

Item 3.**Development Application: 61-63 Macleay Street, Potts Point - D/2022/1363**

File No.: D/2022/1363

Summary

Date of Submission: 3 January 2023, amended 4 April 2023, 13 November 2023, 29 February 2024 and 5 March 2024

Applicant: White House Developments Pty Ltd

Architect/Designer: SJB Architecture (NSW) Pty Ltd

Developer: White House Developments Pty Ltd

Owner: White House Developments Pty Ltd

Planning Consultant: SJB Planning (NSW) Pty Ltd

Heritage Consultant: Paul Davies Pty Ltd

Cost of Works: \$8,987,000

Zoning: MU1 Mixed Use

The proposed development is for a 'mixed use development', comprising 'food and drink premises' and 'hotel accommodation' uses, which are all permissible with consent in the zone under the Sydney Local Environmental Plan 2012.

Proposal Summary: The application seeks development consent for the adaptive reuse of, and alterations and additions to the existing building fronting Macleay Street and Challis Avenue. The primary land use sought is hotel accommodation, with a ground level food and drink premises.

Works include demolition of parts of the existing building, excavation, construction of a new basement level beneath the building, alterations and additions to the existing building, including two additional storeys, 18 hotel rooms and associated landscape works.

The application is referred to the Local Planning Panel for determination as the proposal involves contentious development, due to the receipt of more than 25 unique submissions made in objection to the proposal.

The proposed development exceeds the maximum height of buildings development standard of 15 metres by 1.5 metres, or 10 percent.

A written request to vary the height of buildings standard has been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012.

This statement demonstrates that compliance with the standard is unreasonable and unnecessary in the specific circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the standard.

The application was placed on public exhibition for a period between 9 January 2023 and 9 February 2023 in accordance with the City of Sydney Community Participation Plan. A total of 1,342 properties were notified and 46 submissions in opposition to the proposal were received by the City in response.

The submissions in objection raised concerns in relation to height, heritage, views, excavation, structure, density, bulk and scale, privacy, construction management, traffic, noise, odour, overshadowing, daylight and ventilation, security, owner's consent, street trees, waste management, drawing errors, loss of property value, anti-social behaviour and links to other buildings.

An assessment of the application by Council staff identified concerns relating to works proposed on adjoining properties, a wide range of heritage issues relating to proposed demolition, excavation and construction works, the proposed height of the development and the written Clause 4.6 variation request submitted with the application, insufficient structural and geotechnical information, insufficient fire engineering and design information, insufficient external materials and finishes information, insufficient elevation drawings and detail, an inadequate plan of management and non-compliant restaurant hours of operation, no view sharing assessment and privacy impacts from a roof level balcony.

These issues have been largely addressed through the submission of amended drawings and additional information received by the City on 4 April 2023, 13 November 2023, 29 February 2024 and 5 March 2024.

The amended application received on 13 November 2023 was placed on public exhibition for a period between 17 November 2023 and 2 December 2023 in accordance with the City of Sydney Community Participation Plan.

A total of 1,304 properties were notified, in addition to all of the submitters to the original application, and 32 submissions in opposition to the amended proposal were received by the City in response. The concerns raised in these submissions were similar to those identified in relation to the original proposal.

Subject to the recommended consent conditions, 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.

The amended proposal 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 approval, subject to conditions.

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 (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
- (iv) State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)
- (v) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
- (vi) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
- (vii) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings
- (viii) City of Sydney Interim Floodplain Management Policy

- (ix) City of Sydney Guidelines for Waste Management in New Developments
- (x) City of Sydney Development Contributions Plan 2015
- (xi) City of Sydney Affordable Housing Program
- (xii) City of Sydney Community Participation Plan

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Landscape Drawings and Documents
- D. Clause 4.6 Variation Request - Height of Buildings
- E. View Analysis
- F. Submissions

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 'Height of buildings' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2022/1363 subject to the conditions set out in Attachment A to the subject assessment report.

Reasons for Recommendation

The application is recommended for approval 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 LEP 2012, that compliance with the 'Height of buildings' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 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 MU1 Mixed Use zone and the 'Height of buildings' development standard.
- (C) The proposal otherwise generally satisfies the relevant objectives and provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (D) The proposal is consistent with the objectives of the MU1 Mixed Use zone.
- (E) The proposal will conserve the heritage significance of the local heritage item known as 'Flat building "Wirrawa" including interior', the adjacent and nearby heritage items, and the surrounding Potts Point heritage conservation area, 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 site has a legal description of Lot 2 in Deposited Plan 103410, and is commonly known as 61-63 Macleay Street, Potts Point. It is generally rectangular in shape with an area of approximately 332.5 square metres. It has a primary street frontage of 14.755 metres to Macleay Street and a secondary street frontage of 22.375 metres to Challis Avenue.
2. The site is located on the north-western corner of the intersection of Macleay Street and Challis Avenue. It comprises the southernmost allotment on the block between Macdonald Street to the north and Challis Avenue to the south, on the western side of Macleay Street. There is a minor fall of between approximately 20 to 30 centimetres from south to north in the public domain surrounding the site. The site does not accommodate any on-site parking facilities, or any vehicle access and egress points.
3. The site is occupied almost entirely by a heritage listed three-storey Federation Queen Anne-style mixed use building, which was originally constructed as a pair of two attached terrace houses known as 'Ventura' at 61 Macleay Street, and 'Nevada' at 63 Macleay Street. The building once formed part of a row of ten terrace houses designed by architect Maurice B Halligan, of which only five now remain at 55, 57, 59, 61 and 63 Macleay Street.
4. The terraces were converted to serviced apartments and a boarding house in the early twentieth century, with the rear wings demolished and conversion to a residential flat building known as 'Wirrawa Flats' circa 1930. Later alterations and additions to the building during the 1930s and 1940s added shops and restaurants to the Macleay Street and Challis Avenue frontages of the site, an art gallery use in the 1960s, and further alterations and additions in the 1980s and early 2000s for new ground floor level shop and restaurant uses.
5. The building currently contains two retail premises at the ground floor level, including a clothing shop trading as 'Arida' in the tenancy fronting Macleay Street, and a restaurant trading as 'Bistrot 916' in the tenancy fronting Challis Avenue. A three-bedroom residential apartment and office, staff and storage facilities for the ground floor level restaurant are located at the first-floor level, with a two- and three-bedroom apartment located at the second floor level.
6. Pedestrian access to the restaurant and upper-level residential apartments is from entrances fronting Challis Avenue, while pedestrian access to the clothing shop is from an entrance fronting Macleay Street. A passageway at the western edge of the site is accessed via a pedestrian gate fronting Challis Avenue.
7. The subject site is identified in Schedule 5 and on the Heritage Map in the Sydney Local Environmental Plan 2012 as containing a heritage item of local significance at 61-63 Macleay Street, known as 'Flat building "Wirrawa" including interior' (Item Number I1141).
8. The site is also identified in Schedule 5 and on the Heritage Map in the Sydney Local Environmental Plan 2012 as being located within the Potts Point heritage conservation area (Reference Number C51). The building on the site is identified on the Building contributions map of the Sydney Development Control Plan 2012 as being a contributing building.

9. The site is identified in Section 2.4.4 of the Sydney Development Control Plan 2012 as being located in the Potts Point locality area.
10. The site is not identified as being subject to flooding in the City of Sydney Woolloomooloo Catchment Floodplain Risk Management Plan.
11. The surrounding area is characterised by a mixture of development, primarily being commercial and residential land uses.
12. Directly to the north of the site along the western side of Macleay Street at 57-59 Macleay Street, Potts Point, is a heritage listed part three- and part five-storey mixed use building, originally constructed in the Federation Queen Anne-style and known as the 'Yellow House'. It has a single basement level, a ground floor level restaurant trading as 'Yellow', a currently vacant rear ground floor and basement level commercial art gallery, and nine residential apartments on the upper levels. There are separate entrances providing pedestrian access to the art gallery, restaurant and residential apartments from Macleay Street.
13. It is identified in in Schedule 5 and on the Heritage Map in the Sydney Local Environmental Plan 2012 as containing a heritage item of local significance at 57-59 Macleay Street, known as 'Former artists' studio "The Yellow House" including interior' (Item Number I1140).
14. Further to the north along the western side of Macleay Street at 55 Macleay Street, Potts Point, is a heritage listed three-storey Federation Queen Anne-style building known as the 'White House'. It was most recently used as hotel accommodation trading as the 'Holiday Lodge' but is currently vacant. There are separate entrances providing pedestrian access to Macleay Street and McDonald Lane to the rear.
15. It is identified in Schedule 5 and on the Heritage Map in the Sydney Local Environmental Plan 2012 as containing a heritage item of local significance at 55 Macleay Street, known as 'Terrace house "Santa Fe" including interior' (Item Number I1139).
16. Immediately to the west along the northern side of Challis Avenue at 12-16 Challis Avenue, Potts Point, is a contemporary six-storey mixed use building, designed by Tonkin Zulaikha Architects, constructed circa 1998 and known as 'Challis on Macleay'. It contains a single basement level, a ground floor level restaurant trading as 'Fratelli Paradiso', and eight residential apartments on the upper levels. There are separate entrances providing pedestrian access to the restaurant and residential apartments from Challis Avenue.
17. Further to the west along the northern side of Challis Avenue are a row of four-storey Inter-war residential flat buildings. To the south-east along the southern side of Challis Avenue are a number of grand two- and three-storey Victorian free-standing buildings and attached terraces containing a mix of dwelling house, residential apartment, hotel accommodation and education establishment land uses. All of the latter buildings along the southern side of Challis Avenue are identified in Schedule 5 and on the Heritage Map in the Sydney Local Environmental Plan 2012 as containing heritage items of local significance.
18. Opposite the site to the south-west along Challis Avenue at 31 Challis Avenue, Potts Point, is a four-storey Inter-war mixed use building, known as 'The Maisonette Hotel'.

19. It contains a ground floor level food and drink premises trading as 'Fei Jei', and a hotel accommodation use located on the upper levels trading as 'The Maisonette', with 22 rooms and a pedestrian entrance from Challis Avenue.
20. Opposite the site directly to the south at the south-western corner of Macleay Street and Challis Avenue at 65-65B Macleay Street, Potts Point, is a three-storey Inter-war mixed use building, known as 'The Oaks'. It contains a number of ground floor level retail and business premises, including a clothing shop trading as 'Lou Murray Vintage Macleay Street Concept Store', a small bar trading as 'Bar Sopra' (both of which front Macleay Street), a laundry and drycleaners trading as 'Challis Ave Laundry', and a cafe trading as 'La Bomba' (both of which front Challis Avenue). There are six residential apartments located on the upper levels of the building, with a pedestrian entrance from Macleay Street.
21. Further to the south along the western side of Macleay Street are a row of three- and four-storey mixed use and commercial buildings, containing a mix of ground level retail and business premises, and upper-level residential apartments.
22. To the south-east, on the opposite side of Macleay Street at 16 Macleay Street, Elizabeth Bay, is a seven-storey Inter-war residential flat building, designed by architects Prevost and Ruwald, constructed circa 1934, and known as 'Selsdon'. It contains 53 residential apartments, with a pedestrian entrance from Macleay Street.
23. Further to the south-east along the eastern side of Macleay Street are row of seven- and eight-storey contemporary and Inter-war residential flat buildings.
24. Directly opposite the site on the eastern side of Macleay Street at 14 Macleay Street, Elizabeth Bay, is a nine-storey contemporary mixed use building, designed by Susan Rothwell Architects, constructed circa 2003, and known as 'Pomeroy'. It contains two basement levels, a ground floor level retail premises comprising a book shop trading as the 'Potts Point Bookshop', communal open space and thirty-two residential apartments. The building has separate pedestrian and vehicle entrance points from Macleay Street.
25. To the north-east of the site on the eastern side of Macleay Street at 10-12 Macleay Street, Elizabeth Bay, is a nine-storey Inter-war mixed use building, designed by Pitt and Phillips, constructed circa 1939, and known as 'Macleay Regis'. It contains three ground floor level garages and three retail premises, including a flower shop trading as 'Grandiflora', a jewellery shop trading as 'Mia Chicco', and an art gallery trading as 'Mr Minty's Gallery'. It contains 87 residential apartments, with separate pedestrian and vehicle entrance points from Macleay Street.
26. It is identified in Schedule 5 and on the Heritage Map in the Sydney Local Environmental Plan 2012 as containing a heritage item of local significance at 10-12 Macleay Street, known as 'Flat building "Macleay Regis" including interior' (Item Number I591). The building has separate pedestrian and vehicle entrance points from Macleay Street.
27. Site inspection visits were carried out on 15 March 2023, 29 November 2023 and 7 April 2024.
28. 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 surroundings



Figure 2: The subject site viewed from the eastern side of Macleay St, facing west



Figure 3: The subject site viewed from the eastern side of Macleay St, facing north-west



Figure 4: The subject site viewed from the southern side of Challis Ave, facing north



Figure 5: The subject site viewed from the southern side of Challis Ave, facing north-east



Figure 6: The Yellow House at 57-59 Macleay St (left) and the White House at 55 Macleay St (right), viewed from the eastern side of Macleay Street, facing north-west



Figure 7: The 'Challis on Macleay' building at 12-16 Challis Ave, viewed from the southern side of Challis Ave, facing north-east



Figure 8: Existing development to the west of the site viewed from Challis Ave, facing north-west



Figure 9: Existing development to the south-west of the site viewed from Challis Ave, facing south-west



Figure 10: The 'Maisonette Hotel' building at 31 Challis Ave, viewed from the northern side of Challis Ave, facing south-east



Figure 11: The 'Oaks' building at 65-65B Macleay St, viewed from the eastern side of Macleay St, facing south-west



Figure 12: Existing development to the south of the site viewed from Macleay St, facing south-west



Figure 13: Existing development to the south-east of the site viewed from Macleay St, facing south-east



Figure 14: The 'Selsdon' building at 16 Macleay St, viewed from the western side of Macleay St, facing east



Figure 15: The 'Pomeroy' building at 14 Macleay St, viewed from the western side of Macleay St, facing east



Figure 16: The 'Macleay Regis' building at 10-12 Macleay St, viewed from the western side of Macleay St, facing north-east

History Relevant to the Development Application

Relevant Application History

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

- (a) **Z88-302** - Development consent was granted on 14 March 1988 for the use of the whole ground floor of the site as a restaurant.
- (b) **DU/2001/439** - Development consent was granted on 24 August 2001 for the subdivision of the existing restaurant into three new tenancies and shopfronts.
- (c) **DU/2001/439/B** - A Section 96 modification application was approved on 23 July 2002 to subdivide the existing restaurant into two tenancies instead of three and alter the approved kitchen exhaust duct.
- (d) **DU/2002/872** - Development consent was granted on 24 September 2002 for a change of use of vacant commercial and retail spaces to a furniture and homewares store.
- (e) **DU/2002/872/A** - A Section 96 modification application was approved on 9 December 2002 for an extension of the shop's hours of operation.
- (f) **DU/2001/439/A** - A Section 96 modification application was refused on 17 July 2003 to retrospectively approve additional work.
- (g) **D/2011/1972** - Development consent was granted on 9 February 2012 for refurbishment of the existing restaurant.
- (h) **D/2011/1972/A** - A Section 96(1A) modification application was approved on 18 April 2012 for minor external changes to materials and signage.
- (i) **D/2011/1972/B** - A Section 4.55(1A) modification application was rejected on 28 May 2021.
- (j) **D/2011/1972/C** - A Section 4.55(1A) modification application was approved on 8 July 2021 to change the approved internal configuration of the restaurant.
- (k) **PDA/2021/321** - Pre-development application advice was provided to the applicant's architect on 23 December 2021 in relation to the proposed redevelopment of the existing building on the subject site.

The advice raised concern with the proposed height of the development, the form of the upper-level additions, the extent of proposed demolition and excavation, the landscape design, late night trading management, site servicing, waste management and design excellence considerations.

- (l) **PDA/2022/48** - Pre-development application advice was provided to the applicant's architect on 4 April 2022 in relation to a revision of the proposed redevelopment of the existing building on the subject site.

The advice provided recommendations in relation to restoration and reinstatement works and the activation of the Macleay Street frontage of the site, and raised concerns in relation to the extent of proposed demolition and excavation, and with the prominence, form and design of the upper level additions.

Relevant Application History for Adjoining Properties

30. The following applications on adjoining properties are relevant to the current proposal:

- (a) **D/2016/1079:** Deferred commencement consent was granted by the Land and Environment Court of New South Wales on 25 July 2017 for the redevelopment of the 'White House' at 55 Macleay Street, for a mixed use development comprising ground floor restaurant and upper level hotel accommodation uses.

The deferred commencement conditions were satisfied on 7 June 2019 and the consent was made operative.

- (b) **D/2016/1079/A:** A Section 4.55(2) modification application was approved by Council staff under the delegated authority of Council on 18 September 2020 for internal modifications to the approved hotel configuration of the 'White House' at 55 Macleay Street.

- (c) **D/2020/642:** Development consent was granted by Council staff under the delegated authority of Council on 18 September 2020 for the use and fitout of the basement and ground floor of the 'Yellow House' at 57-59 Macleay Street as a hotel lobby/reception and day spa.

This consent included a door opening and pedestrian access to the approved development at 55 Macleay Street (the 'White House'), and a door opening and pedestrian access to the existing restaurant at 61-63 Macleay Street (the subject site).

- (d) **D/2020/642/A:** A Section 4.55(1A) modification application was approved by Council staff under the delegated authority of Council on 8 July 2021 to delete a restriction on staff only access to the restaurant at 61-63 Macleay Street via the approved door opening.

Compliance Action

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

Amendments

32. Following the commencement of a preliminary assessment of the proposed development by Council staff, a request for an updated three-dimensional electronic CAD model was sent to the applicant on 11 January 2023. The applicant responded to the request on the same date and submitted an updated three-dimensional electronic CAD model.
33. Following an initial site inspection visit, a further request for information was sent to the applicant on 15 March 2023 for photographic documentation of the existing internal attic roof and ceiling structure and amended and additional demolition section and elevation drawings. The applicant responded to the request on 4 April 2023, providing the requested information.
34. Following the completion of the preliminary assessment of the proposed development, a request for an amended application was sent to the applicant on 25 July 2023. The request included the following:
- (a) Owner's consent to lodgement or deletion of works on adjoining properties.

- (b) Amendments to address a wide range of heritage concerns relating to proposed demolition, excavation and construction works.
 - (c) Amendments to address concerns relating to the proposed height of the development and the written Clause 4.6 variation request submitted with the application.
 - (d) Additional structural and geotechnical information.
 - (e) Additional fire engineering and design information.
 - (f) Additional external materials and finishes information.
 - (g) Additional elevation drawings and detail.
 - (h) An amended plan of management and compliant restaurant hours of operation.
 - (i) A view sharing assessment.
 - (j) Deletion or amendment of a roof level balcony to address privacy concerns.
35. An amended application was submitted by the applicant on 13 November 2023, providing all of the requested information.
36. Following re-notification and assessment of the amended application by Council staff, a meeting was held on 13 February 2024 between Council staff and the applicant, the applicant's architect and heritage architect to discuss outstanding heritage concerns with the amended application.
37. Amended applications were submitted to the City to address the outstanding heritage concerns on 29 February 2024 and 5 March 2024.
38. The assessment provided in this report is based on the amended application received on 5 March 2024, and the additional information outlined above.

Proposed Development

39. The application, as amended on 5 March 2024, seeks development consent for the following:
- (a) Demolition of portions of the existing mixed use building.
 - (b) Excavation and construction of a new basement level beneath the existing building.
 - (c) Alterations and additions to the existing building for hotel accommodation and food and drinks premises uses.
40. In specific terms, the proposed development involves the following:
- (a) **Ground floor demolition:**
 - (i) Entry columns and door.

- (ii) Retail facade and awning, door store, back of house and fitting rooms.
 - (iii) Restaurant facade, door, awning, kitchen, bar and amenities.
 - (iv) Internal wall openings.
- (b) **Level 1 demolition:**
- (i) External walls and windows, balcony column and balustrade.
 - (ii) Internal doors, walls, kitchen and bathrooms.
- (c) **Level 2 demolition:**
- (i) External walls and windows.
 - (ii) Internal doors, walls, kitchen and bathrooms.
- (d) **Roof demolition:**
- (i) Portions of the existing rear roof planes.
 - (ii) Cupola elements.
 - (iii) Rear chimney.
- (e) **Basement works:**
- (i) Hotel staff common room, staff amenities and showers.
 - (ii) Bike store for four staff bicycles.
 - (iii) Accessible WC and shower.
 - (iv) Restaurant amenities and foyer.
 - (v) Kitchen prep.
 - (vi) Housekeeping and linen store.
 - (vii) Bulky waste store and garbage store.
 - (viii) Two store rooms.
 - (ix) Stair, lift and service lift.
- (f) **Ground floor works:**
- (i) Glazed shopfront and glass entry door to Macleay Street containing a restaurant bar and dining area.
 - (ii) Paving to the areas of the site adjacent to the Macleay Street and Challis Avenue footpaths.
 - (iii) Six external customer bicycle parking hoop racks at the corner of Macleay Street and Challis Avenue.

- (iv) Glazed shopfront, glass entry doors and fabric awning over to Challis Avenue containing a dining area.
 - (v) Rear kitchen additions.
 - (vi) Fire hydrant booster to Challis Avenue.
 - (vii) Side passage gate and gas and water meter enclosure.
 - (viii) Painted timber and cathedral glass entry door with brass hotel name sign to Challis Avenue.
 - (ix) Reception area.
 - (x) Hotel lobby with glass skylights over.
 - (xi) Lift and service lift.
- (g) **Level 1 works:**
- (i) Six hotel rooms and bathrooms.
 - (ii) Lift.
 - (iii) Hotel room additions and windows to the rear lightwell.
 - (iv) Green walls within the rear lightwell.
- (h) **Level 2 works:**
- (i) Six hotel rooms and bathrooms.
 - (ii) Landing and stair to level 3 and lift.
 - (iii) Hotel room additions and windows to the rear lightwell.
 - (iv) Green walls within the rear lightwell.
- (i) **Level 3 works:**
- (i) Five hotel rooms and bathrooms.
 - (ii) Awning and operable glass windows replacing existing timber vent louvres.
 - (iii) Stair to levels 2 and 4 and lift.
 - (iv) Hotel room additions and windows to the rear lightwell.
 - (v) Green walls within the rear lightwell.
- (j) **Level 4 works:**
- (i) Roof addition containing a hotel suite with bathroom, lounge, kitchenette and external terrace with planters facing Macleay Street.
 - (ii) Stair to level 3 and lift.

- (iii) Plant enclosure.
 - (iv) Hotel room windows to the rear lightwell, Challis Avenue and Macleay Street.
 - (v) New skylights over level 3 hotel rooms and stair.
- (k) **Roof:**
- (i) Reinstated copper dome and windvane.
 - (ii) Reinstated slate roof.
 - (iii) Kitchen exhaust.
 - (iv) Metal roof in standing seam zinc cladding.
- (l) **Elevations:**
- (i) Restoration of existing facade brickwork finish and detailing.
 - (ii) Reinstatement of original railing details.
 - (iii) Wall mounted metal-framed glass lamps at ground floor level.
 - (iv) Reinstatement of ground floor level turret windows and mouldings to match original detailing.
 - (v) Reinstatement of tiles to existing balcony roof.
41. The hotel accommodation use is proposed to have hours of operation 24 hours per day, Monday to Sunday inclusive, and be subject to a plan of management. The hotel reception is proposed to operate between 6am and 12am midnight, Monday to Sunday inclusive, with a site manager available on call 24 hours per day.
42. The main entrance to the hotel is via the hotel lobby and reception area at 57-59 Macleay Street (the 'Yellow House') which was approved under development consent D/2020/642, as amended under modification D/2020/642/A, and then to the subject site via the rear access door (also approved under D/2020/642 and D/2020/642/A).
43. The approved rear door access way will also permit hotel guests and staff access via security key swipe pass to the day spa in the 'Yellow House', and through to the approved restaurant and to provide room service for the approved hotel rooms at 55 Macleay Street (the 'White House'), under development consent D/2016/1079, as amended under modification D/2016/1079/A.
44. A secondary hotel and restaurant reception area is also available to guests, accessed via the new entrance door from Challis Avenue.
45. The ground floor level restaurant and bar use is proposed to have hours of operation between 7am and 1am, Monday to Sunday inclusive, with 20 staff and a maximum patron capacity for 106 persons, subject to a plan of management. No access to any adjoining properties is proposed for restaurant and bar patrons.
46. Selected architectural and landscape drawings and documents are provided in Attachments B and C.

