

Item 4.**Modification Application: 133-141 Liverpool Street, Sydney - D/2018/1144/A**

File No.: D/2018/1144/A

Summary

Date of Submission:	26 May 2022
Applicant:	Deicorp Projects (Liverpool St) Pty Ltd
Architect/Designer:	Candalepas Associates
Developer:	Deicorp
Owner:	The Trustees of the Roman Catholic Church for the Archdiocese of Sydney
Planning Consultant:	Planning Lab
Cost of Works:	Nil
Zoning:	SP5 Metropolitan Centre
Proposal Summary:	<p>The application is a Section 4.55(2) modification to amend concept building envelope for an indicative mixed-use building to a height of approximately 234m containing commercial uses within the podium and residential uses within the tower.</p> <p>Specifically, the modification seeks a slight reduction in setback at the north-eastern corner of the site to allow for further building articulation resulting from the detailed design of the winning scheme following the design competition.</p> <p>The application is referred to the Central Sydney Planning Committee (CSPC) for determination as the proposed modifications relate to “major development” for the purposes of the City of Sydney Act, 1988.</p> <p>A separate detailed design development application (D/2022/495) is presented concurrently for approval.</p>

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

The modification application was notified for 14 days between 10 June 2022 to 25 June 2022. One submission was received. The submission received is a single submission received for the subject modification application and the detailed design development application (D/2022/495) and the separate demolition development application relating to the site (D/2022/488).

The matters raised in the submission relate solely to construction impacts. As the subject application does not relate to any physical works, the submission is not considered relevant to the assessment of the modification. The matters raised in the submission, however, are addressed in the assessment report of the detailed design development application presented concurrently for approval.

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

The detailed design of the development will be considered concurrently by the CSPC under development application D/2022/495, which demonstrates that a generally compliant scheme can be provided within the amended envelopes. The proposed modifications are recommended for approval.

Summary Recommendation: The Section 4.55(2) application is recommended for approval.

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
 - (ii) City of Sydney Act 1988 and City of Sydney Regulation 2016
 - (iii) Airports Act 1996 (Commonwealth) and Civil Aviation (Building Control) Regulation 2018
 - (iv) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)
 - (v) Sydney Local Environmental Plan 2012 (SLEP 2012)
 - (vi) Sydney Development Control Plan 2012 (SDCP 2012)

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

Recommendation

It is resolved that consent be granted to Section 4.55 Application Number D/2018/1144/A subject to the amendment of the following conditions (with modifications shown in **bold italics** (additions) and ~~strikethrough~~ (deletions), as follows:

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2018/1144 dated 21 September 2018 and the following drawings prepared by Candalepas Associates:

Drawing Number	Drawing Name	Date
DA-1-1001 C	Site Analysis Plan	19 April 2019
DA-1-1050 C M	Streetscape – Castlereagh St	19 April 2019 29 June 2022
DA-1-1051 M	Streetscape – Liverpool St	29 June 2022
DA-1-1100 C M	Building Envelope Plan	19 April 2019 29 June 2022
DA-1-1301 C M	Building Envelope North & East Elevation	19 April 2019 29 June 2022
DA-1-1302 C M	Building Envelope South & West Elevation	19 April 2019 29 June 2022

and as amended by the conditions of this consent.

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

(Condition amended – D/2018/1144/A – 17 August 2023)

(2) DESIGN MODIFICATIONS

~~The design of the building must be modified as follows:~~

- ~~(a) The tower envelope is to have a minimum weighted average setback of 8m above the podium along the Liverpool Street frontage.~~

~~The modifications are to be submitted to and approved by Council's Area Planning Manager prior to the commencement of a competitive design process.~~

(Condition deleted – D/2018/1144/A – 17 August 2023)

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979.
- (B) The proposed modification ensures that the detailed design development application is consistent with the concept approval, in order to satisfy Section 4.24 of the Environmental Planning and Assessment Act, 1979.
- (C) The proposed modification is consistent with and is considered acceptable having regard to the reasons given for the original approval in accordance with Section 4.55(3) of the Environmental Planning and Assessment Act, 1979.
- (D) The proposal is consistent with the aims, objectives and relevant provisions of the Sydney Local Environmental Plan 2012 (SLEP 2012) and Sydney Development Control Plan 2012 (SDCP 2012) for the reasons set out in the report.
- (E) The modified building envelope can accommodate a building design which is capable of exhibiting design excellence in accordance with Clause 6.21C of the SLEP 2012.
- (F) The change to the approved building envelope setback to Liverpool Street is not likely to significantly impact the overall use of the building or the amenity of surrounding sites or locality.
- (G) The development as modified is in the public interest.

