

**ITEM 11. DEVELOPMENT APPLICATION: 81-91 QUAY STREET
HAYMARKET**

FILE NO: D/2005/2103

SUMMARY

Date of Submission: 7 December 2005

Amended drawings received 13 August 2007,
Amended drawings received 27 February 2008

Applicant: Bernleigh Developments Pty Ltd

Summary: The present proposal is for the demolition of an existing 10 level commercial car park (Her Majesty's Theatre Car Park) and construction of a new commercial building. The proposal includes 13 levels above ground and 10 levels of basement car park for a total of 179 car spaces, being 162 public car spaces and 17 tenant car spaces.

A retail shop and commercial lobby are proposed at ground floor level with entry via Quay Street. Access to the public car park is proposed via Thomas Street. Public domain works include the widening of the Quay Street footpath.

The current proposal seeks consent for a building height of 50.7m, a total FSR of 17.6:1 (representing 9.4:1 above ground and 8.2:1 below ground) and basement parking for 179 cars (162 public car spaces and 17 tenant spaces).

Council granted consent for essentially a similar development in December 2005, comprising a height of 50 metres, a total FSR 18.4:1 and 12 levels of basement car parking for 214 cars (197 public car spaces and 17 tenant spaces). A copy of the previous assessment, including attachments is located at Attachment B.

Summary (continued)

Council considered the proposal numbered D/2005/2103 at its meeting of 7 April 2008. Proceedings were subsequently commenced in the Land and Environment Court (numbered 40655/08), by a third party under section 123 of the EP& A Act 1979 seeking a declaration that the consent granted by Council was invalid, void and no effect.

The applicant has submitted that the site benefits from existing use rights in respect of the existing car park. In summary, Clause 48A of the Central Sydney Local Environmental Plan 1996 has been held to create a prohibition in relation to the provision of no public car parking (see *Multistar Pty Limited v Sydney City Council* [1999] NSWLEC 205; and *Multistar Pty Limited v. The Minister for Urban Affairs and Planning & Anor* [No.2] [2000] NSWLEC 242).

On review of the relevant records, it appears that a public car park has operated on the site for a significant period. There is no evidence of surrender or abandonment of that use.

Council's Legal Unit accepts that the site does benefit from existing use rights within the meaning of s. 106 of the Environmental Planning and Assessment Act 1979. As such the provisions of any planning controls which derogate from the existing use provisions of the Environmental Planning and Assessment Act 1979 are not relevant to the determination of this Development Application. The planning controls continue to apply to the surrounding context, and in this regard are of relevance to inform the assessment of this application.

However an application for existing use rights on this particular site has not been proven in the court. On this basis, it is appropriate to consider the development both with and without the benefit of existing use rights.

If the applicant was incorrect in the assertion of existing use rights, then the primary instrument for the purposes of development assessment is the Central Sydney LEP 1996.

The application was lodged prior to gazettal of the current Sydney LEP 2005. It has been assessed having regard to the Central Sydney LEP 1996. The current Sydney LEP 2005 has also been taken into account.

Summary Continued

SEPP 1 Objections were submitted in response to proposed non-compliances with FSR and height controls (although if existing use rights are accepted there is no need for a SEPP 1). The proposed variation in height and FSR are considered acceptable as they will not result in increased amenity impacts on surrounding properties. In addition, the proposed FSR is less than previously approved, and the reduction in number of commercial car spaces will satisfy Council's requirements to discourage public car parking within central Sydney.

One objection was received in response to the original proposal and primarily related to view and amenity loss to the adjoining building located at 93 – 105 Quay Street. The original proposal was amended to delete one floor and reduce these impacts.

Summary Recommendation:

The development application is recommended for approval subject to conditions.

Attachments:

- A - Selected Drawings
- B - Report to the Planning Development and Transport Committee on 5 December 2005.
- C - Copy of Judgement Ricky Development Pty Ltd v Sydney City Council & Ors [2005] NSWLEC 729
- D - Copy of Judgement Grosvenor Australia Property Pty Ltd v Sydney CC and Rail Corporation NSW [2007] NSWLEC 2

RECOMMENDATION

It is resolved that consent be granted subject to the following conditions:

SCHEDULE 1A

Approved Development/Design Modifications/Covenants and Contributions/Use and Operation

Note: Some conditions in Schedule A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2007/2103 dated 7 December 2005 and Statement of Environmental Effects prepared by Planning Workshop Australia, dated August 2007 and the following drawings:

Drawing Number	Architect	Date
DA01/B	Stanisic Associates Architects	27.02.2008
DA02/B	Stanisic Associates Architects	27.02.2008
DA12/B	Stanisic Associates Architects	27.02.2008
DA13/B	Stanisic Associates Architects	27.02.2008
DA14/B	Stanisic Associates Architects	27.02.2008
DA15/B	Stanisic Associates Architects	27.02.2008
DA16/B	Stanisic Associates Architects	27.02.2008
DA16/1/B	Stanisic Associates Architects	27.02.2008
DA17/B	Stanisic Associates Architects	27.02.2008
DA18/B	Stanisic Associates Architects	27.02.2008
DA18/1/B	Stanisic Associates Architects	27.02.2008
DA19/B	Stanisic Associates Architects	27.02.2008
DA20/B	Stanisic Associates Architects	27.02.2008
DA21/B	Stanisic Associates Architects	27.02.2008
DA22/B	Stanisic Associates Architects	27.02.2008

Drawing Number	Architect	Date
DA22/1/B	Stanisic Associates Architects	27.02.2008
DA23/B	Stanisic Associates Architects	27.02.2008
DA23/1/B	Stanisic Associates Architects	27.02.2008
DA24/B	Stanisic Associates Architects	27.02.2008
DA25/B	Stanisic Associates Architects	27.02.2008
DA26/B	Stanisic Associates Architects	27.02.2008
DA27/B	Stanisic Associates Architects	27.02.2008
DA27/1/B	Stanisic Associates Architects	27.02.2008
DA28/B	Stanisic Associates Architects	27.02.2008
DA29/B	Stanisic Associates Architects	27.02.2008
DA29/1/B	Stanisic Associates Architects	27.02.2008
VA00/B	Stanisic Associates Architects	27.02.2008

and as amended by the conditions of this consent:

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

(2) DESIGN DETAILS (MAJOR DEVELOPMENT)

The design details of the proposed building facade including all external finishes, colours and glazing must be in accordance with the materials schedule and sample board, and specifications prepared by Stanisic Associates Architects dated 3 August 2007.

(3) BUILDING HEIGHT

- (a) The height of the building (as defined in the Dictionary in the Central Sydney Local Environmental Plan 1996) must not exceed RL 62.35.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the height of the building, to the satisfaction of the Principal Certifying Authority.

(4) FLOOR SPACE RATIO - CENTRAL SYDNEY

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio of the proposal must not exceed 9.5:1 for the commercial building and 8.2:1 for the car park calculated in accordance with the Central Sydney Local Environmental Plan 1996. For the purpose of the calculation of FSR, the Floor Space Area of the development is no more than 8388sqm for the commercial offices and 7200sqm for the car park.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the total and component Floor Space Areas (by use) in the development, utilising the definition under Sydney Local Environmental Plan 2005 applicable at the time of development consent, to the satisfaction of the Principal Certifying Authority.

(5) SEPARATE DA REQUIRED FOR FITOUT AND USE

A separate development application must be submitted at the appropriate time for the specific use and fit out of all commercial and retail tenancies.

(6) OUTDOOR SEATING

A separate development application must be submitted at the appropriate time for outdoor seating.