- 47. Demolition, plan, elevation, section, materials and perspective drawing extracts of the proposed development are reproduced in the figures provided below.

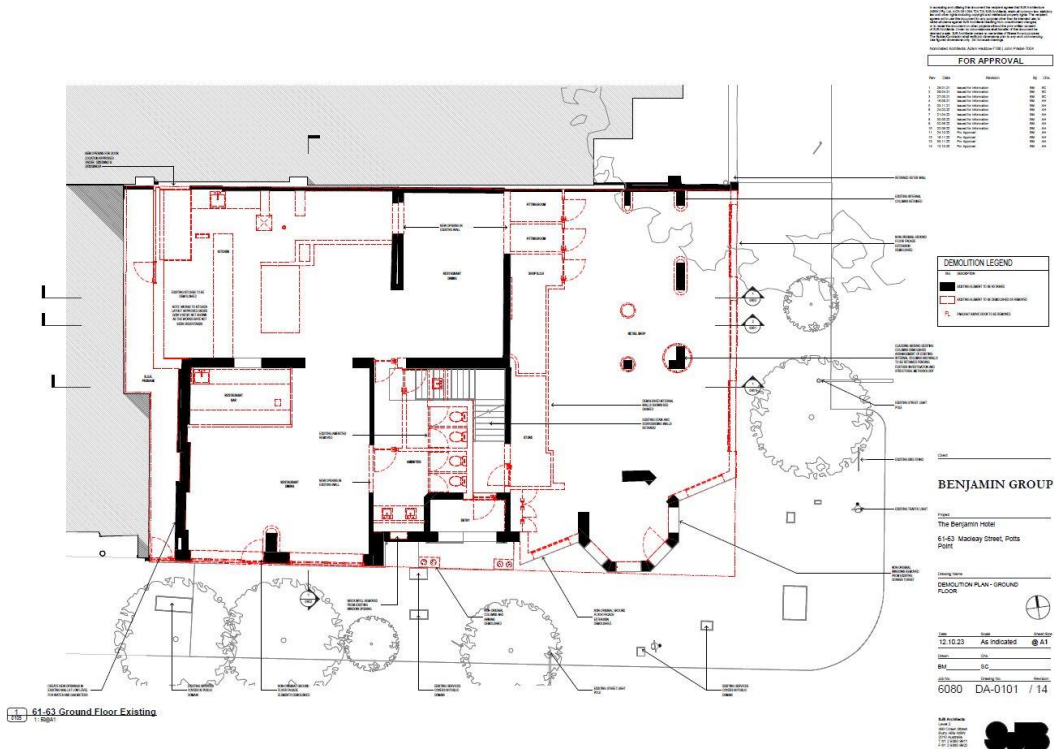


Figure 17: Proposed ground floor demolition plan

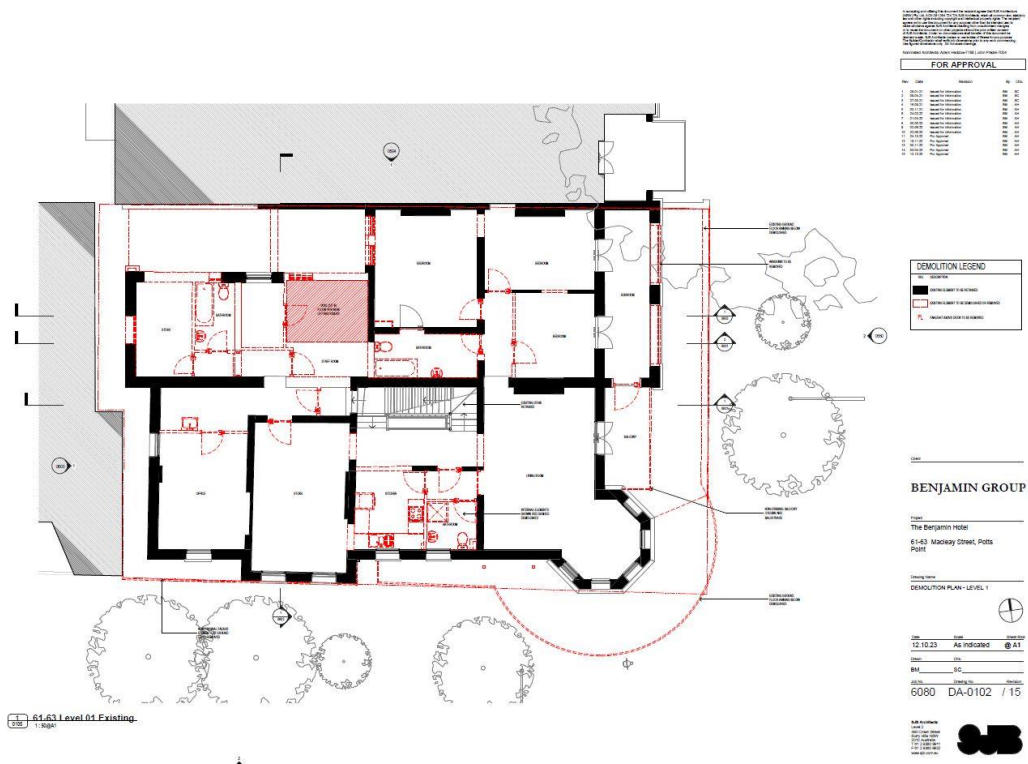


Figure 18: Proposed level 1 demolition plan

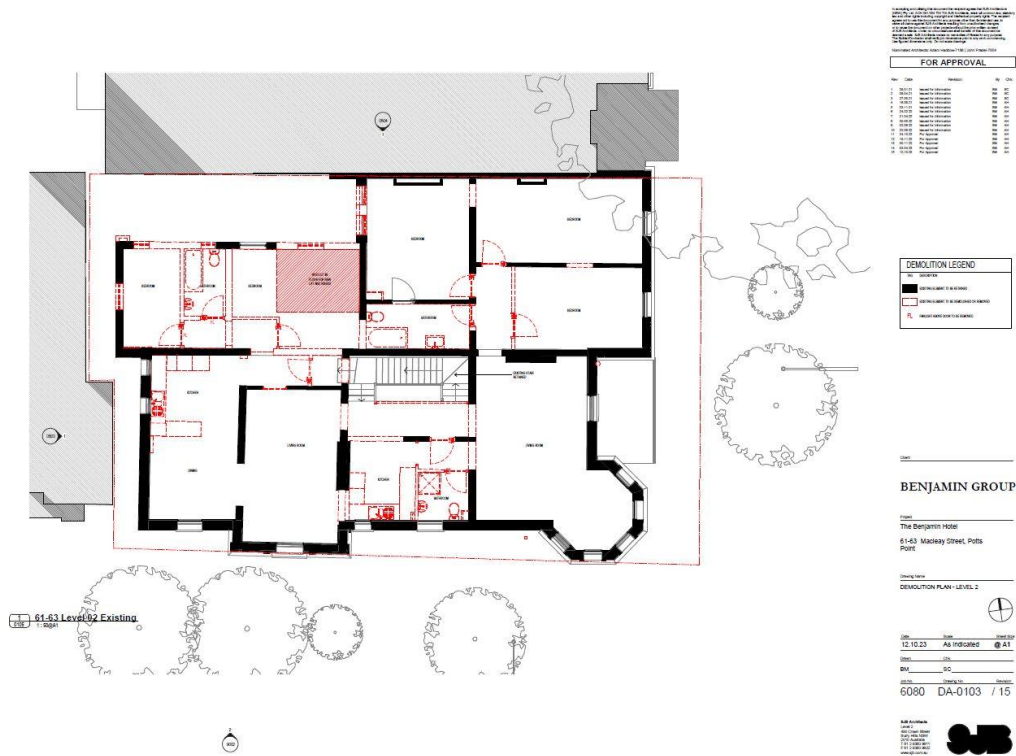


Figure 19: Proposed level 2 demolition plan

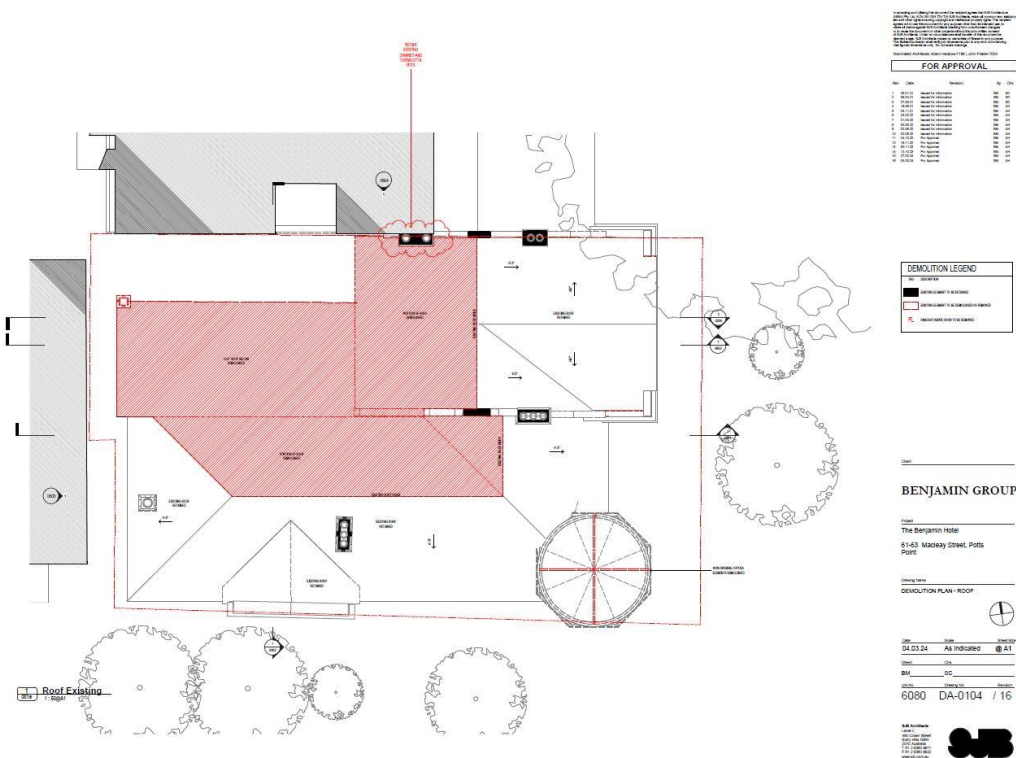


Figure 20: Proposed roof demolition plan

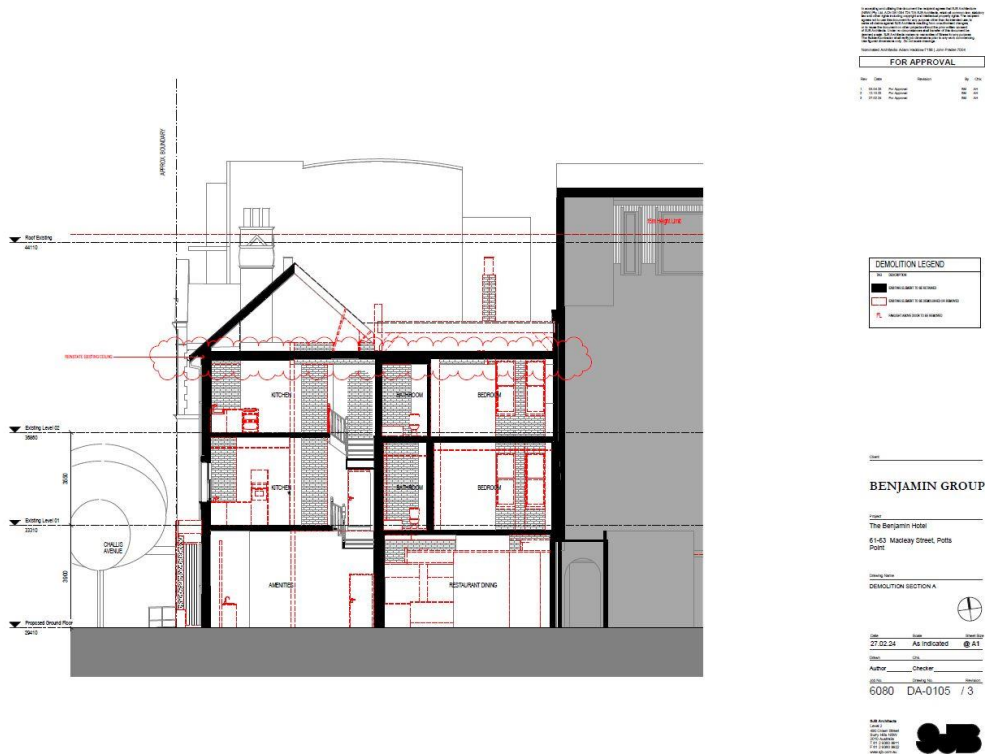


Figure 21: Proposed demolition section A

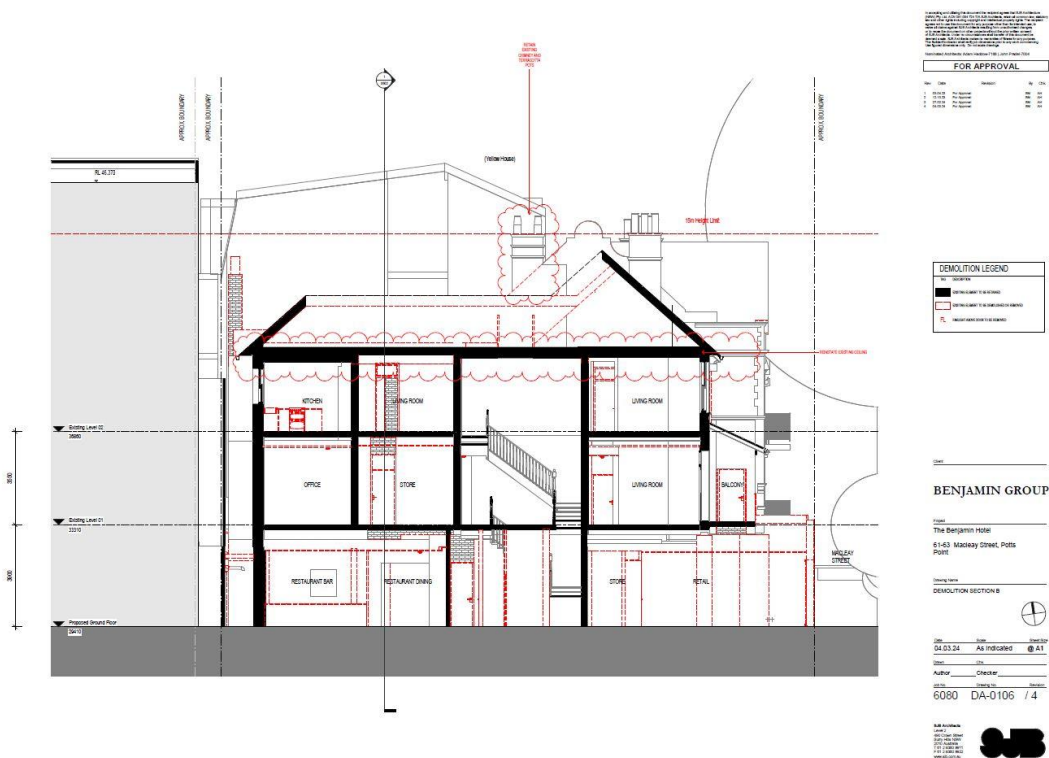


Figure 22: Proposed demolition section B

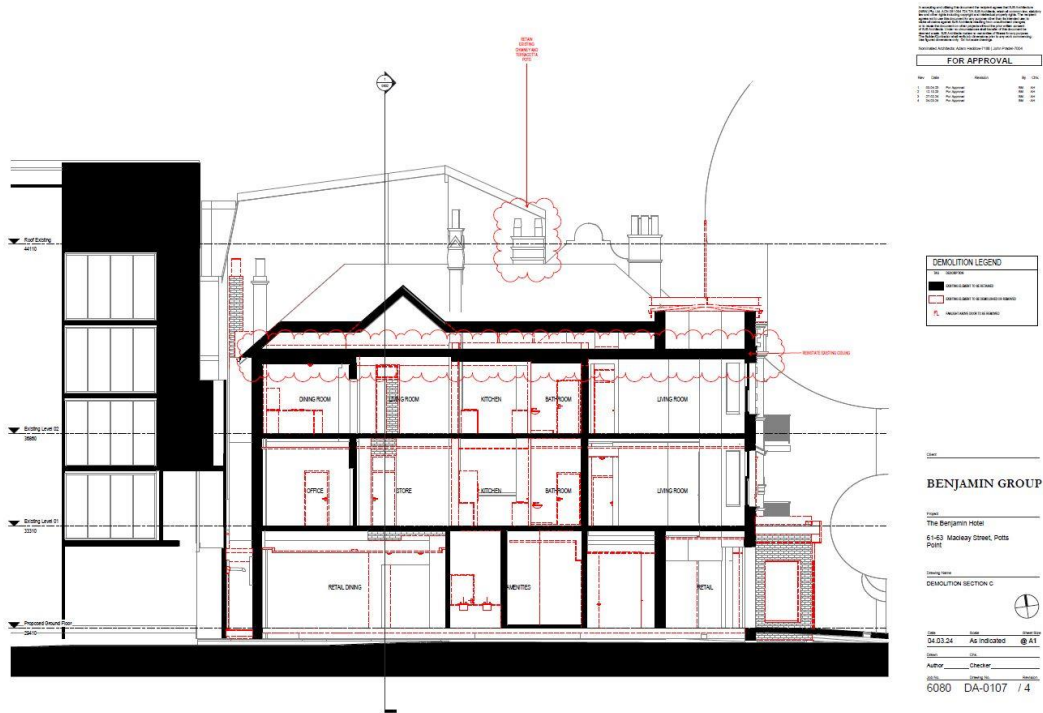


Figure 23: Proposed demolition section C

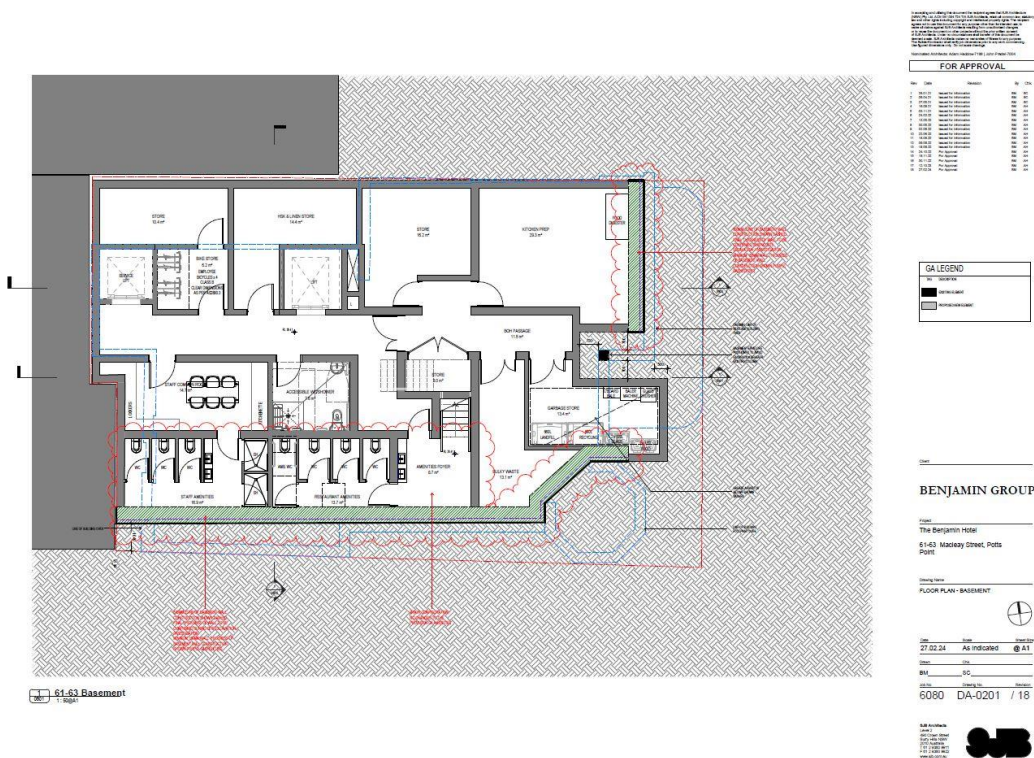


Figure 24: Proposed basement floor plan

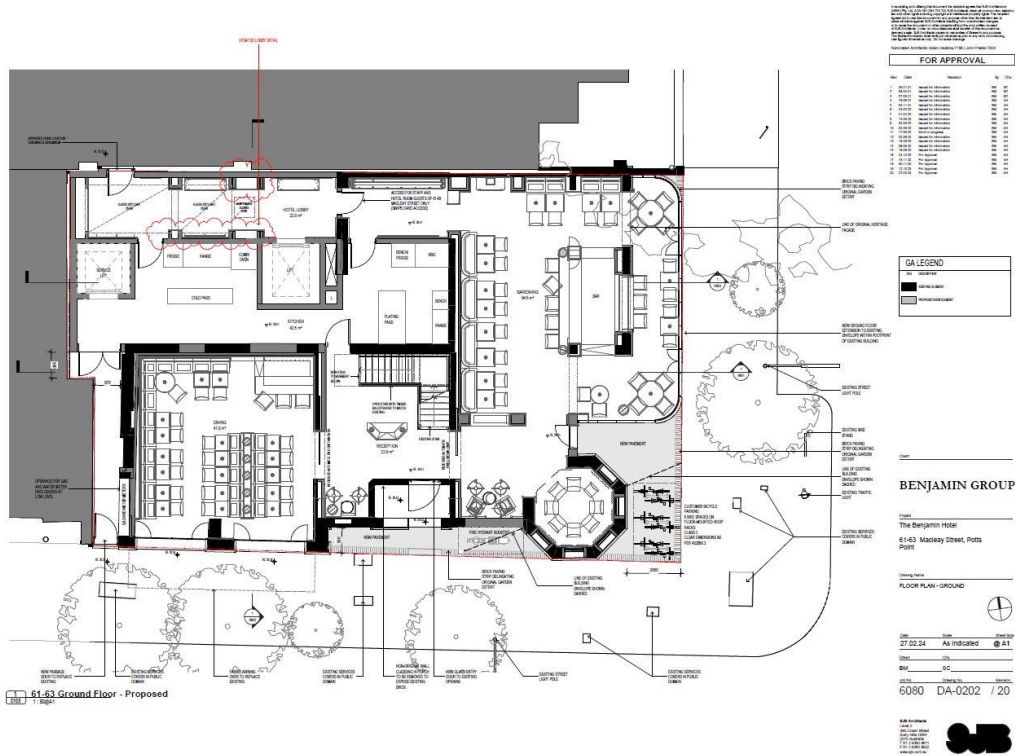


Figure 25: Proposed ground floor plan

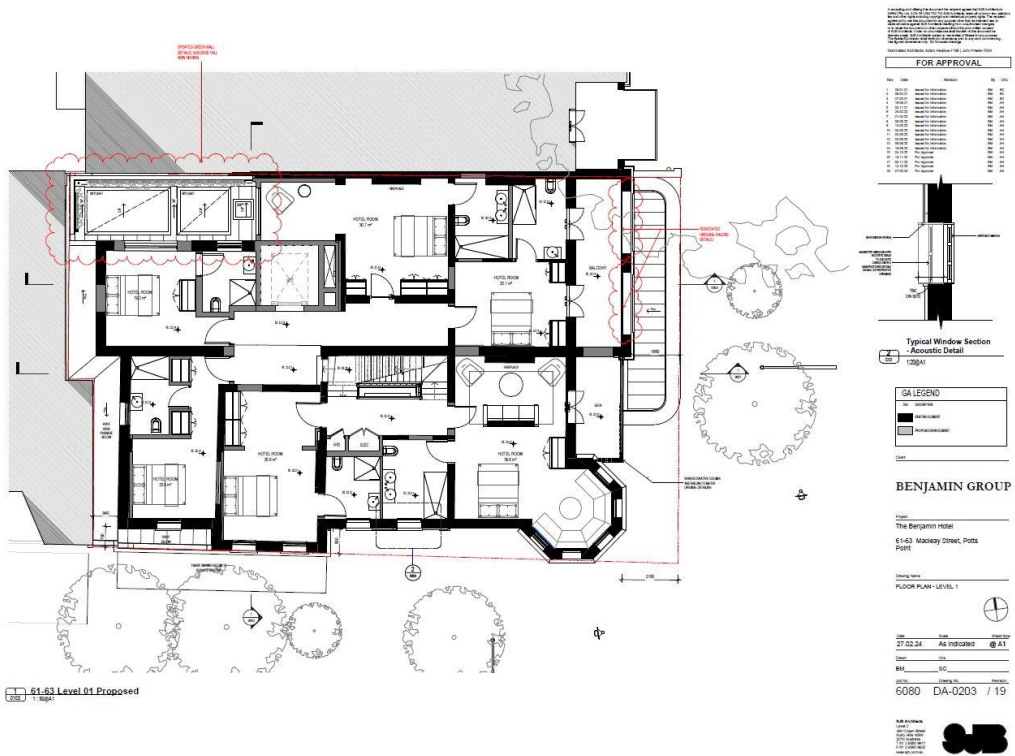


Figure 26: Proposed level 1 floor plan