Background

The Site and Surrounding Development

1. A detailed description of the site and surrounds is provided in the assessment report for the detailed design development application (D/2022/495) that is presented to the Central Sydney Planning Committee (CSPC) concurrently for approval.

History Relevant to the Development Application

Development Applications

2. The following applications are relevant to the current proposal:
 - **D/2018/1144** – Development consent was granted on 13 February 2020 for the concept development application for this site. The approval granted in principle demolition of the existing building, a maximum building height of approximately 234m reaching up to a RL of 253.57 (AHD), a basement envelope with a depth of approximately 20m having a maximum depth of RL00.00 (AHD) and a podium with a maximum height of approximately 33m and a RL 52.78 (AHD).
 - Development application **D/2022/488** is being concurrently assessed for the demolition of the existing 24-storey commercial building (Polding Centre) on site to the ground slab level and proposed site establishment works.

Competitive Design Process

3. A competitive design process was undertaken for the development site in accordance with the provisions of Clause 6.21D of the SLEP 2012 and the City of Sydney Competitive Design Policy. As a result of this competitive design process, the applicant is seeking up to 10 per cent additional floor space pursuant to Clause 6.21D of the SLEP 2012.
4. The Competitive Design Process was conducted between 17 January 2022 and 9 March 2022. The architectural firms who participated in the 'invited' Architectural Design Competition were EMBECE, BVN, Candalepas Associates, Turner and Aileen Sage and Architectus.
5. Candalepas Associates was selected as the winning scheme by the six member selection panel. The selection panel described the winning scheme as considered, engaging, pragmatic and rooted in concept, materiality and making. The selection panel noted the influence of elements in the ANZAC Memorial in its design including the sandstone materiality and staggered arched elements. The panel further noted the design correctly identifies the intent of achieving a high amenity building that addresses the residential and important commercial needs in a balanced manner. The building is calm, quiet and responds well to its context, including the war memorial. The public area on the podium is particularly well planned and executed.

6. A photomontage of the winning scheme is provided in the figure below:



Figure 1: Photomontage of the winning Candalepas Associates scheme

Detailed Design Development Application - D/2022/495

7. On 30 May 2022, a development application for the detailed design of the site was lodged with the City. The DA proposes the demolition of all underground structures on site, site excavation and the construction of a mixed-use development comprising a 55-storey tower with podium (maximum height of RL 230.00 AHD) with vehicle access from Castlereagh Street.

8. The proposal includes eight basement levels, commercial and retail use at the podium (ground to level 4), communal indoor and outdoor spaces above the podium at level 6 for residential uses and residential apartments located within the tower above. Photomontages of the proposed detailed development are provided in Figures 2 and 3 below.
9. The application is being reported concurrently to the CSPC for determination. The detailed design development application is recommended for approval. Refer to the separate report for details.



Figure 2: Photomontage view northeast of Hyde Park



Figure 3: Photomontages of northern elevation (left) and western elevation (right)

Proposed Modification

10. The subject Section 4.55(2) modification application proposes to amend the concept development consent D/2018/1144 to ensure consistency with the concurrent detailed design development application D/2022/495.
11. Specifically, the application seeks to modify Condition 1 'Approved Development' to reduce the setback of the north-eastern corner of the tower portion of the envelope to Liverpool Street. The varied 5.5 metre to 7 metre wide portion of the envelope is proposed to protrude outwards to up to 2.6 metres from the existing approved setback. The remaining setback along Liverpool Street is also proposed to be reduced slightly from 8 metres to 7.9 metres.
12. The proposed protrusion contains residential living areas and wintergardens as proposed in the detailed design development application D/2022/495.
13. The approved 6 metre setbacks to Castlereagh Street and the southern and western property boundaries remain unchanged.
14. The proposed modification will also subsequently require the deletion of Condition 2 'Design Modifications' that previously required an amended envelope to include a weighted average setback of 8m above to podium along the Liverpool Street frontage.

