

Item 4.**Section 4.55 Application: 499-501 Kent Street, Sydney - D/2020/1224/A**

File No.: D/2020/1224/A

Summary

Date of Submission:	27 September 2023, amended on 24 April 2024
Applicant/Developer:	499 My Icon Development Pty Ltd
Architect:	SJB
Owner:	Element Property Sydney Pty Ltd
Planning Consultant:	Urbis
Heritage Consultant:	NBRS
Cost of Works:	\$57,485,385.00 (as stated under D/2020/1224)
Zoning:	<p>The site is zoned SP5 Metropolitan Centre under the Sydney Local Environmental Plan 2012. The indicative use is defined as a 'mixed use development', comprising 'hotel accommodation' and 'food and drink premises', all of which are permissible with consent.</p>
Proposal Summary:	<p>This section 4.55(2) modification application seeks to amend the concept consent for the redevelopment of the former "Universal File Manufacturing Co" warehouse. Specifically, modifications are proposed to the concept envelope, including a reduction to the Kent Street and Druitt Lane tower setbacks, reduction in the overall height, and additional indicative demolition of the heritage building. Modifications are also proposed to amend an existing condition to allow the removal of 2 street trees and other administrative amendments.</p> <p>The concept consent, as amended, will continue to provide a concept envelope comprising a podium, containing the existing heritage building, and a new tower above. The indicative uses will continue to comprise 'hotel accommodation' and 'food and drink premises'.</p>

This application is referred to the Central Sydney Planning Committee (CSPC) for determination as the proposed modifications relate to a "major development" for the purposes of the City of Sydney Act 1988.

A separate Detailed Design DA (D/2023/868) is presented to the CSPC concurrently for approval.

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

The original application was notified between 10 and 25 October 2023. The amended application received on 24 April 2024 was re-notified between 30 April and 15 May 2024. A total of 5 submissions were received.

The submissions raised the following concerns:

- overshadowing impacts to future Town Hall Square;
- amenity impacts, including overshadowing and reduced outlook;
- construction impacts, including noise, vibration and potential structural impacts;
- inconsistency with intent of the competition winning scheme; and,
- inappropriate setback to Kent Street.

The issues raised in the submissions, where relevant to the concept consent, are addressed in this report. Issues relevant to the concurrent Detailed Design DA are addressed under the separate report.

As amended, the proposed modifications to the concept envelope will result in a development that is substantially the same as previously approved and is considered contextually appropriate. The modifications will not impact the future use of the concept envelope, nor unreasonably impact on the amenity of neighbouring properties. Furthermore, the concurrent Detailed Design DA demonstrates that a generally compliant scheme can be provided within the amended envelopes.

Summary Recommendation: The subject section 4.55(2) modification application is recommended for approval.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021
- (ii) City of Sydney Act 1988 and City of Sydney Regulation 2016
- (iii) SEPP (Transport and Infrastructure) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) City of Sydney Guidelines for Public Art in Private Developments 2006
- (viii) City of Sydney Community Engagement Strategy and Community Participation Plan 2023

Attachments:

- A. Amended Concept Conditions of Consent
- B. Selected Drawings
- C. Submissions

Recommendation

It is resolved that consent be granted to section 4.55(2) modification application **D/2020/1224/A** subject to the amendment of the following conditions (additions shown in **bold italics** and deletions shown in ~~strikethrough~~), as follows:

(2) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2020/1224 dated 17 November 2020 and the following drawings prepared by **SJB PTW Architects**:

Drawing Number	Drawing Name	Date
DA-08-1000 Rev A DA-0050 Rev 5	Envelope Plans	22.09.20 18.04.24
DA-08-2000 Rev A DA-0051 Rev 5	Envelope North Elevation	22.09.20 18.04.24
DA-08-2100 Rev A DA-0052 Rev 5	Envelope East Elevation	22.09.20 18.04.24
DA-08-3000 Rev A DA-0053 Rev 5	Envelope Section	22.09.20 18.04.24
DA-0270 Rev 1	Demolition Plan – Basement 1	19.04.24
DA-0271 Rev 1	Demolition Plan – Ground Level	19.04.24
DA-0272 Rev 1	Demolition Plan – Level 01	19.04.24
DA-0273 Rev 1	Demolition Plan – Level 02	19.04.24
DA-0274 Rev 1	Demolition Plan – Level 03	19.04.24
DA-0275 Rev 1	Demolition Heritage Elevation	19.04.24

and as amended by the conditions of this consent.

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

Amended – D/2020/1224/A – 25 July 2024

(4) BUILDING HEIGHT

The height of the tower envelope must not exceed RL 95.600 (AHD) and must not cause additional overshadowing to the Future Town Hall Square, between 12 noon and sunset all year, in accordance with the approved Planning Proposal – Central Sydney 2020.

The height of the podium envelope must not exceed **RL 31.89** ~~31.700~~ (AHD) to its Kent Street (eastern) frontage.

Amended – D/2020/1224/A – 25 July 2024

(11) PUBLIC ART

- (a) The 'Public Art Strategy', reference P2207, dated October 2020 and prepared UAP Studio (Council reference Trim 2020/517632) must be incorporated into the competitive design process brief.
- (b) Selected artists concepts must be presented to the City of Sydney's Public Art Unit prior to the development of detailed public art plan.
- (c) A Detailed Public Art Plan, based upon the **Preliminary Public Art Plan prepared by Barbara Flynn Pty Ltd dated April 2024** ~~public art strategy referred to in (a) above~~, must be prepared and submitted prior to the issue of a Construction Certificate for above ground works.
- (d) All public artwork must be in accordance with the relevant objectives and provisions of the Sydney Development Control Plan 2012, the City of Sydney Public Art Policy, and the City of Sydney Interim guidelines: public art in private developments.

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

Amended – D/2020/1224/A – 25 July 2024

(12) HERITAGE CONDITIONS

The Stage 2 development application must consider the following:

- (a) The Stage 2 DA must retain all the building facades and structural elements specified for retention in the stage 1 DA **with the exception of internal floor slab, columns, facades elements and walls as shown in the drawings prepared by SJB and referenced under Condition (2) above**. No additional demolition or a change to existing facades except for conservation works is allowed.
- (b) The Stage 2 design must incorporate all the conservation and reconstruction works specified in the Schedule of Conservation Works prepared by NBR Architecture Heritage and dated **September 2023** ~~29 October 2020~~.
- (c) The Stage 2 design is to **include a Heritage Interpretation Plan that includes options for** ~~incorporate~~ an interpretation of the existing stair/lift configuration and the existing light-well at the south-east corner (south of existing stair-well). ~~For example, the stair-well windows facing the lightwell above ground should be retained to interpret the light-well location.~~
- (d) The Stage 2 DA is to include a heritage interpretation plan specifying how the history and significance of the heritage building is interpreted under the new development. A large portion of wall surfaces of the lobby area should be utilised for high quality interpretations.
- (e) The Stage 2 DA is to include an archaeological assessment report addressing archaeological potential of the site.
- (f) The Hydraulic booster location needs to be appropriately resolved in the stage 2 design, without compromising the heritage facade.

*Amended – D/2020/1224/A – 25 July 2024***(20) STREET TREES**

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

*Amended – D/2020/1224/A – 25 July 2024***(30) LEVELS AND GRADIENTS**

An Application for Levels and Gradients, including supporting information, must be lodged **as required by any** with the Stage 2 Development Application for all frontages to the site. ~~The Levels and Gradients approval must be issued prior to the determination of the Stage 2 Development Application.~~

*Amended – D/2020/1224/A – 25 July 2024***Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.
- (B) The proposed modifications ensure the detailed design development application is consistent with the concept approval, in order to satisfy Section 4.24 of the *Environment Planning and Assessment Act 1979*.
- (C) The proposal is consistent with the aims, objectives, and relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 for the reasons set out in the report.
- (D) The modified building envelope can accommodate a building design which is capable of exhibiting design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.
- (E) The changes to the approved building envelope are in keeping with the desired future character of the area. The changes are reasonable and justified with regard to the concurrent detailed design development application D/2023/868.
- (F) The changes to the approved building envelope are appropriate and are not likely to significantly impact the overall use of the building or the amenity of surrounding sites or locality.
- (G) The development, as modified, is in the public interest.

Background

The Site and Surrounding Development

1. A detailed description of the site and surrounds is provided in the assessment report for the concurrent detailed design development application (**Detailed Design DA**) (D/2023/868) that is presented to the Central Sydney Planning Committee (**CSPC**) concurrently for approval.

History Relevant to the Development Application

Concept Development Application - D/2020/1224

2. **D/2020/1224** - was granted consent by the CSPC on 25 March 2021 providing a building envelope for future mixed use development comprising hotel accommodation and food and drink premises. The approved building envelope has a maximum height of 80 metre, an 8 metre setback from Kent Street; a 6 metre setback from the centreline of Druitt Lane, and a tapered setback, ranging between 1.9 metres and 9 metres, from the western boundary to protect solar access, views/outlook, and privacy of the adjoining development to the west at 60 Bathurst Street.

Competitive Design Alternatives Process - CMP/2019/12

3. Following the issue of the concept consent, the applicant commissioned an 'invited' competitive design alternatives process for the site, which was held between 13 September 2021 and 27 October 2021.
4. Four architectural firms were invited to submit a design proposal, and the 4 design proposals were presented to the selection panel on 27 October 2021.
5. The selection panel unanimously concluded that the proposal presented by SJB was most capable of achieving design excellence. The reasons for selecting the proposal by SJB, elements of the proposal identified to be retained, and the elements of the proposal recommended for further resolution are discussed in the report for the Detailed Design DA.

Concurrent Detailed Design Development Application - D/2023/868

6. D/2023/868 - a Detailed Design DA was lodged concurrently on 27 September 2023, and later amended on 24 April 2024. It proposes partial demolition of the existing three storey heritage warehouse, excavation and remediation, and construction of a 19 storey tower addition above, to accommodate a 228 room hotel development with food and drink premises on the lower ground, ground, and roof levels. It also proposes associated signage strategy, landscaping including replacement of 2 street trees, and public domain upgrades including the conversion of Druitt Lane into a shared zone.
7. The Detailed Design DA is being reported concurrently to the CSPC for determination and is recommended for approval. Refer to the separate assessment report for details.

Amendments

8. Following a preliminary review of the concurrent Detailed Design DA, and subsequent meetings with the project architect, requests for additional information and amendments were issued to the applicant on 23 November 2023 and 7 February 2024. The Detailed Design DA was later amended on 24 April 2024, supported by additional information submitted on 5 June 2024. Refer to the separate assessment report for details.
9. Associated with the amendments to the Detailed Design DA made on 24 April 2024, the applicant also amended the subject modification application to incorporate the following modifications to the concept envelope:
 - (a) reduce the overall height of the concept envelope to reflect a site-specific sun access plane that will entirely preserve sun access to the future Town Hall Square;
 - (b) reduce the northern setback to the centreline of Druitt Lane by 700 millimetres, from 6 metres to 5.3 metres;
 - (c) reduce the western setback to Kent Street by 2 metres, from 8 metres to 6 metres; and
 - (d) adjust the extent of demolition to respond to the updated structural design, maintaining independent structural support to the new tower addition.

