

Item 4.**Section 4.55 Application: 169-183 Liverpool Street, Sydney - D/2019/992/A**

File No.: D/2019/992/A

Summary**Date of Submission:** 28 July 2022**Amended Plans and Additional Information:** 17 March 2023, 27 July 2023, 11 September 2023 and 28 September 2023.**Applicant:** Sicard Pty Ltd**Developer:** Sicard Pty Ltd**Owner:** Sicard Pty Ltd**Architect:** Bates Smart**Planning Consultant:** Ethos Urban**Design Advisory Panel:** 1 September 2022**Cost of Works:** \$0**Zoning:** SP5 - Metropolitan Centre**Proposal Summary:** The application is a Section 4.55(2) modification to amend the approved concept building envelope for an indicative mixed-use development containing a 7-storey podium with indicative commercial and retail uses, and two towers above containing residential apartments. The application seeks to amend the approved building envelope and conditions of consent.

Specifically, the modification seeks to amend the width of the through-site link at ground level from 10m to 18m in the 'Urban Room' and 6m at the southern extent, include articulation zones on facades, for changes to the Liverpool Street setbacks, and for changes in levels.

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.

A separate and concurrent detailed design development application (D/2022/614) has been lodged and the amendments to the subject concept modification application will allow both applications to 'align' in terms of the siting of the proposed development, as required under Section 4.24 of the Environmental Planning and Assessment Act, 1979.

The original application was notified for 14 days between 2 August 2022 and 17 August 2022. Three submissions were received, including one submission of support and two objections raising concerns regarding privacy, wind and noise impacts. The matters raised in the objections are addressed within the report.

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

The detailed design of the development will be considered concurrently by the CSPC under development application D/2022/614, which demonstrates that a generally compliant scheme can be provided within the amended envelopes. The proposed modifications are recommended for approval.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021
- (ii) City of Sydney Act 1988 and City of Sydney Regulation 2016
- (iii) Sydney Airport Referral Act 1996
- (iv) State Environmental Planning Policy No.65 - Design Quality of Residential Apartment Development and the Apartment Design Guide
- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012

- (iii) Central Sydney Development Contributions Plan 2020

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings

Recommendation

It is resolved that consent be granted to Section 4.55 Application Number D/2019/992/A subject to the amendment of the following conditions (with modifications shown in **bold italics** (additions) and ~~strikethrough~~ (deletions), as follows):

(2) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2019/992 dated 6 September 2019 27 September 2023 and the following drawings prepared by Crone Partners Pty Ltd Bates Smart:

Drawing Name	Drawing Number	Date
<i>Proposed Building</i> Envelope Plan	DA- A- 10500 <i>Revision-B S1DA-01.00 Revision E</i>	18.06.20 <i>27/09/23</i>
<i>Proposed Building</i> Envelope Plan Lower Ground	10508 Revision-C <i>S1DA-01.01 Revision E</i>	13.08.20 <i>27/09/23</i>
<i>Proposed Building</i> Envelope Plan Ground	DA- A- 10510 <i>Revision-B S1DA-01.02 Revision E</i>	18.06.20 <i>27/09/23</i>
<i>Proposed Building</i> Envelope Plan Level 1 -6	DA- A- 10511 <i>Revision-B S1DA-01.03 Revision E</i>	18.06.20 <i>27/09/23</i>
<i>Building Envelope Plan</i> <i>Level 2-6</i>	<i>S1DA-01.04 Revision E</i>	<i>27/09/23</i>
<i>Proposed Building</i> Envelope Plan Level 7-28	DA- A- 10512 <i>Revision-B S1DA-01.05 Revision E</i>	18.06.20 <i>27/09/23</i>
<i>Proposed Building</i> Envelope Plan Level 29	DA- A- 10513 <i>Revision-B S1DA-01.06 Revision E</i>	18.06.20 <i>27/09/23</i>
<i>Proposed Building</i> Envelope Plan Level 30	DA- A- 10514 <i>Revision-B S1DA-01.07 Revision E</i>	18.06.20 <i>27/09/23</i>

Proposed Building Envelope Plan Level 31	DA- A- 10515 Revision B S1DA- 01.08 Revision E	18.06.20 27/09/23
Proposed Building Envelope Plan Level 32	DA- A- 10516 Revision B S1DA- 01.09 Revision E	18.06.20 27/09/23
Proposed Building Envelope Plan Level 33	DA- A- 10517 Revision B S1DA- 01.10 Revision E	18.06.20 27/09/23
Proposed Building Envelope Plan Level 34	DA- A- 10518 Revision B S1DA- 01.11 Revision E	18.06.20 27/09/23
Proposed Building Envelope Plan Level 35	DA- A- 10519 S1DA- 01.12 Revision E	18.06.20 27/09/23
Proposed Building Envelope Plan Level 36	DA- A- 10520 S1DA- 01.13 Revision F	18.06.20 04/10/23
Proposed Envelope Plan - Reef	DA- A- 10521	18.06.20
Proposed Envelope Axonometric Views	DA- A- 10530 S1DA- 03.01 Revision E	18.06.20 04/10/23
Proposed Building Envelope Elevation - North	DA- A- 10601 S1DA- 02.01 Revision E	18.06.20 27/09/23
Proposed Building Envelope Elevation - South	DA- A- 10602 S1DA- 02.02 Revision E	18.06.20 27/09/23
Proposed Building Envelope Elevation - East	DA- A- 10603 S1DA- 02.03 Revision E	18.06.20 27/09/23
Proposed Building Envelope Elevation - West	DA- A- 10604 S1DA- 02.04 Revision E	18.06.20 27/09/23

and as amended by the conditions of this consent.

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

Amended by D/2019/992/A on 19 October 2023

(12) THROUGH SITE LINK DESIGN

The through site link design in any future competitive design process and subsequent detailed design development application must be in accordance with the minimum requirements set out in the relevant objectives and provisions of Section 3.1.2.2 of the Sydney Development Control Plan 2012, including the following:

- (a) Being direct and accessible to all 24 hours a day;
- (b) Having a clear line of sight between public places;
- (c) Being open to the sky (***excluding the area contained within the 'Urban Room'***);
- (d) Being easily identifiable and including wayfinding measures;
- (e) Including materials and finishes consistent with adjoining streets and public spaces;
- (f) Being clear of obstructions and structures;
- (g) Including landscaping; and
- (h) Providing active frontages.