15. Elevations and a building envelope plan are provided below.

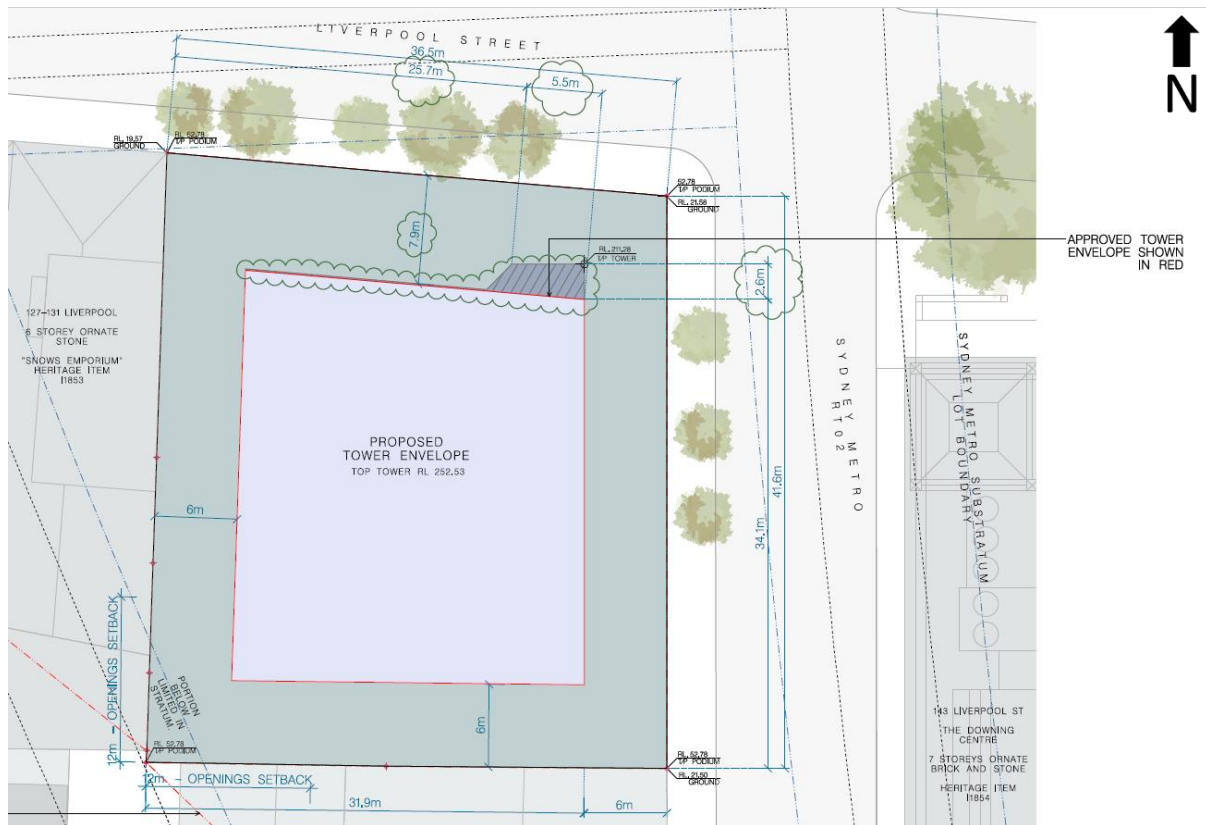


Figure 4: Proposed building envelope plan. Proposed areas of modification identified as hatched and clouded