Proposed Modifications

10. The subject modification application proposes to amend the concept consent to be consistent with the concurrent Detailed Design DA as outlined below:
 - (a) amend Condition (2) to reference an updated concept envelope, with reduced overall height, reduced setbacks to Kent Street and Druitt Lane, reduced basement depth, and increased basement footprint;
 - (b) amend Condition (2) to include a set of indicative demolition plans required by the proposed amendments to Condition (12);
 - (c) amend Condition (4)(b) to correct a height reference of the podium envelope to reflect the existing height of the heritage building;
 - (d) amend Condition (11)(b) to reference a Preliminary Public Art Plan, instead of the approved public art strategy;
 - (e) amend Condition (12) to allow additional demolition to facilitate investigation of the heritage building's existing foundations, accommodate the proposed basement, new structural columns that independently support the new tower addition, and a temporary tower crane required for construction. It is also proposed to adjust the reference to a Schedule of Conservation Works, and the timing of finalising the heritage interpretation strategy;
 - (f) amend Condition (20) to allow the removal of 2 existing street trees on Kent Street, and update requirements for future detailed design development to allow the growth of future replacement street tree to reach maturity; and

- (g) amend Condition (30) to defer the submission and approval of an Application for Public Domain Levels and Gradients to align with the timing required by a Detailed Design DA.

11. Selected drawings of the proposed modifications are provided below. The indicative demolition plans show the previously approved extent of demolition in red, and the proposed additional demolition in light blue.