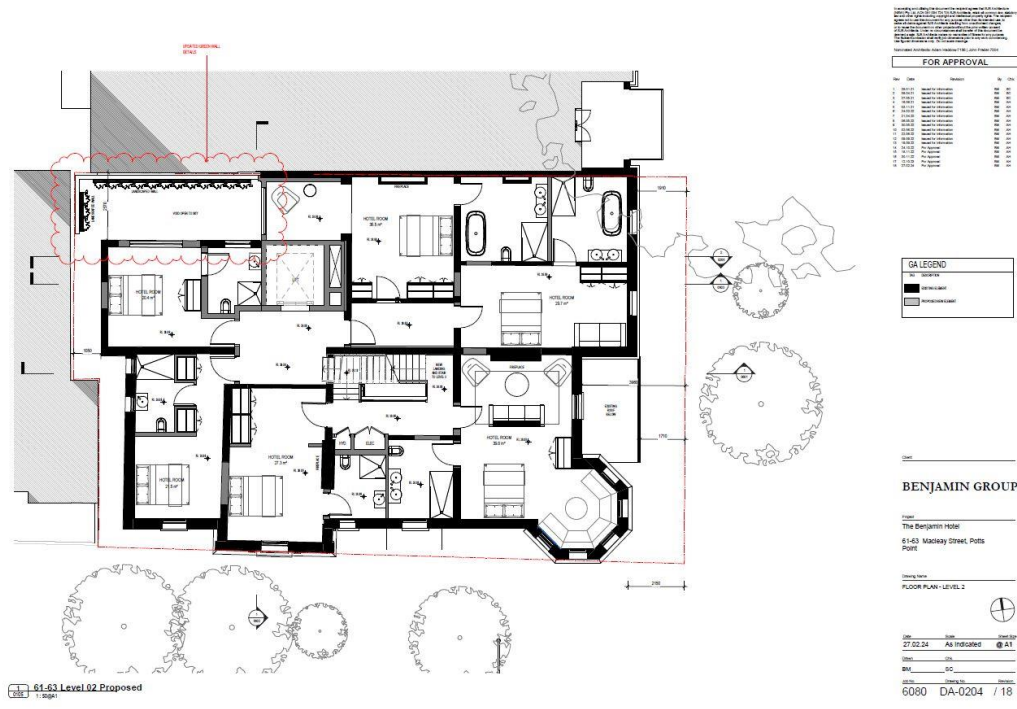


Figure 27: Proposed level 2 floor plan

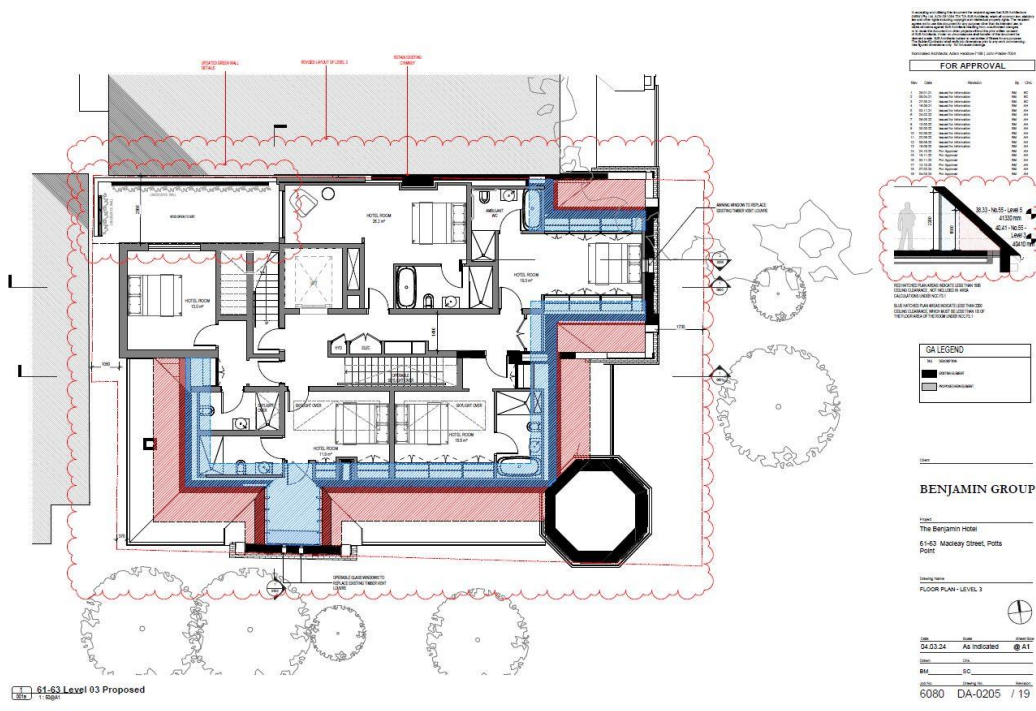


Figure 28: Proposed level 3 floor plan

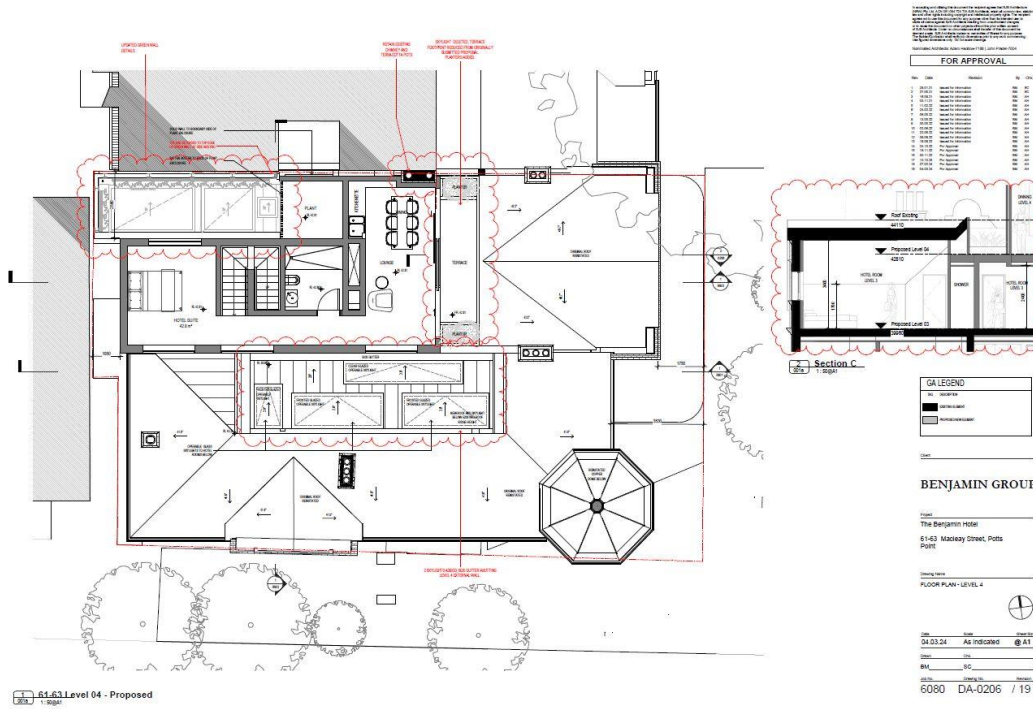


Figure 29: Proposed level 4 floor plan

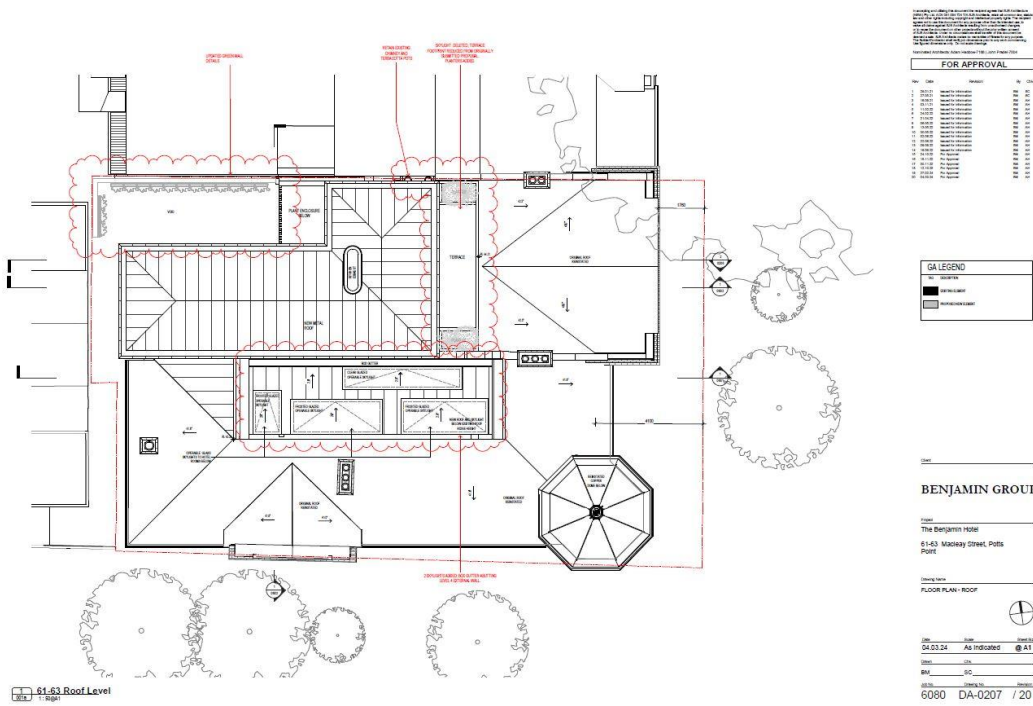


Figure 30: Proposed roof plan

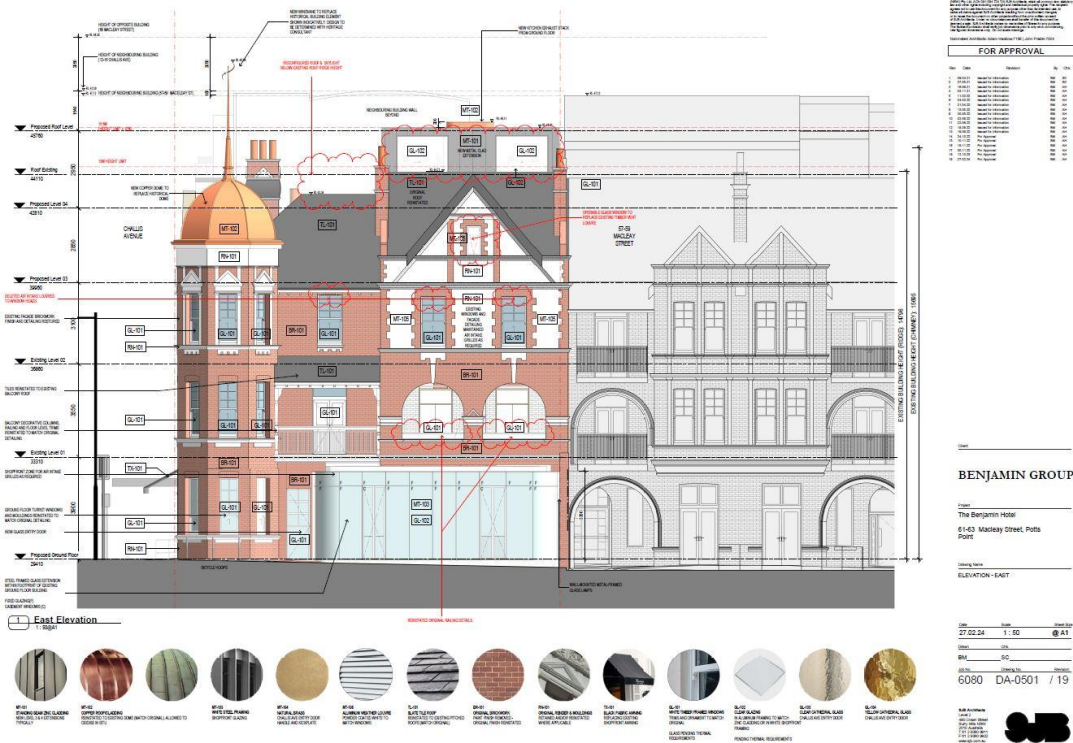


Figure 31: Proposed east (Macleay St) elevation

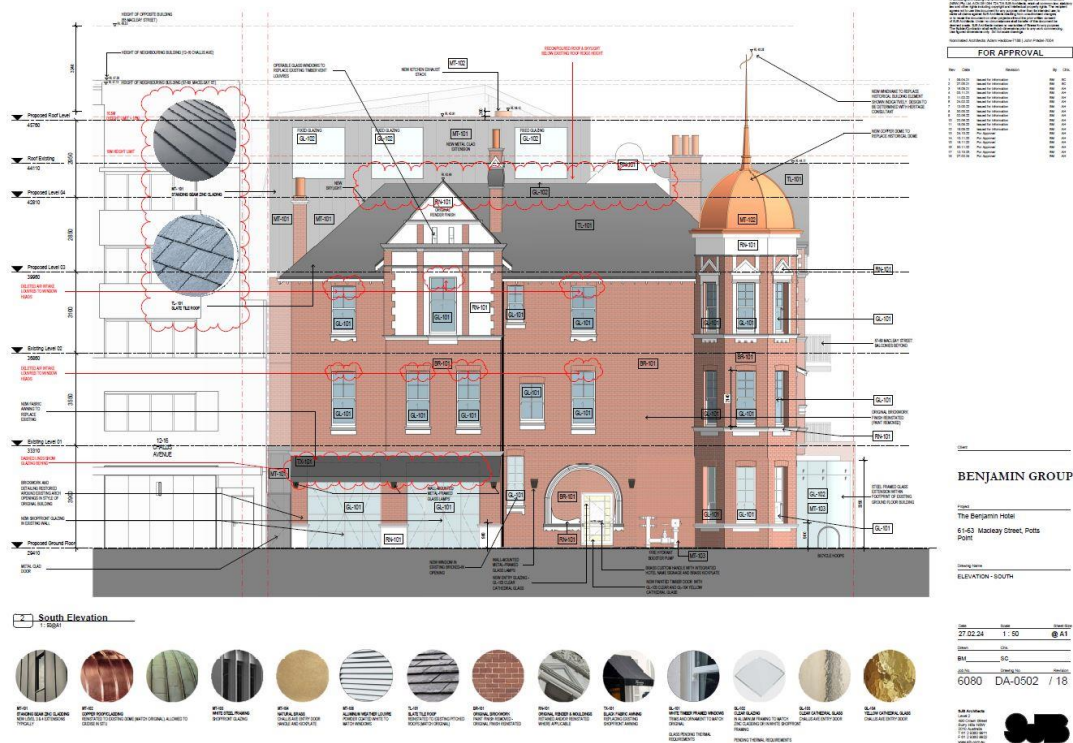


Figure 32: Proposed south (Challis Ave) elevation

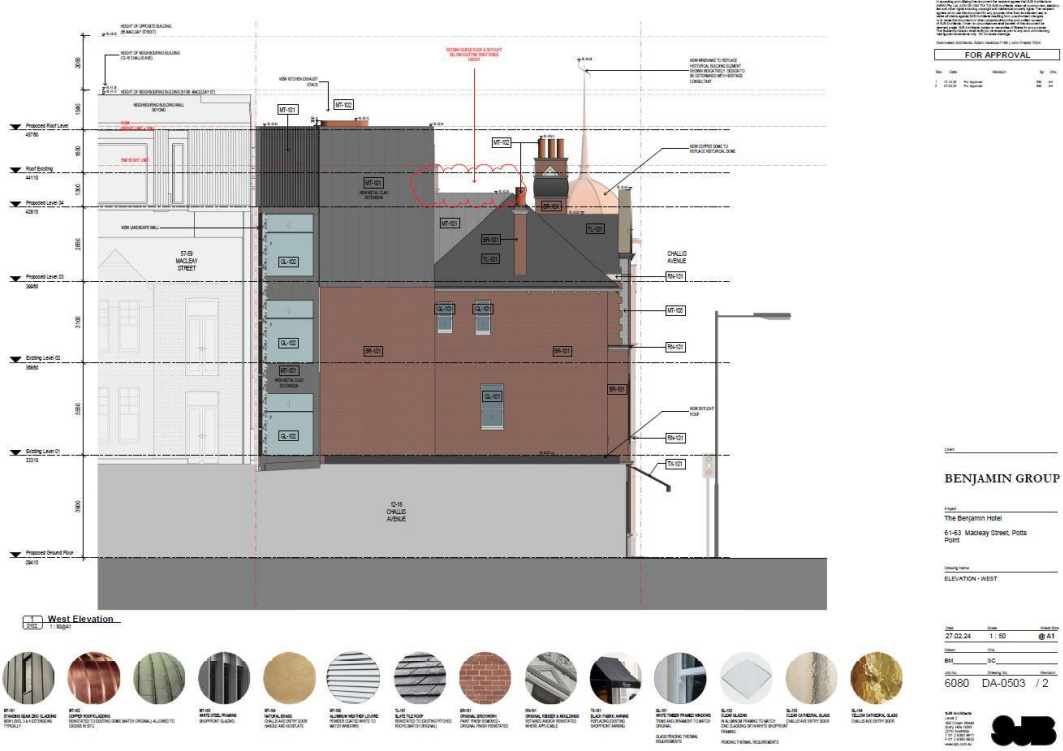


Figure 33: Proposed west elevation

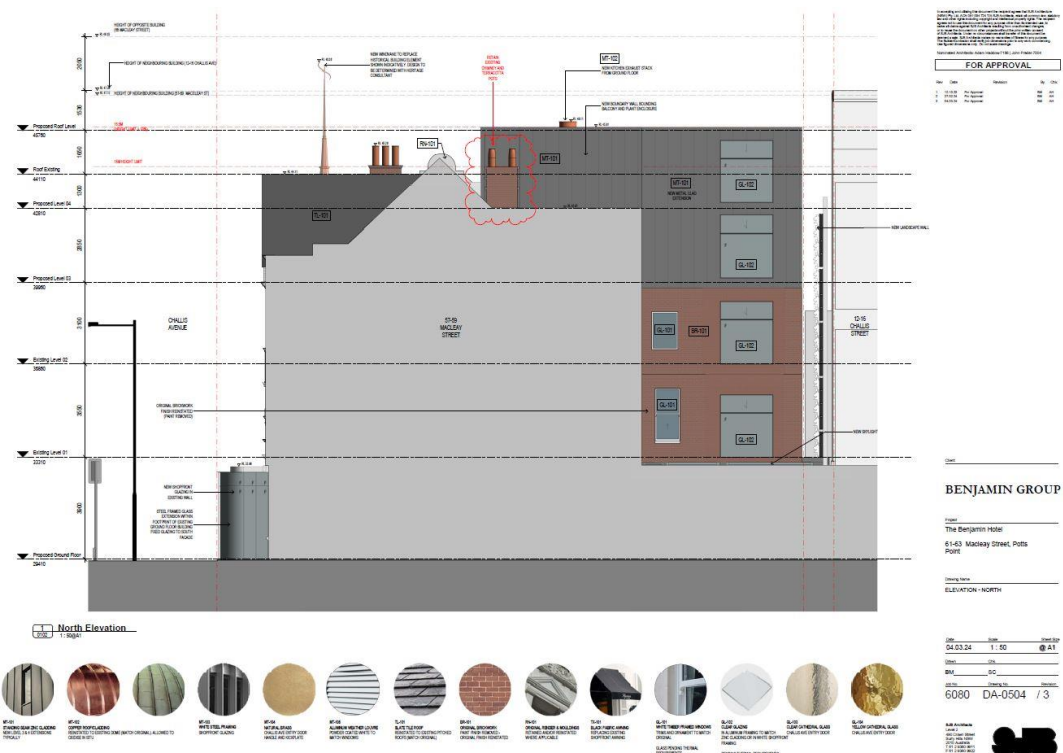


Figure 34: Proposed north elevation

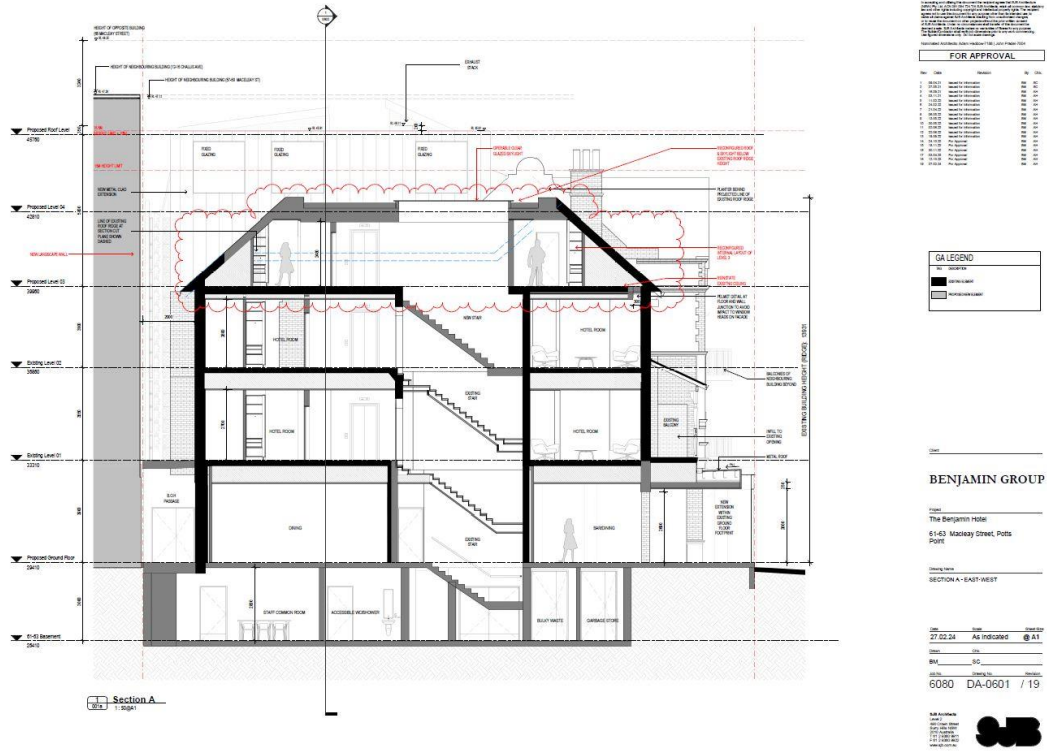


Figure 35: Proposed east-west section A

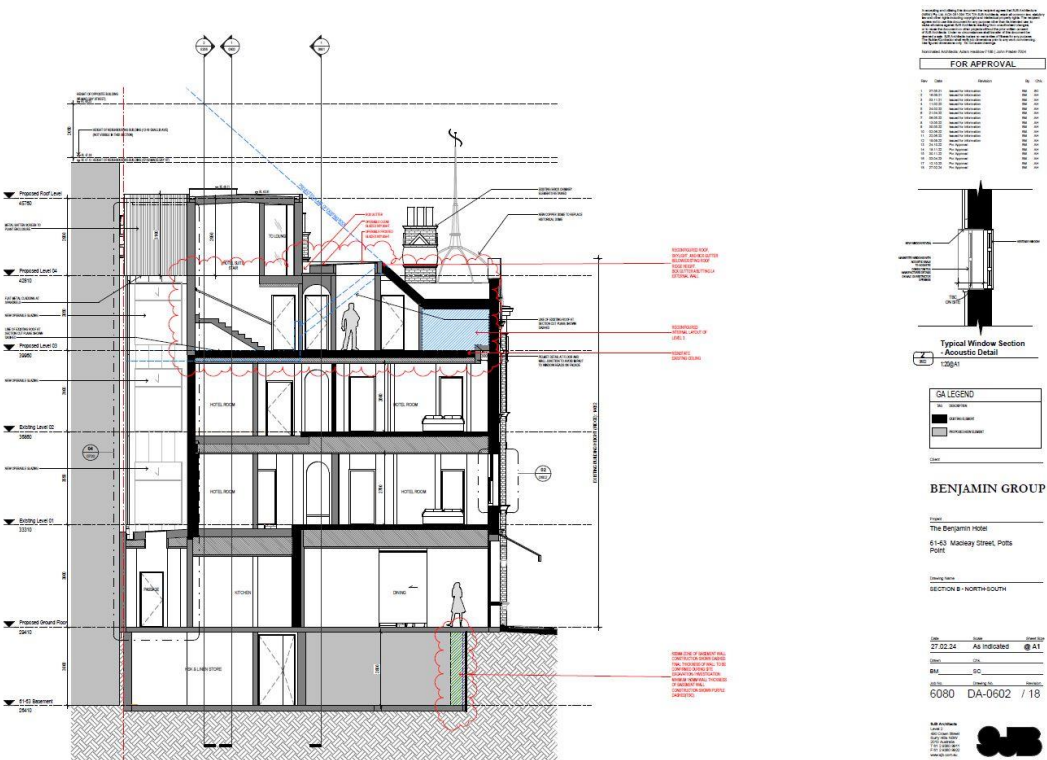


Figure 36: Proposed north-south section B



Figure 37: Proposed east-west section C

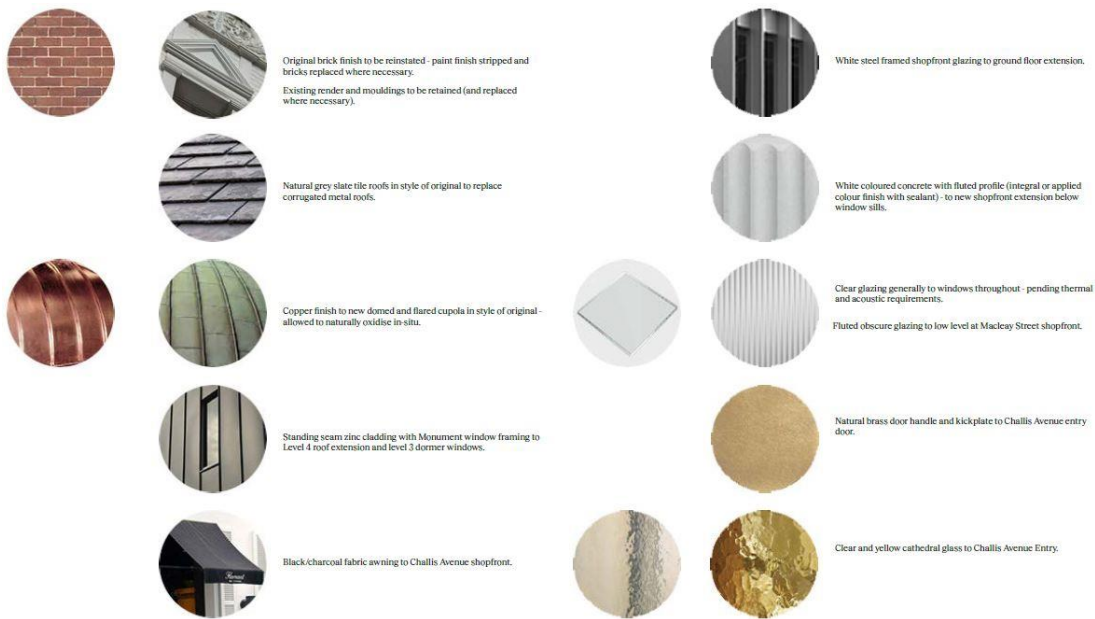


Figure 38: Proposed materials



Figure 39: Proposed perspective viewed from the eastern side of Macleay St, facing west