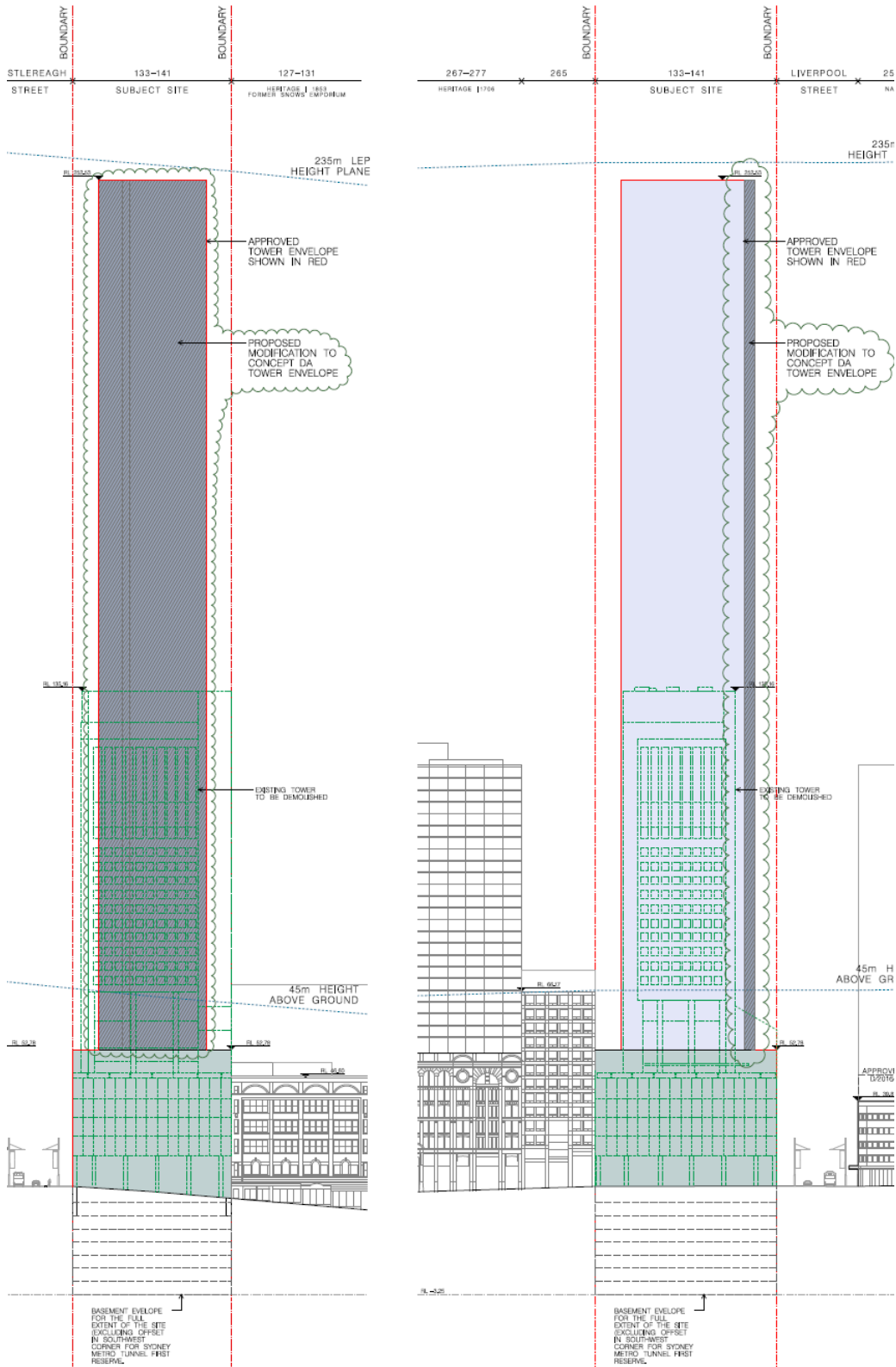


Figure 5: Proposed Liverpool Street (north) elevation (left) and Castlereagh Street (east) elevation (right), areas to be modified hatched and clouded.

Threshold Test

16. The development as proposed to be modified is substantially the same as that originally approved.
17. The location and overall form of the building envelopes are not inconsistent with the intent of the approved concept. As per the originally approved concept application, the proposed modifications will deliver mixed use building envelopes, including retail, commercial and residential land uses which front Liverpool Street and Castlereagh Street.
18. The proposed modifications to the tower envelope are to accommodate the detailed design and result in improved functionality and amenity of this space. Specifically, the modifications seek a decreased setback to Liverpool Street at the northeastern corner of the site while creating a negligible impact on the amenity of surrounding developments by way of outlook, solar access and overshadowing.
19. Further, the reallocation of floor space in this additional protrusion allows for a reduction in the height of the tower, improving sunlight access to Belmore Park, a protected public open space as identified by the Belmore Park sun access plane in the SLEP 2012 and SDCP 2012.
20. The proposed modifications to the envelopes are supported as they do not result in unacceptable amenity impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
21. In accordance with Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, an assessment of the application against the relevant provisions of Section 4.15(1) of the Act is provided under the headings below.