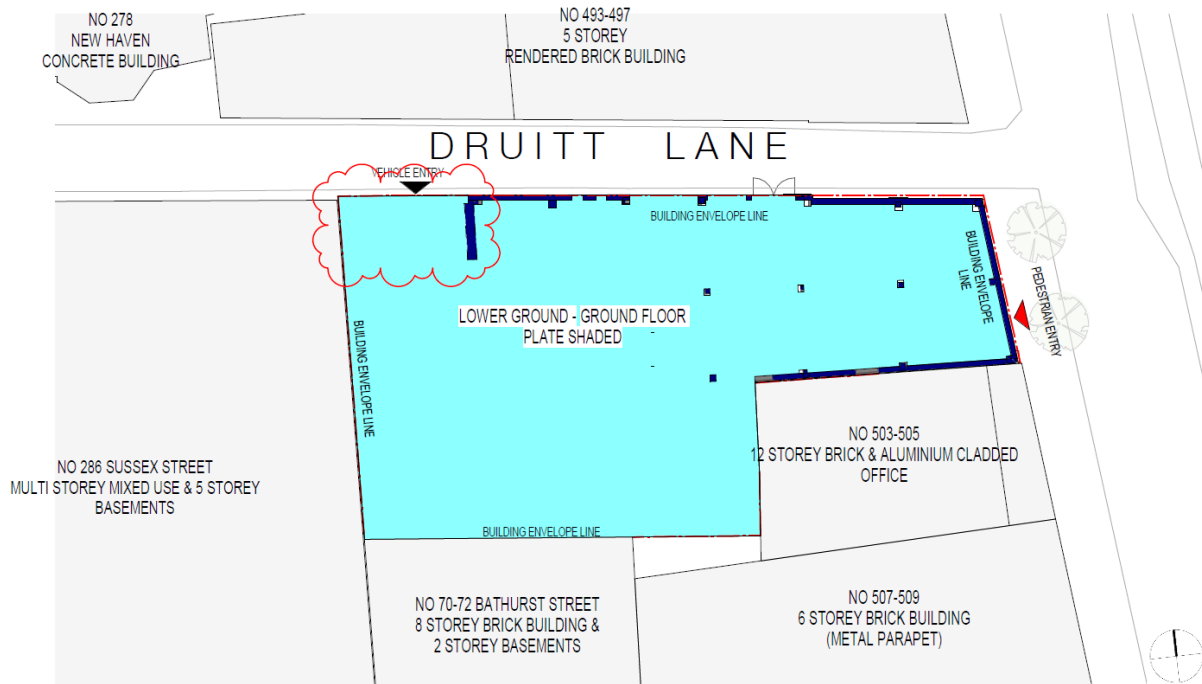


Figure 1: Proposed concept envelope plan - lower ground and ground levels

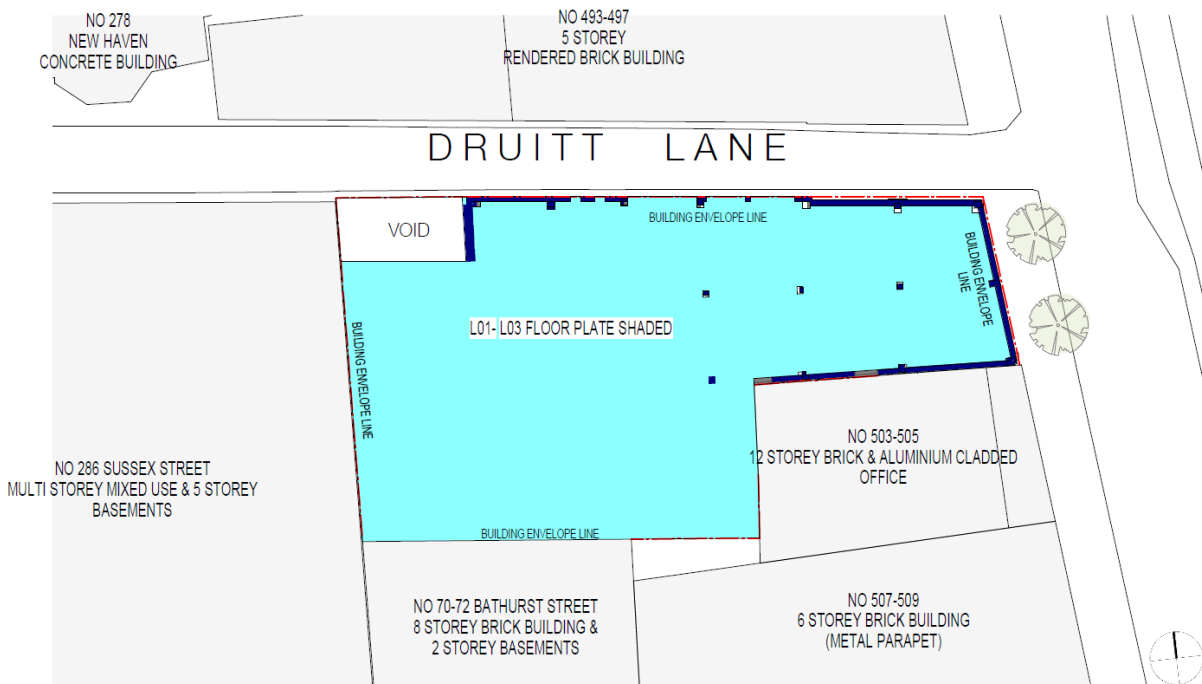


Figure 2: Proposed concept envelope plan - levels 1 to 3

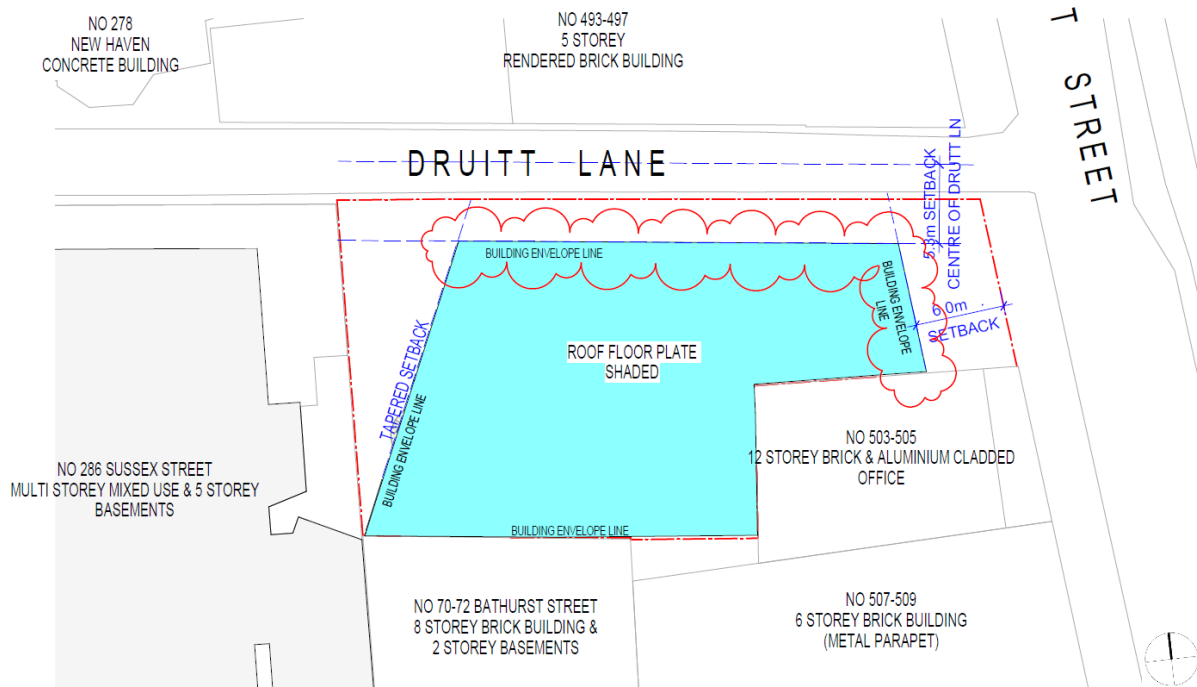


Figure 3: Proposed concept envelope plan - level 4 to roof

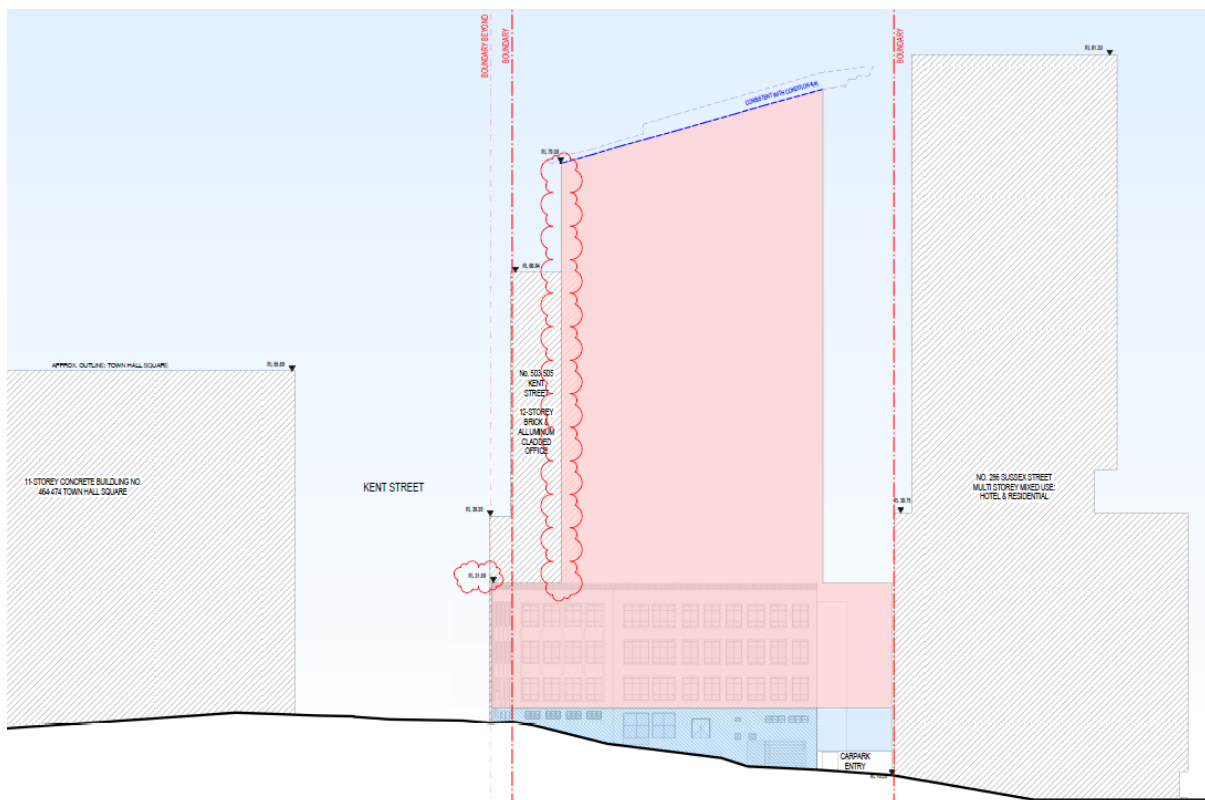


Figure 4: Proposed concept envelope north elevation

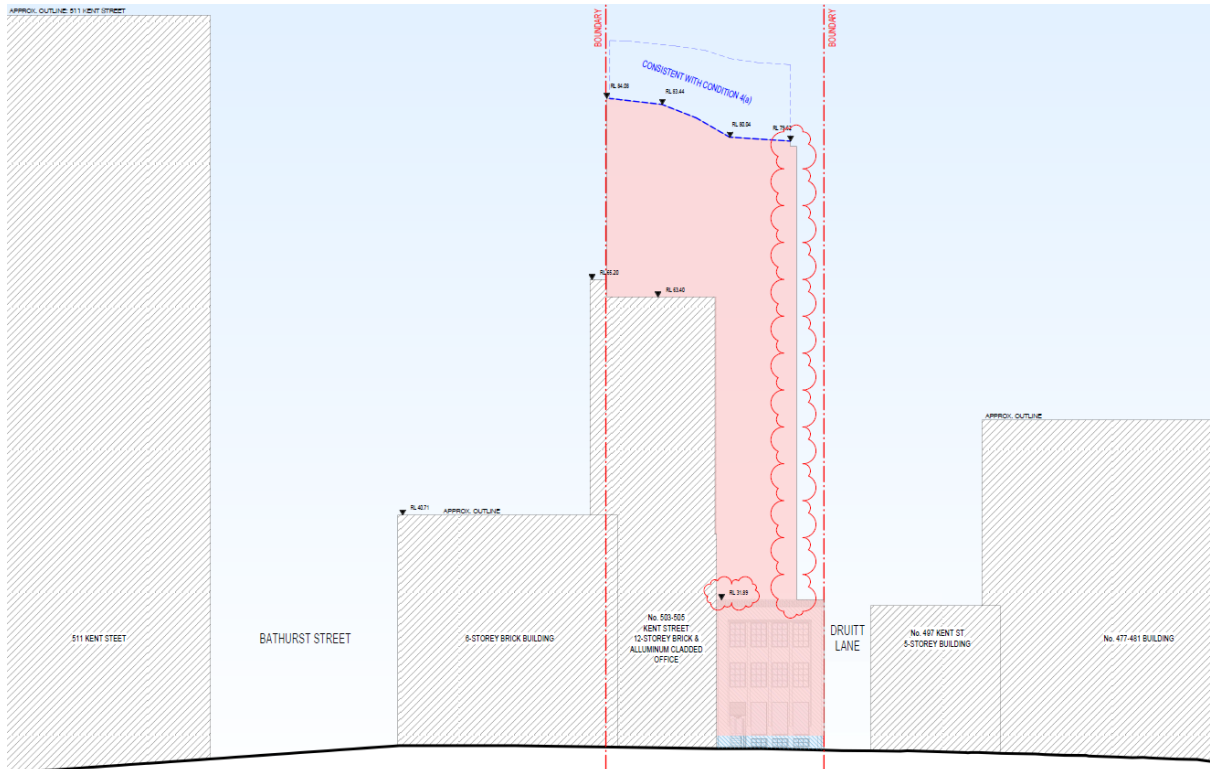


Figure 5: Proposed concept envelope south elevation

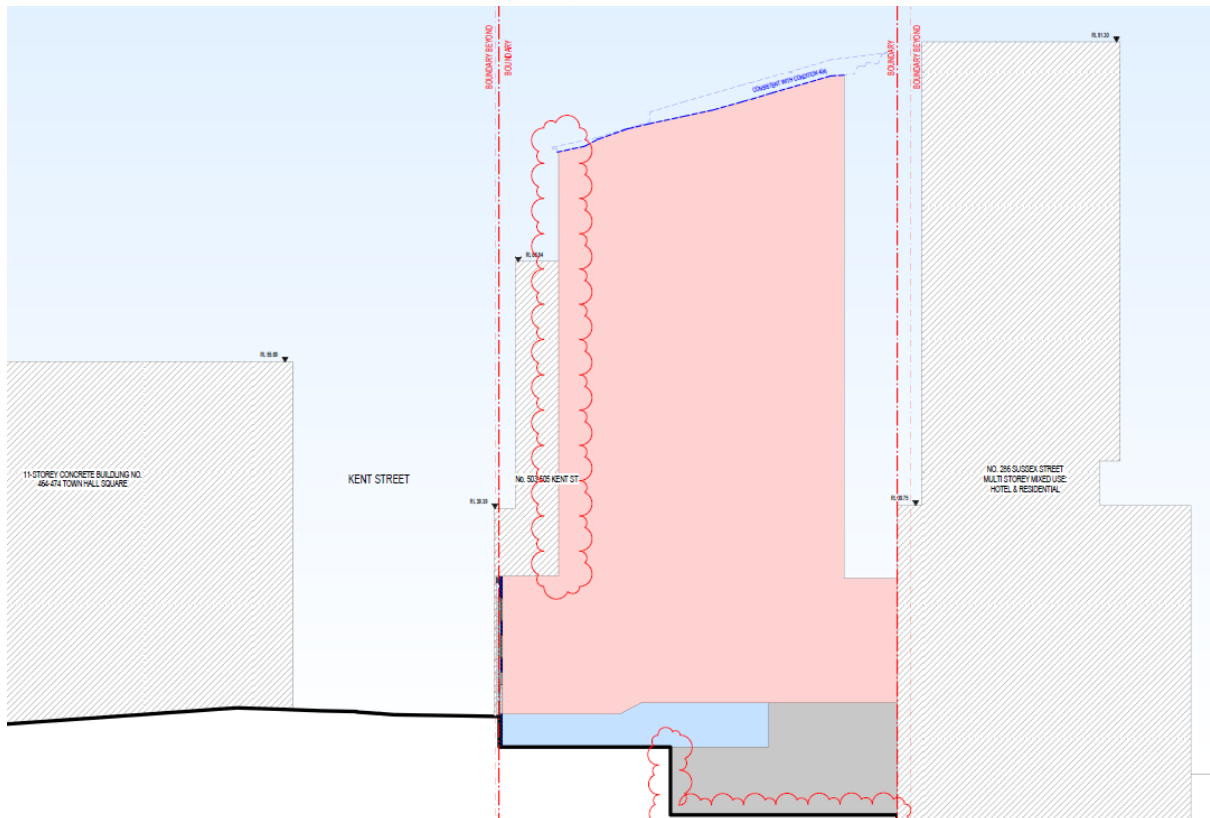


Figure 6: Proposed concept envelope section



Figure 7: Proposed indicative demolition plan - basement 1

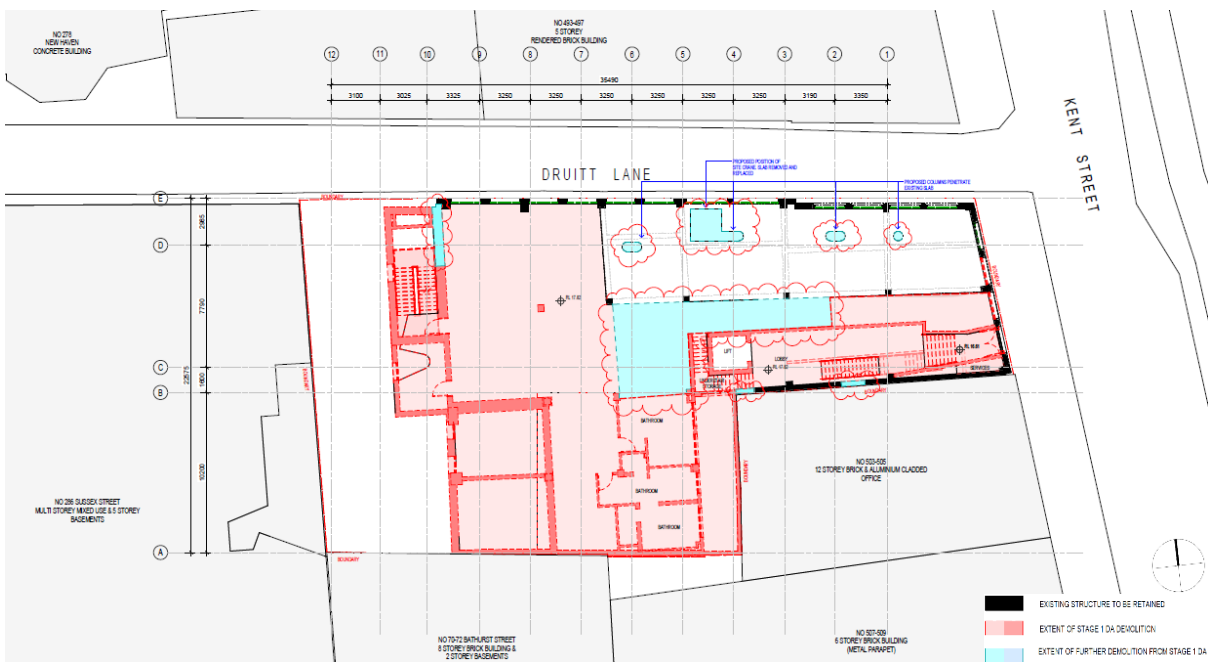


Figure 8: Proposed indicative demolition plan - ground level

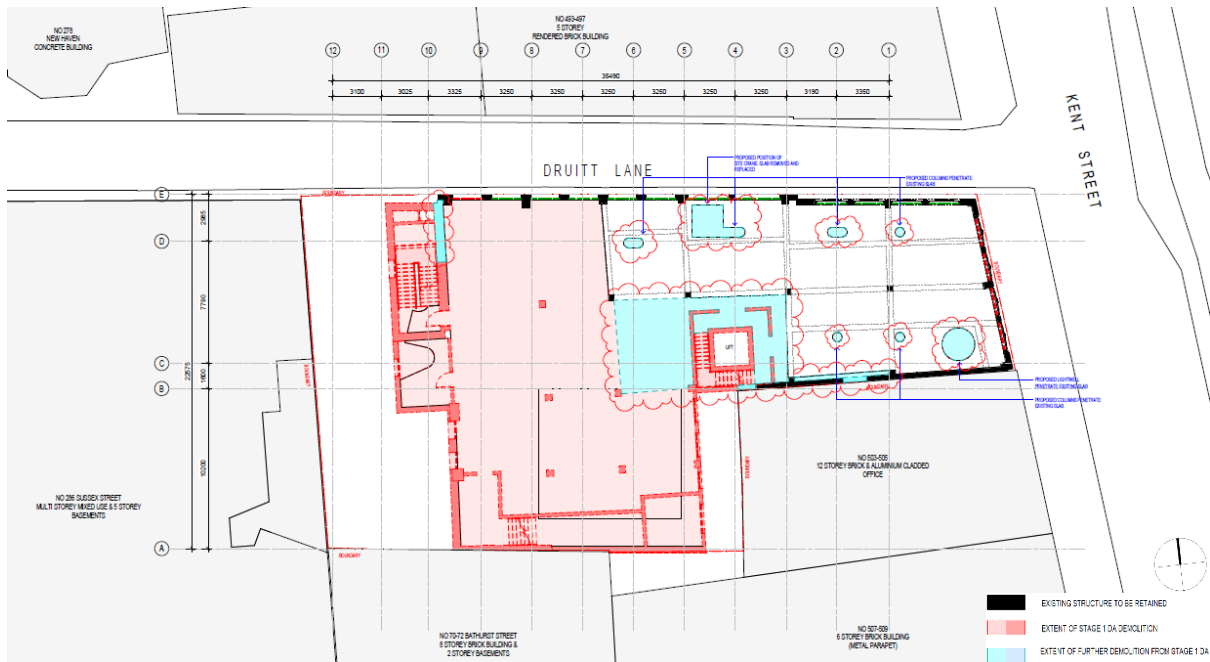


Figure 9: Proposed indicative demolition plan - level 1



Figure 10: Proposed indicative demolition plan - level 2



Figure 11: Proposed indicative demolition plan - roof (no additional demolition)

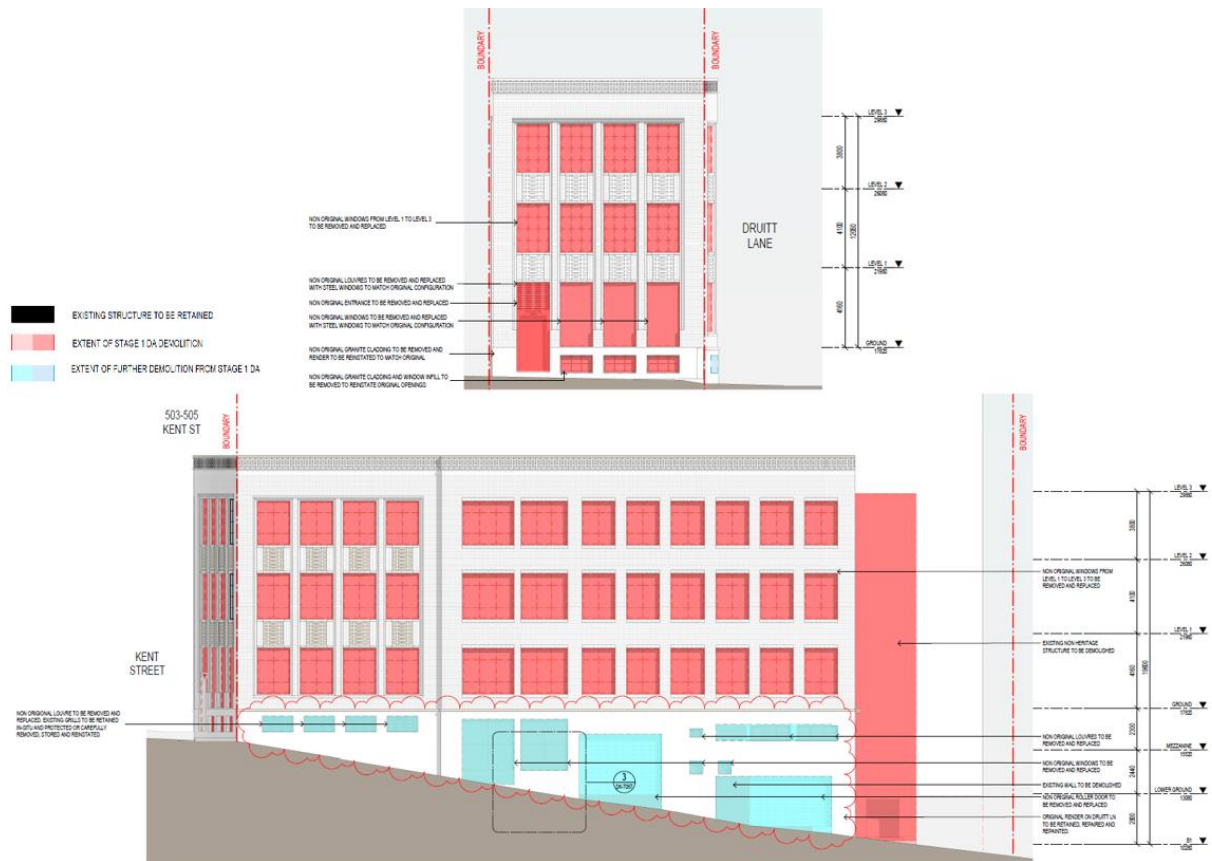


Figure 12: Proposed indicative demolition - heritage elevations (removal of non-original fabric)

Threshold Test

12. The 'development' as proposed to be modified is considered to be substantially the same as that originally approved, satisfying Section 4.55(2)(a) of the EP&A Act, because:
- (a) it remains a concept envelope for the redevelopment of the site, comprising the existing heritage item as a podium and a new tower addition above;
 - (b) it continues to facilitate a mixed use development comprising hotel accommodation and food and drink premises on the lower ground, ground, and roof levels;
 - (c) it generally maintains the relationship between the concept envelope, adjoining properties, and the public domain;
 - (d) it remains generally consistent with the objectives of the relevant environmental planning instruments;
 - (e) it presents acceptable environmental impacts when compared to those previously assessed and considered acceptable by granting of the original concept consent (D/2020/1224);
 - (f) it is modified to allow for consistency with the proposed development of the concurrent Detailed Design DA (D/2023/868), which is based on the winning scheme of a competitive design process;
 - (g) it continues to deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties, as demonstrated in the assessment of the Detailed Design DA; and
 - (h) it is consistent with the intent of the original approved concept development, in that the location and overall form of the building envelope is maintained, including the tapered western setback to maintain outlook and solar access to the residential apartments adjoining to the west and the requirement of Condition (4)(a) to reduce the overall building height to protect sun access to the future Town Hall Square, by avoiding any additional overshadowing.

Assessment

13. Section 4.55(3) of the EP&A Act requires that the consent authority to consider the reasons originally given to grant the concept consent (D/2020/1224). The original reasons, and how the proposed modifications will uphold those reasons, are discussed below:

<i>Original Reasons for Approval</i>	<i>Discussion</i>
The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979, in that, subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.	The proposed modifications allow the concept development to continue to satisfy the objectives of the EP&A Act, including through the retention of existing conditions to ensure the future development will achieve the objectives of the planning controls for the site.
The proposal generally satisfies the objectives and provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.	The proposed modifications allow the concept development to continue to satisfy the objectives and provisions of Sydney LEP 2012 and Sydney DCP 2012, as discussed in this report.
The proposal is consistent with the objectives of the B8 Metropolitan Centre zone.	The proposed modifications ensure the concept development remains consistent with the objectives of the SP5 Metropolitan Centre zone.