Amended by D/2019/992/A on 19 October 2023

(17) ECOLOGICALLY SUSTAINABLE DEVELOPMENT

- (a) Details are to be provided with the subsequent development application for the detailed design of the buildings to confirm that the buildings have adopted the Ecologically Sustainable Development (ESD) targets outlined in The '175 Liverpool Street Concept Development Application ESD Design Report', reference REP-ESD-001, revision 2, prepared by Arup and dated 18 June 2020 (Council reference TRIM 2020/267925).
- (b) These targets must include, at a minimum:
 - (i) For the residential apartment component of the development:
 - a. A BASIX energy score of at least 35 points or better;
 - b. A BASIX water score of at least 50 points or better;
 - (ii) For the commercial component of the development:
 - a. A NABERS Energy rating of 5.5 stars or better; and
 - (iii) ~~**Implementation of Building Integrated Photovoltaics to the northern facades of the development.**~~

- (c) The ESD targets must be included in the competitive design process brief and carried through the competitive design process phase, design development, construction, and through to completion of the project.

Amended by D/2019/992/A on 19 October 2023

(18) PUBLIC ART

- (a) The 'Preliminary Public Art Plan', reference 15914/2190217, version D, dated 19 June 2020 and prepared by Ethos Urban (Council reference TRIM 2020/267917) must be incorporated into the competitive design process brief.
- (b) ~~**The artist brief and shortlist must be presented to the City of Sydney's Public Art Unit prior to any competitive process for the public artwork being undertaken.**~~
- (c) ~~**Selected artists concepts must be presented to the City of Sydney's Public Art Unit prior to the development and submission of any detailed public art plans with a subsequent detailed design development application.**~~
- (d) A detailed Public Art Strategy, based upon the preliminary strategy referred to in (a) above, must be prepared and submitted with any subsequent detailed design development application.
- (e) All public artwork must be in accordance with the relevant objectives and provisions of the Sydney Development Control Plan 2012, the City of Sydney Public Art Policy, and the City of Sydney Interim guidelines: public art in private developments.

Note: All public art must be reviewed and endorsed by the City's Public Art Unit and/or the City of Sydney Public Art Advisory Panel, prior to submission for Council approval.

Amended by D/2019/992/A on 19 October 2023

(25) DEMOLITION, EXCAVATION AND CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN

~~**Any subsequent detailed design development application must be accompanied by a**~~ A site-specific Demolition, Excavation and Construction Noise and Vibration Management Plan **must be prepared prior to the issue of any Construction Certificate for any subsequent detailed design development application.**

The Demolition, Excavation and Construction Noise and Vibration Management Plan must be prepared by a suitably qualified person who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Australian Association of Acoustic Consultants.

The Demolition, Excavation and Construction Noise and Vibration Management Plan must include but not be limited to the following:

- (a) Identification of noise sensitive receivers near to the site.
- (b) The proposed hours of all construction and work on the development including building / demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (e.g. loading and unloading of goods, transferring of tools etc.), in connection with the proposed development.
- (c) A prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the *City of Sydney Construction Hours / Noise Code of Practice 1992* for the typical construction hours of 7.00am to 7.00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of neighbouring property.
- (d) A representative background noise measurement ($L_{A90, 15 \text{ minute}}$) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997.
- (e) Confirmation of the level of community consultation that has/is and will be undertaken with Building Managers/occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (f) Confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise Code **where possible**.
- (g) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (h) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.
- (i) What plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available.

Amended by D/2019/992/A on 19 October 2023

(31) STREET TREES

- (a) All street trees adjoining the site must be included for retention with any subsequent detailed design development application ***excluding street trees approved for removal under Development Consent D/2022/614.***

- (b) Any design elements (awnings, street furniture, footpath upgrades etc.) within the public domain in a subsequent detailed design development application must ensure appropriate setbacks are provided from the street tree to allow maturity of the tree to be achieved.
- (c) The location of any driveway must ensure that the removal of any existing street tree is not required. Any driveway must be appropriately setback so as it does not adversely impact on any existing street tree both below and above ground.

Amended by D/2019/992/A on 19 October 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 LEP 2012 and Sydney DCP 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 Sydney LEP 2012.
- (F) The changes to the approved building envelope are not likely to significantly impact the overall use of the building or the amenity of surrounding sites or locality.

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/2022/614) that is presented to the CSPC concurrently for approval.

History Relevant to the Development Application

Concept Development Application - D/2019/992

2. Development consent was granted on 22 October 2020 by the CSPC for a concept development application on the subject site for a building envelope and in-principle demolition of the existing commercial tower, retention of the existing basement, refurbishment and renewal of the existing pocket park, indicative construction of two new buildings separated by a through-site link, with podium elements containing retail and commercial uses, and residential uses in towers above.

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 Sydney LEP 2012 and the City of Sydney Competitive Design Policy.
4. As a result of this competitive design process the applicant is seeking up to 10 per cent additional height pursuant to Clause 6.21D of the Sydney LEP 2012.
5. The architectural firms who participated in the 'invited' architectural design competition were Bates Smart, Crone + Andrew Burns, Fender Katsalidis + Wong Tung International, PTW + Furtado Sullivan, and SJB.
6. The competitive design process was carried out between 11 October 2021 and 16 February 2022.
7. At the conclusion of the Jury panel's initial deliberations and before a decision could be made, the Jury recommended that further refinements be made to the Bates Smart and PTW + Furtado Sullivan schemes.
8. Following the second-round deliberations, the Jury selected the Bates Smart scheme as the winning scheme. A photomontage of the winning scheme is provided in the figure below:



Figure 1: Photomontage of the winning Bates Smart scheme

Detailed Design Development Application - D/2022/614

9. On 27 June 2022, a development application for the detailed design of the site was lodged with the City. The DA proposes the demolition of the existing building and construction of a new mixed-use development with a maximum height of 117.1m (RL 146.00 AHD) with commercial, retail and residential land uses in a 7-storey podium and 30-storey tower and 28-storey tower.
10. 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.