Economic, Social and Environmental Assessment

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

Environmental Planning and Assessment Act 1979

23. Section 4.55(3) of the EP&A Act requires that a consent authority is to take into consideration the reasons given for the consent that were originally given to grant consent.
24. The original application (D/2018/1144) was approved for the following reasons.
 - (a) The proposed envelope is generally consistent with the relevant planning controls and responds appropriately to the surrounding urban context.
 - (b) The proposed envelope (as recommended for approval) does not result in significant environmental or amenity impacts on the surrounding properties or the public domain.
 - (c) The proposed envelope (as recommended for approval) is capable of accommodating a development which can achieve design excellence.

25. The original reasons for approval have been considered and the proposal is considered acceptable and consistent with the original reasons. Specifically:
- (a) The application relates to a concept development application and the modification application is limited to amendments to the tower envelope.
 - (b) The development, as amended, is consistent with Section 4.15 of the EP&A Act, includes appropriate conditions as recommended, achieves the objectives of the planning controls for the site and does not result in unreasonable environmental impacts.
 - (c) The development, as amended, is generally consistent with the applicable State Environmental Planning Policies, SLEP 2012, SDCP 2012 and the ADG.
 - (d) The modified proposal satisfies the relevant provisions contained in Clause 6.21D of SLEP 2012 relating to design excellence. When discussed with Council's Design Advisory Panel, support was provided to this architectural design feature as it provides further built form articulation and visual interest.
 - (e) The proposal is consistent with the objectives of the SP5 Metropolitan Centre zone.
 - (f) The proposed modification does not result in any impacts to the quality of the public domain to Liverpool Street and Castlereagh Street, as originally approved.
 - (g) The proposed modification application is in the public interest.

Sydney Local Environmental Plan 2012

26. The relevant provisions of the SLEP 2012 have been taken into consideration in the assessment of the proposal.
27. The site is located within the SP5 Metropolitan Centre zone. The proposed development comprises commercial, retail and residential uses which are permissible within the zone.
28. Compliance with the development standards prescribed under Clause 4.3 height of buildings and clause 4.4 floor space ratio are able to be achieved.
29. The detailed design development application (D/2022/495) demonstrates the revised building envelope satisfies the objectives of clause 6.21C relating to design excellence.
30. The development is consistent with the other relevant provisions.

Discussion

31. The applicant submits that the proposed modifications to the envelope in the northeastern corner of the site are minor and do not represent significant or transformational changes.

32. Further, the applicant submits there are no additional amenity impacts introduced as part of the proposed modifications, including shadow impacts, intrusion into view corridors, impacts to the privacy of surrounding developments or wind impacts in the public domain and allows an improved detailed design of the tower development with a lesser impact overshadowing of protected public places.
33. The proposed modification has been considered against the relevant controls of the SLEP 2012 and the SDCP 2012, particularly the building setback controls contained in Section 5.1.1 of the SDCP 2012.
34. Section 5.1.1.1 of the SDCP 2012 requires an 8m setback above street wall height. Subsection (3) however, notes that a variation to street setback may be permitted to building massing that provides the following:
 - (a) encroachment(s) 2m forward of the minimum Street Setback within the middle third of the frontage to a Public Place and provision of compensating recess(es) of equal to or greater area up to 4m behind the minimum Street Setback; or
 - (b) equivalent or improved wind comfort, wind safety and daylight levels in adjacent Public Places relative to a base case building massing with complying Street Frontage Heights and Street Setbacks (i.e. variation to massing is governed by achieving equal or better performance); and
 - (c) a high quality urban design outcome will be achieved, through the preparation of a detailed urban design and options analysis that demonstrates how the proposed massing is compatible with the context.
35. Schedule 12 of the SDCP 2012 provides further guidance regarding varied setbacks above Street wall heights. It notes the areas for consideration for the development to satisfy part (b) noted above in regard to wind comfort and daylight access requiring the submission of base case modelling and a sky view factor analysis.
36. The objectives of the SDCP 2012 seek to protect amenity within the public domain, provide suitable amenity for occupants in tall buildings and to establish a built form that is appropriate to the site's context and location.
37. The proposed modification application was accompanied by shadow diagrams and a wind report confirming that the proposed varied setback of the building envelope to Liverpool Street, in addition to the detailed design as considered in the detailed design development application D/2022/495, will have a negligible impact on overshadowing in the public domain or wind comfort at street level.
38. In light of the above, the absence of a base case model/ sky view factor analysis is assessed as acceptable in this instance as:
 - (a) The proposal is accompanied by a Pedestrian Wind Study report that confirms comfortable and safe wind conditions at ground floor entrances can be achieved throughout the year. The future detailed design is capable of complying with Sections 3.2.6 and 5.1.9 of Sydney DCP 2012.