The proposal will provide a building envelope that is capable of accommodating a future building which, subject to compliance with the design excellence strategy, the undertaking of a competitive design process and the recommended conditions of consent, can exhibit design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.	The proposed modifications are necessary to allow consistency with the proposed development of the concurrent Detailed Design DA, which is the winning scheme of a competitive design process, and is considered to exhibit design excellence as discussed in the separate assessment report for the Detailed Design DA.
The indicative reference design accompanying the application demonstrates that the future proposed development is capable of being consistent with the provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.	The proposed modifications, as demonstrated by the concurrent Detailed Design DA, will facilitate a development that is generally consistent with the provisions of Sydney LEP 2012 and Sydney DCP 2012, and where non-compliances occur, they are considered reasonable and acceptable.

<i>Original Reasons for Approval</i>	<i>Discussion</i>
<p>The proposed development has a height and form suitable for the site and its context and, subject to conditions, satisfactorily addresses the heights and setbacks of neighbouring developments and is appropriate in the streetscape context and broader locality.</p>	<p>The proposed modifications maintain the tapered setback to the adjoining property to the west, and provide acceptable street setbacks to remain appropriate in the streetscape context and the broader locality. The overall height is also reduced to protect sun access to the future Town Hall Square.</p>
<p>The proposed building envelope can accommodate the proposed uses and does not result in any significant adverse environmental or amenity impacts on surrounding properties, the public domain and the broader Sydney Central Business District, subject to conditions on a subsequent detailed design development application.</p>	<p>The proposed modifications continue to provide a building envelope that achieves an acceptable level of environmental and amenity impacts.</p>
<p>The public interest is served by the approval of the proposal, as amendments to the development application have addressed the matters raised by the City and the community, subject to recommended conditions imposed relating to design excellence, heritage, height, setbacks, contamination and traffic.</p>	<p>The proposed modifications will maintain the public interest in that the relevant objectives of the environmental planning instruments are achieved, and that other relevant matters, including design excellence, heritage, height, setbacks, contamination and traffic, continue to be subjected to existing conditions, and are resolved as part of the concurrent Detailed Design DA.</p>
<p>Condition (4)(a) was amended to protect sun access to the future Town Hall Square site.</p>	<p>The proposed modifications will ensure the concept envelope protects sun access to the future Town Hall Square.</p>

14. For the reasons above, the proposed modifications are considered to uphold the reasons given by the consent authority originally to grant the concept consent that is being modified, satisfying part of Section 4.55(3) of the EP&A Act.
15. An assessment against the relevant provisions of Section 4.15(1) of the Act is provided under the headings below, demonstrating that the remaining part of Section 4.55(3) of the EP&A Act is also satisfied, allowing the concept consent to be modified.

State Environmental Planning Policies

State Environmental Planning Policy (Sustainable Buildings) 2022

16. The Sustainable Buildings SEPP is not applicable as the subject modification application benefits from the savings provisions under clause 4.2(1)(a) of the SEPP. This is because the original concept DA (D/2020/1224) was lodged prior to the commencement of the SEPP on 1 October 2023.