(7) STRATA SUBDIVISION – SEPARATE DA REQUIRED

(8) LOT CONSOLIDATION

(9) KERB REALIGNMENT

Prior to the commencement of any work within the public way associated with the realignment of the kerb line in the public way and reconstruction of the footway and carriageway formation, detailed engineering road and drainage works design and construction plans are to be submitted to Council and approval gained for all road and drainage works required as a consequence of the development. Such plans are to include:-

- (a) Location of all public utility services in the vicinity of the proposed works and details of any alterations or deviations required;
- (b) Geometric design, construction materials and specifications of the proposed carriageway and footway formation including kerb and gutter, road and footpath pavement, vehicle crossings and pram ramps;
- (c) Details of existing formation and materials to be removed or relocated;
- (d) Hydraulic and geometric design of any proposed alterations or deviations of the stormwater drainage system and property connections required; and
- (e) Details of any landscaping, tree planting, street furniture and street lighting.

All proposed civil works are to be designed and constructed in accordance with Council's standards and requirements and AUSPEC #1 specifications.

The submission to Council is to include:

- (i) The detailed engineering plans in duplicate and a Certification Form prepared and signed by an appropriately qualified practicing Civil Engineer.
- (ii) The certification repeated for each revision issued to Council.
- (iii) The nomination of an appropriately qualified practicing engineer who is to supervise construction and certify that upon completion, all works and procedures comply with the certified plans and specifications.

(10) VEHICLE FOOTWAY CROSSING

(11) USE OF CAR PARK

(12) CAR PARK MANAGEMENT PLAN

(13) CAR PARKING SPACES AND DIMENSIONS

A maximum of 179 off-street car parking spaces must be provided. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan. The details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

(14) SEALING OF CAR PARK

(15) SECURITY GATES

(16) RESTRICTION ON USE OF CAR SPACES – COMMERCIAL WITH NO STRATA SUBDIVISION

(17) VEHICLES ENTER/LEAVE IN FORWARD DIRECTION

(18) SIGNS AT EGRESS

(19) BICYCLE PARKING

(20) CAR PARK PLAN OF MANAGEMENT

A car park management plan shall be submitted for approval by Council prior to the issue of a Construction Certificate. The plan shall include both segregation of the tenant and service vehicle parking spaces from the public car parking spaces and an efficient and proper use of the courier parking spaces.

(21) LOADING WITHIN SITE

(22) COST OF TRAFFIC MANAGEMENT

(23) ALLOCATION FOR VISITOR PARKING

(24) LOADING/PARKING KEPT CLEAR

(25) ARTICULATED VEHICLES

(26) SHORT STAY PUBLIC CAR PARKS

(27) ACCESSIBLE CAR PARKING SPACES

Of the required car parking spaces, at least 2 must be 3.2m x 5.5m minimum (with minimum headroom of 2.5m) and must be clearly marked and appropriately located as accessible parking for people with mobility impairment. The design and layout of accessible car parking for people with mobility impairment is to be provided in accordance with Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and the *'City of Sydney Access Development Control Plan 2004'*. The details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

(28) NOISE - USE (GENERAL)

(29) NOISE - MECHANICAL PLANT AND EQUIPMENT

(30) CARE OF BUILDING SURROUNDS

(31) REMOVAL OF GRAFFITI

(32) BOUNDARY WINDOWS COVENANT

All windows adjacent to the western boundary of the site must be sealed, bricked up or otherwise enclosed, prior to the construction of any building abutting, adjoining or adjacent to such windows. A covenant to the approval of Council is to be placed on the title of all units facing the affected boundary to this effect. Evidence of the creation of the covenant is to be submitted prior to issue of a Construction Certificate under the Environmental Planning and Assessment Act 1979.

(33) CAR PARK ENTRY FINISH

Car park roller doors shall be designed and constructed for quiet operation.

(34) SECTION 61 CONTRIBUTIONS PAYABLE - REGISTERED QUANTITY SURVEYOR'S DETAILED COST REPORT - SUBMITTED AND VERIFIED PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

SCHEDULE 1B

Prior to Construction Certificate/Commencement of Work/Health and Building

Note: Prior to the issue of a Construction Certificate, a sufficient information must be forwarded to the Certifying Authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate.

(35) PUBLIC DOMAIN PLAN

Three copies of a detailed Public Domain Plan must be prepared by an architect, urban designer or landscape architect and must be lodged with Council's Public Domain Section and approved by Council prior to a Construction Certificate being issued for any new building work excluding approved preparatory, demolition or shoring work. It is recommended that draft plans should be submitted for comment prior to formal submission for approval.

The Public Domain Plan must be prepared in accordance with the City of Sydney's Public Domain Manual. The works to the public domain are to be completed in accordance with the approved plan and the Public Domain Manual before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.

Note: A security deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges. You should contact Council to determine deposit amount prior to payment.

(36) PUBLIC ART

(37) ALIGNMENT LEVELS

(38) PAVING MATERIALS

(39) FOOTPATH DAMAGE BANK GUARANTEE

(40) PHOTOGRAPHIC ARCHIVAL DOCUMENTATION (MAJOR WORKS)

Procedure

For buildings or structures with heritage significance, the archival documentation, and the number and type of selected enlarged photographs required will be determined by the significance and quality of the building or structure. For a scope of work, refer to Council's Heritage Specialist to determine the particular architectural/design features of the building/site that may need to be recorded.

For buildings or structures with no heritage significance the archival documentation requirements are less comprehensive, and may just be limited to contextual and exterior photographs only. However, this will depend upon the type, complexity and significance of the building, and should be confirmed with the Area Planning Manager, and if necessary Council's Heritage Specialist.

Because significant fabric may remain concealed and only be exposed during construction works, the archival recording is to be undertaken in stages, prior to the removal of any significant building fabric or furnishings from the site, during the removal of fabric on site that exposes significant building fabric or furnishings, and after work has been completed on site, as considered appropriate by the conservation architect commissioned for the project, and submitted as two parts as follows:

- (A) The first submission of the archival recording of significant building fabric or furnishings is to be prior to the removal of any significant building fabric or furnishings from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.
- (B) The second submission of the archival recording is of significant building fabric or furnishings that is exposed during demolition or construction and after work has been completed on site, and must be submitted to Council prior to an Occupation Certificate being issued.

The form of recording is to be a photographic documentation of the site and its context, and the exteriors and interiors of the existing building(s) photographed, where appropriate, using a camera/lens capable of 'perspective correction'. The photographic recording may be in either digital or film-based form, or a combination of both, prepared in accordance with the NSW Heritage Office guidelines titled 'Photographic Recording of Heritage Items using Film or Digital Capture'. One copy of the record is to be submitted to Council to be lodged with Council's Archives.

- (a) For each of the two submissions listed above in (A) and (B), the form of the recording is to be as follows:
 - (i) In A4 format, placed in archival plastic sleeves in an appropriate archival folder.
 - (ii) The Development Application number and the Condition of Consent number must be noted on the front of the folder and in the report.
 - (iii) Include a summary report detailing the project description, date and authorship of the photographic record, method of documentation and limitations of the photographic record.
 - (iv) Each negative, slide or digital image is to be cross referenced to a photographic catalogue and photographic base plans.
 - (v) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.
- (b) A digital based recording is to include:
 - (i) Thumbnail image sheets and a selection of A5 or A4 size images, all labelled and cross-referenced to the catalogue sheets and base plans, and processed on A4 size archival photographic paper using stable archival inks.
 - (ii) CD or DVD containing the report in PDF format and the electronic images saved as JPEG or TIFF files and cross referenced to the catalogue sheets.