Proposed Development

11. The subject Section 4.55(2) modification application proposes to amend the concept development consent (D/2019/992) to ensure consistency with the concurrent detailed design development application (D/2022/614).
12. Specifically, the application seeks to modify Condition 2 'Approved Development' to amend the approved architectural plans referenced in the consent, with the plans including the following:
 - amend the width of the through-site link at ground level from 10m to 18m in the 'Urban Room' and to 6m at its southern extent connecting through to Clarke Street;

- inclusion of articulation zones on the facades;
- changes to the Liverpool Street setbacks; and
- changes in levels.

13. Axonometric drawing extracts and building envelope plans are provided below.

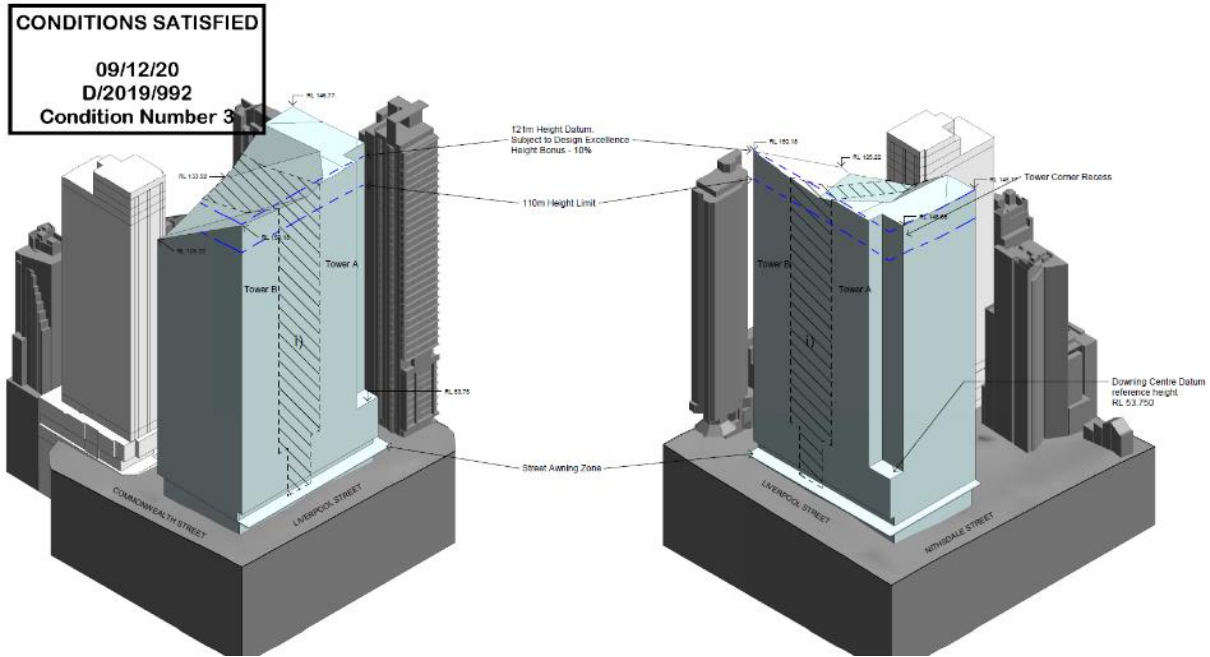


Figure 2: Approved axonometric drawings



Figure 3: Proposed axonometric drawings

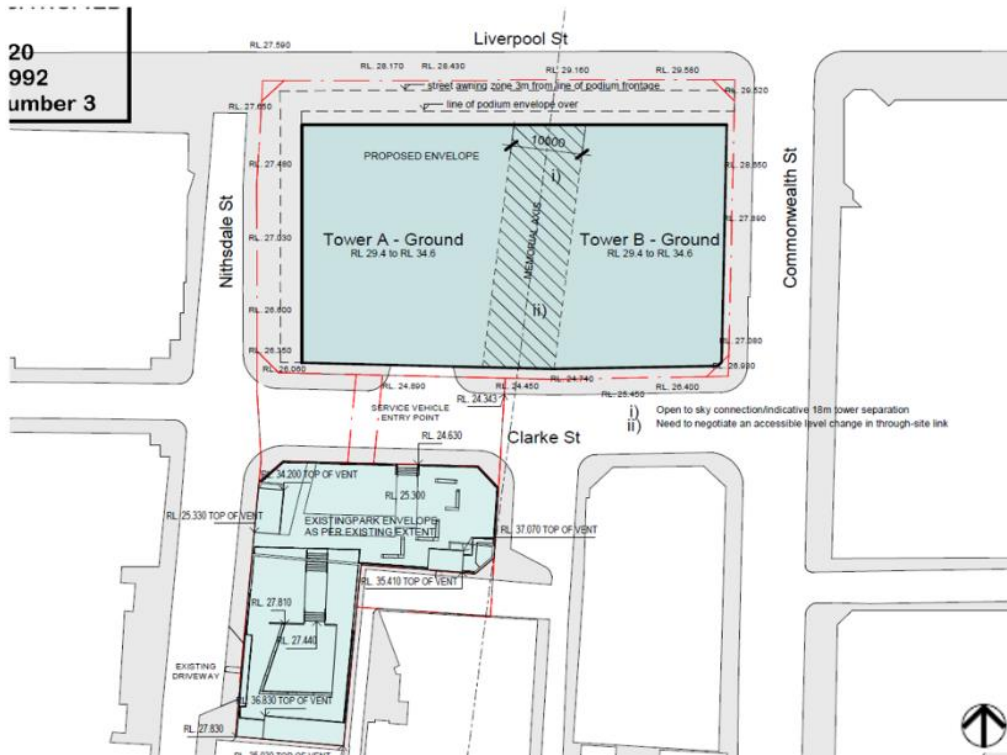


Figure 4: Approved building envelope plan

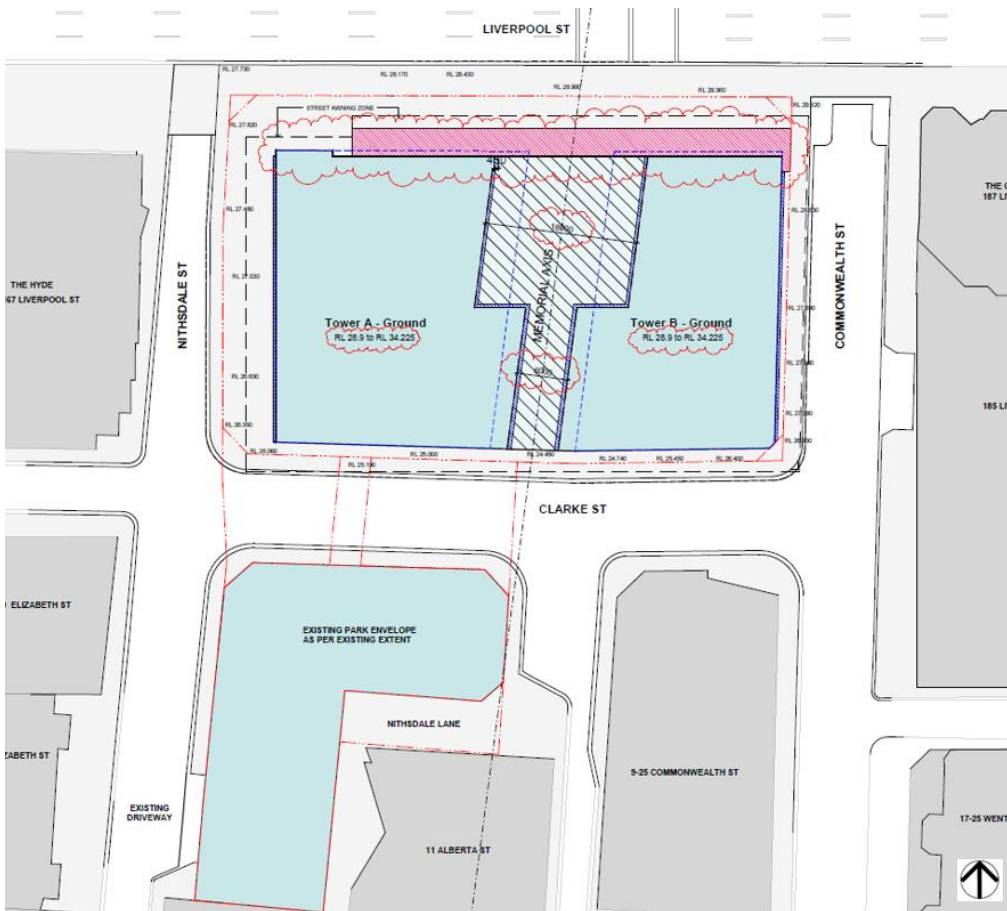


Figure 5: Proposed building envelope plan

14. The modification application also seeks consent to modify the wording of the following conditions of consent on the concept development application:
 - (a) Condition 12 'Through-Site Link Design',
 - (b) Condition 17 'Ecologically Sustainable Development',
 - (c) Condition 18 'Public Art',
 - (d) Condition 25 'Demolition, Excavation and Construction Noise and Vibration Management Plan', and
 - (e) Condition 31 'Street Trees'.
15. Details of the proposed wording changes are provided in the 'Discussion' section below.

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 consistent 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 uses which front all street frontages including Liverpool Street, Commonwealth Street, Nithsdale Street and Clarke Street.
18. The proposed modifications are to accommodate the detailed design and result in improved functionality and amenity of the development. Specifically, the modifications seek to amend the width of the through-site link at ground level from the approved 10m to 18m in the 'Urban Room' (towards Liverpool Street) and a reduction to 6m at its southern extent (towards Clarke Street), changes to the Liverpool Street setback in the podium, and changes in levels.
19. 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.
20. In accordance with Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (EP&A Act), an assessment of the application against the relevant provisions of Section 4.15(1) of the EP&A Act is provided under the headings below.

Economic, Social and Environmental Assessment

21. The proposed development has been assessed under Section 4.15 of the EP&A Act.

Environmental Planning and Assessment Act, 1979

22. Section 4.55(3) of the EP&A Act requires that a consent authority take into consideration the reasons given for the grant of the original consent.

23. The original application (D/2019/992) was approved 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 appropriate conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.
 - (b) The proposal generally satisfies the objectives and provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