State Environmental Planning Policy (Transport and Infrastructure) 2021

17. 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

18. The original application was referred to Ausgrid for comments pursuant to Clause 2.48 of the SEPP as it comprises development likely to affect an electricity transmission or distribution network.
19. As the proposed modification will not result in additional effects to an electricity transmission or distribution network, a referral is not required.

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

Clause 2.97 – Development adjacent to rail corridors

20. The subject site is adjacent to the CBD Rail Link (Zone B), and the original application was Transport for NSW (TfNSW) for comment.
21. As the subject modification application increases the basement envelope, it was referred to TfNSW again for comment.
22. TfNSW responded on 30 October 2023, raising no concerns and recommended no amendments to existing conditions.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

23. Chapter 2 of the Biodiversity and Conservation SEPP is applicable as the proposed modifications will facilitate the removal of vegetation, being 2 existing street trees, in a non-rural area under the Detailed Design DA. However, the vegetation to be removed is not part of a heritage item, or within a heritage conservation area, or form part of an Aboriginal object, nor within an Aboriginal place of heritage significance. Consent can therefore be granted for the removal of the 2 existing street trees.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

24. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
25. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

26. The relevant provisions of the Sydney LEP 2012 have been taken into consideration in the assessment of the proposal.
27. The site is located within the SP5 metropolitan Centre zone. The proposed development, defined as a mixed use development comprising hotel accommodation and food and drink premises, is permissible within the zone.
28. Compliance with the height of buildings development standard (Clause 4.3) and the no additional overshadowing development standard (Clause 6.18) are discussed below.
29. The concurrent Detailed Design DA demonstrates that the revised building envelope can accommodate compliant floor space ratio (Clause 4.4) and satisfy the objectives relating to design excellence (Clause 6.21C).
30. The development is consistent with other relevant provisions.

Discussion

Condition (2) - Reduce the overall height of the concept envelope

31. The concept envelope, as shown in the approved envelope drawings reflects the maximum 80 metre height plane.
32. Condition (4)(a) was modified by the CSPC at its 25 March 2021 meeting to bring into effect a requirement of the then approved Planning Proposal - Central Sydney 2020 to preserve sun access to the future Town Hall Square between 12pm midday and sunset throughout the year.

33. The concept envelope, however, was not amended to reflect the requirements of Condition (4)(a). Under the assumption that the approved concept envelope automatically satisfies the requirement of Condition (4)(a), the competitive design process and the preparation of the concurrent Detailed Design DA were not informed of the need to amend the concept envelope.

Note: The requirement to preserve sun access to the future Town Hall Square is now included in Clause 6.18 of Sydney LEP 2012. However, Clause 6.18 does not apply to the subject modification application or the concurrent Detailed Design DA as they benefit from the savings provisions under Clause 1.8A(5)(b)(ii) of Sydney LEP 2012.

34. Following detailed solar analyses carried out by the project architect SJB, and verified by the City's Model Unit, a site-specific sun access plane is established. The highest point is in the west, established by the existing parapet height of the adjoining development at 60 Bathurst Street, and the lowest point is in the east at the Kent Street frontage. As illustrated in Figure 13 below, the sun access plane runs in the opposite direction to the maximum 80m height plane.
35. It is recommended that Condition (2) be amended to reference the updated concept envelope drawings. This is to reduce the overall height of the concept envelope, reflecting the site-specific sun access plane. This ensures any future detailed design development that is wholly contained within the envelope will entirely preserve sun access to the future Town Hall Square.

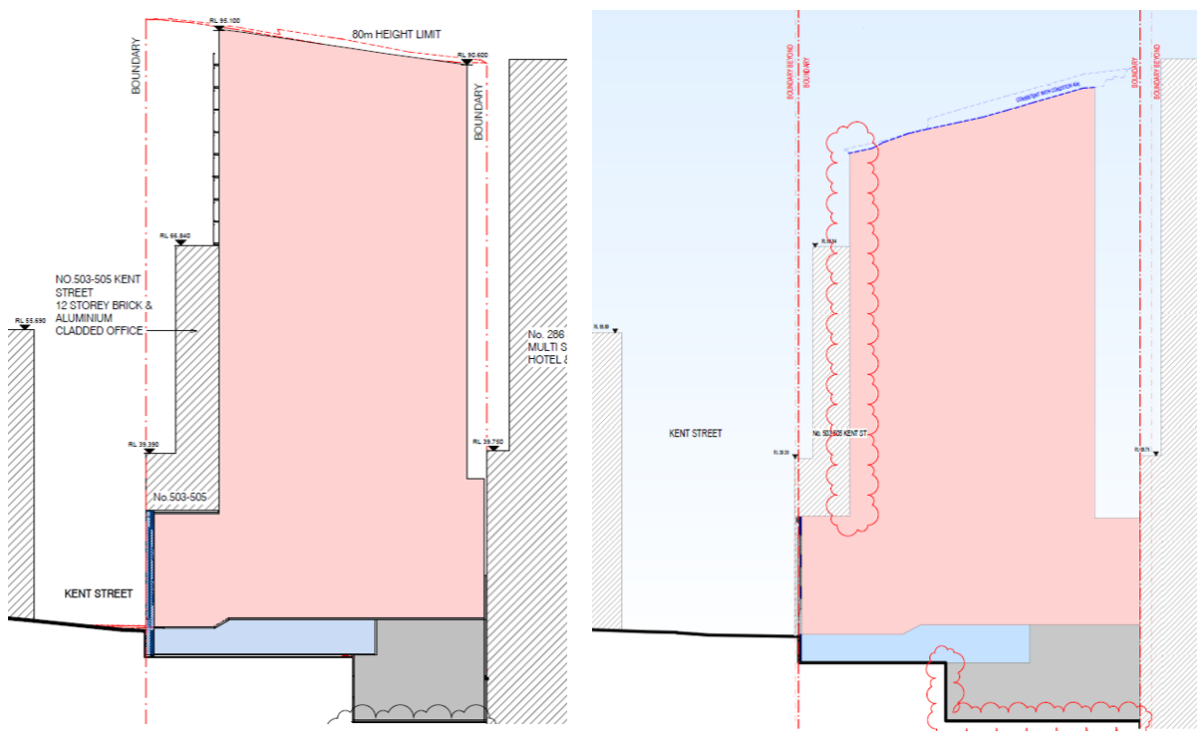


Figure 13: Approved (left) and proposed (right) concept envelope sections

Condition (2) - Reduce Kent Street and Druiitt Street setbacks

Kent Street Setback

36. The concept consent approved a reduced 8m tower setback to Kent Street, considering that a reduction from the 10m setback required by the DCP at the time the concept consent was granted would continue to allow an acceptable visual relationship with the retained heritage building.

Note: Section 5.1.1 of Sydney DCP 2012 has been amended since the issue of the concept consent. An 8m setback above the recommended street frontage height is now recommended for buildings on both sides of Kent Street within the Sydney Square/Town Hall and St Andrews Special Character Area (i.e. between Bathurst Street and Druiitt Street).

37. It is proposed to reduce the Kent Street tower setback by 2m, from 8m to 6m, as shown in Figure 14 below. The proposed reduction is made in association with the proposed reduction in the overall building height, which is to preserve sun access for the future Town Hall Square as discussed above. The proposed reduction is to enable the redistribution of floor space, ensuring the concept envelope can reasonably accommodate the permissible floor space to support a feasible development scheme.

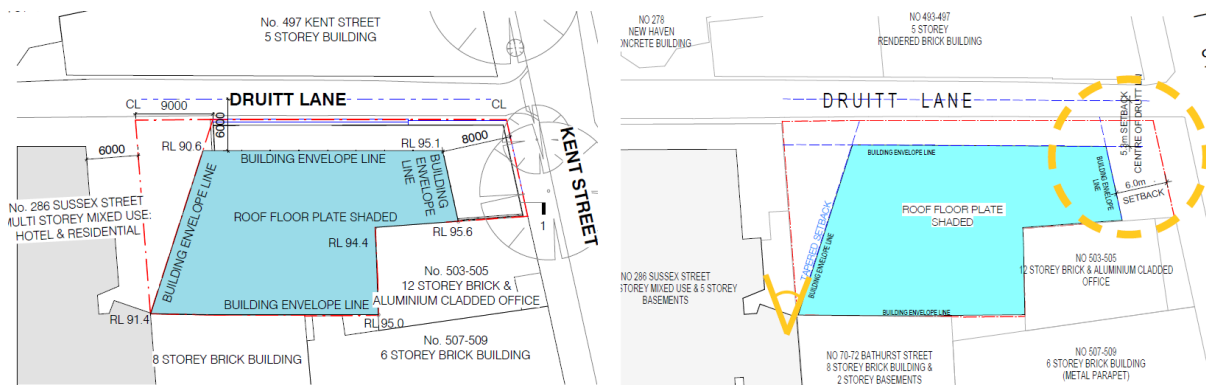


Figure 14: Comparison of the approved (left) and proposed (right) concept envelope

38. In the wider context, the western side of Kent Street, as perceivable together with the subject site, has a varying street wall height and upper-level setback as detailed below:

- (a) the existing carpark building at 521-527 Kent Street has a seven storey street wall, with no existing/approved/concept envelope for a tower addition above;
- (b) the existing Maestri Towers at 515 Kent Street has a seven storey street wall, with a tower addition above that is set back 2.5 metres in the north, corresponding to the Adina hotel, and an increased 3 metre setback in the south;
- (c) the existing Adina hotel building at 511-513 Kent Street has a stepped street wall height of seven storeys to 10 storeys, with a tower addition that is minimal setback at the street corner and an increased setback of approximately 2.5 metres in the south;
- (d) the existing building at 507-509 Kent Street has a six storey street wall, with no existing/approved/concept envelope for a tower addition above;

- (e) the existing building at 503-505 Kent Street has a six storey street wall, with a tower addition above that is setback between 4.4 to 5.2 metres, with 'glass enclosed projections' on the Kent Street facade that are setback between 3 to 3.7 metres;
 - (f) the existing building at 493-497 Kent Street has a four storey street wall (but same height as the subject site), with no existing/approved/concept envelope for a tower addition above;
 - (g) the existing building at 483-491 Kent Street has a 10 storey street wall, with two additional storeys that are setback approximately 3 metres; and
 - (h) the existing buildings at 465-481 Kent Street have a stepped street wall height of five storeys to two storeys, stepping down to the north.
39. The varying height and setbacks within the wider context are also illustrated in Figures 15 and 16 below.