- (c) If the option of a film based recording is selected, it is to include 35mm film images submitted as contact sheets with equivalent negatives, a selection of black and white prints 200 x 250mm, and 35mm colour transparencies, all labelled and cross-referenced to the catalogue sheets and base plans.

(41) ENERGY EFFICIENCY OF BUILDINGS

(42) INSTALLATION OF DUAL-FLUSH TOILETS

(43) INSTALLATION OF WATER EFFICIENT TAPS

(44) INSTALLATION OF WATER EFFICIENT URINALS

(45) INTERNAL LIGHTING SYSTEM

(46) PHYSICAL MODELS

**(47) SUBMISSION OF ELECTRONIC MODELS PRIOR TO CONSTRUCTION
CERTIFICATE AND PRIOR TO OCCUPATION CERTIFICATE**

(48) SITE AUDIT STATEMENT

- (a) Prior to the execution of works associated with the built form of the development, a Site Audit Statement is to be submitted to Council clearly indicating that the site is suitable for the proposed use. Conditions on the Site Audit Statement shall form part of this consent.
- (b) That prior to the exportation of waste (including fill or soil) from the site, the material should be classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Environmental Guidelines Assessment, Classification and Management of Non-Liquid Wastes. The classification of the material is essential to determine where the waste may be legally taken. The Protection of the Environment Operations Act 1997 provides for the commission of an offence for both the waste owner and the transporter if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For transport and disposal of industrial, hazardous or group A liquid waste, advice should be sought from the EPA.
- (c) Where the Site Audit Statement is subject to conditions that require ongoing review by the Auditor or Council these conditions should be discussed with Council before the Site Audit Statement is issued.

**(49) STRUCTURAL CERTIFICATION FOR DESIGN - BCA (ALL BUILDING
CLASSES)**

(50) CERTIFICATION OF GEOTECHNICAL INSPECTION

(51) GEOTECHNICAL REPORT AND CERTIFICATION

(52) BCA - NEW BUILDINGS WORKS - CLASS 2-9 BUILDINGS

(53) ANNUAL FIRE SAFETY STATEMENT FORM

(54) FIRE SAFETY CERTIFICATE TO BE SUBMITTED

(55) SPRINKLER SYSTEM

(56) NO DEMOLITION PRIOR TO A CONSTRUCTION CERTIFICATE

(57) DEMOLITION, EXCAVATION AND CONSTRUCTION MANAGEMENT

- (a) Prior to the commencement of demolition and/or excavation work the following details must be submitted to and be approved by the Principal Certifying Authority:
- (i) Plans and elevations showing distances of the subject building from the site boundaries, the location of adjoining and common/party walls, and (where applicable) the proposed method of facade retention.
 - (ii) A Demolition Work Method Statement prepared by a licensed demolisher who is registered with the Work Cover Authority. (The demolition by induced collapse, the use of explosives or on-site burning is not permitted.)
 - (iii) An Excavation Work Method Statement prepared by an appropriately qualified person.
 - (iv) A Waste Management Plan for the demolition and or excavation of the proposed development.
- (b) Such statements must, where applicable, be in compliance with AS2601-1991 Demolition of Structures, the Occupational Health and Safety Act 2000 and Regulation; Council's Policy for Waste Minimisation in New Developments 2005, the Waste Minimisation and Management Act 1995, and all other relevant acts and regulations and must include provisions for:
- (i) A Materials Handling Statement for the removal of refuse from the site in accordance with the *Waste Minimisation and Management Act 1995*.
 - (ii) The name and address of the company/contractor undertaking demolition/excavation works.
 - (iii) The name and address of the company/contractor undertaking off site remediation/disposal of excavated materials.
 - (iv) The name and address of the transport contractor.
 - (v) The type and quantity of material to be removed from site.
 - (vi) Location and method of waste disposal and recycling.
 - (vii) Proposed truck routes, in accordance with this development consent.

- (viii) Procedures to be adopted for the prevention of loose or contaminated material, spoil, dust and litter from being deposited onto the public way from trucks and associated equipment and the proposed method of cleaning surrounding roadways from such deposits. (Note: With regard to demolition of buildings, dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site).
 - (ix) Measures to control noise emissions from the site.
 - (x) Measures to suppress odours.
 - (xi) Enclosing and making the site safe.
 - (xii) A certified copy of the Public Liability Insurance indemnifying Council for \$10,000,000 against public prosecution for the duration of the demolition works.
 - (xiii) Induction training for on-site personnel.
 - (xiv) Written confirmation that an appropriately qualified Occupational Hygiene Consultant has inspected the building/site for asbestos, contamination and other hazardous materials, in accordance with the procedures acceptable to Work Cover Authority.
 - (xv) An Asbestos and Hazardous Materials Clearance Certificate by a person approved by the Work Cover Authority.
 - (xvi) Disconnection of utilities.
 - (xvii) Fire Fighting. (Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed).
 - (xviii) Access and egress. (Demolition and excavation activity must not cause damage to or adversely affect the safe access and egress of the subject building or any adjacent buildings).
 - (xix) Waterproofing of any exposed surfaces of adjoining buildings.
 - (xx) Control of water pollution and leachate and cleaning of vehicles tyres (proposals must be in accordance with the *Protection of the Environmental Operations Act 1997*).
 - (xxi) Working hours, in accordance with this development consent.
 - (xxii) Any Work Cover Authority requirements.
- (c) The approved work method statements and a waste management plan as required by this condition must be implemented in full during the period of construction.

(58) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL

- (a) A Waste Management Plan is to be approved by the Certifying Authority prior to a Construction Certificate being issued. The plan must comply with the Council's Policy for Waste Minimisation in New Developments 2005. All requirements of the approved Building Waste Management Plan must be implemented during construction of the development.

UPON COMPLETION OF THE DEVELOPMENT

- (b) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must ensure that waste handling works have been completed in accordance with: the Waste Management Plan; other relevant development consent conditions; and Council's Policy for Waste Minimisation in New Developments 2005.

(59) BARRICADE PERMIT

(60) EROSION AND SEDIMENT CONTROL - BETWEEN 250 AND 2,500SQM

Prior to the commencement of demolition/excavation/construction work, an Erosion and Sediment Control Plan (ESCP) must be submitted to and be approved by the Principal Certifying Authority. The ESCP must:

- (a) Conform to the specifications and standards contained in Managing Urban Stormwater: Soils and Construction (Landcom, 2004); the Guidelines for Erosion and Sediment Control on Building Sites (City of Sydney, 2004); and the NSW Protection of the Environment Operations Act 1997.
- (b) Include a drawing(s) that clearly shows:
 - (i) location of site boundaries and adjoining roads
 - (ii) approximate grades and indications of direction(s) of fall
 - (iii) approximate location of trees and other vegetation, showing items for removal or retention
 - (iv) location of site access, proposed roads and other impervious areas
 - (v) existing and proposed drainage patterns with stormwater discharge points
 - (vi) north point and scale
- (c) Specify how soil conservation measures will be conducted on site including:
 - (i) timing of works
 - (ii) locations of lands where a protective ground cover will, as far as is practicable, be maintained

- (iii) access protection measures
- (iv) nature and extent of earthworks, including the amount of any cut and fill
- (v) where applicable, the diversion of runoff from upslope lands around the disturbed areas
- (vi) location of all soil and other material stockpiles including topsoil storage, protection and reuse methodology
- (vii) procedures by which stormwater is to be collected and treated prior to discharge including details of any proposed pollution control device(s)
- (viii) frequency and nature of any maintenance program
- (ix) other site-specific soil or water conservation structures.