Figure 40: Proposed perspective viewed from the eastern side of Macleay St, facing north-west



Figure 41: Proposed perspective viewed from the southern side of Challis Ave, facing north-east

Assessment

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

Sydney Water Act 1994

49. Section 78 of the Sydney Water Act, 1994 sets out various requirements for the notification of development applications to the Sydney Water Corporation (SWC).
50. The application was referred to the SWC in accordance with the Act.
51. A response was received from the SWC, raising no objections to the proposal, subject to the recommended conditions.

State Environmental Planning Policies

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

52. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the Biodiversity and Conservation SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
53. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour.

54. The site is not located in the Foreshores Waterways Area or adjacent to a waterway however and, with the exception of the control of improved water quality and quantity, the controls set out in Division 2 of the Biodiversity and Conservation SEPP are not applicable to the proposed development.
55. The proposal achieves the relevant objective of the Biodiversity and Conservation SEPP, subject to the recommended conditions relating to erosion and sediment control and stormwater management.

State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)

56. The aim of Chapter 3 of the Industry and Employment SEPP is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
57. The proposal includes a single business identification sign, being a brass custom entry door handle with an integrated hotel name sign and brass kickplate on the Challis Avenue entrance door.
58. An assessment against the provisions within the assessment criteria set out in Schedule 5 of the Industry and Employment SEPP is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	Yes	The proposed sign is generally consistent with the character of the area, subject to the recommended signage conditions.
2. Special areas	Yes	The proposed sign does not detract from the amenity or visual quality of the locality or the Potts Point heritage conservation area, subject to the recommended signage conditions.
3. Views and vistas	Yes	The proposed sign does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed sign is of an appropriate scale, proportion and form, and provides a positive contribution to the streetscape and setting of the area.
5. Site and building	Yes	The scale, proportion and positioning of the proposed sign is acceptable, and the materiality is compatible with the finishes and colours of the building.

Provision	Compliance	Comment
6. Associated devices and logos	Yes	The proposed sign has been designed as an integral part of the new entry door on which it is to be displayed.
7. Illumination	Not applicable	The proposed sign is not proposed to be illuminated
8. Safety	Yes	The proposed sign will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

59. The proposed signage is consistent with the objectives set out in Section 3.1 of Chapter 3 and satisfies the assessment criteria set out in Schedule 5 of the Industry and Employment SEPP, as outlined in the table provided above.

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

60. 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.
61. The site has been historically used for residential and retail purposes. The proposal maintains a ground level retail premises use, with a change to a hotel accommodation use of a portion of the ground floor level and the levels above.
62. The subject site is not located on land within an investigation area, nor is there any record of the site having been used for any land use activity listed in Table 1 of the Managing Land Contamination Planning Guidelines. No residential, educational, recreational, child care or hospital purposes are proposed.
63. The proposal is therefore acceptable with regard to the relevant provisions of the Resilience and Hazards SEPP and the site is suitable for the proposed development and land use.

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

64. The provisions of the Transport and Infrastructure SEPP have been considered in the assessment of the development application.

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

65. 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.
66. In accordance with the requirements of the Clause, the application was referred to Ausgrid.

67. Ausgrid provided a response, raising no objections to the proposed development subject to a recommended condition.

Local Environmental Plans

Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

68. An assessment of the proposed development against the relevant provisions of the Sydney LEP 2012 is provided under the following headings.

Part 1 Preliminary

Provision	Compliance	Comment
1.2 Aims of Plan	Yes	The proposal is generally consistent with the relevant aims of the Sydney LEP 2012, subject to the recommended conditions.
1.9A Suspension of covenants, agreements and instruments	Yes	<p>A redundant existing right of way easement, which is shown in Deposited Plan 103410, while not listed on the certificate of title on the land, may exist at the rear of the site.</p> <p>The right of way benefitted the adjoining lot at 12-16 Challis Avenue and provided access to a waste storage area, which was demolished during the 1990s and replaced with a blank wall built to the boundary. The rear passageway now serves the subject site only.</p> <p>The proposed works, including new rear additions and service lift are shown to sit across the location of the easement.</p> <p>Where an existing agreement, covenant or other similar instrument restricts the carrying out of proposed development, Clause 1.9A operates so that it does not apply to the extent necessary to serve that purpose.</p>

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the MU1 mixed use zone.

Provision	Compliance	Comment
		<p>The proposed development is defined as a 'mixed use development'. It comprises 'food and drink premises' and 'hotel accommodation' uses, and is permissible with consent in the zone.</p> <p>The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15 metres is permitted.</p> <p>A height of 16.5 metres is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
4.4 Floor space ratio (FSR)	Yes	<p>A maximum FSR of 3:1, or 997.5 square metres of gross floor area (GFA), is permitted.</p> <p>An FSR of 2.73:1, or 908.29 square metres of GFA, is proposed.</p> <p>The proposed development complies with the maximum FSR development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the maximum height of buildings development standard prescribed under Clause 4.3.</p> <p>A written Clause 4.6 variation request has been submitted with the application.</p>

Provision	Compliance	Comment
		Refer to the further details and assessment provided in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
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> <p>This advice is contingent on compliance with a comprehensive range of recommended conditions relating to the conservation of the site's heritage significance.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
5.21 Flood planning	Not applicable	The site is not identified in the City's Floodplain management plans as being located on land which is subject to flooding.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes, subject to conditions	<p>The proposal exhibits design excellence for the following reasons, subject to the recommended conditions:</p> <ul style="list-style-type: none"> It is generally of a high standard that proposes high quality materials and detailing.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • The form and external appearance will improve the quality and amenity of the public domain to its street and lane frontages, by restoring the heritage significance of the building and providing active uses. • It will not significantly impact any view corridors. • The site is suitable for the proposed mix of land uses in light of the zoning applying to the land. • It is compatible with the heritage significance of the site and existing development along Macleay Street and Challis Avenue. • It will contribute positively to the character of the locality and heritage conservation area. • The bulk, massing, modulation and height of the proposal does not present any significant visual or environmental impacts. • 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. • It achieves the principle of ecologically sustainable development (ESD). • 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 the existing loading zone to Challis Avenue.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> The concept landscape design is integrated with the architectural scheme, which will provide acceptable landscape amenity to the subject site.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes, subject to condition	<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 recommended 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>

Development Control Plans

Sydney Development Control Plan 2012 (Sydney DCP 2012)

69. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided under the following headings.

Section 2 – Locality Statements

70. The site is identified in Section 2.4.4 of the Sydney DCP 2012 as being located within the Potts Point locality.
71. The proposed development is generally in keeping with the character and the design principles for the Potts Point locality in the following manner:

- (a) It restores many of the original features of the heritage building located on the western side of Macleay Street, generally maintaining and respecting its significance and setting.
- (b) The proposal reinforces the desired future character of Macleay Street as a primary retail spine by maintaining a ground level retail premises use, and Challis Avenue a destination for unique cafe and dining opportunities by providing for a ground level food and drinks premises.
- (c) Subject to a range of conditions relating to the protection of the existing street trees along both the Macleay Street and Challis Avenue frontages, the proposal will protect and maintain the established landscape quality of the streetscape.
- (d) Subject to the recommended conditions, the proposal responds in a satisfactory manner to the heritage significance of the subject heritage item, adjacent and nearby heritage items, and contributory buildings within the surrounding heritage conservation area, including the streetscapes to Macleay Street and Challis Avenue.
- (e) The proposal does not affect any views to the City skyline from Challis Avenue.
- (f) The proposal will enhance the dynamic mix of uses within the locality by introducing a new hotel accommodation use to the site.
- (g) The proposal maintains and reinforces the asymmetry of Macleay Street's built form along its western side.

Section 1 – Introduction

Provision	Compliance	Comment
1.3 Aims of this DCP	Yes, subject to conditions	The proposal is generally consistent with the relevant aims of the Sydney DCP 2012, subject to the recommended conditions.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2 Defining the Public Domain 3.2.1 Improving the public domain	Yes	The proposed development 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.

Provision	Compliance	Comment
3.2.2 Addressing the street and public domain	Yes	The proposed development positively addresses both Macleay Street and Challis Avenue, maintaining the existing points of access and providing activity to its street edges.
3.2.3 Active frontages	Yes	<p>The subject site is identified on the Active frontages map in the Sydney DCP 2012 as having to provide active frontages to both its Macleay Street and Challis Avenue frontages.</p> <p>The proposed development includes active frontages to both streets, maximising entries, display windows and a high standard of finish and level of architectural detail and restores and maintains significant original elements of the existing heritage building. It provides extensive transparent glazing, particularly to the Macleay Street facade.</p> <p>Subject to the recommended conditions, the proposed development will provide pedestrian oriented, high design quality active frontages, which will add activity, vitality and amenity to the surrounding streets and locality.</p>
3.2.4 Footpath awnings	Acceptable	<p>The site is identified on the Footpath awnings and colonnades map in the Sydney DCP 2012 as requiring continuous footpath awning to both its Macleay Street and Challis Avenue frontages.</p> <p>The proposed development includes a black fabric awning to a portion of the Challis Avenue frontage, affixed to the rear wing of the subject building, but does not include a continuous footpath awning to the balance of its street frontage, or provide a compliant 3.2 metre clearance between the footpath and awning.</p> <p>The proposed non-compliances are acceptable in the specific circumstances of the site however, given that:</p>

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • Continuous footpath awnings are uncharacteristic of the subject building type and design. • The introduction of a continuous footpath awning would likely result in detrimental impacts on the heritage significance of the site. • The proposed fabric awning replaces an existing awning of the same type and design previously approved by Council. • The clearance of between 2.5 and 3.2 metres to the footpath under the proposed awning is acceptable, given that a height compliant awning would not integrate as well with the architectural features of the existing building as that proposed.
3.2.7 Reflectivity	Yes, subject to condition	A condition is recommended to ensure that light reflectivity from the materials used in the proposed development does not exceed 20%.
3.2.8 External lighting	Yes	<p>The proposed development includes a number of small wall mounted metal-framed glass lamps along the street frontages of the site at the ground level and grow lights above the proposed green walls.</p> <p>These light fixtures are acceptable with regard to the architecture of the existing building and, subject to a recommended condition, will comply with the relevant Australian standards for external illumination.</p>
3.5 Urban Ecology	Partial compliance, but acceptable	<p>The proposal will not provide 15% canopy cover of the site within 10 years in accordance with the applicable provisions.</p> <p>This is acceptable however, given:</p>

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • The constraints posed by the heritage significance of the site and surrounds. • The proposal provides an improvement in terms of contribution to urban vegetation than that presented by the existing development. <p>The proposal does not remove any trees and will not have an adverse impact on the local urban ecology.</p> <p>The application was referred to both the City's Landscape Assessment Officer and Tree Management Unit, who advised that, subject to the recommended conditions, the proposal will not have any significant impacts on the street trees adjacent to the site, and that the proposed green wall features will provide acceptable landscape amenity.</p>
3.6 Ecologically Sustainable Development (ESD)	Yes, subject to conditions	<p>The proposal will meet the sustainability requirements of Section J of the Building Code of Australia, which is applicable to the proposed mix of land uses.</p> <p>Conditions are recommended to ensure that additional ESD measures are implemented and carried through to the certification, construction and operational phases of the development.</p>
3.7 Water and Flood Management	Yes, subject to conditions	<p>The site is not identified as being flood prone.</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 the recommended conditions relating to stormwater drainage management.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes, subject to conditions	<p>The proposal does not propose site subdivision, strata subdivision or consolidation of allotments.</p>

Provision	Compliance	Comment
		The application was referred to the City's Specialist Surveyor who raised no objection, subject to conditions.
3.9 Heritage	Yes, subject to conditions	<p>The site is located within a heritage conservation area and is identified as accommodating a heritage item, which is a contributing building.</p> <p>The application was referred to the City's Heritage Specialist.</p> <p>The advice received in response is that the proposed development will not have detrimental impacts on the significance of the subject heritage item, adjoining and nearby heritage items, or the surrounding heritage conservation area.</p> <p>This advice is contingent on compliance with a wide range of recommended conditions relating to the conservation of the site's heritage significance.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
3.11 Transport and Parking 3.11.3 Bike parking and associated facilities	Yes	<p>The mix of proposed hotel accommodation and restaurant uses generates a requirement for:</p> <ul style="list-style-type: none"> • 4 employee bike parking spaces. • 4 customer / visitor bike parking spaces. <p>The proposal includes 6 class C customer / visitor bicycle parking spaces at the ground floor level at the entryway to the site from Macleay Street, and a basement level bicycle store for 4 class B employee bicycle parking spaces.</p> <p>A condition is recommended to ensure the carriage of the bike facilities through to the certification, construction, and operational phases of the development.</p>

Provision	Compliance	Comment
3.11.6 Service vehicle parking	Acceptable, 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 building on the site.</p> <p>All site servicing (including waste collection) is proposed to occur within the existing loading zone on the Challis Avenue frontage of the subject site.</p> <p>The application was referred to the City's Access and Transport Unit and the City's Cleansing and Waste Unit for advice.</p> <p>The advice received was generally supportive of the proposed servicing arrangements, subject to a range of recommended conditions. These conditions require a loading and servicing management plan and transport access guide.</p>
3.11.8 Bus parking	Yes, subject to conditions	<p>The proposed development includes a hotel accommodation use with 18 rooms.</p> <p>No on-site bus parking is proposed, largely due to the physical constraints posed by the heritage significance of the existing building on the site.</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 recommended conditions.</p> <p>These conditions require a loading and servicing management plan and transport access guide.</p>

Provision	Compliance	Comment
3.12 Accessible Design	Yes, subject to condition	An appropriate condition is recommended 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 within the locality will be 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. It 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 recommended conditions relating to the provision of CCTV and plans of management for the hotel accommodation and food and drink premises uses, the proposal is acceptable in relation to social and environmental responsibilities.</p>
3.14 Waste	Yes, subject to conditions	<p>The proposed development was accompanied by a Waste Management Plan (WMP), which accords 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> <p>This is subject to the recommended conditions 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>

Provision	Compliance	Comment
3.15 Late Night Trading Management	Yes, subject to conditions	<p>The site is located within a Local Centre Area along Macleay Street.</p> <p>The proposal includes a hotel accommodation use, with hours of operation 24 hours per day, 7 days per week, and a ground level restaurant use, which is proposed to have indoor hours of operation between 7am and 1am the following day, Monday to Sunday.</p> <p>The latter use is a Category B Low Impact Premises, in accordance with the definition in Section 3.15 of the Sydney DCP 2012. The base hours permitted for Category B premises in Local Centre areas are between 7am and 11pm, with trial hours until 12am midnight, and the proposed development does not comply.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
3.16 Signage and Advertising 3.16.1 Signage strategy	Yes, subject to conditions	<p>The proposal includes a single business identification sign.</p> <p>No signage strategy has been submitted.</p> <p>Appropriate conditions are recommended to:</p> <ul style="list-style-type: none"> • Require a signage strategy, including wayfinding signage, to be submitted to the City for approval. • Require any other future signage to be the subject of a separate application and be consistent with the approved signage strategy.
3.16.3 General requirements for signage	Yes, subject to conditions	<p>The proposed sign, subject to the recommended conditions:</p> <ul style="list-style-type: none"> • Is compatible with the architecture, materials, finishes and colours of the building and the streetscape.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • Is positioned in an appropriate location. • Does not detract from the amenity or visual quality of the subject or adjoining heritage items, or surrounding heritage conservation area. • Does not create unacceptable visual clutter. • Does not contain significantly reflective materials, colours or finishes. • Does not incorporate any emissions, whether by sound, vibration or odour.
<p>3.16.6 Business identification signs and on-premises advertisements</p> <p>3.16.1 General requirements</p>	Yes, subject to conditions	<p>The proposed sign, subject to the recommended conditions:</p> <ul style="list-style-type: none"> • Is located at the ground floor level of the site to the Challis Avenue frontage of the site. • Does not add clutter to the street and building elevation of the site. • Is compatible with the architectural elements of the existing building. • Has a finish which is compatible with the streetscape and will not detract from the appearance of the building.
3.16.11 Signage related to heritage items and conservation areas	Yes, subject to conditions	The design, style, and material of the proposed sign is of high quality and consistent with the heritage style of the subject building, subject to the recommended conditions.
3.17 Contamination	Yes	Refer to the discussion and assessment provided in relation to contamination and remediation provided under the State Environmental Planning Policy (Resilience and Hazards) 2021 heading above.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Acceptable	<p>The site is permitted a maximum building height of three storeys, with a maximum street frontage height of four storeys.</p> <p>The proposed development is five storeys in height with a street frontage height of three storeys and does not comply.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section 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> <ul style="list-style-type: none"> • The existing floor levels and structure of the subject building is generally proposed to be retained. • Requiring compliance with the controls would likely result in detrimental impacts to heritage significant building fabric and visual impacts. • The upper level additions are provided with openings which provide acceptable daylight access into the building interiors.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> The design of the building is specific to the use proposed and circumstances of the site, and the flexibility to accommodate other future commercial uses is unwarranted in this case.
<p>4.2.2 Building setbacks</p> <p>4.2.2.1 Setbacks</p>	Yes	<p>No setbacks are shown to be required on the Building setback and alignment map in the Sydney DCP 2012.</p> <p>The setbacks of the proposal are consistent with the adjoining buildings, which have nil or minimal setbacks.</p>
4.2.2.2 Setbacks above the street frontage height	Yes	The uppermost level is setback above the street frontage height of the existing building, reducing its visual impact on the subject and adjoining heritage items.
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.</p> <p>These demonstrate that the additional overshadowing resulting from the proposal is in accordance with the minimum provisions set out in Section 4.2.3.1 of the Sydney DCP 2012.</p>
4.2.3.2 Lightwells	Acceptable	<p>A lightwell is proposed which:</p> <ul style="list-style-type: none"> Provides adequate daylight access to hotel rooms served by the lightwell. Is fully open to the sky. Provides acceptable outlook from hotel rooms to the proposed green wall systems. Is shared with the ground floor hotel lobby below, which is roofed over with glass skylights, which will mitigate any potential for acoustic privacy impacts.

Provision	Compliance	Comment
4.2.3.3 Internal common areas	Acceptable	<p>The common corridors have acceptable dimensions and provide lift lobbies wider than 2 metres in front of lifts.</p> <p>Daylight access and outlook is not provided to all internal common areas, corridors and lift lobbies, which is acceptable in the specific circumstances of the subject site and proposed development, given that:</p> <ul style="list-style-type: none"> • The existing floor levels and structure of the subject building is generally proposed to be retained. • Requiring compliance with the controls would likely result in detrimental impacts to heritage significant building fabric and visual impacts.
4.2.3.4 Design features to manage solar access	Yes	The proposal does not include extensive glazing facing north or west that will be impacted by summer sunlight.
4.2.3.5 Landscaping	Yes, subject to conditions	<p>The site does not currently provide any tree planting or landscape areas.</p> <p>The proposed development includes two new green walls within the rear lightwell.</p> <p>The application was referred to the City's Landscape Assessment Officer.</p> <p>The advice received was that subject to the recommended conditions, the proposed green wall features will provide acceptable landscape amenity.</p>
4.2.3.6 Deep Soil	Acceptable	<p>The site does not currently provide any deep soil areas.</p> <p>No deep soil areas are proposed.</p> <p>This is acceptable in the specific circumstances of the subject site and proposal, given that requiring compliance would likely result in detrimental impacts to heritage significant building fabric.</p>

Provision	Compliance	Comment
4.2.3.10 Outlook	Yes	<p>The application was accompanied by a view analysis.</p> <p>The analysis demonstrates that views and outlooks from existing residential development surrounding the site has been adequately considered in the site planning and massing of the proposed development.</p> <p>Refer to the further details and assessment provided in the 'Discussion' section below.</p>
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 acoustic report are generally acceptable.</p> <p>Conditions are recommended to ensure that appropriate noise control measures are implemented in relation to the proposed uses of the site.</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 and articulation.</p> <p>The proposed scale, modulation and facade articulation of the development has been designed to respond appropriately to its context on Macleay Street and Challis Avenue.</p>
4.2.6 Waste and recycling Management	Yes, subject to conditions	<p>The proposed waste and recycling management facilities within the development generally accord with the requirements set out in 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 recommended conditions 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 indicated to be consolidated within a rooftop location.</p> <p>This will assist in achieving energy efficiency and allow for accommodation of future heating and cooling technology.</p> <p>Appropriate conditions are recommended to preclude facade and balcony-mounted air conditioning units and require the acoustic screening of plant.</p>
4.2.8 Letterboxes	Yes, subject to condition	<p>A letterbox is not indicated on the drawings submitted with the application.</p> <p>A condition is recommended to require that a letterbox is provided within the lobby of the building and that it is installed with a non-master key lock for security.</p>
4.2.9 Non-residential development in the MU1 Mixed Uses Zone	Yes, subject to conditions	<p>The proposed development includes non-residential uses within proximity to existing residential uses within the MU1 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 recommended conditions.</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 containing 18 hotel rooms, with hours of operation 24 hours per day, Monday to Sunday inclusive.</p> <p>The hotel reception is proposed to operate between 6am and 12am midnight, with a site manager available on call 24 hours per day Monday to Sunday inclusive.</p> <p>The application was accompanied by both an acoustic report, and a plan of management supporting the proposed hotel accommodation use.</p> <p>These documents outline general management practices for the proposed hotel accommodation use, including those relating to hotel management, guest services, security and noise management.</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 recommended conditions relating to:</p> <ul style="list-style-type: none"> • Provision of an updated hotel accommodation Plan of Management. • Compliance with the submitted acoustic report.
4.4.8.3 Additional provisions for hotels, private hotels and motels	Yes, subject to conditions	The proposed hotel rooms within the development exceed the minimum areas prescribed by the Sydney DCP 2012, with the capacity for adequate storage areas provided in each room.