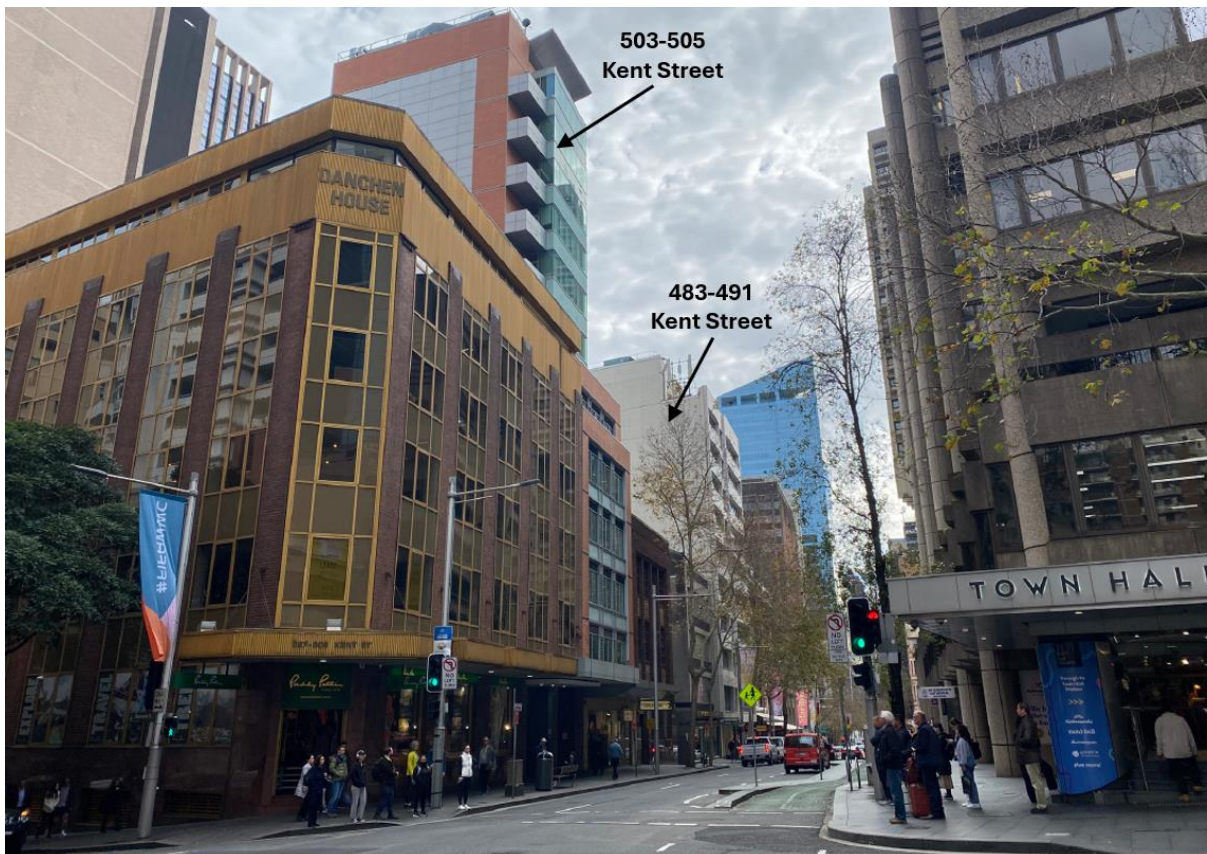


Figure 15: Western side of Kent Street viewed from Bathurst Street, facing north, illustrating the varying street wall height and upper-level setback within the street block



Figure 16: Comparison of the approved (left) and proposed (right) concept envelope, viewed from Kent Street

40. The proposed 6m setback is acceptable in the above context and is consistent with the objectives of Section 5.1.1.1 of Sydney DCP 2012 for street frontage height and street setbacks, considering:
- (a) the concept envelope as modified will maintain a three storey street wall that maintains the variety of street wall heights along the western side of Kent Street;
 - (b) the new tower, with the proposed 6 metre setback, will maintain a stepped relationship with the adjoining tower at 503-505 Kent Street as shown in Figure 16 above, similar to the relationship between 511-513 and 515 Kent Street;
 - (c) the new tower, being set back further than 503-505 Kent Street and the 10 storey building at 483-491 Kent Street, will also maintain long views of open sky, especially considering the overall envelope height is also being reduced;
 - (d) the reduced setback will ensure an acceptable stepped relationship between the existing building at 503-505 Kent Street, which is setback approximately 3m from Kent Street, and any future tower envelope above 493-497 Kent Street, which is required to have an 8m setback to Kent Street;
 - (e) given the orientation of Kent Street, and the lower street wall height and overall building heights on the eastern side, the proposed 6m tower setback will maintain adequate daylight access and a sense of openness to Kent Street;
 - (f) the wind impact assessment submitted with the concurrent Detailed Design DA also demonstrates that the surrounding public domain, both on Kent Street and Druiitt Lane, will continue to achieve the relevant wind comfort and safety criteria.

41. The reduced tower setback is also considered to maintain an acceptable relationship with the existing heritage building, satisfying the objectives of section 5.1.3 of Sydney DCP 2012, considering:
 - (a) it is considered sufficient to ensure the tower addition will not overwhelm the heritage building;
 - (b) it will allow the original scale, form and architectural character of the heritage building to be clearly perceivable; and
 - (c) it will also ensure the heritage building remains visually prominent when viewed from the street.
42. The adjoining property to the south, at 503-505 Kent Street, has windows on its northern facade that is constructed to the shared boundary, and 'glass enclosed projections' on the Kent Street facade. The boundary windows are set back approximately 8 metres from Kent Street. As such, they are already required to be enclosed in accordance with an existing covenant, and the reduced 6 metre setback will not result in additional impact to those boundary windows. Similarly, the submitted sun's eye diagrams demonstrate that the reduced setback will result in no additional overshadowing, compared to the approved 8 metre setback, to the 'glass enclosed projections' on the Kent Street facade. The reduced setback is therefore considered to result in no additional amenity impacts to 503-505 Kent Street.

Druitt Lane Setback

43. The concept consent approved a 6m setback to the centre line of Druitt Lane, which was compliant with the required setback of the DCP at the time the concept consent was granted.
44. It is proposed to reduce the setback by 700 millimetres, from 6 metres to 5.3 metres, as shown in Figure 14 above. Similar to the proposed reduction to the Kent Street setback, the proposed reduction is made in association with the proposed reduction in the overall building height to enable the redistribution of floor space.
45. The reduced setback is not readily perceivable from the public domain, as demonstrated by Figure 17 below. It also continues to allow the new tower envelope to remain visually distinctive from the heritage item, allowing the original scale, form and architectural character of the heritage item to be clearly perceivable.



Figure 17: Comparison of the approved (left) and proposed (right) concept envelope, viewed from the corner of Kent Street and DrUITT Lane

46. The reduced setback will not result in additional amenity impacts to the adjoining residential development at 60 Bathurst Street. This is achieved primarily by maintaining the approved tapered western setback (discussed separately below), which allows:
- (a) the same level of solar access, being over two hours of direct sunlight in mid-winter to be maintained to the balconies of the eastern apartments of the adjoining 60 Bathurst Street, as shown in Figure 18 below:
 - (b) the same level of outlook as shown in Figure 19 below.

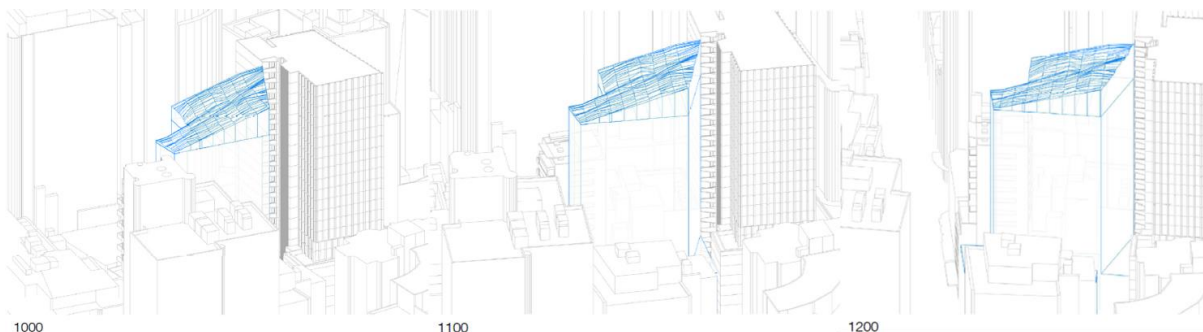


Figure 18: Sun's eye diagrams - demonstrating at least 2 hours of direct sunlight to balconies of the eastern apartments of 60 Bathurst Street (same level as previously approved)

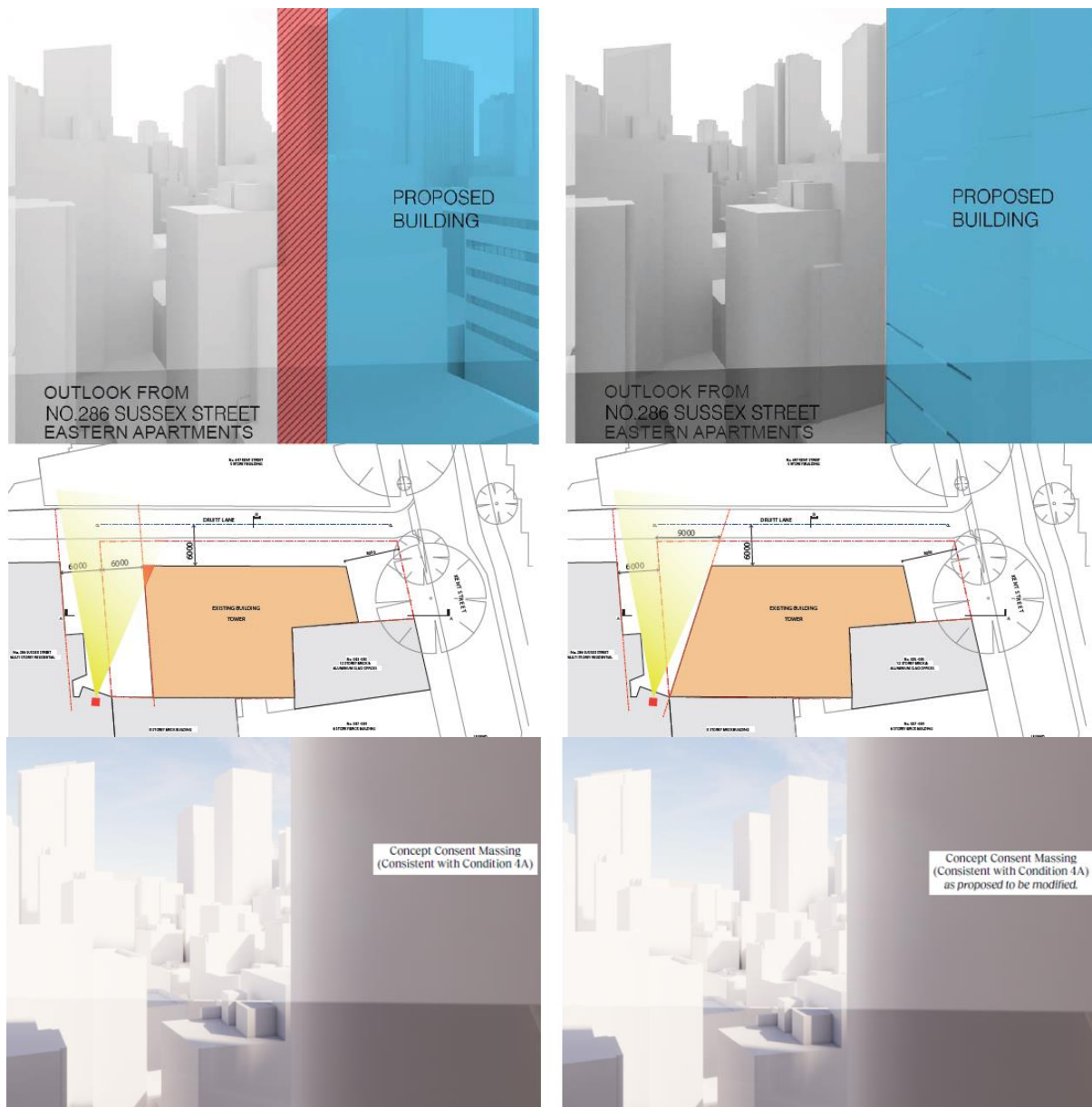


Figure 19: Comparison of the 6m required setback (top left) and the approved tapered setback (top right) in terms of outlook as illustrated in the PTW Design Report (which was reproduced in Figure 30 of the assessment report for D/2020/1224), and the updated modelled view by SJB, taken further within the balconies demonstrating the same level of outlook between the approved (bottom left) and proposed (bottom right) envelope

Western Setback

- 47. No amendments are proposed to the approved western setback.
- 48. The concept consent approved a tapered western setback, increasing from 1.9 metres in the south to 6 metres in the north. The tapered setback was approved as a better alternative to the 6 metre setback required by Section 5.1.2.2 of the DCP applicable at the time the concept consent was granted to improve solar access and outlook to the eastern apartments of the adjoining 60 Bathurst Street.