 - (c) The proposal is consistent with the objectives of the B8 (now SP5) Metropolitan Centre zone.
 - (d) The building envelope complies with the maximum height of buildings development standard in Clause 4.3 of the Sydney Local Environmental Plan 2012 and provides capacity for an additional 10 per cent height available under Clause 6.21(3)(a) of the Sydney Local Environmental Plan 2012 for any subsequent detailed building design resulting from a design competition process and demonstrating design excellence.
 - (e) The indicative reference design accompanying the application demonstrates that the envelope can accommodate a building which complies with the maximum floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012.
 - (f) The proposed development will conserve the heritage significance of the ANZAC War Memorial and Hyde Park in accordance with Clause 5.10 of the Sydney Local Environmental Plan 2012.
 - (g) The proposed building envelope complies with the Harmony Park sun access plane under the Draft Central Sydney Planning Strategy.
 - (h) Subject to compliance with the design excellence strategy, the undertaking of a competitive design process and the recommended conditions of consent, the proposed development will provide a building envelope capable of accommodating a future building which can exhibit design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.
 - (i) The indicative reference design accompanying the application demonstrates that the proposed development is generally consistent with the provisions of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG).
 - (j) The proposed development has a height 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 broader locality.
 - (k) Subject to the recommended conditions of consent, the proposed development will provide a building envelope capable of accommodating a future building which can achieve acceptable amenity for future residents for solar access, natural ventilation, private open space and privacy.

- (l) The proposed building envelope can accommodate the proposed uses and does not result in any significant adverse environmental or amenity impacts on surrounding properties, the public domain and the broader Sydney Central Business District, subject to conditions on a subsequent detailed design development application.
 - (m) The public interest is served by the approval of the proposal, as amendments to the development application have addressed the matters raised by the City and the community, subject to recommended conditions imposed relating to heritage conservation, setbacks, views, privacy, transport, servicing and parking.
 - (n) Condition 11 was amended to address privacy concerns.
24. 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 podium and tower envelopes.
 - (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, Sydney LEP 2012, Sydney DCP 2012 and the ADG.
 - (d) The modified proposal satisfies the relevant provisions contained in Clause 6.21D of Sydney LEP 2012 relating to design excellence.
 - (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, Commonwealth Street, Nithsdale Street and Clarke Street as originally approved.