(61) SYDNEY WATER CERTIFICATE (QUICK CHECK)

(62) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES

(63) STORMWATER AND DRAINAGE - MAJOR DEVELOPMENT

(64) RECEPTACLES FOR CIGARETTE BUTTS

Receptacles for the disposal of cigarette butts are to be provided on the site, adjacent to each of the entrance/s to the building. Prior to a Construction Certificate being issued, the location and design of the receptacle/s must be approved by Council. The receptacle/s must:

- (a) be located entirely on private property and must not be located on or over Council's footpath;
- (b) not obstruct any required means of egress or path of travel from the building required by the Building Code of Australia;
- (c) be appropriately secured to the building;

The emptying and maintenance of the receptacle/s must be done on a daily basis and is the responsibility of the building owner/manager.

(65) ELECTRICITY SUBSTATION

(66) TELECOMMUNICATIONS PROVISIONS

(67) MECHANICAL VENTILATION

(68) CONTINUED PERFORMANCE OF MECHANICAL VENTILATION

(69) CAR PARK VENTILATION

(70) CONTROL OF LEGIONNAIRES DISEASE

(71) UTILITY SERVICES

(72) ARCHAEOLOGICAL INVESTIGATION

(73) ROAD OPENING PERMIT

(74) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

(75) TRACHYTE KERBING

As a consequence of its heritage significance, any trachyte kerbing to be removed or relocated is to be protected, stored and re-installed in accordance with Council's requirements and to its satisfaction. The owner of the site must provide a bank guarantee for \$20,000 as security for any damage rectification.

(76) USE OF MOBILE CRANES

(77) FIRE SAFETY PROCEDURES ON CONSTRUCTION SITES

The applicant must ensure that adequate precautions against fire are made on the site during construction works prior to the occupation of the building. In this regard the following measures must be implemented:-

- (a) Fire services must be provided in accordance with E1.9 of the Building Code of Australia;
- (b) An emergency response plan must be developed for the site that includes:
 - (i) An emergency response point where emergency agencies (fire brigade, police, ambulance, gas and electricity authorities) should access the site;
 - (ii) Preparation of a floor plan showing the layout of the building, including the location of the electrical switchboard, installed fire services, and valve and control locations;
 - (iii) Preparation of a contact list of Project Managers and a designated "Emergency Officer";
 - (iv) Provision of a hardstand area where fire brigades or police can set up operations.
- (c) Prior to commencement of work the emergency response plan must be submitted to the police, ambulance and fire brigade for evaluation and assessment.

(78) DEMOLITION/SITE RECTIFICATION (if cost is under \$50m)

The following conditions apply to the development:

- (a) Demolition or excavation must not commence until a Construction Certificate has been issued for construction of the substantive building.

- (b) Prior to the Construction Certificate being issued, documentary evidence must be provided to Council that the owner of the site has entered into a Deed with Council, the cost of preparation and execution of such Deed (including stamp duty and registration fees) to be borne by the applicant, which contains such conditions as the Council reasonably requires to ensure the matters set out in this condition are adequately provided for.
- (c) Without limiting the generality of paragraph (b), the Deed must provide for:
- (i) a bank guarantee to be provided in the sum of \$220,125 dollars as security for the costs of such works provided that:
 - a. the maximum liability under the Deed must not exceed \$220,125 dollars; and
 - b. the Council may accept a lesser amount as security if substantiated by detailed design and Quantity Surveyor costing for works which meet the objectives of the condition.
 - (ii) Council to be given sufficient contractual rights to be able to ensure that in any of the following events namely:
 - a. demolition of the existing building has commenced but not been completed;
 - b. the existing building has been demolished; or
 - c. the site has been excavated; or
 - d. the structure has commenced to be erected;that it, or any person authorised by it, may enter the site and carry out such works at the cost of the applicant (or such other person as the consent authority may approve) as may be then appropriate in the circumstances in each of the abovementioned events, to:
 - e. make the building safe and attractive at ground level;
 - f. allow the ground level to be landscaped and made attractive from any public vantage point; or
 - g. for the hole to be covered to allow it to be landscaped and made attractive from any public vantage point; or
 - h. in the event that the new building is constructed beyond the ground floor, to allow any hoardings to be removed and the ground floor development to be completed to a tenable stage;

AND to call on such bank guarantee to cover the cost thereof.

- (d) If the site is commenced to be developed and there is suspension in activity for 6 months (or suspensions of activity which in the aggregate exceed 6 months), resulting in an unattractive building site appearance, then the Council will have the readily enforceable rights to:
 - (i) require certain works including but not limited to those works necessary to achieve the results referred to in sub-clause (c) (ii) e - h to take place on the site; and
 - (ii) in the event of default, must have the right to enter and carry out these works and to call upon security in the nature of a bank guarantee to cover the cost of the works.
- (e) The Deed may provide for the release of the Bank Guarantee at such time that the Final Occupation Certificate for the approved development is released. If the approved development also relates to works to existing buildings, the relevant Final Occupation Certificate is the one that relates to that part of the approved development which involves the demolition and new construction.

(79) APPLICATION FOR HOARDINGS AND SCAFFOLDING ON A PUBLIC PLACE

SCHEDULE 1C

During Construction/Prior to Occupation/Completion

- (80) OCCUPATION CERTIFICATE TO BE SUBMITTED**
- (81) HOURS OF WORK AND NOISE – CBD**
- (82) SITE NOTICE OF PROJECTS DETAILS AND APPROVALS**
- (83) USE OF APPLIANCE OF A HIGHLY INTRUSIVE NATURE**
- (84) DEED OF AGREEMENT**
- (85) LIGHTING OF SITE OUTSIDE OF STANDARD CONSTRUCTION HOURS**
- (86) LOADING AND UNLOADING DURING CONSTRUCTION**

The following requirements apply:

- (a) All loading and unloading associated with construction must be accommodated on site.
- (b) A Works Zone is required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.

- (c) The structural design of the building must permit the basement and/or the ground floor to be used as a loading and unloading area for the construction of the remainder of the development.
- (d) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (e) In addition to any approved construction zone, provision must be made for loading and unloading to be accommodated on site once the development has reached ground level.

(87) ACCESS DRIVEWAYS TO BE CONSTRUCTED

(88) COVERING OF LOADS

(89) EROSION AND SEDIMENT CONTROL

(90) PROTECTION OF STREET TREES DURING CONSTRUCTION

(91) NOTIFICATION OF EXCAVATION WORKS

(92) SYDNEY WATER CERTIFICATE

(93) VEHICLE CLEANSING

(94) NO OBSTRUCTION OF PUBLIC WAY

(95) SURVEY CERTIFICATE AT COMPLETION

(96) SHOP NUMBERING

(97) STREET NAME PLATE

(98) STREET NUMBERING – MAJOR DEVELOPMENT

(99) NOTIFICATION OF EXCAVATION WORKS

(100) USE OF APPLIANCE OF A HIGHLY INTRUSIVE NATURE

SCHEDULE 2

The prescribed conditions in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000 apply to the development.