49. The comparison diagrams included in the assessment report of the concept consent is reproduced in Figure 19 above for reference. Demonstrating the improved outcome for the eastern apartments of the adjoining 60 Bathurst Street.

Condition (2) - Infill the northeastern void

50. It is proposed to increase the concept envelope on the lower ground and ground levels by infilling the northeastern void setback, as shown in Figure 20 below.
51. The additional envelope is located in an area of the site identified to have no heritage significance. The location of the envelope is also consistent with the existing approach to have an addition west of the heritage item. To be clearly subservient to the heritage item, the height of the envelope is substantially reduced, compared to the existing addition.
52. Furthermore, the additional envelope will conceal the future driveway to the site, it will also provide for a more consistent street wall to the southern side of DrUITT Lane. As demonstrated by the concurrent Detailed Design DA, any addition located within the envelope can also adopt a different architectural character to clearly present as a new addition while responding to the nuance detailing of the heritage item.
53. Therefore, the additional envelope is acceptable, as it can support an improved design outcome. While preserving the aesthetic or historical significance of the heritage item.

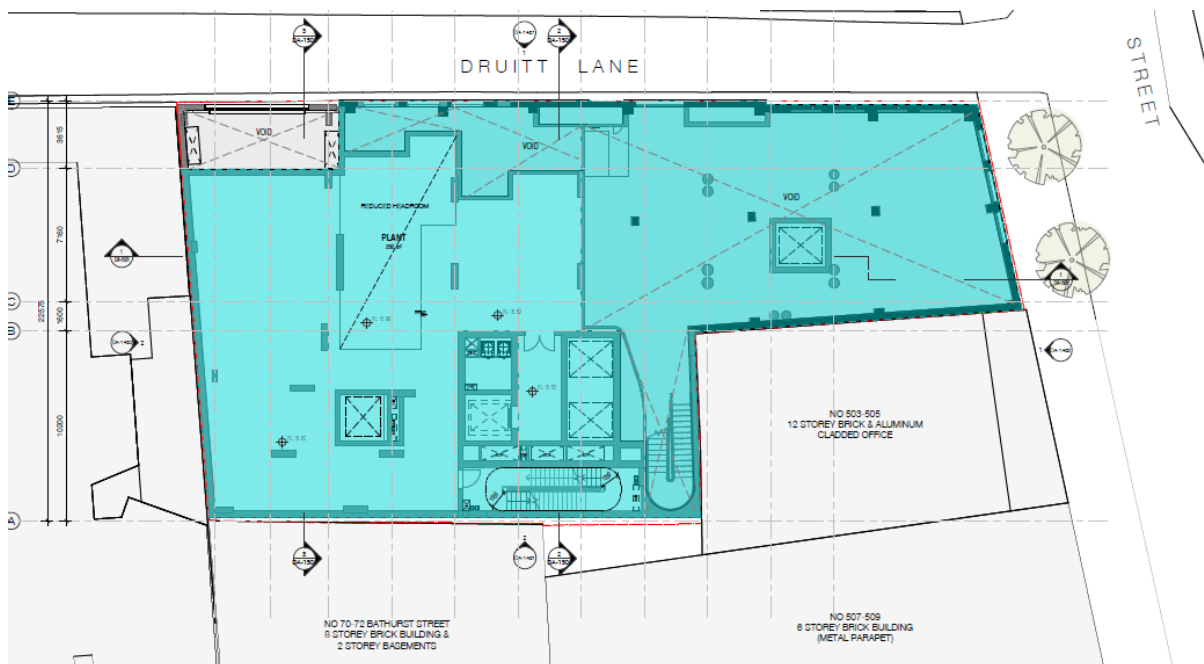


Figure 20: Comparison of the approved lower ground and ground levels footprint in blue and that of the concurrent Detailed Design DA

Condition (2) - Increase the footprint, and reduce the depth, of the basement envelope

54. It is proposed to reduce the depth of the basement by 1.48 metre (from RL4.30 to RL 5.78); and to increase the footprint by reducing the setback from the east, as shown in Figure 13 above and Figure 21 below. The increase in footprint is to accommodate the new consolidated internal circulation core of the concurrent Detailed Design DA, that is centrally located and services the basements, the heritage building, and the new hotel tower.

55. The reduction in overall basement depth would reduce the extent and complexity of excavation as well as the associated risks posed to neighbouring developments. It would also reduce risks posed to the CBD Rail Link (Zone B), which is adjacent to the basement envelope. TfNSW (Sydney Trains) has reviewed the proposed modification and raised no objections.
56. The increase in the basement footprint is entirely below ground and will not be visible from adjoining properties or the public domain. The proposed basement footprint is demonstrated by the Detailed Design DA as necessary to accommodate the consolidated internal circulation core, while accommodating the substation and other loading and servicing requirements of the proposed development. The additional excavation is considered acceptable by the submitted geotechnical report and the associated additional demolition to the heritage item is also considered acceptable by the submitted heritage impact statement and the City's Heritage Specialist.
57. Considering the above, the proposed changes to the basement envelope are considered acceptable.



Figure 21: Comparison of the approved basement extent and that of the Detailed Design DA

Condition (4)(b) - Correct the height reference point for the podium envelope

58. Condition (4)(b) currently states the maximum height of the podium envelope as RL 31.70 (AHD).
59. The podium envelope is intended to accommodate the existing heritage building.

60. The height of the existing heritage building has been surveyed in preparation of the concurrent Detailed Design DA. The survey identified the maximum height of the existing heritage building as RL31.89 (AHD), which is 190 millimetres above the height stipulated in Condition (4)(b).
61. Therefore, it is recommended that Condition (4)(b) be amended to reference the surveyed height of the existing heritage building. This ensures the podium envelope will wholly accommodate the existing heritage building.
62. The modification is considered administrative in nature, as the existing height of the heritage building is not being modified, and that heritage building will continue to form the podium of the concept envelope.

Condition (11) - Update reference to a Preliminary Public Art

63. Condition (11) references the Public Art Strategy submitted to support the original DA. Without prejudicing the competition process, the strategy restricted public art opportunities to within the future hotel lobby, with potential forms including interior suspended feature, lobby entry digital wall and sculptural pieces near the entry.
64. The Public Art Strategy has been incorporated into the design competition brief to inform the 'invited' competitive design alternatives process. This satisfied Condition (11)(a), and no amendments are required.
65. Following the completion of the 'invited' competitive design alternatives process, a Preliminary Public Art Plan has been developed. The Preliminary Public Art Plan reexamines the public art opportunities offered by SJB's competition winning scheme; and identified potential locations that are more public in nature and art forms that can be better integrated into the overall architecture. The Preliminary Public Art Plan has been reviewed by the City's Public Art Team and is considered acceptable.
66. To bring into consistency with the Detailed Design DA, it is recommended that Condition (11)(c) be amended to reference the Preliminary Public Art Plan. This will also require a Detailed Public Art Plan to be developed based on the Preliminary Public Art Plan following artist selection.
67. The requirement of Condition (11)(b) for selected artists concepts to be presented to the City's Public Art Unit prior to the development of a Detailed Public Art Plan will remain. The requirements of Condition (11)(d) for public art to be in accordance with the relevant policies and guidelines also remain applicable.
68. The development of a Detailed Public Art Plan, and the subsequent installation of public art to the City's satisfaction are required by conditions recommended for the concurrent Detailed Design DA.

Condition (12) - Heritage Conditions

69. The proposed modification to Condition (12)(a) is to allow additional indicative demolition of the following elements, as shown in Figures 7-10, and 12 above:
 - (a) sections of internal floor slabs;
 - (b) cutouts in internal floor slabs to accommodate a temporary construction crane, new structural columns for the hotel tower, and new skylights;

- (c) non-original fabric and openings on the Druitt Street lower ground level facade;
and,
 - (d) the remaining section of the western return wall.
70. Detailed investigations on the existing foundation of the heritage item are required as part of the certification process for the Detailed Design DA. The investigation will involve excavating the existing fill material several metres below the existing basement floor slab to establish the size, location, condition, and details of the existing foundation. While soil batters will be used, the existing basement floor slab will be undermined and necessitate full replacement.
71. Additional sections of the upper-level floor slabs are also required to be removed. This is because the structural support required by those sections of the slabs will be removed by the already approved demolition of the central lift/stair core and a relevant structural column.
72. On the other hand, the additional cutouts in the upper-level floor slabs are required to accommodate new structural columns for the new tower addition, new skylights, and a temporary construction crane. The new structural columns will independently support the new tower addition to avoid potential impacts (including alterations) on the existing steel columns and structural integrity of the heritage item, while the skylights will provide the heritage item improved access to natural light. The temporary construction crane is also necessary to facilitate the construction of the Detailed Design DA, given the constraints of the site and its surrounds.
73. Similarly, the proposed additional demolition to the Druitt Lane lower ground level facade is to alter the existing openings and replace non-original windows and roller doors to accommodate the new lower ground level entrance and new services, including water meter and fire-hydrant booster chamber.
74. The interior of the heritage building has been substantially modified and replaced. As such, the heritage significance of the building is largely confined to the external form of the building. In particular, the floor slab and the openings on the Druitt Street facade are identified to have little heritage significance. Their removal and modifications are therefore considered acceptable by the submitted heritage impact statement and the City's Heritage Specialist, and will not detrimentally impact on the significance of the heritage item.
75. A section of the western return wall was proposed to be retained as part of the concept consent. It is proposed to demolish this section of the return wall, and reconstruct it in its original location on the ground level and levels above to accommodate the new elements proposed by the Detailed Design DA, particularly on the basement and lower ground levels. This section of the return wall is currently concealed by a later addition to the heritage item, and other sections of the western return wall have also been approved for demolition. While this section of the return wall is identified to have moderate heritage significance, its replacement is considered acceptable by the submitted heritage impact statement and the City's Heritage Specialist.
76. The proposed modification to Condition (12)(b) is to reference the Schedule of Conservation Works by NBR Architecture Heritage that has been updated as part of the concurrent Detailed Design DA. The modification is administrative in nature.