Provision	Compliance	Comment
		Appropriate conditions are recommended to provide detail of storage in each room, 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.

Discussion

Clause 4.6 Request to Vary a Development Standard

72. The site is subject to a maximum height of buildings control of 15 metres. The proposed development has a maximum height of 16.5 metres, which is a variation of the standard of 1.5 metres (or 10 per cent of the standard).
73. The definition of 'building height' in the Dictionary of the Sydney LEP 2012 excludes 'communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.'
74. Some existing and proposed building elements, including chimney flues, a new kitchen exhaust and the restored cupola spire and windvane, exceed 15 metres in height above the existing ground level, but are excluded in accordance with this definition.
75. 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:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.
 - (c) The proposed development will be consistent with the objectives of the zone.
 - (d) The proposed development will be consistent with the objectives of the standard.

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

76. The applicant seeks to justify the contravention of the maximum 15 metre height of development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case in the following manner:
 - (i) The proposal satisfies the objectives of the MU1 Mixed Use zone and the objectives of the Height of Buildings standard.

- (ii) The quantum of additional height above the maximum building height standard is sited away from the southern and eastern primary building setbacks so as to maintain existing privacy impacts for neighbouring properties, particularly for 14 Macleay Street to the east, which enjoys substantial building separation (including Macleay Street road reserve) from the rooftop addition.
- (iii) Furthermore, the siting of the addition ensures that new works can be clearly distinguishable relative to the original building in accordance with standard heritage practices.
- (iv) Solar access to neighbouring properties will be maintained. Overshadowing will continue to be limited to a small portion of the road reserve and public footpath between 12pm and 3pm midwinter.
- (v) The amended proposal ensures that the extent of impact of view sharing conditions for neighbouring properties ranges from no impact, negligible to minor impact, as views to significant items such as the Sydney Central Business District skyline and Sydney Harbour Bridge are maintained.
- (vi) Despite an identified non-compliance with the provision at 4.2.1.1(1) of the Sydney DCP 2012, the proposed five storey building achieves an appropriate height transition relative to surrounding contemporary and heritage listed buildings (as shown in the figures provided below) which vary in height from three to nine storeys.
- (vii) Notwithstanding previous development approvals involving non-compliances with height development standards, the contemporary aspect of the proposal remains consistent with the scale of neighbouring buildings to the west when viewed from neighbouring properties and the streetscape.

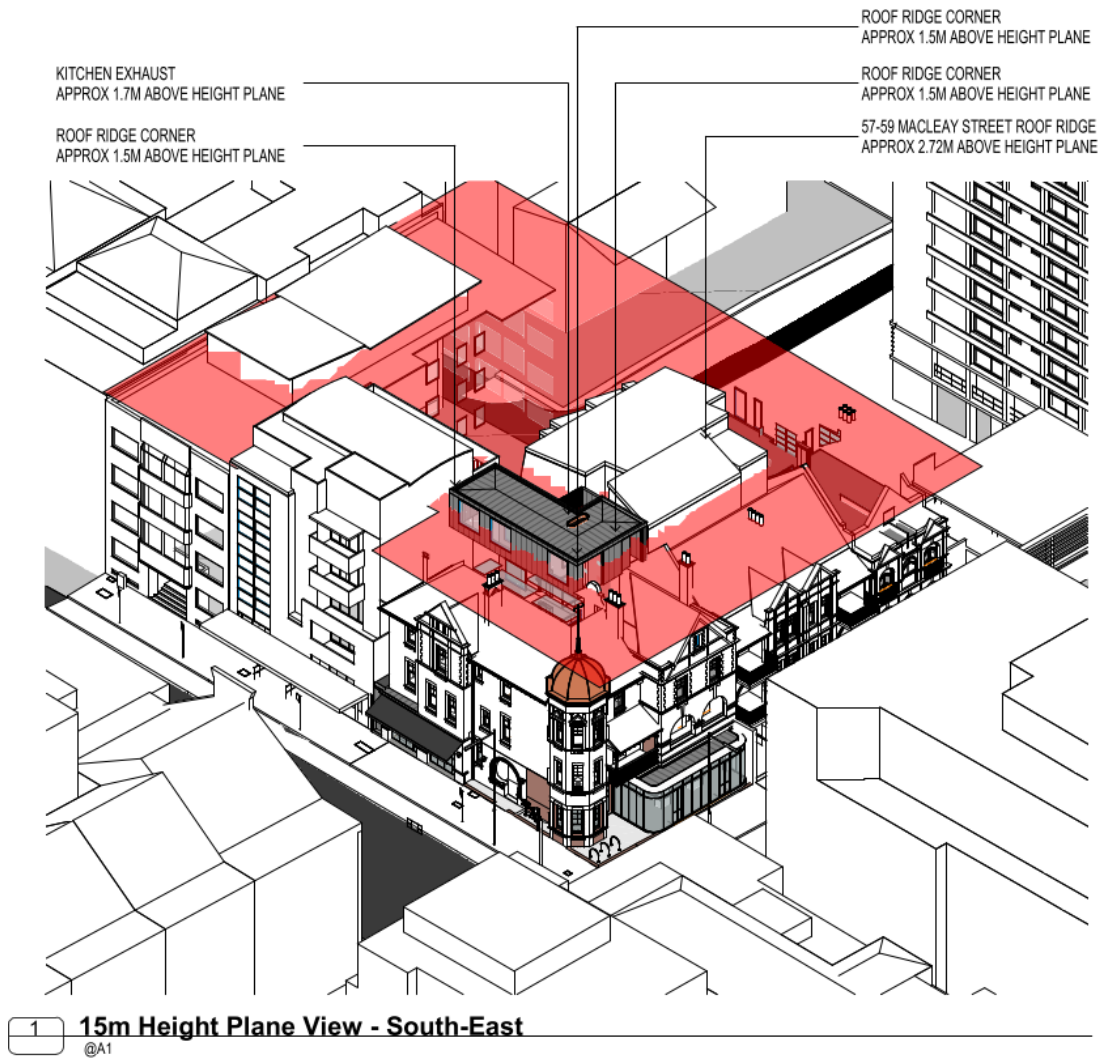


Figure 42: Three dimensional axonometric drawing extract depicting the 15 metre height plane and the proposed non-compliant building elements, facing north-west

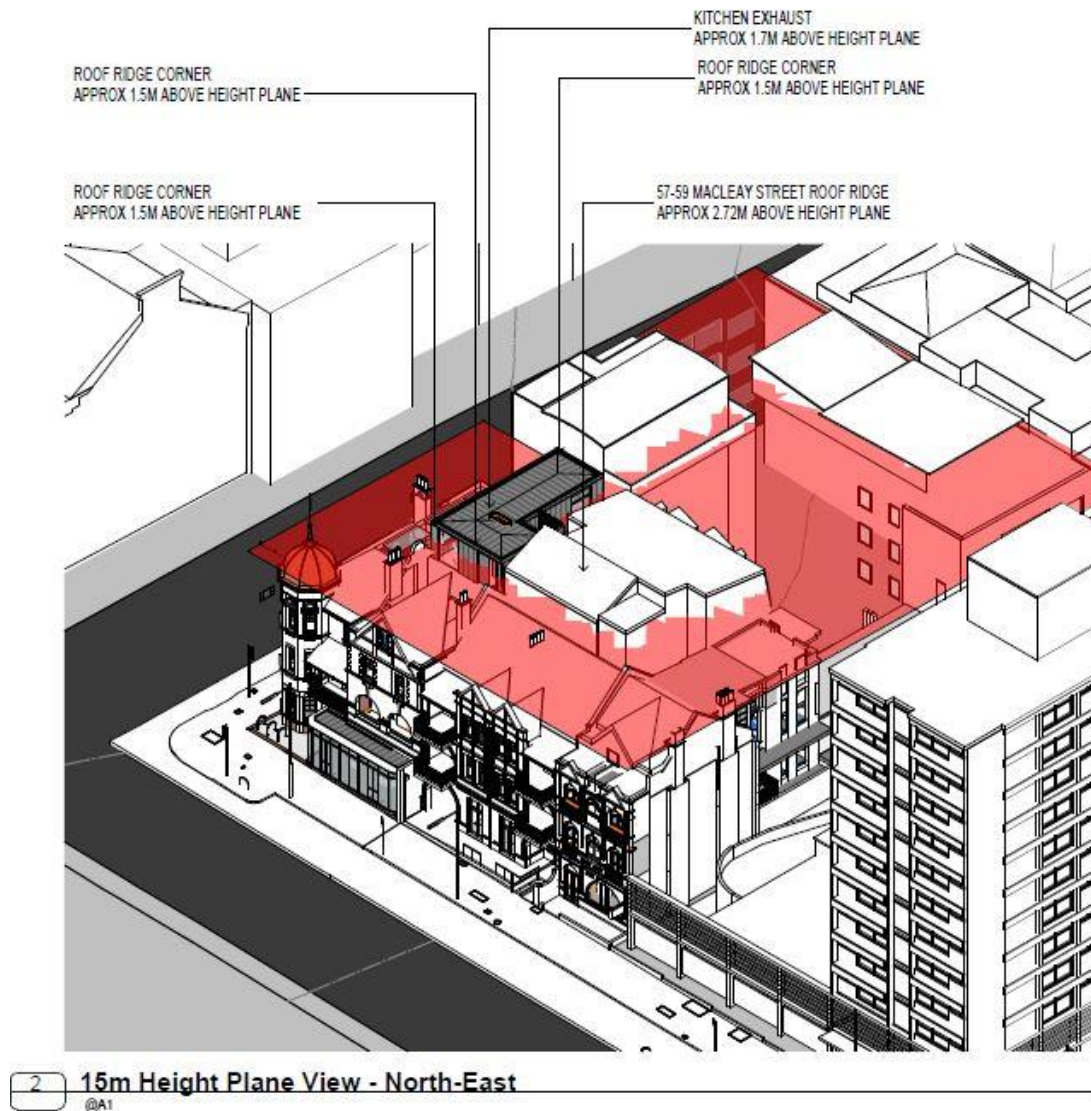


Figure 43: Three dimensional axonometric drawing extract depicting the 15 metre height plane and the proposed non-compliant building elements, facing south-west

- (b) That there are sufficient environmental planning grounds to justify contravening the standard in the following manner:
- (i) The proposal satisfies the objectives of the MU1 Mixed Use zone and the objectives of the Height of Buildings standard.
 - (ii) The reduced mass and scale of the amended proposal, which is the result of a decrease in the overall maximum building height and reconfiguration of the rooftop addition, ensures views over the site to the Sydney CBD skyline and to the Sydney Harbour Bridge are not adversely affected in a significant manner.
 - (iii) The proposal maintains the significance of the heritage item on the site and other items within its vicinity. The proposed works have been substantially amended to have careful regard to the fabric, setting, and view corridors of the heritage item itself and nearby items.

- (iv) When viewed from neighbouring properties, the contemporary rooftop addition remains consistent with the scale of neighbouring buildings to the west. The design of the rooftop addition has been amended to create an increased southern secondary building setback from the original roof form.
 - (v) Consequently, the proposal creates minimal public domain impacts when viewed from the streetscape along Challis Avenue and Macleay Street.
 - (vi) The variation to the height control does not increase the density of the development in such a way that it will give rise to significant adverse overshadowing, privacy impacts, or view loss.
 - (vii) The proposal is generally compliant with the controls, or the intent of the controls, contained in Sydney DCP 2012.
- (c) The proposed development will be consistent with the objectives of the zone in the following manner:
- (i) The proposal will viably enable the improvement of the subject building to accommodate a diversity of uses including hotel accommodation between Levels 1 to 4, and a restaurant on the ground floor.
 - (ii) The amended proposal contains improved active street frontages on its East (Macleay Street) and South Elevations (Challis Avenue) to increase permeability and visual access to the ground level of the subject building.
 - (iii) The proposal (as amended) will not give rise to significant adverse overshadowing, privacy impacts, acoustic impacts, or view loss for surrounding development in the MU1 Mixed Use zone and R1 General Residential zone to the north.
 - (iv) An existing approval exists for use of the ground level as a restaurant, which will be improved by the changes proposed as part of the development application.
 - (v) The continuation of a mix of uses on the site will support the viability of nearby centres without diminishing local centres hierarchy as the proposal does not result in an overdevelopment of the site.
 - (vi) The proposal (as amended) will attract tourism and create benefits for associated night-time economy industries in a viable and controlled manner.
 - (vii) The proposal integrates retail and hotel accommodation land uses in a location that is well-serviced by bus and train services, as well as footpaths conducive to walking. The proposal includes bicycle infrastructure at the street level at the corner of the site to encourage cycling.
- (d) The proposed development will be consistent with the objectives of the standard in the following manner:
- (i) The proposal is of a height and scale that is appropriate to the condition of the site. With respect to the original roof form of the existing building, the increased southern secondary building setback of the rooftop addition creates a substantial recession in the contemporary roof form.

- (ii) As a result, it is considered that any perceived height impacts of the non-compliant aspects of the proposal have been reduced when viewed from the public domain.
- (iii) The height of the rooftop addition actively responds to the context of surrounding development, particularly to the east and west, without resulting in significantly adverse overshadowing, visual privacy, or view sharing impacts.
- (iv) The site includes a local heritage item, 'Flat building "Wirrawa" including interior', which is located within the Potts Point Conservation Area. The proposed contemporary rooftop addition is of an appropriate and reasonable scale by virtue of its reduced overall height and its increased southern secondary building setback from the original heritage roof form. This ensures that the 'Wirrawa' building, which will undergo sympathetic heritage design interventions as part of this proposal, remains the predominant built form on the site when viewed from different parts of the Potts Point Conservation Area.
- (v) The proposed rooftop addition is consistent with the scale of buildings adjoining the site at 12-16 Challis Avenue and 57-59 Macleay Street, whereby the maximum height of the new building (RL 45.91) sits below the parapet height of these neighbouring buildings (i.e. RL 47.30 and RL 47.12 respectively). On this basis, the amended proposal ensures an appropriate height transition between the rooftop addition, the original roof form of the 'Wirrawa' building, and surrounding buildings in the Potts Point Conservation Area.
- (vi) The design of the proposed rooftop addition has been amended to ensure that existing significant views to the Sydney Central Business District skyline and Sydney Harbour Bridge, whether or not they are already obstructed, will not be obscured further, as concluded within the View Impact Assessment submitted with the application.
- (vii) Changes to the proposed design of the rooftop addition include, but are not limited to, a reduced height and scale, increased secondary building setback from the southern boundary, and the reduction in the projection of the kitchen exhaust flue. These changes promote view sharing principles, whereby the majority of views from neighbouring properties to the east will be retained.
- (viii) The subject site is not identified as being located within Central Sydney or the Green Square Town Centre. Notwithstanding, the proposal has no impact on the height transition from these Centres to adjoining areas.
- (ix) The subject site is not located within Green Square. Notwithstanding, the proposal has no impact on the amenity or built form of Green Square.

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

77. 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)?

- 78. 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.
- 79. 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)?

- 80. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify varying the development standard.
- 81. 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?

- 82. 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.
- 83. 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

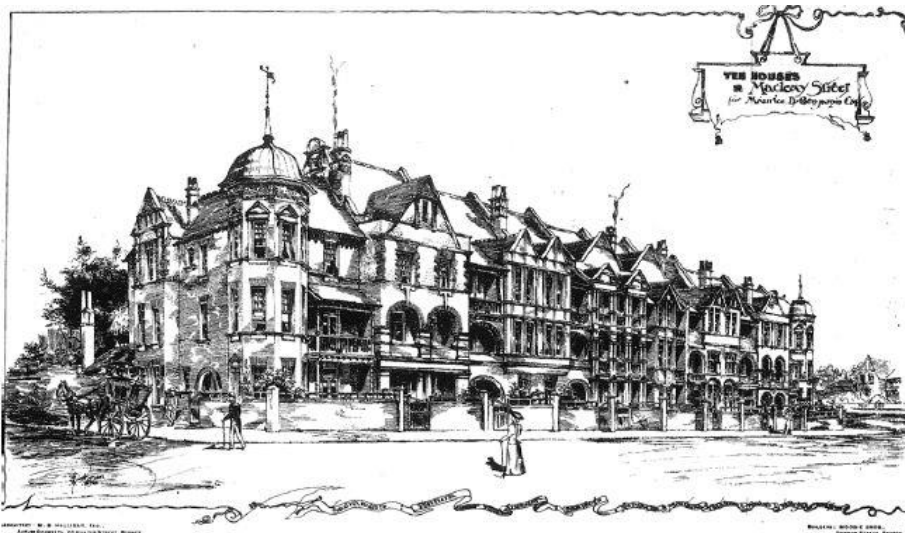
- 84. For the reasons provided above the requested variation to the maximum height of buildings standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public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

Heritage Conservation

- 85. Each of the key aspects of the proposed development is assessed with regard to the relevant objectives and provisions in Section 5.10 of the Sydney LEP 2012 and Sections 3.9 of the Sydney DCP 2012 relating to heritage conservation under each of the headings provided below.

Background

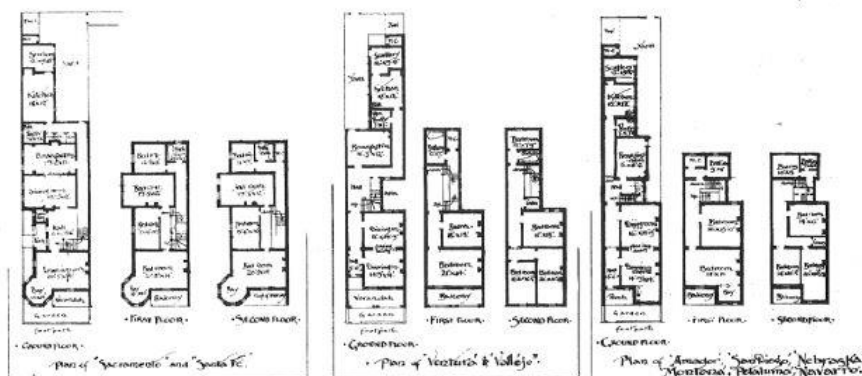
86. The original design visualisation and floor plans for the subject heritage item and adjoining terraces are depicted in the figure provided below.



Original design visualisation

Building & Engineering News, 18th July 1896

Sketch Plans of Ten Houses on Macleay Street for Maurice B. Halligan Esq.



Original design floor plans

Building & Engineering News, 18th July 1896

Figure 44: Original design visualisation (top) and floor plans (bottom) of the original terrace row

87. The heritage inventory sheet states the following in relation to the subject heritage item:

Wirrawa has local historic and aesthetic significance. It comprises two of five grand three-storey Federation Queen Anne style terraces at 55-63 Macleay Street, which is the surviving half of a set of 10 terraces, designed by architect Maurice B Halligan, that contribute to the streetscape.

The surviving terraces are of historical evidence for their history of change since 1905 from grand residents, to hotel, boarding house or apartment uses, illustrating the changing nature of Potts Point.

The building should be retained and conserved. A Heritage Assessment and Heritage Impact Statement, or a Conservation Management Plan, should be prepared for the building prior to any major works being undertaken. There shall be no vertical additions to the building and no alterations to the facade of the building other than to reinstate original features.

The principal room layout and planning configuration as well as significant internal original features including ceilings, cornices, joinery, flooring and fireplaces should be retained and conserved. Any additions and alterations should be confined to the rear in areas of less significance, should not be visibly prominent and shall be in accordance with the relevant planning controls.

88. The subject site was first listed as an item of local heritage significance in the South Sydney Local Environmental Plan 1998 schedule of heritage items in 2001.
89. The following figures depict the existing condition of various elements of the building and its fabric, both internal and external.

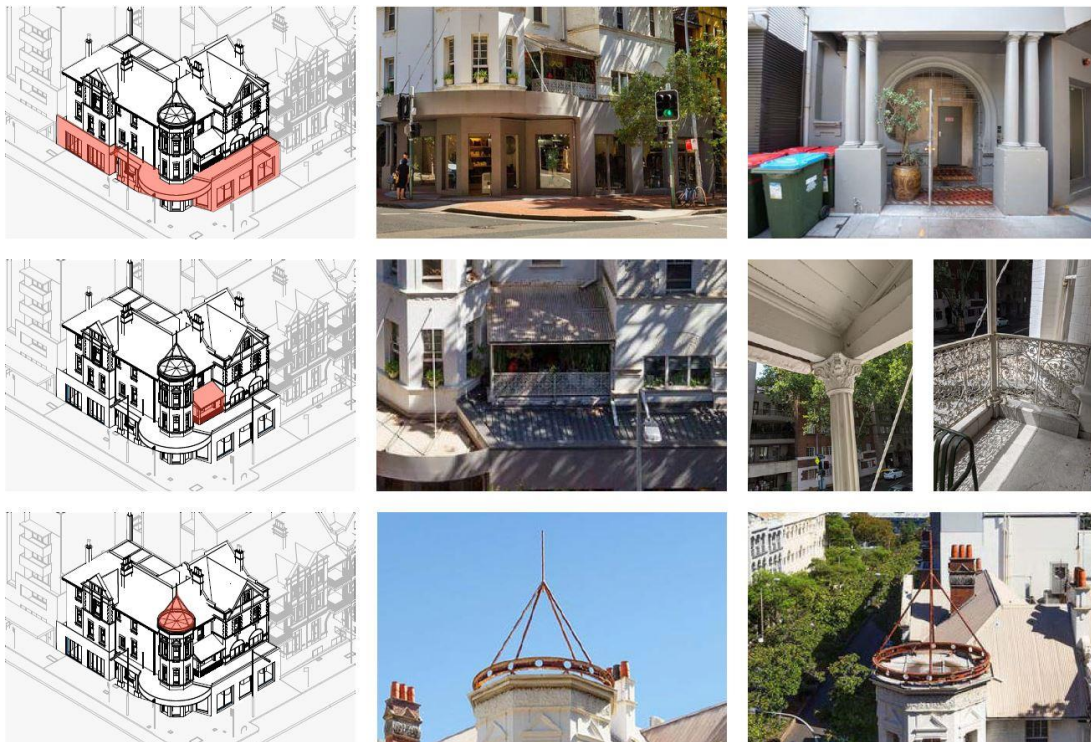


Figure 45: Three-dimensional drawing extracts and photographs of the ground floor shopfront and awning additions (top), original balcony (middle) and tower cupola (bottom)



Figure 46: Three-dimensional drawing extracts and photographs of the roof (top), facade finish (middle) and non-original windows (bottom)



Figure 47: 2022 ground, level 1 and level 2 plan extracts with significant fabric circled in pink (left), 1896 plan extracts (middle) and photographs of the significant existing staircase and fireplace (right)

Excavation

90. The original scheme was accompanied by a desktop geotechnical and concept structural reports, both of which relied on assumptions unsupported by field work and investigation and detail drawings.
91. Council engaged an external structural engineering consultant who provided advice raising a range of concerns with the excavation work proposed to facilitate the new basement level below the subject building.
92. The amended application lodged with the City on 13 November 2023 provided updated geotechnical and structural engineering reports, which included the results of borehole investigation and detailed structural engineering drawings and recommendations.
93. These updated documents have been reviewed by Council staff and are acceptable, subject to a range of recommended conditions to:
 - (a) Delete the proposed excavation and basement level beyond the footprint of the existing building.
 - (b) Require the provision of final structural design and solutions pertaining to floor upgrade requirements, including fire resistance, seismic stability and vertical load capacity.
 - (c) Provide detailed structural drawings and construction methodology showing how existing retained fabric will be supported during excavation and construction and how excavation machinery will be installed on site.
 - (d) Require structural certification for the proposed alterations and additions and retained building facades, party walls and other building elements.
 - (e) Construction and protection management plans for the subject and adjoining buildings, including additional geotechnical investigations and reporting, and strict excavation and vibration management controls.
 - (f) Require the engagement of appropriately qualified geotechnical and structural engineering consultants to oversee the course of demolition, excavation and construction work.

Ground Level

94. The proposal incorporates the following work at the ground floor level of the development:
 - (a) Removal of the security grille to the original arched entrance off Challis Avenue and the addition of a new entry door and new windows, which represents a positive heritage outcome.