BACKGROUND

The Site and Surrounding Development

1. The subject site includes 2 parcels of land, being Lot 1 (DP 408335) and Lot 1 (DP713058), which have a combined area of 880.5sqm. The levels on the site fall from south to north by approximately 1.2 metres.
2. The site is occupied by 'Her Majesty's Car Park'. The existing building has two basement levels and 8 above ground levels accommodating 214 car spaces which are used for public car parking. The evolution of the car park was investigated both in relation to this application and the preceding application numbered 2005/2103. In summary the existing envelope was constructed in the 1970's. Council approved a part 7 storey, part 8 storey building on 24 June 1974. The original approved scheme included a restaurant at the ground floor level, a parking station for a total of 160 cars on the first to the sixth floor, and an administrative office on the seventh floor. In December 1974, the Council approved the inclusion of childminding on the seventh floor. In July 1975, Council granted consent to removal of the approved restaurant and child minding floor. In December 1977, the Council approved the deletion of offices and the use as car parking. In 1978, the Minister for Planning and Environment upheld an approval to permit operation between 7.30 am and midnight, Monday to Friday. In March 1980, the Minister for Planning upheld an appeal to increase the capacity from 176 spaces to 214 car spaces.
3. The site has a frontage of approximately 32 metres to Quay Street and 23.5 metres to Thomas Street, and is irregular in shape. The irregular shape creates a curved boundary to Quay Street and to the adjoining site to the west. The building is an open slab structure with concrete panels.
4. A location plan is provided below.

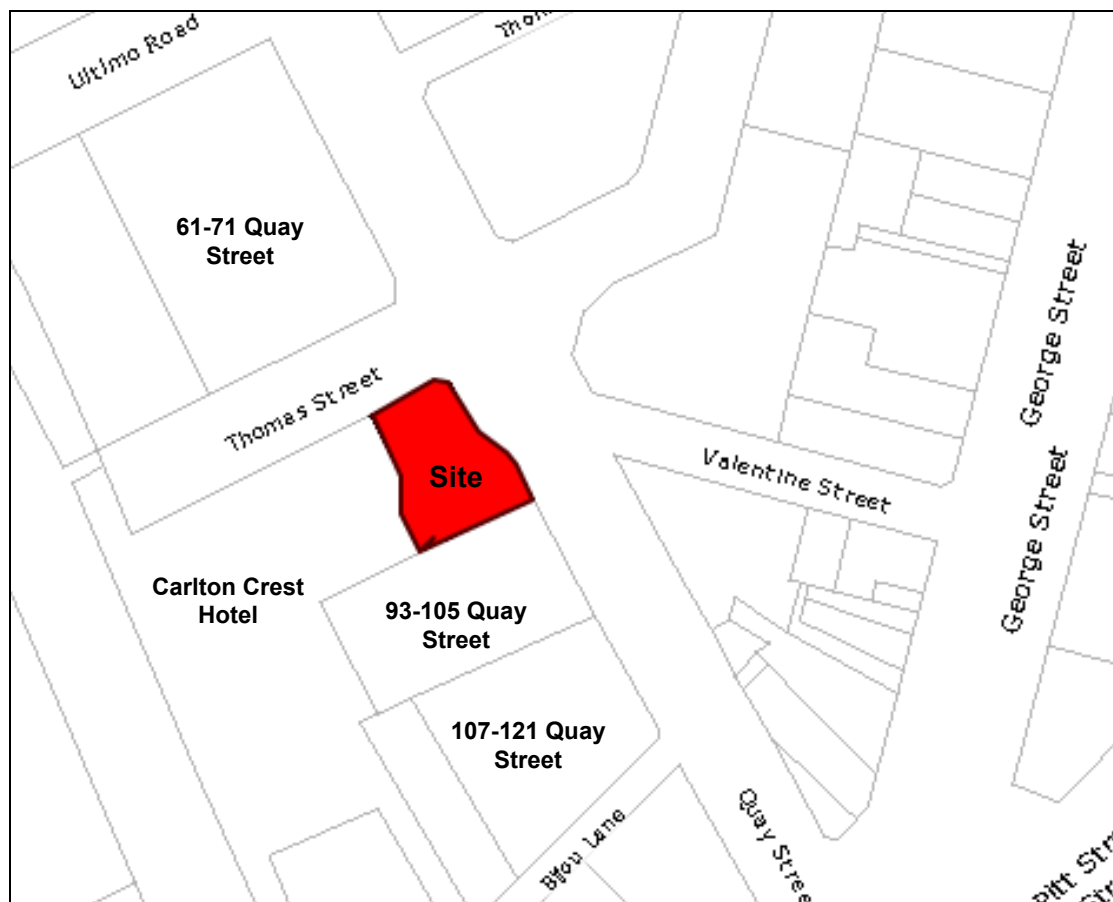


Figure 1: Location Plan

5. Cars currently enter the car park from Thomas Street and exit into Quay Street. Pedestrian access is located at the junction of Quay and Thomas Streets. The site is surrounded by mature plane trees.

Surrounding development

6. To the south of the site is a 17 storey residential and serviced apartment building (93-105 Quay Street). The development was approved by the Land and Environment Court on 9 November 1999 (1999/453) a copy of the judgement is attached. That development has an FSR of 9.7:1 (14,882sqm) and a maximum height of 52.45 metres (RL 64.95), and a podium height of 22 metres with a graduated setback from Quay Street ranging from 7.4 metres to 11.6 metres. The building exceeds the height control by between 2.09 and 2.63 metres. Consent was granted for the change of use from residential to serviced apartments in May 2005 (D/2005/315). The top floor contains two storey penthouse residential apartments.
7. Further to the south is 107-121 Quay Street (formerly occupied by Her Majesty's Theatre) which is occupied by a 16 storey residential building with a maximum height 51.85 metres (RL 65.59) and an FSR of 7.25:1. The building contains 190 residential strata apartments, ground floor retail use and 4.5 levels of basement parking for 199 cars. The building exceeds the height control by 1.85 metres.

8. To the west of the site is 175-179 Thomas Street, a Schedule 1 Heritage Item. The building is 2 storeys in height with 38 metre frontage to Thomas Street. The building provides the main entry component of the Carlton Crest Hotel (further to the west) which has a maximum height of 65 metres and a podium fronting Thomas Street.
9. To the north is a vacant allotment at 61-79 Quay Street and 178 Thomas Street which is partly used as an on-grade car park. A double storey masonry facade has been partially retained at the corner of Quay Street and Ultimo Road. On 6 December 2007, a Stage 1 application for a commercial building envelope comprising a maximum height of 50 metres and basement car parking comprising 227 spaces was approved. A condition included on the consent requires the approved Stage 1 envelope to comply with the FSR control (7.5:1).
10. Photos of the site and surrounds are provided below.