77. The proposed modification to Condition (12)(c) is to allow options to interpret the central lift and stair core and the south-east lightwell of the heritage item to be scoped and developed by the heritage consultant (in a Heritage Interpretation Plan), and to remove the suggestion of a possible interpretation strategy. The proposed modification is considered acceptable, as it is commonplace for the heritage consultant to advise on possible interpretation strategy, and it is unnecessary for a condition to suggest a possible strategy.
78. Considering the above, the proposed modifications to Condition (12) are considered acceptable.

Condition (20) - Allows the removal of existing street trees

79. Two street trees are located on the site's Kent Street frontage. Both trees are London Plane (*Platanus x acerifolia*) of early to semi maturity. The trunks of the trees are located approximately 3m from the facade of the existing heritage building; while the crowns of the trees have developed asymmetrically towards Kent Street as a phototropic response.
80. The original concept application did not propose the removal of the 2 street trees. As such, an arborist report was not submitted to consider the likely impact associated with the redevelopment of the site. Condition (20)(a) was subsequently imposed to require the retention of both street trees, while Condition (20)(b) and (c) were imposed to ensure future detailed design will not adversely affect the trees, allowing them to reach maturity.
81. In preparation for the concurrent Detailed Design DA, construction strategies were investigated. It is identified that the redevelopment of the site would require the establishment of Class B hoarding, scaffolding, and a construction work zone on Kent Street. The construction work zone on Kent Street, in particular, is necessary as DrUITT Lane is not sufficient to accommodate the size of delivery vehicles required to facilitate redevelopment.
82. An arborist report is submitted to support the Detailed Design DA, which identifies the class B hoarding, scaffolding and construction work zone would result in over 40 per cent encroachments into the tree protection zones, and over 60 per cent encroachment into the trees' crowns, as shown in Figure 22 below. The construction work zone, and the transport of building materials over the Kent Street footpath and the existing heritage facade, would also result in substantial pruning of the existing street trees.

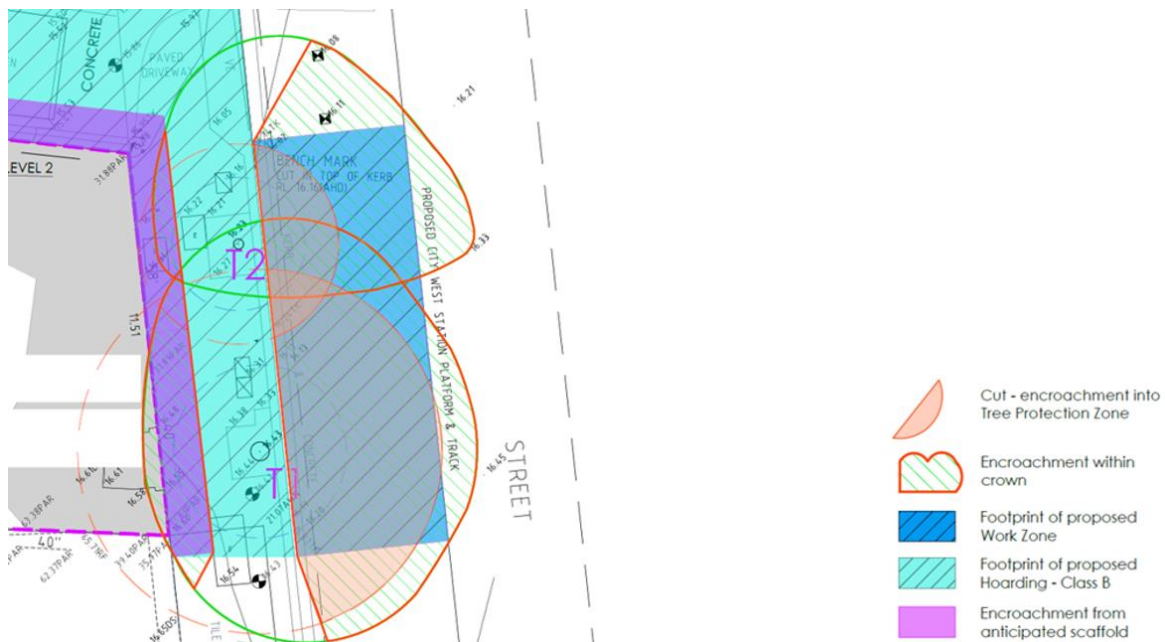


Figure 22: Indicative encroachments into tree protection zones and crowns (source: Arboricultural Impact Assessment by Arboreport)

83. The arborist report concludes that the substantial encroachments and pruning would severely affect the long-term health of the two existing street trees even if they are retained. Therefore, it is recommended that the two existing street trees be removed, and two replacement trees be provided as part of the Detail Design DA's public domain works.
84. The City's Tree Management Unit concurs that the substantial encroachments and pruning would warrant the removal and replacement of the two street trees. The City's Construction Regulation Unit also advised that the proposed construction strategy, which includes a construction work zone on Kent Street would be the only feasible solution.
85. Therefore, it is recommended that:
- Condition (20)(a) be deleted to no longer require the existing street trees to be retained;
 - Condition (20)(b) be amended to ensure future detailed design will not adversely affect the health and growth and any replacement street trees; and
 - Condition (20)(c) be deleted, as a driveway would only be supported from DrUITt Lane, which contains no street trees, to avoid impacts on pedestrian safety and traffic operation on Kent Street and to avoid impacts to the existing heritage building.

Condition (30) - Defer the application for public domain levels and gradients

86. Condition (30) currently requires an Application for Public Domain Levels and Gradients to be lodged concurrently with the Detailed Design DA. It also requires the application to be approved prior to the determination of the Detailed Design DA. The requirement of Condition (31) for a Public Domain Concept Plan to be submitted to include a proposal for converting DrUITt Lane into a shared zone is also relevant.

87. This application seeks to amend Condition (30) to defer the submission and approval of an Application for Public Domain Levels and Gradients with the intent to align with the timing required by a Detailed Design DA.
88. The concurrent Detailed Design DA is supported by a concept design to convert the full length of Druitt Lane into a shared zone. This is consistent with the requirement of Condition (31) of the subject concept consent. The concept design for converting Druitt Lane into a shared zone is supported by the City's Public Domain Unit, Access and Transport Unit, and Traffic Operations Unit. The City's Traffic Operation Unit has also obtained in principle agreement from TfNSW.
89. To implement the conversion of Druitt Lane, the concurrent Detailed Design DA will require a Detailed Public Domain Plan to be submitted and approved. As advised by the City's Public Domain Team, it is appropriate for public domain levels and gradients to be resolved concurrently with the Detailed Public Domain Plan. Therefore, an Application for Public Domain Levels and Gradients is no longer required to be submitted concurrently with, and approved prior to the determination of, a Detailed Design DA.
90. Therefore, it is recommended that Condition (30) be amended to allow the timing of resolving public domain levels and gradients to be determined by a subsequent Detailed Design DA.

Consultation

Internal Referrals

91. The subject application was discussed with the City's Heritage Specialist, Urban Design Specialist, Model Unit, Tree Management Unit, Construction Regulation Unit, Public Domain Unit, Access and Transport Unit, and Traffic Operations Unit. Relevant advice has been included in this report, and recommended modifications to conditions have been included in Attachment A.

External Referrals

92. The subject application was referred to Ausgrid and Transport for NSW, who raise no objections to the proposed modifications and recommended no modifications to the existing conditions of consent.

Advertising and Notification

93. In accordance with the City of Sydney Community Engagement Plan Participation Strategy 2023, the proposed modification was notified between 10 and 25 October 2023. The amended application received on 24 April 2024 was re-notified between 30 April and 15 May 2024. A total of 1,262 properties were notified and five submissions were received.

94. The submissions raised the following issues:

- (a) **Issue:** The amended concept envelope remains taller than the Sun Access Plane for the future Town Hall Square included in Sydney DCP 2012.

Response: The diagram included in Sydney DCP 2012 is extrapolated from the boundary of the future Town Hall Square without the context of existing buildings. As discussed in this report, a site-specific sun access plane has been established, and verified by the City's Model Unit. The amended concept envelope will entirely preserve sun access to the future Town Hall Square.

- (b) **Issue:** The proposed modifications will result in additional amenity impacts in terms of overshadowing and reduced outlook to the eastern apartments of 60 Bathurst Street, adjoining to the west.

Response: The proposed modifications will not result in additional amenity impacts to the eastern apartments of 60 Bathurst Street. As discussed in this report, the tapered western setback is maintained to preserve the same degree of solar access and outlook.

- (c) **Issue:** Construction of the proposed development will result in amenity and potential structural impacts to the adjoining residential development to the west.

Response: This concept consent does not consider/approve any physical works. This issue is addressed in the report for the concurrent Detailed Design DA, and appropriate conditions are recommended to the concurrent Detailed Design DA to manage the relevant construction impacts.

- (d) **Issue:** The removal of the courtyard and lightwell along the western boundary of 503-505 Kent Street, and the reduced Kent Street tower setback, are inconsistent with the design competition winning scheme.

Response: This concept consent does not consider any detailed design. This issue is considered further in the report for the concurrent Detailed Design DA.

- (e) **Issue:** The reduced Kent Street tower setback is inappropriate, resulting in additional amenity to 503-505 Kent Street and an adverse streetscape outcome. It also results in an overdevelopment of the site.

Response: The reduced Kent Street tower setback is considered acceptable as discussed in this report.

It is noted that the commercial development at 503-505 Kent Street do not rely solely on the windows located on the common boundaries with the subject site for solar access. Those boundary windows are also subject to a covenant that requires them to be sealed prior to the redevelopment of the subject site. This is to ensure the redevelopment potential of the subject site is not unduly compromised to improve the amenity of the adjoining property.

Financial Contributions

95. The subject application is not subject to any development contributions as it relates only to a concept envelope.
96. Appropriate conditions are recommended under the concurrent Detailed Design DA to levy the relevant contributions should consent be granted by the CSPC.

Relevant Legislation

97. Environmental Planning and Assessment Act 1979.
98. City of Sydney Act 1988.

Conclusion

99. This section 4.55(2) modification application proposes to alter the approved concept envelope and selected conditions of consent to be consistent with the Detailed Design DA (D/2023/868) that is presented to the CSPC concurrently for approval.
100. The proposed modifications will ensure consistency between the staged development applications in order to satisfy Section 4.24 of the Environmental Planning and Assessment Act 1979.
101. The development as proposed to be modified is substantially the same as that originally approved.
102. The modifications to the building envelope are supported as they do not result in unacceptable amenity impacts and deliver an envelope that can achieve an acceptable level of amenity for future occupants and adjoining properties.
103. The amended building envelope can accommodate a future building that exhibits design excellence in accordance with Clause 6.21C of the Sydney LEP 2012. This is demonstrated by the Detailed Design DA being considered concurrently by CSPC.
104. The modifications to conditions of consent are also supported as they do not result in unacceptable impacts to the public domain or diminish the significance of the retained heritage item.
105. The proposed modifications are therefore in the public interest and are recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Bryan Li, A/Area Coordinator