A condition is recommended to require the preparation and submission of a detailed door and window schedule to Council for approval, in addition to detail drawings of the new door and windows.
 - (b) Reinstatement of the original window opening currently bricked up to the west of the arched entrance off Challis Avenue) with a new window to match, as closely as possible, to the original window, which represents a positive heritage outcome.

A condition is recommended to require the preparation and submission of a detailed door and window schedule to Council for approval, in addition to detail drawings of the new window.

- (c) Installation of a new guest and service lift to be located where the original stair at 61 Macleay Street was situated, which interprets the former vertical circulation within the building and represents a positive heritage outcome.

A condition is recommended to require the preparation and submission of architectural design details to Council for approval of the structural interventions relative to the heritage fabric of the building, including lift and fire stair cores relative to existing timber beams and floor joists.

- (d) Creation of a new void space in the northwest corner of the site which reactivates the original lightwell to 61 Macleay Street, albeit with a larger void space. This represents a positive heritage outcome.
- (e) Demolition of some existing walls dividing the two former terraces. There is little original fabric remaining and what remains has had its detail removed.

These changes present some potential cumulative impact, however the amended application lodged with the City on 13 November 2023 minimised the extent of demolition of existing internal walls and there is satisfactory interpretation of the original internal room configuration.

- (f) Demolition of the 1980s addition fronting Macleay Street, which represents a positive heritage outcome.
- (g) Construction of a new glazed shopfront addition fronting Macleay Street. The original shopfront design was not sufficiently visually permeable to permit appreciation of the original building form and features of the heritage item.

The amended application lodged with the City on 13 November 2023 simplified the design of the addition, incorporated additional glazing, and removed solid elements including the base wall panels and roof planting, as depicted in the figure provided below.

The proposed addition is now visually permeable and represents an acceptable heritage outcome, subject to conditions recommended to ensure that the design intent of the proposed shopfront is carried through to the certification, construction and operational phases of the development.



Figure 48: Perspective drawing extract of the proposed ground floor level shopfront to Macleay St

- (h) Demolition of the 1980s awning, including columns and support rods to the first floor fronting Challis Avenue, which represents a positive heritage outcome.
- (i) Installation of a new fire hydrant booster pump assembly along the Challis Avenue frontage of the site.

A condition is recommended to ensure that the assembly is not enclosed, which could result in potential heritage impacts.

- (j) Replacement of the base of the tower and existing ground floor windows to the turret to match the original openings. The proposed windows are elevated, reinstating the original sill height and to match, as closely as possible, the original windows.

The original scheme depicted windows that did not match the original window proportions however the amended application lodged with the City on 13 November 2023 modified the design to match the windows like for like, which represents a positive heritage outcome.

A condition is recommended requiring that the proposed windows within the ground level walls of the existing turret match original timber double hung design and have equal sash sizes.

- (k) Replacement of the Challis Avenue shopfront and awning. The original scheme included the unnecessary construction of arches along Challis Avenue where they were not part of the original design.

The amended application lodged with the City on 13 November 2023 redesigned the shopfront openings to have square heads, which is an acceptable heritage outcome. A condition is recommended to require the preparation and submission of detail drawings of the new shopfront and awning to Council for approval.

Levels 1 and 2

95. The proposal incorporates the following work at the levels 1 and 2 of the development:

- (a) Reinstatement of the original first floor balcony with no enclosing glazed elements and reinstatement of balcony railing, which represents a positive heritage outcome.

A condition is recommended requiring the preparation and submission of detail drawings of the reinstated balcony railings to Council for approval, and to add notes to the effect that the proposal is reinstating the open balcony.

- (b) Reinstatement of the timber detailing and original balustrading to the first floor verandah fronting Macleay Street, which represents a positive heritage outcome.

A condition is recommended requiring the preparation and submission of detail drawings of the verandah, including decorative columns, railing, and floor level trims to Council for approval. A separate condition has been recommended to require the provision of structural detail drawings demonstrating how the timber deck will be supported.

- (c) Retention of the extant fireplaces, which represents a positive heritage outcome.

A condition is recommended to require that the retention of the fireplaces and associated components is carried through to the certification, construction and operational phases of the development.

- (d) Retention of the original stair, which represents a positive heritage outcome.

A condition is recommended to require that the retention of the existing timber staircase and associated elements is carried through to the certification, construction and operational phases of the development.

- (e) Retention of the principal rooms in their intact spatial arrangement, which was not entirely achieved in the original scheme, as new walls had been proposed to subdivide the spaces.

The amended application lodged with the City on 13 November 2023 resolved this issue by improving the interpretation of the original room configuration by retaining additional internal walls.

Level 3

96. The proposal incorporates the following work at level 3 of the development:

- (a) New hotel rooms within the existing roof space. The original scheme was deficient in that the impact on original ceiling fabric and levels was significant.

The amended applications lodged with the City on 13 November 2023 and 29 February 2024 resolved this issue, given that evidence was produced that the lathe and plaster ceiling comprised deteriorated fabric, supporting its removal, and that the level 2 ceilings would be retained, which is an acceptable heritage outcome.

Appropriate conditions are recommended to require alterations to the pelmet between level 2 and level 3, the retention of original and early ceilings and ceiling roses, modification of services to facilitate this outcome, and preparation and submission of reflected ceiling plan drawings to Council for approval.

- (b) Extension of the main stair in the same format as the existing stair, which represents a positive heritage outcome.

Level 4

97. The proposal incorporates the following work at level 4 of the development:

- (a) The construction of a new roof addition behind the existing roof level. The impacts associated with the original scheme were not supported due to the extent of demolition of the principal roof form.

The amended application lodged with the City on 13 November 2023 reduced the extent of demolition, deleted proposed skylights and dormer windows and reduced the extent of the roof addition, which represents an acceptable heritage outcome on balance, given the extent of proposed conservation, reinstatement and restoration works.

- (b) The construction of a roof terrace and planters adjacent to the roof addition represents an unacceptable intrusion into the roof plane directly behind the main roof ridgeline and is not supported on heritage grounds.

Appropriate conditions are recommended to delete the terrace and planters, retain more of the rear roof plane, and provide construction level details of the proposed roof junction with existing retained roof ridges.

Conservation Works

98. The proposal incorporates the following conservation work to the development:

- (a) Removal of paintwork to the facade brickwork, which represents a positive heritage outcome, as depicted in the figure provided below.



Figure 49: Perspective drawing extract of the proposed heritage slate roof, brick finish, render, and trims

A condition is recommended to ensure that the paintwork removal is carried through to the certification, construction and operational phases of the development, and that any early or historic signage revealed is retained and stabilised. A separate condition requires all non-original external wall attachments to be removed and made good.

- (b) Retention of original joinery and replacement of altered joinery at the upper levels, which represents a positive heritage outcome.

Appropriate conditions are recommended to require the retention and conservation of original joinery, replace non-original joinery with joinery consistent with the original, and require the preparation and submission of a detailed door and window schedule to Council for approval.

- (c) Reinstatement of the copper dome cupola and windvane, as depicted in the figure provided below, which represents a positive heritage outcome.

A condition is recommended to require the preparation and submission of design and construction details of the copper dome cupola and windvane to Council for approval.



Figure 50: Perspective drawing extract of the proposed copper domed, segmented cupola with windvane / lightning rod to be reinstated in an interpretation of the original cupola

- (d) Retention of existing chimneys on the principal building form, as depicted in the figure provided above, which is a positive heritage outcome.

A condition is recommended to ensure that structural certification of the retained chimneys is submitted to and approved by Council.

- (e) Reinstatement of slate roofing, as depicted in the figure provided above, which is a positive heritage outcome.

A condition is recommended to ensure that the slate is traditionally detailed, laid and flashed using lead flashing.

View Loss and View Sharing

99. Submissions received by the City have raised concerns regarding the loss of private views from units 403, 404, 501 and 503 at 14 Macleay Street, and unit 60 at 16 Macleay Street.

100. An assessment of these matters is provided under each of the headings below.

Private Views

101. At the invitation of the submitters, Council staff attended several private properties located to the east, and south-east of the subject site.

102. The aerial photograph reproduced in the figure provided below shows the location of the subject site, the submitters buildings and their proximity to the site, and the surrounding locality.

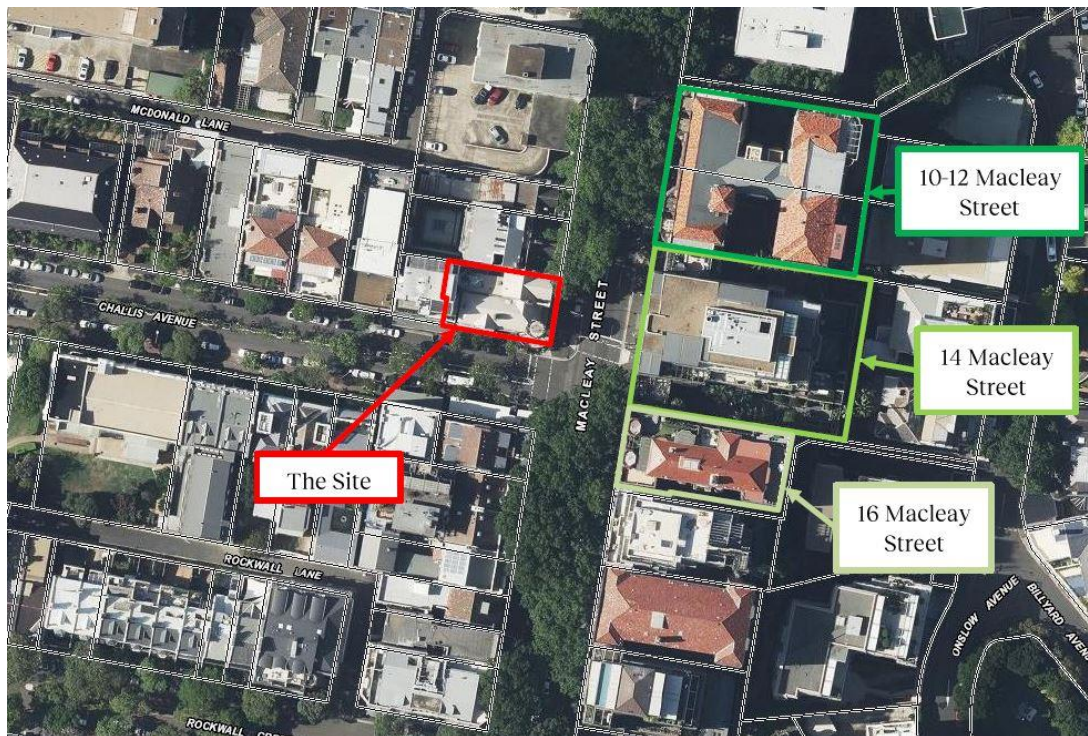


Figure 51: Aerial photographic view of the subject site (outlined in red) and the properties subject to the view impact assessment submitted with the application (outlined in green)

103. The views from these properties are across the street front boundaries of the properties and the subject site, primarily toward the north-west and west toward the Sydney Central Business District skyline, the Sydney Harbour Bridge and Sydney Opera House.
104. The proposal must satisfy the objectives of the building height development standard, including objective 4.3(1)(c) of the Sydney LEP 2012 which requires development "to promote the sharing of views outside Central Sydney".
105. It must also satisfy the relevant design excellence provisions including Clause 6.21C(2)(c) of the Sydney LEP 2012 which requires consideration as to "whether the development detrimentally impacts on view corridors".
106. An assessment is provided below with regard to view loss and view sharing considerations.

View Impact Assessment

107. A view impact study, which is reproduced at Attachment E, was submitted with the application which assesses views from the following nearby properties:
 - (a) 51/16 Macleay Street, Elizabeth Bay.
 - (b) 60/16 Macleay Street, Elizabeth Bay.
 - (c) 403/14 Macleay Street, Elizabeth Bay.
 - (d) 404/14 Macleay Street, Elizabeth Bay.

- (e) 503/14 Macleay Street, Elizabeth Bay.
 - (f) 501/14 Macleay Street, Elizabeth Bay.
 - (g) 600/10-12 Macleay Street, Elizabeth Bay.
108. The study contains three dimensional modelling and perspectives of existing and proposed views from locations within each apartment in the nearby developments.
109. Although the analysis has not provided specific heights, levels or camera angles, the view images have been reviewed by Council staff and are a generally acceptable depiction of views.

Planning Principle

110. Assessment of view impacts is undertaken based on the principles of view sharing established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 by the Land and Environment Court of New South Wales.
111. In the *Tenacity* case, Senior Commissioner Roseth notes 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. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.)
112. To decide whether view sharing is reasonable or not, Senior Commissioner Roseth developed a four step assessment, which is summarised in part below:
- (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
 - (b) The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. The expectation to retain side views is often unrealistic.
 - (c) The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas.
 - (d) The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.
113. The City's assessment against the four steps for each property where a submitter has raised concerns relating to a view impact is outlined below.

403/14 Macleay Street, Elizabeth Bay

114. The apartment at 403/14 Macleay Street is located on level 5 of the 'Pomeroy' building.
- (a) Views to be affected: Partial views Sydney Central Business District skyline, which are subject to obstruction from existing buildings to the west of the subject site.

- (b) Part of the property viewed from: Views are from the west-facing living room, dining room, balcony and bedroom.
- (c) Extent of impact: A small portion of the view of the Sydney Central Business District skyline in the gap between the building at 12-16 Challis Avenue and the 'Yellow House' building at 57-59 Macleay Street, and behind the proposed cupola and spire.

Existing views to prominent buildings within the skyline, including Centre Point Tower will not be affected.

- (d) Reasonableness: The view is obstructed by the cupola, cupola spire, windvane, and by the roof addition which exceeds the 15 metre height standard and three storey height control, and impacts to the view must be assessed with a higher degree of sensitivity.

The amendments made to the proposal on 13 November 2023 provide a flat roof, a secondary setback from the ridgelines of the existing building which have minimised view impacts to a very small portion of the existing view, and maintained the clear majority of the views of the Sydney Central Business District from the property. The impact can be assessed as being minor in scope, as depicted in the figure provided below.

In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 52: Three dimensional drawing extract of the location of 403/14 Macleay St (top left), unit plan drawing extract (bottom left), view photograph (top right) and modelled view of the proposal outlined in blue and shaded green (bottom right)

404/14 Macleay Street, Elizabeth Bay

115. The apartment at 404/14 Macleay Street is located on level 5 of the 'Pomeroy' building.

- (a) Views to be affected: Partial views of the Sydney Central Business District skyline and local heritage items on the southern side of Challis Avenue, which are subject to obstruction from existing buildings to the west of the subject site and the existing cupola frame elements.
- (b) Part of the property viewed from: Views are from the west-facing living room, balcony and bedroom.
- (c) Extent of impact: A small portion of the view of the Sydney Central Business District skyline in the gap between the building at 12-16 Challis Avenue and the 'Yellow House' building at 57-59 Macleay Street, and portions of the heritage items along Challis Avenue behind the proposed cupola and spire.

Existing views to prominent buildings within the skyline, including Centre Point Tower will not be affected.

- (d) Reasonableness: The view is obstructed by the cupola, cupola spire, windvane, and by the roof addition which exceeds the 15 metre height standard and three storey height control, and impacts to the view must be assessed with a higher degree of sensitivity.

The amendments made to the proposal on 13 November 2023 provide a flat roof, a secondary setback from the ridgelines of the existing building which have minimised view impacts to a very small portion of the existing view, and maintained the clear majority of the views of the Sydney Central Business District from the property. The impact can be assessed as being minor in scope, as depicted in the figure provided below.

In the above context, the view impacts of the proposal are reasonable in this instance.

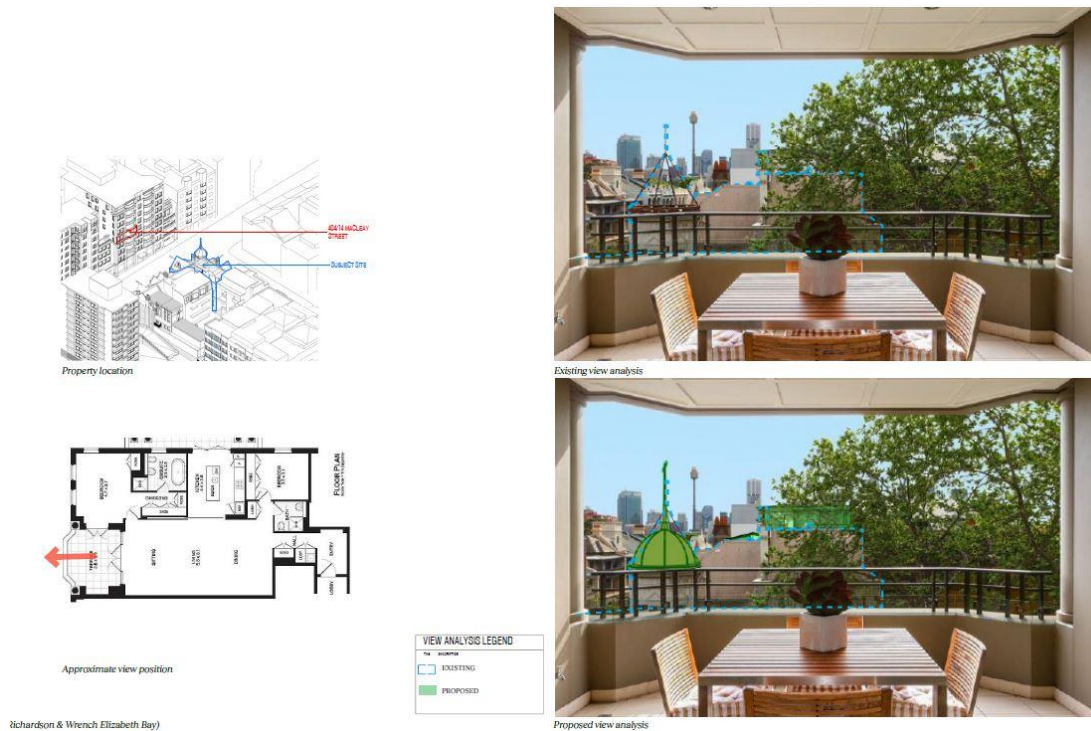


Figure 53: Three dimensional drawing extract of the location of 404/14 Macleay St (top left), unit plan drawing extract (bottom left), view photograph (top right) and modelled view of the proposal outlined in blue and shaded green (bottom right)

501/14 Macleay Street, Elizabeth Bay

116. The apartment at 501/14 Macleay Street is located on level 6 of the 'Pomeroy' building.

- (a) Views to be affected: Expansive views of the Sydney Central Business District skyline and local heritage items on the southern side of Challis Avenue, which are subject to some obstruction from existing buildings to the west of the subject site and the existing cupola frame elements.
- (b) Part of the property viewed from: Views are from the west-facing living room, balcony and bedroom.
- (c) Extent of impact: The proposal will have no significant impact on views of the Sydney Central Business District skyline. Impacts are limited to some very minor loss of view arising from the restored cupola and spire.
- (d) Reasonableness: The view is obstructed by the cupola, cupola spire and windvane.

The work to restore the original cupola and spire is an important heritage outcome, and view impacts will be limited to a very small portion of the existing view, maintaining most of the views of the Sydney Central Business District from the property. The impact can be assessed as being negligible in scope, as depicted in the figure provided below.

In the above context, the view impacts of the proposal are reasonable in this instance.

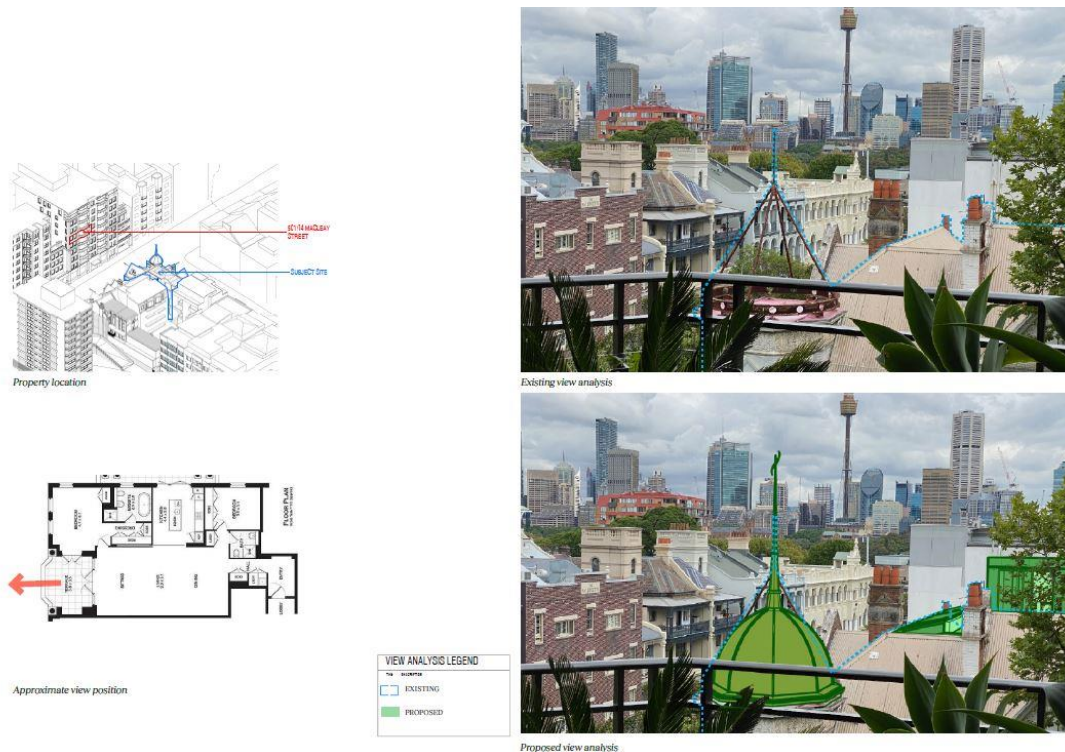


Figure 54: Three dimensional drawing extract of the location of 501/14 Macleay St (top left), unit plan drawing extract (bottom left), view photograph (top right) and modelled view of the proposal outlined in blue and shaded green (bottom right)

503/14 Macleay Street, Elizabeth Bay

117. The apartment at 503/14 Macleay Street is located on level 6 of the 'Pomeroy' building.

- (a) Views to be affected: Expansive views of the Sydney Central Business District skyline and local heritage items on the southern side of Challis Avenue, which are subject to some obstruction from existing buildings to the west and the existing cupola frame elements.
- (b) Part of the property viewed from: Views are from the west-facing living room, dining room, balcony and bedroom.
- (c) Extent of impact: The proposal will have no significant impact on views of the Sydney Central Business District skyline. Impacts are limited to some very minor loss of view arising from the restored cupola and spire.
- (d) Reasonableness: The view is obstructed by the cupola, cupola spire and windvane.

The work to restore the original cupola and spire is an important heritage outcome, and view impacts will be limited to a very small portion of the existing view, maintaining most of the views of the Sydney Central Business District from the property. The impact can be assessed as being negligible in scope, as depicted in the figure provided below.

In the above context, the view impacts of the proposal are reasonable in this instance.