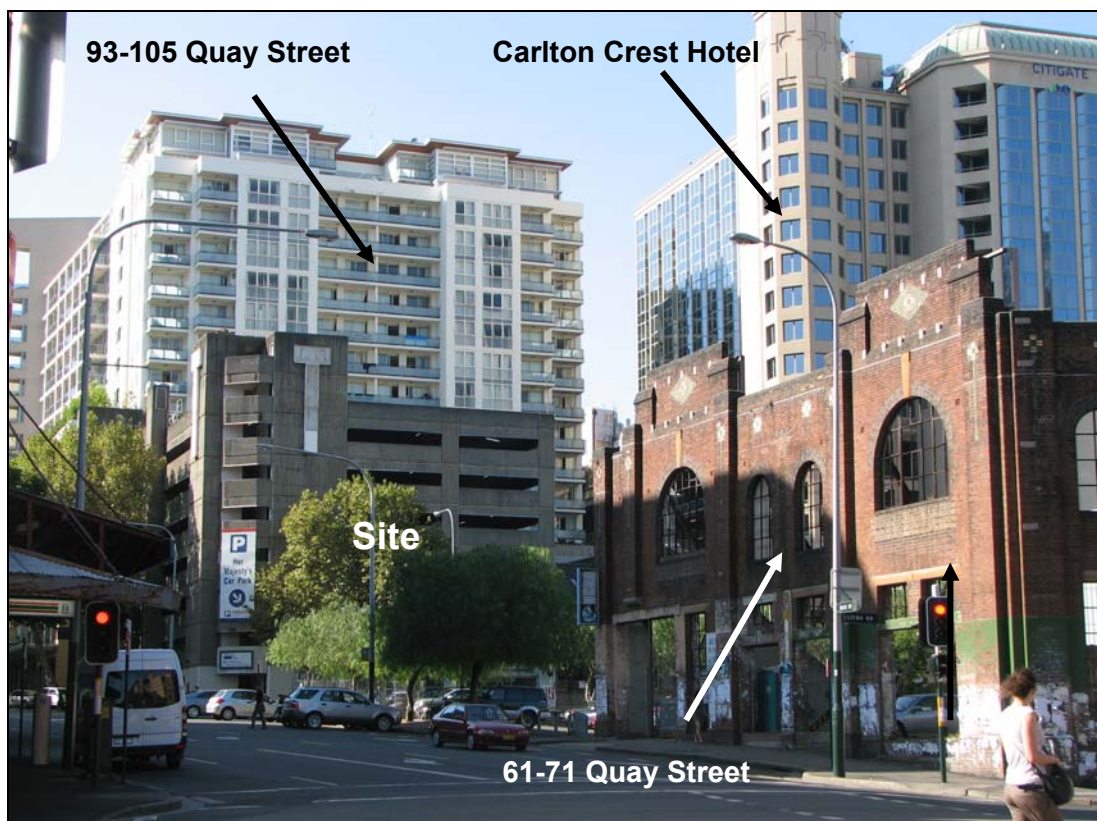


Figure 2: Site as viewed from Quay Street looking south and showing surrounding development.

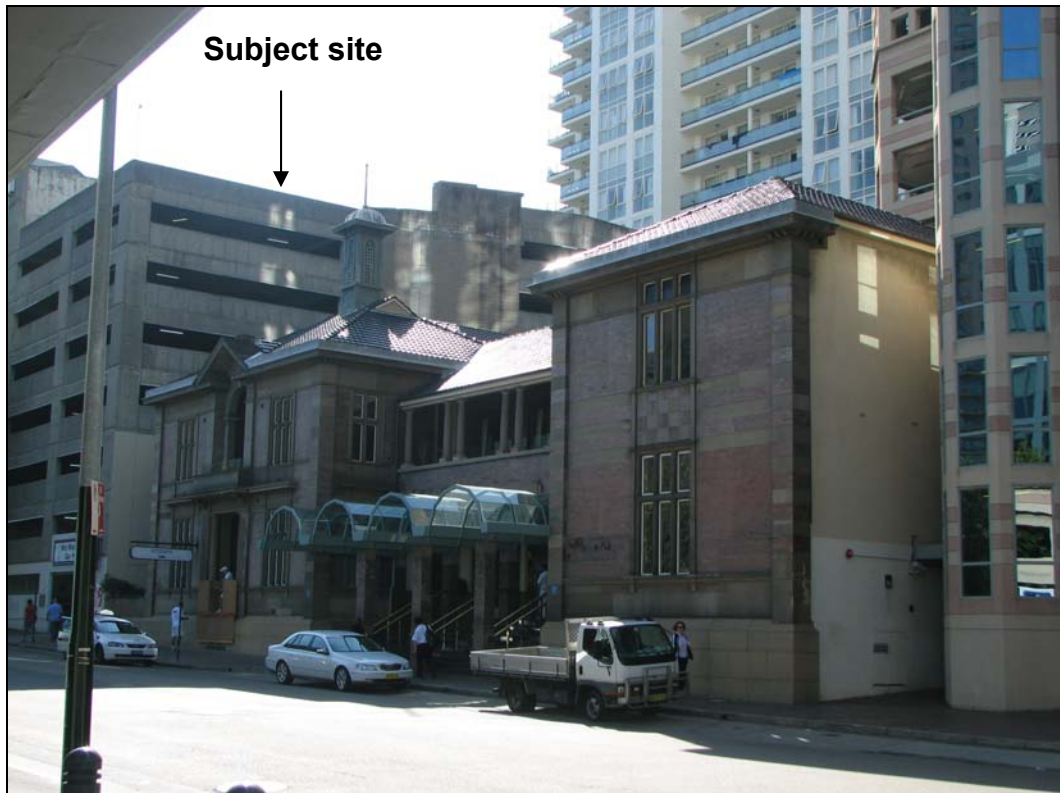


Figure 3: View of heritage building which forms part of the Carlton Crest Hotel (169-179 Thomas Street) and situated to the west of the subject site.

History of Development Applications Relevant to this Site

11. The following development applications are considered relevant to the subject site and the proposed development:

Existing Car Park

- (a) The present Structure on the site comprises a part 7 and part 8 storey public car park with a total of 214 car spaces,

D/2005/473

- (b) On 12 December 2005 a development application was approved by Council for an 11 storey commercial building and 12 basement levels of public car parking for 214 cars. The approved building had a maximum height of 50 metres and a FSR of 7.5:1 (above ground). The height and massing of the scheme “above ground” essentially complies with the relevant controls as set out in Central Sydney LEP 1996



Figure 5: Thomas Street elevation of approved development.

PROPOSAL

12. The development application was originally lodged on 8 December 2005 (prior to gazettal of the current Sydney LEP 2005, 9 December 2005). Clause 14 of LEP 2005 entitled "Saving of certain Development Applications and Development Plans" provides that the development application is not regulated by that instrument. It is therefore within the class of applications which would usually be assessed under the Central Sydney LEP 1996. This prior instrument (that is, the LEP 1996) relevantly contains a prohibition in respect of public car parking, and (as such) gives rise to the applicants asserted existing use rights. However, it may be helpful to compare the 1996 controls to that of the Sydney LEP 2005.
13. The relevant controls include:

	Central Sydney LEP 1996	Sydney LEP 2005
Zoning	City Centre	City Centre
Height	50 metres	50 metres
Floor space	7.5:1 (commercial) 8:1 (residential, serviced apartments)	7.5:1 (commercial) 8:1 (residential, serviced apartments)

	Central Sydney LEP 1996	Sydney LEP 2005
Car Parking	Public car parking prohibited under clause 48A	Public Car parking permissible (refer Part 5 and clause 66(4) in particular)
Car parking (tenant)	Clause 48	Clause 65
Special area	Special Area D - Haymarket	Special Area 4 - Haymarket

14. In summary the overall numeric controls are broadly similar. When viewed in the context of the present application, the main points of difference between the two instruments lie (firstly) the consideration of public car parking; and (secondly) the consideration of variation to the controls.
15. Both the Central Sydney LEP 1996 and the Sydney LEP 2005 seek to discourage public car parking. The explanatory notes to Part 5 Central Sydney LEP 1996 and the Sydney LEP 2005 both identify that the *“continued attraction of excessive private vehicles”* in inconsistent with the *“environmental quality” (1996) or ecologically sustainable objectives (2005)* of the plans. However, while excessive commuter parking is discouraged, the LEP 2005 does not prohibit development for the purpose of the public car parking on land which public car parking already lawfully exists.
16. Under clause 66(4) of the Central Sydney LEP, a redevelopment of this site may include up to the existing quantity of car parking that is, 214 spaces). The present proposal represents a lesser amount. Further, the relocation of the car spaces to an underground location provides an opportunity for increased activation at Street level and a more legible active design to the balance of the built form.
17. The second point of material difference between the Central Sydney LEP 1996 and the Sydney LEP 2005, is that Clause 10 of the Sydney LEP 2005 displaces SEPP 1 and “caps’ the extent to which the controls may be exceeded. In this regard, while the height of the development is clearly permissible under either instrument, the FSR sought for the proposal would not comply with Sydney LEP 2005, and is in excess of that amount which would be permissible under Sydney LEP 2005.
18. However the applicant is entitled to the benefit of the relevant legislative framework as at the date of lodgement. That includes either the benefit of “existing use rights” under s. 106 of the Act or (if the applicants position is incorrect) the benefit of the Central Sydney LEP 1996, whose development standards can be varied in accordance with SEPP 1. The “non compliance” substantially relates to the incorporation of the car. The FSR “above ground” is significantly less, and the impacts relating to the “above ground” FSR are addressed in this report. In summary, the FSR of the building is generally consistent with the surrounding built form, and does not create excessive or unacceptable adverse impacts.