Sydney Local Environmental Plan 2012

- 25. The relevant provisions of the Sydney LEP 2012 have been taken into consideration in the assessment of the proposal.
- 26. The site is located within the SP5 Metropolitan Centre zone. The proposed development comprises retail, commercial and residential use which are permissible within the zone.
- 27. 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.
- 28. The detailed design development application (D/2022/614) demonstrates the revised building envelope satisfies the objectives of Clause 6.21C relating to design excellence.

29. The development is consistent with other relevant provisions.

Discussion

30. A summary of the proposed amendments and an assessment of their acceptability is discussed below.

Amendments to width of through site link

31. As part of the concept approval, an indicative through-site link was shown on the plans, separate to the approved envelope and building massing. This indicative through site link was shown to be 10 metres in width at the ground floor level and podium levels (as shown in Figure 6 below), and 18 metres in width for the tower levels.
32. The winning design competition scheme included changes to the width of the through-site link, with the provision of an 18m wide section at its northern frontage towards Liverpool Street from the ground and podium levels (known as the 'Urban Room'). The rationale for the increased width is:
- (a) consistency with the 18m separation of the towers above;
 - (b) consistency with the Anzac Memorial axis;
 - (c) assists to address wind issues on the site; and
 - (d) create a strong urban response to the ground plane.
33. In addition, it is proposed to reduce the through-site link width to 6m towards the Clarke Street interface of the site, to reflect a more fine-grain form and laneway representative of the historical character of Surry Hills.
34. The subject modification application proposes to amend the through-site link in accordance with the design competition winning scheme. For the ground and podium levels, it is proposed to amend the through-site link width to part 18 metres, part 6 metres, as shown in Figure 7 below. This will result in an overall increase in the approved area of the through-site link (from approximately 340sqm to approximately 390sqm), as well as the approved 10m width at ground level. The 6m dimension at the rear is also consistent with Council's requirements for through site links as set out in Section 3.1.2.2 of the Sydney DCP 2012, which specifies a minimum width of 4m or 6m where bike access is provided.
35. Council Officers support the proposed amendments to and rationale for varying the width of the through site link.