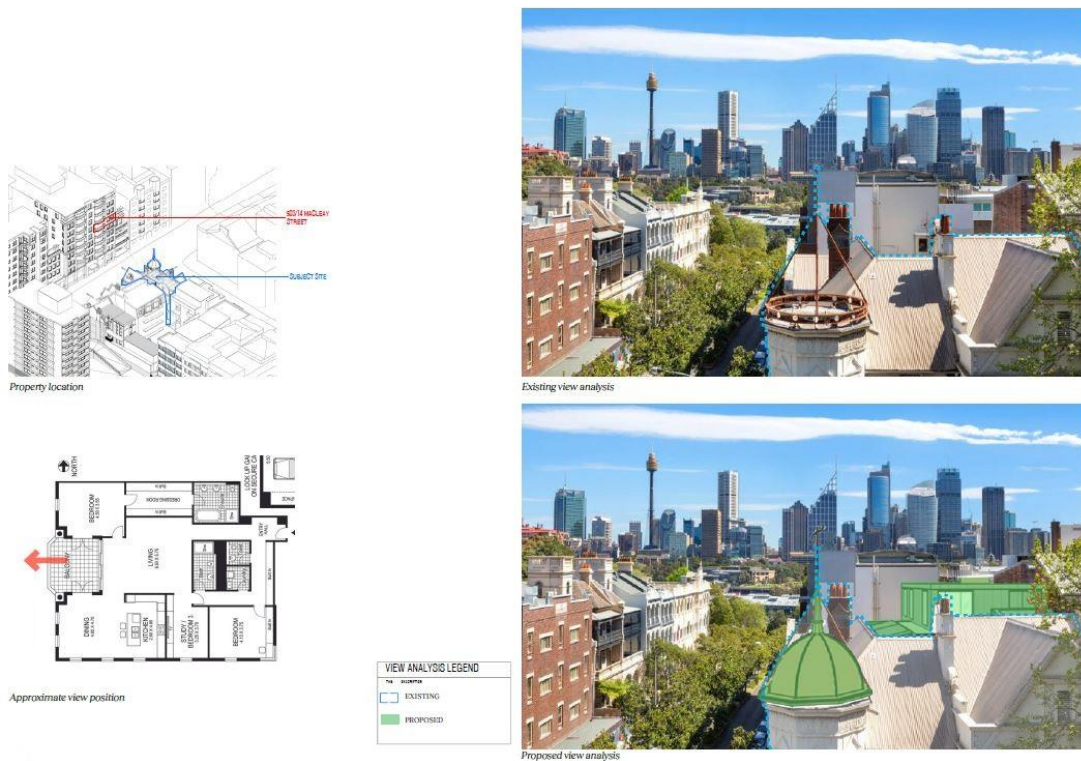


Figure 55: Three dimensional drawing extract of the location of 503/14 Macleay St (top left), unit plan drawing extract (bottom left), view photograph (top right) and modelled view of the proposal outlined in blue and shaded green (bottom right)

60/16 Macleay Street, Elizabeth Bay

118. The apartment at 60/16 Macleay Street is located on level 7 of the 'Selsdon' building.

- (a) Views to be affected: Unobstructed and expansive views of the Sydney Harbour Bridge and Sydney Opera House and partial views of the Sydney Central Business District skyline.
- (b) Part of the property viewed from: Views are from the rooftop terrace, gazebo, sitting room and bedroom.
- (c) Extent of impact: The proposal will have no impact on views of the Sydney Harbour Bridge and Sydney Opera House, or on views of the Sydney Central Business District skyline.
- (d) Reasonableness: The proposal is located entirely below the parapet level of the rooftop terrace and will have no impact on views from the property, as depicted in the figure provided below.

In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 56: Three dimensional drawing extract of the location of 60/16 Macleay St (top left), unit plan drawing extract (bottom left), view photograph (top right) and modelled view of the proposal outlined in blue (bottom right)

Conclusion

119. The proposed roof additions and cupola and spire restoration will be visible from a number of adjoining buildings to varying degrees.
120. The view sharing assessment found that the protection of views from adjoining properties is not reasonable in this instance. This is due to several reasons outlined below:
- (a) Despite the proposal obscuring views from some apartments in buildings, the value of views that would be retained from these properties from other vantage points remains high, with:
 - (i) Unit 403/14 Macleay Street maintaining the clear majority of partial views of the Sydney Central Business District skyline.
 - (ii) Unit 404/14 Macleay Street maintaining the clear majority of partial views of the Sydney Central Business District skyline.
 - (iii) Unit 501/14 Macleay Street maintaining expansive views of the Sydney Central Business District skyline.
 - (iv) Unit 503/14 Macleay Street maintaining expansive views of the Sydney Central Business District skyline.

- (v) Unit 60/16 Macleay Street maintaining expansive views of the Sydney Harbour Bridge and Sydney Opera House, and partial views of the Sydney Central Business District skyline.
 - (b) Opportunities for a more skilful design to reduce the view impact but deliver a similar yield would result in other impacts, such as negative streetscape and heritage impacts.
121. While it is acknowledged that the proposal is not without view sharing impacts, the results of the Tenacity Consulting v Warringah Council [2004] NSWLEC 140 assessment conclude that view loss from adjoining properties as a result of the proposed addition are reasonable for the reasons described above.

Storey Height

122. The provisions in Section 4.2.1.1 of the Sydney DCP 2012 permit a maximum building height of three storeys, with a maximum street frontage height of four storeys along the Macleay Street and Challis Avenue frontages.
123. The proposed development comprises five storeys and maintains the existing street frontage height of three storeys.
124. 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.
125. The variation of the maximum three storey height control is only acceptable with regard to this objective in the specific circumstances of the site and proposed development for the following reasons:
- (a) The proposed height in storeys reinforces the desired future character for the Potts Point locality, as it maintains and reinforces the asymmetry of Macleay Street's built form along its western side, sitting within the specified range in height of between three to five storey development.
 - (b) The fourth storey is set well within the existing roof form of the existing building and will not be readily discernible from the public domain.
 - (c) The fifth storey has been designed as a visually recessive element, set back from and behind the original roof ridgeline of the building, when viewed from the surrounding public domain.
 - (d) The bulk, massing and scale of the additions comprises a simple and lesser form behind the existing roof, which will be only seen in limited oblique views from the surrounding public domain, with the restored building and cupola comprising the visually dominant element in the streetscape.
 - (e) Recovery of the external form of the building in terms of the slate roof, tower, the tower windows, the cupola and retention of the simple street front roof forms achieves a high level of conservation of the building, with the non-compliant storey height being offset by the broad scope of conservation and reinstatement work proposed to the majority of the subject heritage item.

- (f) Although demolition of portions of the rear roof plane of the principal roof form of the building is proposed, with some associated heritage impacts, the changes will not have a major impact on the significance of the subject heritage item, and serve to facilitate a level of change which will permit a viable adaptive reuse of the site into the future.
- (g) The significant benefit of the proposed conservation works and alterations to the public's appreciation of the restored heritage item justifies the non-compliant storey height for the following reasons:
 - (i) The upper level 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 building, allowing appreciation of the main roof form when viewed from above and in the round.
 - (ii) The rear additions contain circulation space and services that facilitates the retention of the fabric and proportions of the principal building form and will also provide equitable access and additional seismic and structural bracing.
 - (iii) The roof additions are only acceptable given that they do not result in any significant or unreasonable amenity impacts. Importantly, the proposal includes the reversal of intrusive alterations and additions that have occurred to the building over time.
- (h) The approval of the proposed five storey form is very specific to the subject site and use, and is only acceptable because it is offset by a very substantial reversal of intrusive fabric on the street elevations that restores the original integrity of the item.
- (i) It will not form a precedent that could or should be applied to other individual heritage items.

Late Night Trading Management

- 126. Section 3.15 of the Sydney DCP 2012 sets out controls for late night trading premises and identifies a hierarchy of three late night trading areas located throughout the City.
- 127. The site is identified on the Late night trading areas map in the Sydney DCP 2012 as being located within a Local Centre area which is the lowest intensity of the three late night trading management areas.
- 128. The provision at Section 3.15.4(2) of the Sydney DCP 2012 permits extended hours for some late night trading premises on 'Main Streets' within Local Centre areas. Neither Macleay Street or Challis Avenue are identified as being a 'Main Street' in a Local Centre Area on the map.
- 129. Table 3.8 in Section 3.15.4 of the Sydney DCP 2012 sets out base and extended trading hours and provides definitions for Category A (High Impact Premises), Category B (Low Impact Premises) and Category C (Retail and Business premises), based on patron capacity, type of use and type of liquor licence.
- 130. Approval is sought for 24-hour operation of the hotel to allow appropriate check in and check-out services for hotel guests. The proposal also includes a restaurant and bar at the ground floor level with a capacity for 106 patrons, to be accessed by the general public, in addition to hotel guests.

131. The proposed restaurant and bar is a Category B Low Impact Premises, in accordance with the definition in Section 3.15 of the Sydney DCP 2012.
132. The proposed indoor hours of operation of the restaurant and bar are between 7am and 1am the following day, Monday to Sunday inclusive. No external seating areas are proposed.
133. The base internal hours for Category B premises in a Local Centre area are between 7am and 11pm, with an extension up to 12am midnight available subject to a trial period, and the proposal does not comply as a result.
134. Section 3.15.3 of the Sydney DCP 2012 sets out matters for consideration when determining appropriate trading hours for late night trading premises. This is determined by taking into account a number of issues, including the location and context of the premises, proximity to residential land uses and other late night trading premises, the likely impact on amenity including noise, and the ability to manage the impacts.
135. In determining whether the proposed indoor hours of operation of the restaurant and bar are acceptable, the plan of management submitted with the application has been reviewed by the City's Licensed Premises Unit, and the acoustic report submitted with the application has been assessed by the City's Health and Building Unit.
136. The Plan of Management meets the requirements of Schedule 3 of the Sydney DCP 2012, and as such, the City's Licensed Premises Unit recommends conditions relating to the updating of the plan to reference the approved trial trading period and compliance with the final version of the plan, in addition to conditions relating to the primary purpose of the premises being for a restaurant, the use of Closed Circuit Television cameras, cessation of service and incident recording and notification, amongst others.
137. The City's Health and Building Unit advises the acoustic report is acceptable, subject to a range of conditions requiring compliance with the report, limitation on entertainment noise, no external speakers or amplified music, transmission of structure borne noise, no spruiking noise, noise from glass removal, crushing of glass on premises and neighbourhood amenity.
138. The applicant has asserted that 'Development Application Z88-00302 was approved on 14 March 1988 for the use of the whole ground floor of the site as a restaurant with hours of operation restricted to 8am to 1am daily.' While this is accepted, a later development consent (U01-00439) converted the front portion of the ground floor level of the building to a shop with hours of operation between 10am and 10pm, which is the current use of this area.
139. Nonetheless, the proposal involves the wholesale redevelopment of the site, including the demolition and removal of both the existing restaurant and shop fitouts and uses. In these circumstances, it is entirely appropriate to require the surrender of the existing development consents for use of the existing restaurant and shop via an appropriate condition, and to ensure that the new restaurant and bar use complies with the hours of operation prescribed by the Sydney DCP 2012.
140. A condition is therefore recommended restricting the base hours of operation for the restaurant and bar to between 7am and 11pm, with a one year trial period between 11pm and 12am midnight, Monday to Sunday inclusive.

Consultation

Internal Referrals

141. 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) Health and Building Unit.
 - (e) Heritage Specialist.
 - (f) Landscape Assessment Officer.
 - (g) Licenced Premises Unit.
 - (h) Model Unit.
 - (i) Public Domain Unit.
 - (j) Specialist Surveyor.
 - (k) Tree Management Unit.
 - (l) Urban Design Specialist.
142. The application was referred to an external structural engineering consultant, who provided independent advice to Council staff on the structural and geotechnical information submitted with the application.
143. The advice received generally raised no significant objections to the proposal, subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

144. As discussed elsewhere in this report, pursuant to Section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid for comment.
145. A response was received raising no objections to the proposed development, subject to a recommended condition.

NSW Police

146. The application was referred to NSW Police for comment.
147. No response was received.

Sydney Water

148. As discussed elsewhere in this report, pursuant to Section 78 of the Sydney Water Act, 1994.
149. A response was received raising no objections to the proposed development, subject to recommended conditions.

Advertising and Notification

150. In accordance with the City of Sydney Community Participation Plan, the proposed development was notified for a period between 9 January 2023 and 9 February 2023. A total of 1,342 properties were notified and 46 submissions were received in response.
151. The amended application submitted to Council on 13 November 2023 was re-notified for a period between 17 November 2023 and 2 December 2023, in accordance with the City of Sydney Community Participation Plan. A total of 1,304 properties were notified and 32 submissions were received in response.
152. The amended applications submitted on 29 February 2024 and 5 March 2024 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.
153. The submissions raised a range of the issues in relation to the proposed development, which are summarised and addressed below.
 - (a) **Issue:** Missing drawings, including plans and sections.
Response: All drawings submitted with the application and the amended application submitted on 13 November 2023 were made publicly available on the City's website, in accordance with the requirements of the City of Sydney Community Participation Plan.
 - (b) **Issue:** General support of reinstatement or reinterpretation of the building's historic fabric.
Response: Noted. This aspect of the proposal is supported by Council staff, subject to the recommended conditions.

- (c) **Issue:** Corner treatment reduces transparency and permeability on an important and prominent commercial corner.

Response: The amended application submitted to the City on 13 November 2023 revised the design of the ground level treatment of the site. As discussed elsewhere in this report, subject to the recommended conditions, the site provides an acceptable response to the requirement for active frontages in Section 3.2.3 of the Sydney DCP 2012.

- (d) **Issue:** Excessive hours of operation in a predominantly residential area, noise should stop at 11pm.

Response: The site is located within a 'Local Centre' late night trading area, as identified on the Late night trading map in the Sydney DCP 2012. As discussed elsewhere in this report, a condition is recommended to limit the base hours of operation until 11pm, with a one year trial period until 12am midnight, in accordance with the hours permissible under Section 3.15.4 of the Sydney DCP 2012 for such areas and for the type of premises proposed.

- (e) **Issue:** Security and noise issues from operable hotel room windows in the proposed lightwell and green walls are close to apartments within the building at 12-16 Challis Avenue, hotel room windows should be made inoperable.

Response: The proposed lightwell and green walls are designed to be inaccessible except for maintenance purposes and, as such, do not give rise to any significant security issues for adjoining properties.

The acoustic report submitted with the application has been reviewed by the City's Health and Building Unit. The advice received is that noise impacts from the proposed use are acceptable, subject to recommended conditions relating to compliance with the acoustic report and with the City's entertainment noise and other noise management conditions.

The plan of management submitted with the application also contains appropriate controls relating to guest activities, house rules, noise and complaint management. The plan of management has been reviewed by the City's Licenced Premises Unit and the advice received is that the proposed management of the new uses is acceptable, subject to the recommended conditions requiring the plan to be updated to reflect the hours of operation to be approved.

Consequently, there is no clear planning rationale to require the subject windows to be made inoperable.

- (f) **Issue:** Unacceptable noise impacts from roof plant enclosure to nearby residents.

Response: The proposed development, including the plant enclosure and acoustic report submitted with the application, has been reviewed by the City's Health and Building Unit. The advice received is that plant noise will be acceptable, subject to the recommended conditions relating to compliance with the acoustic report and the City's standard plant noise condition.

- (g) **Issue:** Reduced light and fresh air to adjoining light well at 55-57 Macleay Street from roof plant enclosure.

Response: The proposed plant enclosure is located to the south of the adjoining site at 55-57 Macleay Street and will not overshadow the adjacent light well, nor will the addition have any significant impacts on the daylight or ventilation amenity currently borrowed by the residential apartments served by the lightwell across the southern boundary with the subject site.

- (h) **Issue:** Unacceptable odour impacts from roof level kitchen exhaust to nearby residents.

Response: The proposed development, including the mechanical ventilation system and kitchen exhaust location, has been reviewed by the City's Health and Building Unit. The advice received is that these systems are acceptable, subject to the recommended conditions relating to mechanical ventilation and emissions and odour control.

- (i) **Issue:** Non-compliant with maximum height of buildings standard, no variation should be approved.

Response: A written Clause 4.6 variation request has been submitted with the application. As discussed elsewhere in this report, the request provides adequate justification for the proposed variation of the height control and is supported in this instance.

- (j) **Issue:** Roof plant enclosure unsightly and diminishes streetscape quality.

Response: The plant enclosure will only be visible from the eastern edge of the private open space of the uppermost residential apartment at 12-16 Challis Avenue (which has its primary outlook to the north, rather than to the east toward the subject site), given its location at the rear of the level 4 additions. It is proposed to be clad in standing seam zinc, which is a high quality finish. It will not be visible from the surrounding streets or public domain.

- (k) **Issue:** Height, bulk and scale impacts on residents at 12-16 Challis Avenue, including from inadequate roof addition setback.

Response: The eastern elevation of the mixed use development at 12-16 Challis Avenue is primarily a blank wall, with a portion of its northern end at the uppermost level being open to the eastern edge of an area of private open space, with some screening evident. As noted above, the primary outlook from the private open space of the apartments at 12-16 Challis Avenue is to the north, and not to the east.

The visual bulk and scale impacts associated with the proposed addition on this apartment will be minimal and the separation distance between the proposed windows is in excess of seven metres, which comprises adequate separation distance between the two buildings for visual privacy.

- (l) **Issue:** Locality well served by existing food and drink premises and hotel accommodation uses, proposal substantially increases pedestrian and vehicular traffic volume, exacerbates existing traffic congestion and noise impacts.

Response: The proposal has been reviewed by the City's Access and Transport Unit. The advice received is that the traffic impacts generated by the hotel accommodation and restaurant uses are acceptable, subject to the recommended conditions relating to ensuring the provision and implementation of the proposed bike parking facilities and a loading and servicing management plan and transport access guide.

- (m) **Issue:** Previously existing Macleay Street set down area removed by Council, must be reinstated as there is no proposed pick up and drop off area.

Response: The proposal has been reviewed by both the City's Public Domain Unit and Access and Transport Unit. The advice received has not included any recommendations for alterations to the existing design of the Macleay Street road reserve to accommodate a pick up and drop off area.

Matters relating to servicing, including pick up and drop off of hotel guests within the vicinity of the site are acceptable, subject to the recommended conditions relating to ensuring the provision and implementation of a loading and servicing management plan and transport access guide.

- (n) **Issue:** Proposed density is excessive, proposal is an overdevelopment.

Response: The proposal complies with the maximum floor space ratio development standard in Clause 4.4 of the Sydney LEP 2012, as discussed elsewhere in this report. The density of development is acceptable in this respect.

- (o) **Issue:** Construction management plan is inadequate, no rear lane access and Macleay Street too narrow to support construction work.

Response: The draft construction management plan submitted with the application is not recommended to form part of any development consent.

Conditions are recommended to ensure that a construction traffic management plan and a construction management plan are required to be developed by the applicant and approved by Council prior to issue of a Construction Certificate, or the commencement of any demolition works on the site.

- (p) **Issue:** Restaurant patrons should use proposed Challis Avenue entry only, impacts will arise from restaurant guests using proposed Macleay Street entrance.

Response: The main entrance to the restaurant addresses Challis Street. There are no substantive planning or management issues with the proposed secondary entrance fronting Macleay Street, subject to the recommended conditions relating to the management of the restaurant use.

- (q) **Issue:** Excavation and construction of basement poses high risk to subject and adjoining heritage items, compromised building integrity, permanent loss of original building fabric. Basement deletion eliminates risk.

Response: The original application, including the submitted geotechnical and structural information, was peer reviewed by an independent external structural engineer engaged by Council.

Subject to the range of recommended conditions relating to geotechnical and structural engineering matters, the proposed basement excavation can be supported.

- (r) **Issue:** Accommodation of excavation equipment may require additional demolition of ground floor elements.

Response: The heritage impact statement submitted with the application demonstrates that most of the original ground floor level heritage fabric has been lost. If any theoretical additional demolition is required, it will require a modification application to be lodged to the City, which will be subject to a merit assessment by Council staff.

Furthermore, a condition is recommended requiring the final construction methodology to detail how existing retained fabric will be supported throughout the course of demolition, excavation and construction works, including how any required machinery will be installed on site.

- (s) **Issue:** Non-compliance with excavation controls in Section 3.9.13 of the Sydney DCP 2012.

Response: Noted. As discussed elsewhere in this report, a condition is recommended to delete the extent of proposed basement extending beyond the front walls of the existing building. Subject to this condition, the proposal is acceptable with regard to the requirements of Section 3.9.13 of the Sydney DCP 2012.

- (t) **Issue:** Extent of demolition indicates destruction of building interior and north-western corner.

Response: The scope of internal demolition was significantly reduced in the amended applications lodged with Council on 13 November 2023 and 29 February 2024.

The proposed demolition of existing portions of the building in the north-western corner of the site has been reviewed by the City's heritage specialist who has raised no objections in this regard.

- (u) **Issue:** Unacceptable view impacts to apartments in the 'Pomeroy' building at 14 Macleay Street, apartments in the 'Macleay Regis' building at 10-12 Macleay Street, and penthouse apartment of the 'Selsdon' building at 16 Macleay Street.

Response: As discussed above under the heading 'View Loss and View Sharing', the impacts to views from apartments within the 'Pomeroy' building at 14 Macleay Street and the penthouse apartment within the 'Selsdon' building at 16 Macleay Street, range from nil to negligible to minor impacts.

The assessment provided in this report concludes that these impacts are acceptable when considered against the planning principle for view sharing established by the Land and Environment Court of New South Wales.

No submissions received by the City from residents or owners of specific apartments in the 'Macleay Regis' building at 10-12 Macleay Street raised concern in relation to view loss arising from the proposed development.

- (v) **Issue:** Inconsistency with objectives (a), (b) and (c) of Clause 4.3 of the Sydney LEP 2012 and insufficient environmental planning grounds to justify variation of height standard.

Response: As outlined above, the written Clause 4.6 variation request submitted with the application adequately demonstrates that:

- (i) There are sufficient environmental planning grounds to support variation of the control.
 - (ii) That compliance with the control is unreasonable and unnecessary in the circumstances of the proposed development.
 - (iii) That the objectives of the control have been met, including that:
 - i. The height of the proposed development is appropriate.
 - ii. The height transition to the adjoining heritage buildings is appropriate.
 - iii. Impacts to views are acceptable when considered against the planning principle for view sharing established by the Land and Environment Court of New South Wales.
- (w) **Issue:** Approval of height non-compliance may set precedent.

Response: Each individual development application is assessed on its own merit, as is each supporting Clause 4.6 variation request. The granting of development consent in the specific circumstances of the subject site and proposed development are unlikely to set a precedent, given the unique nature of the case.

- (x) **Issue:** Unacceptable visual and acoustic privacy impacts to nearby residents from roof level terrace

Response: As discussed elsewhere in this report, a condition is recommended to delete the proposed roof level terrace for heritage reasons, and not for reasons relating to visual or acoustic privacy.

The proposed size of the terrace is modest and there is adequate separation across Macleay Street between the subject site and the 'Pomeroy' building.

- (y) **Issue:** External bicycle racks unsightly and pose pedestrian hazard.

Response: As discussed elsewhere in this report, the location and number of proposed customer and visitor bicycle racks complies with the requirements set out in Section 3.11.3 of the Sydney DCP 2012.

The bike racks are not located within the public domain and, as such, they are not anticipated to create any significant hazard to pedestrians utilising the footpath along either the Macleay Street or Challis Avenue road reserve.

- (z) **Issue:** Basement nightclub use.

Response: The basement level includes amenities and services critical to the operation of the proposed hotel accommodation and restaurant uses, including waste storage and kitchen prep areas, staff facilities and the like.

No basement level nightclub use is proposed or recommended for development consent.

- (aa) **Issue:** No demand for additional hotel accommodation in locality.

Response: Matters relating to the level of occupation of existing hotel rooms at a particular point in time within the locality are not of relevance to the assessment of the planning merits of the subject development application.

- (bb) **Issue:** Inventory data sheet requires no vertical additions to building and alterations and additions not visibly prominent.

Response: The listing data sheet for the subject heritage item does contain a generic statement that there should be no vertical additions under the 'recommended management' heading for the property. This statement appears on almost all such listings however development consent has been granted by the City on many occasions to vertical additions above heritage items where they have deemed to be acceptable, and in cases where this clause applies.

The intent of the statement is to ensure that heritage buildings are not seen as adjunct elements of a site that can then have a large rear or overhanging new built form. The subject application has been amended to propose a rear roof addition which has acceptable impacts offset by the broad scope of the conservation and restoration work proposed to the majority of the building.

On balance, the proposal has an acceptable impact on the heritage value of the site and is supported in this instance.

- (cc) **Issue:** Non-compliance with objective (c) of the Sydney LEP 2012.

Response: As outlined elsewhere in this report, the proposal will not significantly detract from the residential amenity of the locality, subject to compliance with the recommended conditions.

- (dd) **Issue:** Unacceptable amenity impacts on residents of the 'Yellow House' from the existing operable roof skylight above ground level tenancy from change and intensification in use of common property hallway.

Response: No change or intensification of use to the hallway of the 'Yellow House' at 57-59 Macleay Street, is proposed under the subject application.

The use and fitout of the basement and ground floor as a hotel lobby/reception and day spa was granted development consent under development application D/2020/642 on 18 September 2020, as amended by modification application D/2020/642/A on 8 July 2021.

It is noted that this development consent contains a condition requiring that the operable skylight in the roof above the subject tenancy must be closed between 10pm and 7am.

The approved door connections between the buildings under the existing development consents for the subject site, the 'White House' and the 'Yellow House' (being Z88-00302, D/2016/1079 and D/2020/642 respectively) allows for patrons and staff of the approved hotel and restaurant (with a combined capacity 77 patrons) at the 'White House', and the existing restaurant (with a capacity of 94 patrons) on the subject site to transit between the three properties.

Under the subject application, security key swipe access to the approved door will be restricted to hotel guests and staff only, with restaurant patrons to use the Challis Avenue and Macleay Street doors only, which represents a reduction in intensity of use from that currently approved.

- (ee) **Issue:** Owner's consent not granted to lodgement of subject application by Strata Plan 70276 owners corporation for use of 'Yellow House' common property, including entrance hallway.