Original DA

19. The original plans lodged with Council were similar to those originally lodged under Development consent D/2005/473, dated 12 December 2005. These included the demolition of the existing car park and erection of a 11 storey commercial building, (plus plant level) comprising a maximum height of 50m (RL 61.65) and 12 basement levels of commercial car parking for 197 cars, and an additional 17 car spaces for commercial tenants, providing a maximum of 214 car spaces.
20. The application was not determined pending submission of further information and amendments to the proposed scheme.

Amended plans – August 2007

21. Amendments were received on 13 August 2007 and involved an increase in height of 4.9 metres a 14 storey (plus plant level) commercial building comprising a maximum height of 54.9 metres (RL 66.55) and basement commercial car park for 144 cars and 17 tenant spaces. Concerns were raised by Council officers regarding increased impacts on neighbouring residential amenity due to increased height of the proposed building.

Amended plans – February 2008

22. On 27 February 2008, final amended drawings were submitted to Council which sought to address the concerns raised and removed one floor of the proposed development. The revised scheme is summarised below:
 - (a) demolition of existing 10 level commercial car park;
 - (b) construction of 12 storey (plus plant room) commercial building over basement structure incorporating strata title office units;
 - (c) construction of 10 basement levels for the continued use as a commercial public car park comprising 162 public car spaces, and 17 commercial tenant car spaces;
 - (d) retail shop and commercial entrance lobby at ground level fronting Quay Street, with pedestrian and vehicle entrances to the commercial car park fronting Thomas Street;
 - (e) associated plant equipment, landscaping and public domain works;
 - (f) the building is proposed to be 50.7 metres in height. A podium element is proposed adjoining 93-105 Quay Street continuing the established 22 metre high street wall to the south of the site in Quay Street; and
 - (g) the building will be clad in high performance glass and masonry tiles.
23. The following table summarises the primary differences between the approved development, the original proposal and the current amended scheme.

	Approved development	Amended proposal
Height	50m (RL 61.65) 11 levels (+ plant room)	50.7m (RL 62.35) 12 levels (+ plant room)
FSR - Commercial building <i>(Above ground floor space area)</i>	7.5:1 (6605m ²)	9.4:1 (8284m ²)
FSR - Commercial Car Park <i>(Below ground floor space area)</i>	10.9:1 (9605m ²)	8.2:1 (7200m ²)
Total FSR	18.4:1 (16,210m ²)	17.6:1 (15,484m ²)
Car spaces (commercial and tenant)	214	179

24. The proposed hours of operation of the commercial car park will remain as 7.30am to 12 midnight on Mondays to Thursdays, 7.30am to 1.00am Fridays and Saturdays and 8.00am to 11.00pm Sunday.
25. Plans, elevations and photomontages of the development are provided in **Attachment A**.

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

26. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments

State Environmental Planning Policy – SEPP 1 Development Standards and Draft SEPP 2004 (Application of Development Standards)

27. A SEPP 1 Objection was submitted to Council on 13 August 2007 in relation to non-compliance with FSR and height controls in summary, the SEPP 1 is considered to be well founded. Refer to Issues section of report.

State Environmental Planning Policy – SEPP 55 Remediation of Land

28. SEPP 55 relates to controls for land which may require remediation as a result of past use of the site. The policy states that land must not be developed if it is unsuitable for the proposed use because it is contaminated. A phase 1 investigation report was prepared by Environmental Investigation Services (EIS) and submitted with the development application.

29. Council's Health Section is satisfied that the site can be made suitable for the proposed use. A condition has been recommended which requires a Site Audit Statement to be submitted which will outline any necessary remediation.

Central Sydney LEP 1996

30. The relationship of the proposal with the LEP controls is summarised below:

COMPARISON TO CENTRAL SYDNEY LEP 1996

Development Controls	Permissible under Central Sydney LEP 1996	Proposal as assessed under Central Sydney LEP 1996
Zoning	City Centre	The proposal is permitted in Zone (subject to cl 48 (A))
Floor Space Area	6603sqm	8284sqm (above ground) + 7200sqm (below ground) = 15,484sqm
Floor Space Ratio (Site area = 880.5m²)	7.5 : 1	9.4:1 (above ground) 8.2:1 (below ground) Total 17.6:1 (Refer to issues section)
Height	The top of the building is 50m above street level (RL 61.65)	50.7m above street level (RL 62.35) (Refer to issues section)
Tenant Parking	Max. 17.61 spaces	17 tenant spaces are proposed
Special Areas	Haymarket Special Area	Discussed later in this report

COMPLIANCE WITH CENTRAL SYDNEY HERITAGE LEP 2000

Matter to be considered	Compliance	Comment
<p>Aims CI 2</p> <p>Development within the vicinity of a heritage item CI 13</p>	✓	<p>Complies: The proposal has been designed to sympathetically relate to the adjoining heritage item on Thomas Street. The proposal will conserve the heritage significance of the building.</p> <p>Refer to issues section</p>
<p>Development of potential archaeological sites CI 14</p>	✓	<p>Complies: The proposal involves substantial excavation works for the construction of 10 basement levels of car parking. A condition has been recommended for archaeological investigation should the site contain archaeological deposits.</p>

Sydney Local Environmental Plan 2005

31. The savings provisions at Clause 14 of the Sydney Local Environmental Plan 2005 apply to development applications lodged, but not finally determined, prior to the commencement of the Sydney Local Environmental Plan 2005. The subject application was lodged on 7 December 2005 which is before to the Sydney Local Environmental Plan gazettal date of 9 December 2005. The relationship with the Central Sydney DCP is set out below.

Central Sydney DCP 1996

RELATIONSHIP TO THE CENTRAL SYDNEY DCP 1996

Matter to be Considered	Compliance	Comment
Building to the street alignment CI 2.1	✓	Complies: The building is set back from the street alignment at ground and mezzanine levels on both the Quay and Thomas Street elevations. The building returns to match the building line of the adjoining heritage item on Thomas Street, and to match 93-105 Quay Street. The setbacks at lower levels will provide an active street front on the prominent corner site in the Haymarket area, and will form part of the proposed improvements to the public domain.