- (b) The proposed development is accompanied by shadow analysis diagrams which demonstrates the proposed building envelope achieves acceptable daylight levels on the amenity of the public domain. Inclusive of the proposed varied setback for part of the Liverpool Street frontage of tower, the proposal achieves good separation between tall buildings on adjacent sites and across the street. The proposed setbacks still allow for a maintenance of views to the sky and good daylight access in the public domain at street level for pedestrians.
 - (c) The proposed envelope and detailed design have been subject to detailed urban design options analysis which demonstrates that the proposed massing is compatible with the context and enables a high-quality urban design outcome to be achieved and is demonstrated in the assessment of the detailed design development application D/2022/594, assessed concurrently with the subject modification.
39. Overall, the proposed modification to the building envelope generally satisfies the objectives of the SDCP 2012. The varied setback to Liverpool Street is unlikely to create any additional amenity impacts on surrounding developments by way of building separation, outlook, solar access or visual privacy. The modification is also unlikely to have any additional wind impacts on the public domain.

Consultation

Internal Referrals

40. The application was discussed with Council's Urban Design Specialist who advised that the proposal is acceptable subject to conditions.

External Referrals

Sydney Airport

41. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
42. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify that the site is subject to a prohibition of the construction of buildings more than 156m above existing ground level.
43. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be conducted in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
44. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, responded on 29 June 2022 and notified the referral of the controlled activity to the Secretary of the Department of Infrastructure Transport, Cities and Regional Development under Regulation 11(2) of the Airports (Protection of Airspace) Regulations 1996.
45. The Secretary's Delegate of the Department provided approval for the controlled activity on 26 July 2022 subject to conditions.

Advertising and Notification

46. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 10 June 2022 and 25 June 2022. A total of 427 properties were notified and one submission was received.
47. The submissions raised the following issues:
 - (a) **Issue:** The amenity of neighbouring developments will be impacted by noise, vibration and traffic impacts during demolition, excavation and construction.

Response: The subject modification application does not involve any construction works. The matters relating to construction impacts have been discussed in further detail in the detailed design development application D/2022/495 assessment report.

Financial Contributions

Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2021

48. A condition has been recommended to require a monetary contribution in accordance with Section 7.12 of the Environmental Planning and Assessment Regulation 2021 as part of the concurrent detailed design development application (D/2022/495).

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

49. Similar to above, a condition has been recommended to require an affordable housing monetary contribution as part of the concurrent detailed design development application (D/2022/495).

Relevant Legislation

50. Environmental Planning and Assessment Act 1979.

Conclusion

51. This Section 4.55(2) modification application proposes the altering of the approved building envelope to be consistent with the detailed design development application (D/2022/495). The detailed design development application is presented to the CSPC concurrently for approval.
52. The scope of the proposed modification includes the slight reduction in setback at the north-eastern corner of the site to allow for further building articulation resulting from the detailed design of the winning scheme following the design competition. The modified envelope creates a small pop-out section at the north-eastern corner of the site at close to the Liverpool Street and Castlereagh Street intersection. The variable setback of the tower form from the Liverpool Street elevation is proposed to be reduced to a maximum of 6.15m in this area.

53. The modifications to the envelope is supported as it does not result in unacceptable amenity impacts and delivers an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
54. The proposed building envelope is capable of accommodating a future building which exhibits design excellence in accordance with Clause 6.21C of the SLEP 2012. The detailed design development application (D/2022/495) being considered concurrently by CSPC demonstrates that a generally compliant scheme can be provided within the amended envelopes that delivers design excellence in accordance with Clause 6.21C of SLEP 2012. The architectural design feature was acknowledged and supported by the design competition jury and Council's Design Advisory Panel as being a successful feature in the built form articulation and provided visual interest.
55. The proposed modification is in the public interest and recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Marie Burge, Senior Planner