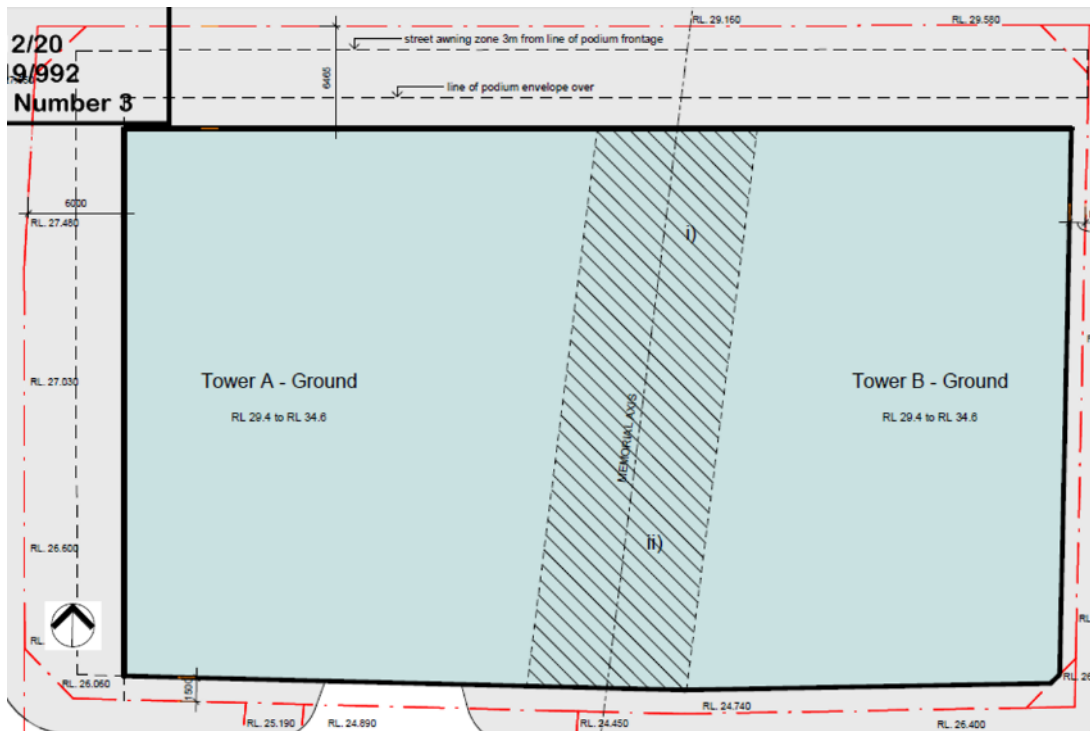


Figure 6: Approved ground floor envelope plan

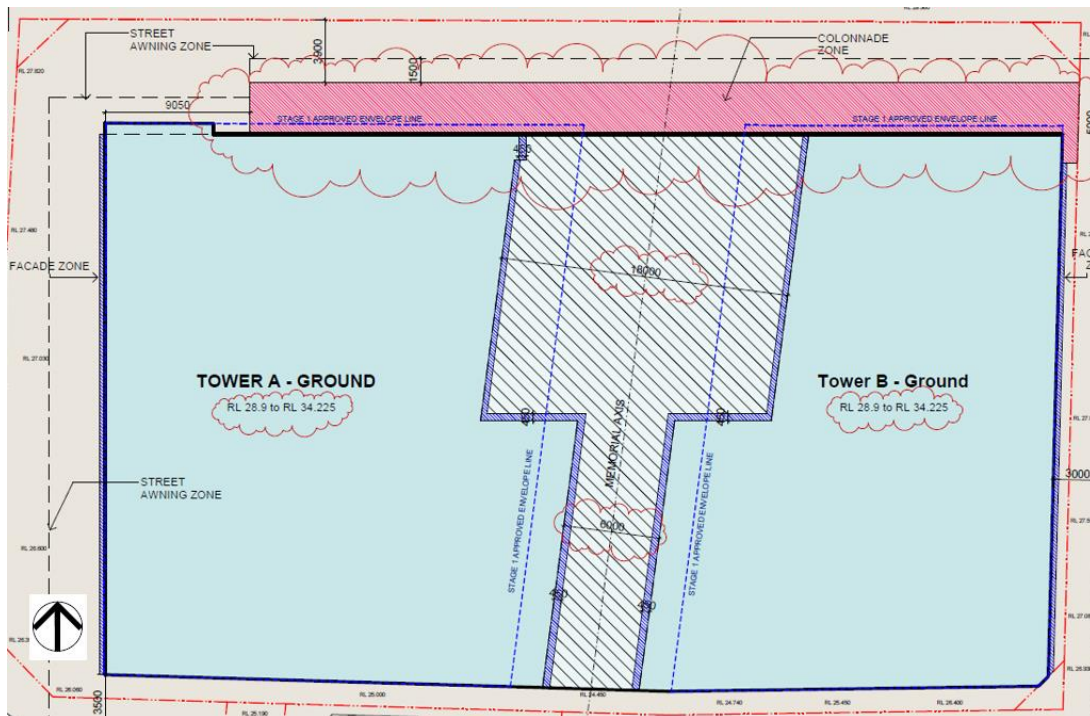


Figure 7: Proposed ground floor envelope plan

Inclusion of articulation zones

36. The subject modification application proposes minor extensions to the envelope to capture the detailed facade design of the building, with the architectural elements in these zones to provides privacy and shading fins, as well as horizontal concrete lintels to support these elements. These are identified as 'articulation zones' on the modified concept envelope drawings at Attachment B and as shown in Figure 8 below.

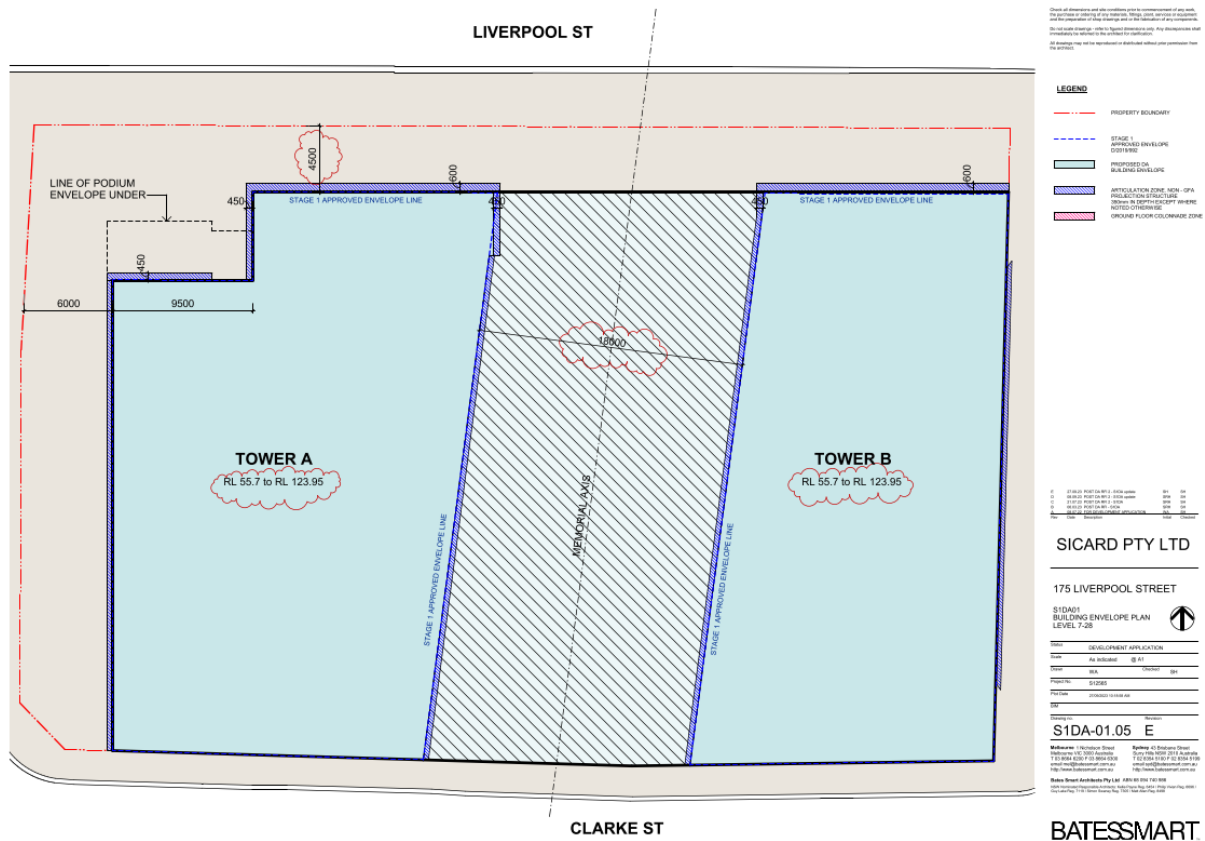


Figure 8: Proposed tower levels (7-28) concept envelope plan

- 37. These articulation zones are contained within the site boundaries, except for the site's eastern frontage to Commonwealth Street.
- 38. Schedule 4 of the Sydney DCP 2012 allows for projections beyond private property boundaries over or into the public road/footpath, as follows:
 - (a) Projections for decorations or sun shading devices: A maximum projection of 450mm, at least 3m above the footpath, at least 800mm from the face of the kerb, and being constructed primarily of masonry, reinforced concrete, steel or other approved non-combustible material.
 - (b) Projections for balconies and bay windows: A maximum projection of 450mm, not comprising more than 50 per cent of the road frontage, at least 3.2m above the footpath, at least 800mm from the face of the kerb, and does not result in adverse impacts on the amenity of the adjoining property.

39. Section 5.1.4(5) of the Sydney DCP 2012 states that new balconies or bay windows projecting over a Public Place are considered in line with Schedule 4 of the Sydney DCP 2012, where:
- (a) the balcony or bay window has a frontage adjacent to Public Place with a width greater than 8m wide, and
 - (b) it does not derogate from the existing daylight levels in the adjacent Public Place.

This DCP section also notes that projections over Public Places that contain GFA, and projections within 10m of a street intersection, will not be permitted.

