the apartment at 4/181-183 Victoria Street, Potts Point, either from the built form of the proposed development, or from any landscaping and vegetation that will be planted and grow to obstruct views.

Response: As discussed elsewhere in this assessment report, the applicant has provided a view analysis which demonstrates that there will be no significant impacts arising from the built form of the development.

The proposal includes the indicative planting of four trees on the site, one each in the rear yards of the terraces at 92, 94, 96 and 98 Brougham Street, Potts Point. The City's Tree Management Unit have recommended appropriate conditions, which are included in Attachment A.

These conditions set considerations for soil depth for trees to contribute to canopy cover over the site, in accordance with the relevant objective and provisions in Section 3.5.2 of the Sydney Development Control Plan 2012. Given the limited space available for tree plantings, it is unlikely that the future canopy growth of these trees will result in significant view sharing impacts from the subject apartment.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

135. The development is subject to a total Section 7.11 development contribution of \$186,270.81 under the provisions of the City of Sydney Development Contributions Plan 2015.

136. This calculation is based on:
- (a) 17 hotel rooms.
 - (b) 1,669 square metres of food and drink premises Gross Floor Area.
137. Credits have been applied for the most recent approved use of the site, as follows:
- (a) 3 three+ bedroom dwellings in the dwelling houses at 92, 94 and 98 Brougham Street, Potts Point.
 - (b) 3 one-bedroom dwellings in the residential flat building at 96 Brougham Street, Potts Point.
 - (c) 1,045 square metres of food and drink premises Gross Floor Area.
 - (d) 342 square metres of sex services premises Gross Floor Area.
138. A condition relating to this development contribution is included in the recommended conditions of consent in Attachment A. The condition requires the contribution to be paid prior to the issue of any construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

139. The site is located within the Residual Lands affordable housing contribution area.
140. As the proposed development includes additional floor space, a contribution is required totalling \$35,321.21, which is calculated by establishing the sum of the equivalent monetary contribution \$11,599.74 multiplied by 0.5 per cent of the total floor area (TFA) for non-residential development.
141. The applicant has provided TFA calculation drawings prepared in accordance with the definition in Clause 7.13 of the Sydney Local Environmental Plan 2012, which indicate that the TFA of the proposed development is equal to 609 square metres.
142. A condition of consent is recommended in Attachment A requiring payment of the contribution prior to the issue of any construction certificate.

Relevant Legislation

143. Environmental Planning and Assessment Act, 1979.
144. Roads Act, 1993.
145. Sydney Water Act, 1994.

Conclusion

146. The application seeks consent for the adaptive reuse of the Piccadilly Hotel and terrace buildings fronting Victoria Street and Brougham Street for hotel accommodation and indicative food and drink premises uses, including associated demolition, alterations and additions, tree removal, landscaping and tree plantings.

147. The proposal was amended to address Council's concerns relating to heritage conservation, demolition, contamination, deep soil provision, tree planting, flooding and stormwater, ecologically sustainable development, late night trading and acoustic privacy. The amended proposal is satisfactory, subject to the recommended conditions in Attachment A.
148. The proposed height of the development exceeds the maximum 12 metre height of buildings standard by between 1.05 metres (9 per cent) and 2.99 metres (24.9 per cent). The proposal also exceeds the maximum floor space ratio standard applicable to site by 0.23:1 (14 per cent) or 310 square metres of gross floor area.
149. Requests to vary both the Clause 4.3 'Height of buildings' and Clause 4.4 'Floor space ratio' development standards have been submitted with the application in accordance with Clause 4.6 of the Sydney LEP 2012.
150. The statements demonstrate that compliance with the standard is unreasonable and unnecessary, and there are sufficient environmental planning grounds to justify contravening the standards.
151. The proposal is generally consistent with the objectives of the land use zones applicable to the site, and the objectives of both development standards, and the proposed departures to building height and FSR are supported in the particular circumstances of the site and proposed development.
152. The proposal is generally consistent with other applicable planning provisions including the Sydney LEP 2012 and the Sydney DCP 2012. Proposed variations to controls have been assessed as having merit in this case and are addressed in the report. Conditions are recommended to address non-compliances where appropriate.
153. The proposal does not pose any other significant or unreasonable impacts upon the existing or likely future development surrounding the site. Furthermore, the potential impacts on the heritage significance of the Piccadilly Hotel and terrace buildings on the site is generally acceptable, subject to conditions.
154. It will enhance the interface between the private and public domain and exhibits design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
155. The proposal will provide for an amended mix of new visitor and tourist accommodation and indicative food and drink premises uses on a site which is highly accessible to existing and planned employment, services, public transport infrastructure and community facilities.
156. Subject to the recommendation of this report, and the imposition of the conditions in Attachment A (including deferred commencement consent conditions), the proposed development respond appropriately to the site constraints and will contribute positively to the existing and desired future character of the locality.

ANDREW THOMAS

Executive Manager Planning and Development

David Reynolds, Area Coordinator