Response: Owner's consent to lodgement of the application from the owners corporation of Strata Plan 70276 is not required to be provided given that the application does not propose any works to that property.

As outlined above, the use of the ground floor level of the 'Yellow House' has been granted development consent as a hotel lobby, as has the door access point between the two properties.

For the avoidance of any doubt however, appropriate conditions are recommended to clarify that no works are approved to the adjoining private properties and to ensure that the drawings clearly reflect this requirement.

- (ff) **Issue:** No by-law or easement granted by Strata Plan 70276 owners corporation to use 'Yellow House' common property for access to adjoining lands. Development consent should be contingent on the granting of such a by-law or easement.

Response: The granting of a by-law or an easement for access is not a relevant matter for consideration under the subject development application, given that development consent has already been granted for the door access between the two properties under a separate development application. Any such negotiation for a by-law or easement is a civil matter to be resolved between the respective property owners.

- (gg) **Issue:** Strata Plan 70276 owners corporation opposed joining of adjacent properties, were not aware of, and gave no lodgement consent to modification application D/2020/642/A, which removed hotel staff only access restriction.

Response: Environmental Planning and Assessment Regulation, 2000, applicable to modification application D/2020/642/A at the time, was amended in July 2021 to remove the statutory requirement for applicants to provide written evidence of owner's consent when lodging applications. These changes coincided with the state-wide introduction of online lodgements through the New South Wales Planning Portal. The application was made in accordance with these requirements.

The City of Sydney Community Participation Plan does not require Section 4.55(1A) modification applications to be notified, where an amendment to a development consent is considered involve 'minimal environmental impacts'. Council staff made an assessment that the modification met this test at the time of the determination of the application.

- (hh) **Issue:** Purpose of new hotel lobby unclear, as development consent D/2020/642 also approved a hotel lobby, confusing for guests, unclear which entrance will be used. Lobby space use could be changed.

Response: The proposed hotel lobby differentiates the space adjacent to the hotel lift from the adjacent restaurant use. Access to the lobby space is proposed to be via security key swipe access for hotel guests only, and not for the general public or restaurant patrons.

The plan of management submitted with the application is not recommended to be approved and a condition is recommended requiring the plan to be updated to reflect the hours of operation recommended to be approved.

Wayfinding for future guests of the hotel is a matter to be resolved in the satisfaction of the recommended condition requiring a signage strategy for the development.

The subject application seeks approval for the space as a lobby, and not any other use.

- (ii) **Issue:** Liquor licence foreshadowed over 'Yellow House' ground floor tenancy.

Response: The subject application does not seek development consent for a food and drink premises use on the adjoining property.

Any application for a liquor licence at the adjoining property is a matter for Liquor and Gaming New South Wales and lies outside the scope of the assessment of the subject application.

- (jj) **Issue:** 'Yellow House' ground floor bar or a nightclub.

Response: No development consent is sought under the subject application for a bar or nightclub use at the ground floor level of the 'Yellow House'. It is noted that a condition of development consent D/2020/642 precludes the use of the approved hotel lobby and reception area for any functions or events.

- (kk) **Issue:** Heritage conservation and restoration works has questionable authenticity.

Response: The proposed development has had considerable input from a qualified heritage architect. The proposed conservation and restoration has been reviewed by the City's Heritage Specialist and, as discussed elsewhere in this report, is acceptable subject to the wide range of recommended heritage conditions.

- (ll) **Issue:** Roof additions too prominent and visible, compromise heritage significance and Potts Point heritage conservation area contribution, inconsistent with Potts Point locality existing and desired future character.

Response: As discussed elsewhere in this report, the amended application lodged with Council on 13 November 2023, then further revised on 29 February 2024 and 5 March 2024 reduced the height and extent of the proposed roof additions.

The City's Heritage Specialist has reviewed the amended proposal and advises both the visual and physical heritage impacts of the additions are acceptable with regard to the significance of the subject heritage item and surrounding heritage conservation area, subject to the broad range of recommended heritage conditions. The proposal is also consistent with the desired future character for the Potts Point locality, as detailed above under the 'Section 2 – Locality Statements' heading.

- (mm) **Issue:** Roof additions overshadow apartments in the 'Pomeroy' building.

Response: The shadow diagrams and sun eye view diagrams submitted with the application demonstrate that the proposal complies with the relevant provisions in Section 4.2.3.1 of the Sydney DCP 2012 and will not result in any additional overshadowing of apartments within the 'Pomeroy' building between 9am and 3pm at the midwinter solstice.

- (nn) **Issue:** Height plane drawings and sun eye view diagrams depict 'White House' building with a three storey addition, incorrect and misleading.

Response: Noted. The height plane drawings, sun eye view diagrams and three dimensional CAD model submitted with the application have been reviewed by City staff for accuracy and are sufficient for the purposes of assessing height and overshadowing. These drawings and diagrams are not recommended to form part of any development consent.

- (oo) **Issue:** Existing building should be preserved in original intended form, integrity and consistency with original architectural design important.

Response: The original use of the existing building on the subject site as two grand terrace houses failed early in its life.

It was converted from its original form and use in the 1920s (if not earlier) and has since undergone many changes to modify it for adaptation for various residential apartment, commercial and retail uses.

Many of these changes have been poorly executed and have had significant impacts on the integrity and significance of the heritage item. The proposal has incorporated a wide range of heritage conservation, reinstatement and restoration work which, on balance, is acceptable.

There are no planning controls which could be relied upon to require the restoration of the original form and use of the former residential terraces, particularly given that this would require the acquisition and demolition of the existing mixed use building at 12-16 Challis Avenue.

- (pp) **Issue:** View obstruction from Macquarie Street and Sydney ridge line, Art Gallery of New South Wales and Sydney Modern Building, St Marys Cathedral and lower Domain playing fields to 'Selsdon' building at 16 Macleay Street and 'Macleay Regis' building at 10-12 Macleay Street.

Response: It must be noted that while the 'Macleay Regis' building at 10-12 Macleay Street is a heritage item, and that the 'Selsdon' building at 16 Macleay Street is not a heritage item.

The proposal will not have any significant view impacts from the public domain areas outlined above, given that the existing neighbouring buildings at 12-16 Challis Avenue, and at 57-59 Macleay Street, are higher than the proposed additions, and already protrude into the view lines towards the Macleay Regis from the Domain and Sydney Modern.

Views from St Marys Cathedral and its surrounds will be largely unaffected, given that the extent of the proposed addition has been reduced to sit behind the existing ridgeline of the subject building.

- (qq) **Issue:** Unacceptable noise impacts for the nearby residents and pedestrian safety issues from outdoor seating. External operation hours should be limited.

Response: No development consent is sought or recommended to be granted for any outdoor dining.

Separate approval under the Roads Act, 1993 must be obtained from the City for any such areas on the footpath in the road reserve to either Macleay Street or Challis Avenue. Matters relating to pedestrian and residential amenity are assessed by Council staff during the course of the assessment of these applications.

- (rr) **Issue:** Unacceptable noise impacts from patron capacity, acoustic treatment, management controls and 11pm closure required.

Response: As discussed elsewhere in this report, an acoustic report has been submitted with the application which makes recommendations about the management of noise from the proposed development.

The acoustic report has been reviewed by the City's Health and Building Unit and the advice received is that noise impacts from the proposed use are acceptable, subject to the recommended conditions relating to compliance with the acoustic report, the City's entertainment noise and other noise management conditions.

A condition is recommended to limit the base hours of operation until 11pm, with a one year trial period until 12am midnight, in accordance with the hours permissible under Section 3.15.4 of the Sydney DCP 2012.

A plan of management submitted with the application in accordance with the requirements of Section 3.15.5 and Schedule 3.2 of the Sydney DCP 2012, which contains appropriate management controls for the operation of the proposal.

The plan of management has been reviewed by the City's Licenced Premises Unit and the proposed management of the new uses is acceptable, subject to the recommended conditions requiring the plan to be updated to reflect the hours of operation to be approved.

- (ss) **Issue:** Non-compliance with three storey height control in Section 4.2.1.1 of the Sydney DCP 2012. Additions should be accommodated within the existing roof form.

Response: The variation of the maximum three storey control is acceptable for the reasons outlined under the 'Storey Height' heading above. The proposal is not considered to dominate the existing building and has instead been designed as a recessive form.

The restored slate roof, tower, the tower windows, the cupola and retention of the simple street front roof forms will be the dominant elements of the building, and the wide range of conservation, reinstatement and restoration work proposed provide sufficient justification for the non-compliance in the specific circumstances of the subject site and proposed development.

- (tt) **Issue:** Non-compliance with floor to floor height controls in Section 4.2.1.2 of the Sydney DCP 2012.

Response: The non-compliant floor to floor heights throughout the development are acceptable given that the existing floor levels and structure of the subject building are generally proposed to be retained, and requiring compliance with the controls would likely result in detrimental impacts to heritage significant building fabric and visual impacts. With regard to the upper level additions, they are provided with openings which provide acceptable daylight access into the building interiors and the design of the building is specific to the use proposed and circumstances of the site. In this case, flexibility to accommodate other future commercial uses is unwarranted.

- (uu) **Issue:** Inconsistent with Clause 6.21C(2)(c), (d)(iii), (d)(v) and (d)(xi) of the Sydney LEP 2012 and does not exhibit design excellence, due to view, environmental and heritage impacts.

Response: As outlined in this report, the environmental impacts associated with the proposal are acceptable, including those relating to views and heritage, subject to the recommended conditions.

The conclusion of the assessment provided in relation to Clause 6.21C of the Sydney LEP 2012 is that the proposal exhibits design excellence as it has satisfactorily addressed the quoted matters for consideration.

- (vv) **Issue:** Inconsistent with Sections 3.9.6 and 3.9.7 of the Sydney DCP 2012 due to heritage impacts.

Response: As outlined elsewhere in this report, the proposal has been reviewed by City staff, including Council's Heritage Specialist, who have concluded that the roof addition is acceptable with regard to the quoted controls in the Sydney DCP 2012.

The form, materiality and siting of the addition has been designed to ensure that the restored principal building form is the dominant element within the streetscape, and that its visibility will be recessive and limited to forming part of the general background of the built form within the immediate locality.

- (ww) **Issue:** Ground floor level Macleay Street shopfront addition visually prominent, ugly, awkward, out of character with streetscape and unsympathetic to the heritage item. Should be deleted and replaced with original terrace character, detailing, awning and outdoor seating.

Response: The design of the ground floor level addition has been simplified in the amended application lodged with Council on 13 November 2023, in order to incorporate additional glazing and remove solid elements, so that the original building facade and alignment can be more readily be seen and understood from the public domain.

The City's Heritage Specialist has provided advice that it is generally acceptable on heritage grounds, subject to a number of recommended conditions relating to the shopfront detail and glazing proposed to the addition.

- (xx) **Issue:** Conversion to hotel rooms and bathrooms results in loss of original spatial configuration and planning, and adverse impact on Macleay Street building presentation.

Response: The modifications made to the proposal in the amended applications lodged with Council on 13 November 2023 and 29 February 2024 are acceptable with regard to both the retention and interpretation of the original configuration of the building, and do not present any significant visual impacts to Macleay Street.

- (yy) **Issue:** Conversion to hotel use will require extensive acoustic and fire upgrade works into existing timber floors.

Response: Noted. A condition is recommended to ensure that where building works are required to ensure compliance with the Building Code of Australia and may impact or potentially have impact on existing fabric and features, details of the works must be submitted and approved by Council.

- (zz) **Issue:** Removal of foundation level beneath heritage item contrary to heritage practice, negative significance impact, requires extensive replacement or strengthening. Shocking Council would exhibit proposal.

Response: As discussed elsewhere in this report, the geotechnical and structural interventions proposed have been reviewed and assessed as being acceptable, subject to the broad range of recommended conditions relating to these matters

The City is obligated to consult with the community in accordance with its Community Participation Plan and with the requirements of the Environmental Planning and Assessment Act, 1979.

It is noted that development consents have been granted by the Land and Environment Court of New South Wales and Council respectively for both the heritage item at 55 Macleay Street, and the heritage item at 57-59 Macleay Street, for alterations and additions to those properties, including new basement levels.

(aaa) **Issue:** Example of 'facadism' which will devalue all heritage listings. Council must remove heritage listing if approved.

Response: The proposal does not comprise 'facadism' given that it retains and conserves a significant proportion of the existing building fabric.

Removal of the heritage listing of the subject building is a matter beyond the merit assessment of the proposal, however it is noted that neither the heritage listing for 55 Macleay Street, or for 57-59 Macleay Street, were removed following the granting of consent for alterations and additions to those properties, including new basement levels.

(bbb) **Issue:** Shortcut to short term rental accommodation, boarding house, or studio apartments uses.

Response: The application seeks consent for hotel accommodation and food and drinks premises land uses, and does not propose short term rental accommodation, boarding house, or residential flat building land uses.

(ccc) **Issue:** Geotechnical assessment is desktop report for preliminary design purposes only. Additional site investigation is required and excavation retention systems advice provided.

Response: Updated geotechnical and structural engineering reports were submitted with the amended application lodged with the City on 13 November 2023. The updated report included information on borehole testing and site investigation.

Subject to the recommended conditions requiring further post-consent investigation, matters relating to excavation and structural considerations have been adequately addressed.

(ddd) **Issue:** Structural engineering feasibility report doesn't provide documentary evidence of construction principles or structural details.

Response: An updated structural report, including structural detail drawings, was submitted with the amended application lodged with the City on 13 November 2023.

(eee) **Issue:** Finance primary driver of proposal, heritage argument supports commercial activities.

Response: The proposal has been assessed on a merit basis against the heritage controls in the Sydney LEP 2012 and Sydney DCP 2012 and informed by advice from the City's Heritage Specialist, rather than financial considerations.

Subject to the recommended conditions, the proposal is acceptable with regard to heritage considerations.

(fff) **Issue:** Proposed redevelopment of 'Chimes' building at 45-53 Macleay Street, Potts Point may link to the 'White House', 'Yellow House' and subject site.

Response: No consent is sought for such a link.

The theoretical possibility of linking the four quoted properties lies beyond the scope of the merit assessment of the subject development application. Any such link would require development consent via a development application.

- (ggg) **Issue:** Combined cumulative noise, kitchen exhaust, waste impacts, and planning control variation are unnecessary and unacceptable.

Response: Subject to the recommended conditions, the potential environmental impacts associated with the proposal, particularly those relating to the operation of the new food and drink premises and hotel accommodation land uses, are acceptable.

- (hhh) **Issue:** Non-compliant height justification on historic developments, including the 'Chimes', the 'Yellow House' and the building at 12-16 Challis Avenue.

Response: The written Clause 4.6 variation request submitted with the amended application lodged with Council on 13 November 2023 was revised from that submitted with the original application and no longer justifies the height exceedance on these previous approvals.

- (iii) **Issue:** Drawings depict work to the 'Yellow House' and omit an existing light box.

Response: No works are proposed to the adjoining 'Yellow House' building.

A condition is recommended to clarify that no development consent is granted or implied for any such works, including the removal of the existing light box.

- (jjj) **Issue:** Extent of pruning works to street trees unclear.

Response: The application was reviewed by the City's Tree Management Unit, who have provided advice that only minor pruning work will be required to accommodate the design and its construction.

Appropriate conditions have been recommended to ensure that any such pruning work requires the approval of the City's Tree Management Unit.

- (kkk) **Issue:** Council should collect all restaurant waste within locality.

Response: Council does not provide commercial waste collection services.

An appropriate condition is recommended to require that the proposed development will be serviced by a private waste collection contractor.

- (lll) **Issue:** Plan of management restricts amplified music to reasonable levels by 12 midnight, 10.30pm preferable.

Response: The plan of management submitted with the application is not recommended to form part of any development consent, given that it must be updated to reflect the recommended conditions, including those relating to entertainment noise, compliance with the acoustic report submitted with the application and that no speakers or music is to be provided or played outside of the site.

(mmm) **Issue:** Removal of previously proposed contemporary dormer windows and skylights supported, reconfiguration of the new addition has minimal public domain visual impact.

Response: Noted. The amended application lodged with the City on 13 November 2023 contained a range of improvements to the original scheme which are supported by Council staff.

(nnn) **Issue:** Kitchen exhaust too close to balcony and windows of uppermost apartment facing Macleay Street in the 'Yellow House', not clearly depicted on application drawings.

Response: The location of the proposed kitchen exhaust is acceptable, subject to the conditions recommended by the City's Health and Building Unit relating to mechanical ventilation and emissions. The detail provided on the drawings is sufficient for assessment purposes, noting that the assessing officer carried out a site inspection of the subject apartment on 1 March 2024.

(ooo) **Issue:** No meaningful applicant consultation with the nearby residents.

Response: While consultation with neighbours is strongly encouraged and supported by the City, there is no legislative mandate requiring applicants to undertake such consultation.

(ppp) **Issue:** Risk of developer bankruptcy before completion, impacts on adjoining property values.

Response: Matters relating to the risk of developer bankruptcy and loss of property value are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

(qqq) **Issue:** Risk to toilets and plumbing infrastructure within the 'Yellow House'.

Response: No work is proposed to plumbing infrastructure or toilets within the 'Yellow House'.

Subject to the recommended conditions, the proposal is subject to a separate application process with the Sydney Water Corporation for sewerage and wastewater connections.

(rrr) **Issue:** Anti-social behaviour within 'Yellow House' common property areas.

Response: As outlined above, the subject application does not relate to common property areas within the 'Yellow House'.

Matters relating to the management of the approved hotel lobby in that building are the subject of conditions of development consent D/2020/642 which require the submission of a plan of management to Council for approval, along with a range of other appropriate management controls relating to incident recording and notification, use of Closed Circuit Television camera and neighbourhood amenity.

- (sss) **Issue:** Loss of community character, feel and ambience, and change in neighbourhood dynamics.

Response: The proposal, subject to the recommended conditions which have been recommended to mitigate the potential for environmental impacts associated with the development, will bring activity and vitality to the surrounding streets and broader locality in accordance with the City's planning controls for the site.

- (ttt) **Issue:** Joint cost of works of subject development application, and development consents D/2016/1079 and D/2020/642 exceeds \$50 million, consent authority is the Central Sydney Planning Committee.

Response: The Central Sydney Planning Committee is the consent authority for individual development applications with an estimated cost of works exceeding \$50 million. The estimated cost of the proposed development under the subject application does not exceed this threshold.

It should be also noted that the accepted cost of works relating to development consents D/2016/1079 and D/2020/642 does not exceed \$50 million, nor does the combined total of the cost of works of all three developments.

- (uuu) **Issue:** Plan of management for development across all three properties should be required.

Response: The subject application has been accompanied by a plan of management for the proposed land uses on the subject site.

Given that the proposal does not seek further development consent for the already approved land uses at the 'Yellow House' and 'White House' which are subject to separate requirements for plans of management, it is not appropriate to require a plan of management to address them.

- (vvv) **Issue:** No consent from Strata Plan 70276 owners corporation for any excavation work at the 'Yellow House'.

Response: No development consent is recommended to be granted to any excavation or associated work on the adjoining properties.

A condition is recommended to ensure that this matter is clarified within any development consent granted to the proposal.

- (www) **Issue:** No updated structural engineer's report.

Response: A structural engineer's report, including detail drawings, was submitted with the amended application lodged with Council on 13 November 2023.

- (xxx) **Issue:** Unacceptable noise from waste and glass collection.

Response: Conditions are recommended requiring compliance with the City's Waste Policy – Local Approvals Policy for Managing Waste in Public Places 2017 to avoid noise disruption to the surrounding area, and to require glass waste to be crushed on the site and moved from the site in containers.

(yyy) **Issue:** Demolition, excavation, and construction noise, dust and vibration impacts.

Response: The construction management plan submitted with the application has not been recommended to form part of any development consent granted to the proposal approved.

The City's standard condition for hours of work and noise outside of the Sydney Central Business District has been recommended, 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 application was referred to the City's Health and Building Unit, which advised that the proposed development is acceptable, subject to conditions.

The recommended conditions require the preparation, submission, approval and compliance with a site specific Demolition, Excavation and Construction Noise and Vibration Management Plan.

The City's standard condition relating to demolition, excavation and construction management has also been recommended. This condition contains requirements for the minimisation of dust emissions from development sites.

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

The application was also referred to the City's Heritage Specialist, who has recommended conditions requiring the formulation of protection strategies for the adjoining buildings, including additional vibration controls.

(zzz) **Issue:** Insufficient geotechnical investigation in geotechnical report, recommends additional investigation and boreholes.

Response: The updated geotechnical report contains sufficient information to facilitate the assessment of the proposal.

Conditions are recommended requiring further geotechnical work to be carried out and the engagement of a geotechnical engineer throughout the course of the works associated with the development.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

154. The development is subject to a Section 7.11 development contribution of \$137,332.04 under the provisions of the City of Sydney Development Contributions Plan 2015.

155. This calculation is based on:
- (a) 18 hotel rooms; and
 - (b) 298.3 square metres of restaurant gross floor area.
156. Credits have been applied for the most recent approved uses of the site, as follows:
- (a) One 2 bedroom dwelling;
 - (b) Two 3 bedroom dwellings;
 - (c) 161.59 square metres of restaurant gross floor area; and
 - (d) 108 square metres of shop gross floor area.
157. A condition relating to this development contribution has been recommended. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

158. The site is located within the Residual Lands affordable housing contribution area.
159. As the proposed development includes additional floor space, a contribution is required totalling \$56,696.96, which is calculated by establishing the sum of the equivalent monetary contribution \$11,176.22 multiplied by 1 percent of the total floor area (TFA) for non-residential development.
160. The TFA of the proposed development has been calculated to be equal to 507.3 square metres.
161. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The Act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:
- (a) The consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area; or
 - (b) The consent authority is satisfied that the proposed development will create a need for affordable housing within the area; or
 - (c) The proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site; or
 - (d) The regulations provide for this section to apply to the application.
162. The proposal is consistent with the criteria under parts (a) and (b) above.
163. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to consideration of the following:

- (a) The condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section; and
- (b) The condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan; and
- (c) The condition requires a reasonable dedication or contribution, having regard to the following:
 - (i) The extent of the need in the area for affordable housing;
 - (ii) The scale of the proposed development;
 - (iii) Any other dedication or contribution required to be made by the applicant under this section or section 7.11.

164. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.

165. A condition of consent is recommended requiring payment of the contribution prior to the issue of any construction certificate.

Housing and Productivity Contribution

166. The development is not subject of a Housing and Productivity Contribution under the provisions of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023, as the subject development application was lodged prior to 1 October 2023.

Relevant Legislation

167. Environmental Planning and Assessment Act 1979.

168. Roads Act, 1993.

169. Sydney Water Act, 1994.

Conclusion

170. The applicant seeks consent for adaptive reuse of, and alterations and additions to the existing building fronting Macleay Street and Challis Avenue. The primary land use sought is hotel accommodation, with a ground level food and drink premises.

171. Works include demolition of parts of the existing building, excavation, construction of a new basement level beneath the building, alterations and additions to the existing building, including two additional storeys, 18 hotel rooms and associated landscape works.

172. The proposal was amended to address Council's concerns relating to works proposed on adjoining properties, heritage issues relating to proposed demolition, excavation and construction works, the proposed height of the development and the written Clause 4.6 variation request submitted with the application, insufficient structural and geotechnical information, insufficient fire engineering and design information, insufficient external materials and finishes information, insufficient elevation drawings and detail, an inadequate plan of management and non-compliant restaurant hours of operation, no view sharing assessment and privacy impacts from a roof level balcony. The amended proposal is satisfactory, subject to the recommended conditions.
173. The proposed height of the development exceeds the maximum 15 metre height of buildings development standard by 1.5 metres (or 10 percent of the standard). The proposal complies with the maximum 3:1 floor space ratio development standard applicable to the site.
174. A request to vary the Clause 4.3 'Height of buildings' development standard has been submitted with the application in accordance with Clause 4.6 of the Sydney LEP 2012. The statement demonstrates that compliance with the standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify contravening the standard.
175. The proposal is generally consistent with the objectives of the land use zones applicable to the site, and the objectives of the height development standard, and the proposed departure to building height is supported in the particular circumstances of the site and proposed development.
176. 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.
177. 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 subject heritage item on the site is generally acceptable, subject to conditions.
178. 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.
179. The proposal will provide for a mix of new visitor and tourist accommodation and food and drink premises uses on a site which is highly accessible to existing and planned employment, services, public transport infrastructure and community facilities.
180. Subject to the recommendation of this report, and the imposition of the conditions in Attachment A, the proposed development responds appropriately to the site constraints and will contribute positively to the existing and desired future character of the locality.

ANDREW THOMAS

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