40. The proposed articulation zone over the Commonwealth Street site boundary is generally consistent with the above requirements, and is acceptable for the following reasons:
- (a) It includes projections for sun shading devices / privacy fins and bay windows of 350mm in depth, which is less than the 450mm maximum projection specified in Schedule 4 of the Sydney DCP 2012.
 - (b) The articulation zone commences from level 1, which is higher than the 3-3.2m heights specified in Schedule 4.
 - (c) The articulation zone is not within 800mm from the face of the kerb, as specified in Schedule 4.
 - (d) The shading devices / privacy fins comprise a bronze finish metal, which is non-combustible material, as required by Schedule 4.
 - (e) Although the projection comprises more than 50 per cent of the road frontage, it does not extend the full length of the building elevation, with the northern most extent of the facade closer to Liverpool Street being contained within the site boundary.
 - (f) The articulation zone to accommodate sun shading devices / privacy fins will ensure that amenity to the adjacent property to the east is maintained.
 - (g) The frontage to Commonwealth Street has a width greater than 8m, as required by Section 5.1.4 of the Sydney DCP 2012.
 - (h) The articulation zone does not derogate from the existing daylight levels in Commonwealth Street, with the zone being reduced from 450mm to 350mm to address the DAP's concerns regarding this.
 - (i) The projections do not contain GFA.
 - (j) The articulation zone is more than 10m away from the Liverpool Street and Commonwealth Street intersection. Less than 10m has been provided for the Commonwealth Street and Clarke Street intersection, however this is acceptable in this circumstance given there being less traffic going through these side streets.

41. Additionally, the articulation zones within the through site link are considered to be acceptable, as follows:
 - (a) The amended proposal maintains the 18m separation between the towers when measured from glass line to glass line.
 - (b) The privacy and shading fins and horizontal elements included within the articulation zones have been reduced from 450mm to 350mm to address the DAP's concerns.
 - (c) The Trustees of the Anzac War Memorial raise no concern regarding any impact of these articulation zones within the amended proposal on the Hyde Park / ANZAC War Memorial axis.
42. Overall, Council Officers accept the inclusion of these articulation zones in the concept envelope plans.

Changes to the Liverpool Street setbacks

43. The two changes sought to the approved concept envelope's setback to Liverpool Street and their acceptability are discussed below:
 - (a) A reduction in setback to Liverpool Street at the upper ground level and level 1, to accommodate a colonnade zone:
 - (i) The proposed modification seeks to amend the Liverpool Street setback at upper ground level and level 1 in the concept envelope (shown in pink on the proposed envelope plans at Figure 7), to accommodate a colonnade in this location for the detailed design development application. The amended setback to Liverpool Street will be consistent with the Liverpool Street setback for the levels above.
 - (ii) This amendment is sought as it was included as a key element of the winning design competition scheme, to successfully extend the masonry frame to the ground plane. It is also understood that the inclusion of this colonnade improves wind conditions at ground level.
 - (iii) Further discussion and assessment of the detailed design of the colonnade and architectural expression building as a whole is addressed in the concurrent assessment report for the detailed design development application.
 - (b) Changes to the setback to Liverpool Street at the north-western corner of the podium.
 - (i) These setback changes are minor and will have no significant impact on pedestrian permeability in this location.

Changes in levels

44. The proposed modification includes slight changes in levels / RLs, as a result of applying the mapping grid system used for the new Harmony Park sun access plane (SAP) under the current Sydney LEP 2012, which differs from the previous mapping grid system used for the SAP at the time of the approval of the concept application.

45. Council's Model Team confirm that the proposed RLs are consistent with the current Harmony Park sun access plane, and the amended concept envelope is contained wholly within the SAP.

Proposed condition changes

46. The modification seeks consent for changes to several conditions of consent, as a result of the amendments to the concept envelope as well as separate requests by the applicant. The table below details the proposed changes and outlines whether the amendments are supported or not.

Condition	Proposed Changes	Assessment
(12) Through Site Link Design	Delete part (c) which states "Being open to the sky".	<p>Acceptable, subject to changes.</p> <p>The site is not identified on the DCP's through-site links map as being required to provide a through site link. However, an indicative through site link was approved as part of the concept application, that was situated on the Hyde Park / ANZAC War Memorial axis running through the centre of the site.</p> <p>Condition 12 of concept approval outlines the design requirements for the through site link as part of the detailed design development application.</p> <p>This modification proposes to delete part (c) of Condition (12), which requires the link to be open to the sky, in order to reflect the through site link that was designed as part of the winning design competition scheme. This through-site link included an enclosed 'Urban Room' at an 18m width which was consistent with the approved tower separation, and then narrowed down to 6m at the southern extent. This through-site link design was identified as a key element of the winning scheme that was to be retained as:</p> <ul style="list-style-type: none"> • It continued the historic Hyde Park and Memorial axis and was successful in linking the CBD to Surry Hills. • It addressed to wind impacts at the ground plane, resulting in a useable through-site link suitable for outdoor dining, pedestrian access and a public thoroughfare.

Condition	Proposed Changes	Assessment
		<p>The concurrent detailed design development application is consistent with the winning design competition scheme. This results in the need for an amendment to the concept envelope as well as the requirement for the through-site link being open to the sky (as required as part of Condition 12 of the concept approval).</p> <p>An Environmental Wind Assessment Report has been submitted with the concurrent detailed design application which supports that the proposed enclosure of the through site link with the 'Urban Room' improves the wind conditions at the ground plane, compared to the approved open 10m wide through site link.</p> <p>It is further noted that:</p> <ul style="list-style-type: none"> • The Sydney DCP 2012 requirements for through site links at Section 3.1.2.2 stipulate that through site links are to be designed to 'be open to the sky as much as is practicable' (emphasis added). The amended through-site link will still be open to the sky at the southern extent. • The proposed detailed design which encloses the through-site link with glazing to the street frontage and at the podium level to create an 'Urban Room', still allows for the through site link to be lit by natural lighting, emulating an uncovered link. <p>Council Officers recommend the condition be amended to specify that the 'Urban Room' component of the through-site link is excluded from the requirements of part (c).</p>
(17) Ecologically Sustainable Development	Delete part (iii) which states "Implementation of Building Integrated Photovoltaics to the northern facades of the development".	<p>Acceptable, subject to changes.</p> <p>As part of the detailed design development application, the integrated PV cells are not proposed to be included on the northern facade, due to the constraints of the scheme and the</p>

Condition	Proposed Changes	Assessment
		<p>intention for a respectful backdrop to the Anzac Memorial.</p> <p>Further, the detailed design development application has incorporated shading elements on all facades, including the northern facade, which seek to regulate temperature of apartments, address privacy issues and create depth in the facade to create a quiet and respectful backdrop to the Anzac Memorial. The shading elements proposed were considered an integral element of the competition design, as considered to demonstrate design excellence by the Jury.</p> <p>It is also noted that as part of the detailed design development application, PV cells are proposed on the rooftop of Tower A.</p> <p>There is no objection to the deletion of the requirement for the implementation of PVs to the northern facades of the development, subject to the amended detailed design's commitment to the electrification of the development and the removal of onsite fossil fuel consumption (outside of emergency systems). This will be ensured via a recommended condition of consent as part of the detailed design development application.</p>
(18) Public Art	Delete parts (b) and (c) which require presentations to the Public Art Unit prior to the competitive design process and with the detailed design application.	<p>Acceptable.</p> <p>The artwork by Yhonnie Scarce was integrated into the overall Bates Smart winning design competition scheme and was an integral part of the overall design of the 'Urban Room'.</p> <p>As a result, these conditions are not considered necessary for the detailed design considering the integral element of Yhonnie Scarce's artwork into the overall design of the building is maintained with the concurrent detailed design development application.</p>

Condition	Proposed Changes	Assessment
(25) Demolition, Excavation and Construction Noise and Vibration Management Plan	Delete the requirement to submit the plan with the detailed design DA and instead submit prior to the issue of a Construction Certificate and add "where possible" and the end of part (f).	Acceptable. The detailed design development application includes a recommended condition requiring that a Demolition, Excavation and Construction Noise and Vibration Management Plan be submitted and approved prior to issue of any Construction Certificate.
(31) Street Trees	Delete part (a) which states that "All street trees adjoining the site must be included for retention with any subsequent detailed design development application".	Not acceptable. The City's Tree Management Unit support the removal of the street trees on Commonwealth Street, subject to the provision of new street trees along this frontage (subject to a condition to be imposed on the concurrent detailed design DA). However, the City does not support the removal of the street trees on Clarke Street to accommodate new awnings, given their healthy condition. Council Officers recommend that condition be amended to specify that street tree removal is to be consistent with that approved under the detailed design development application.

Consultation

Internal Referrals

47. The application was discussed with Council's:

- (a) Environment Projects
- (b) Heritage Specialist
- (c) Urban Design
- (d) Public Art
- (e) Tree Management
- (f) Environment Health
- (g) Model Team.

48. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Trustees of the ANZAC War Memorial

49. The application was referred to the Trustees of the ANZAC War Memorial. The Trustees raised no objections to the amended proposal which maintains the 18m separation between the towers.

Transport for NSW

50. Pursuant to Clause 109 of the Environmental Planning and Assessment Regulation 2021, the application was referred to Transport for NSW (TfNSW) for comment as TfNSW.
51. On 22 August 2022, TfNSW provided a response raising no objections, subject to the recommended conditions included in TfNSW previous letter dated 1 October 2019 that was submitted during the assessment of the approved concept application. The subject modification application will have no impact on these conditions.

Advertising and Notification

52. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 14 days between 2 August 2022 and 17 August 2022. A total of 1158 properties were notified and three submissions were received (two objections and one submission of support).

53. The objections raised the following issues:

- (a) **Issue:** Issues with “twin tower” form with building located closer to adjacent buildings resulting in privacy and noise impacts.

Response: Detailed window and view studies were submitted during the assessment of the original application to illustrate how building separation impacts on adjoining residential developments were mitigated. The proposed modification application maintains these separation distances. The inclusion of articulation zones for shading elements on facades will ensure visual privacy is maintained.

- (b) **Issue:** Potential wind impacts.

Response: This issue is relevant to the detailed design development application (D/2022/614), and a detailed response to this is provided in the assessment report to D/2022/614.

- (c) **Issue:** Noise canyoning not addressed in acoustic report.

Response: This issue is relevant to the detailed design development application (D/2022/614), and a detailed response to this is provided in the assessment report to D/2022/614.

- (d) **Issue:** Impacts on underground car parking.

Response: This issue is relevant to the detailed design development application (D/2022/614), and a detailed response to this is provided in the assessment report to D/2022/614.

- (e) **Issue:** Construction-related impacts such as noise and dust pollution.

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/2022/614) assessment report.

- (f) **Issue:** Queries regarding when the project will commence, hours of work, and construction complaints will be handled.

Response: As stated above, the subject modification application does not relate to construction works. The matters relating to construction activities have been discussed in further detail in the detailed design development application (D/2022/614) assessment report.

Financial Contributions

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

54. A condition is recommended to require a monetary contribution in accordance with Section 7.12 of the Environmental Planning and Assessment Act 1979 as part of the concurrent detailed design development application (D/2022/614).

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

55. Similar to above, a condition is recommended to require an affordable housing monetary contribution as part of the concurrent detailed design development application (D/2022/614).

Relevant Legislation

56. Environmental Planning and Assessment Act 1979.
57. City of Sydney Act 1988.
58. Sydney Airport Referral Act 1996.

Conclusion

59. This Section 4.55(2) application proposes the altering of the approved building envelopes to be consistent with the detailed design development application (D/2022/614). The detailed design development application is presented to the CSPC concurrently for approval.

60. The scope of the proposed modifications include:
 - (a) amend the width of the through site link at ground level from 10m to 18m in the 'Urban Room' and 6m at the southern extent;
 - (b) inclusion of articulation zones on the facades;
 - (c) changes to the Liverpool Street setbacks; and
 - (d) changes in levels.
61. The modifications to the envelopes are supported as they do not result in unacceptable amenity impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
62. The proposed building envelopes are capable of accommodating future buildings which exhibit design excellence in accordance with Clause 6.21C of the Sydney LEP 2012. The detailed design development application (D/2022/614) 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 the Sydney LEP 2012.
63. The proposed modifications are in the public interest and are recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Mia Music, Senior Planner