Matter to be Considered	Compliance	Comment
<p>Building setbacks – front; side and rear CI 2.3</p>	<p>✓</p>	<p>Generally complies: The building setbacks above the street wall require a weighted average of 8 metres with a minimum of 6 metres which can be reduced to smaller setbacks on corner sites. The irregular shape of the site and constraints established by the residential building located on the southern boundary has led to a site responsive design solution that transfers the massing of the building to the corner of Quay and Thomas Street. The design incorporates an 8 metre setback on the eastern wall, on the southern boundary which decreases to 5 metres and tapers to the boundary on the corner of Quay and Thomas Streets. No setback is proposed to the northern façade. Approximately 20 metres of the western faced has not been set back, a splay has then been created so that there is a 9 metre setback on the southern boundary wall. The setback to the southern boundary is zero metres, which complies with the DCP requirement for commercial buildings.</p>

Matter to be Considered	Compliance	Comment
<p>Street frontage heights and setbacks for special areas CI 2.4</p> <p>Street frontage heights CI 2.2</p>	<p>✘</p>	<p>Does Not Comply: The street wall height control for the Haymarket Special Area is 20 metres, or that of an adjacent heritage item. The proposal does not comply, but is considered appropriate within context.</p> <p>Whilst a strict interpretation of the controls would suggest the maximum street wall height to be 9 metres, it is appropriate to apply the 20 m control along Quay Street. The established street wall of the development to the south is approximately 22 m and it is considered that the continuity of the established street wall represents the appropriate height. This allows an appropriate integration with the current context.</p>
<p>Street frontage activities CI 2.5</p>	<p>✓</p>	<p>Complies: Retail activity is proposed at ground level, adjacent to the increased pavement area. The retail proposed will activate the street frontages to a greater capacity than that which currently exists on the site.</p>
<p>Building exteriors CI 2.7</p>	<p>✓</p>	<p>Complies: The building incorporates masonry elements, particularly on the Thomas Street frontage adjacent to the heritage building. In addition, the plant room has been incorporated internally to form part of the building design.</p>
<p>Views CI 2.8</p>	<p>✓</p>	<p>Complies: The proposed development results in a minor increase in height and will not encroach on significant views.</p> <p>Refer to Issues section.</p>

Matter to be Considered	Compliance	Comment
Vehicle access and footpath crossings CI 3.3	✓	<p>Complies: The vehicle access to the commercial car park and tenant parking is from Thomas Street, which is not identified as pedestrian priority.</p> <p>The entrance to the car park is in essentially the same location as the existing car park. However its appearance will be improved via, the design including clay tiling to the façade, and the use of L.E.D. light panels and glass panelling to allow natural light to penetrate through the entry foyer and driveway.</p>
Awnings & colonnades CI 3.5	✓	<p>Complies: No awning has been provided on the Thomas Street elevation, however, the building has been cantilevered 1.6 metres over the ground level setback and is contained within the site's boundaries. In addition, the Quay Street elevation comprises a colonnade with a minimum width of 3 metres expanding to 8 metres at the southern edge of the frontage, provides a degree of weather protection.</p>
Artworks CI 3.6	✓	<p>Able to comply: A condition has been recommended which requires artwork in the setback from Quay Street.</p>
Paving for street footpaths and public spaces CI 3.7	✓	<p>Able to comply: Public domain condition is recommended.</p>
Easy access CI 3.8	✓	<p>Complies: Conditions recommended with regard to compliance in accordance with the BCA</p>

Matter to be Considered	Compliance	Comment
Sunlight to public spaces CI 4.1	✓	Complies: There will be some additional shadow cast over Quay Street between 1pm and 2pm at the equinox. The shadow will be cast over the mature plane trees in Quay Street and over part of the road. The proposal does not however affect any major parks or community spaces identified in this DCP.
Wind standards CI 4.2	✓	Complies: The Windtech Consultants Pty Ltd prepared a Wind Environment Statement for the original proposal which stated that subject to the use of 1.2 metre high impermeable balustrades on the terraces, the wind impacts were considered acceptable. The amended scheme includes the infill of terraces and is unlikely to cause any increase in wind impacts.
Energy efficiency of buildings CI 4.3	✓	Complies: Hyder Consulting Engineers prepared a report in relation to the original scheme. Conditions will require a 4.5 star energy rating.
Reflectivity CI 4.5	✓	Complies: The Solar Light Reflectivity Analysis prepared by Windtech Consultants Pty Ltd concludes that the building's glazing system will have a maximum normal reflectivity of visible light of 20%. A condition is recommended that the glazing system does not exceed this maximum.
Urban runoff CI 4.6	✓	Able to comply: A condition is recommended to regulate run-off.

Matter to be Considered	Compliance	Comment
External lighting of buildings CI 4.7	✓	Able to comply: Condition recommended.
Parking for people with mobility impairment CI 5.3	✓	Able to comply: Conditions recommended.
Delivery & service vehicles CI 5.4	✓	Complies: 2 loading spaces are provided at basement level 1.
Bicycle parking CI 5.5	✓	Complies: Provision for bicycles has been made at basement level 1.
Motor cycle parking CI 5.6	✓	Complies: Provision has been made at basement level 2 for motorcycle parking.
Visual Privacy CI 6.1.10	✓	Complies: There are no windows proposed on the southern elevation of the proposed building. Accordingly, the proposal will ensure that visual privacy is retained to the adjoining property to the south.

Issues

32. The issues identified in the above instruments/policies (as either non-complying or requiring further discussion in the abovementioned tables) are discussed in detail below. It should be noted that (to the extent the instruments may not strictly apply), this discussion remains relevant to a consideration of the proposal in the existing urban form context.

Existing Use Rights

33. The existing commercial car park which occupies the site has been operating since approximately 1977. The previous approved development (D/2005/473) addressed the situation that the site benefited from existing use rights.

34. The applicant has asserted it is entitled to the benefit of existing use rights. It is consistent with the court findings in the Multistar litigation and in *Grosvenor Australia Property Pty Ltd v Sydney CC and Rail Corporation NSW* [2007] NSWLEC 2 (18 January 2007). Under the Environmental Planning and Assessment Act 1979, where a building is used for the purposes of an “existing use”, it may be altered, extended, or rebuilt in accordance with the relevant regulations under that Act (which are defined to be “incorporated provisions.”) Any provision of an environmental planning instrument, such as the Central Sydney LEP 1996, which would either derogate from the incorporated provisions or have the effect of derogating from those provisions or have the effect of derogating from those provisions have no force and effect. However, an application for existing use rights on this particular site has not been proven in the court. On this basis, it is appropriate to consider the development both with and without the benefit of existing use rights.
35. The current proposal is essentially very similar to development previously approved. Existing use rights apply to the site, the planning controls are still considered relevant as they generally shape the form of all development surrounding the site, and act as a guide to the appropriate building form within the existing context.
36. The application was lodged prior to the gazettal of Sydney Local Environmental Plan 2005. Accordingly, the proposed development has been assessed mindful of the existing use right benefit and in accordance with the Central Sydney LEP 1996, and SEPP 1 Objections were considered regarding the proposed non-compliances with height and FSR controls.

URBAN FORM

Height

37. The Central Sydney LEP 1996 requires a maximum height of 50 metres. The current proposal has a height of 50.7 metres.
38. A SEPP 1 Objection was also lodged with the original proposal (54.9m height) to address the non-compliance. The current proposal results in an additional 0.7 metres higher than the approved development and the SEPP 1. Given the:
 - (a) juxtaposition of the proposed building with the Carlton Crest Hotel to the west (higher than the proposal);
 - (b) adjacent property (at 93 – 105 Quay Street), approximately 1 storey taller than the 50 metre height limit; and
 - (c) proposal steps down slightly from 93 -105 Quay Street reflecting the topography of the area,

it is not considered that the exceedence constitutes a significant issue. The SEPP 1 Objection is supported as the proposed height is generally consistent with the height of surrounding buildings, and is not considered to result in significant additional loss of residential amenity or sunlight to neighbouring properties or the public domain. The SEPP 1 is considered to be well founded.

39. Figure 6 demonstrates that the amended proposal steps down from the adjoining development to the south and will not significantly intrude upon views of adjoining north facing apartments on the upper levels of 93-105 Quay Street. Refer to view discussion further on in this report.

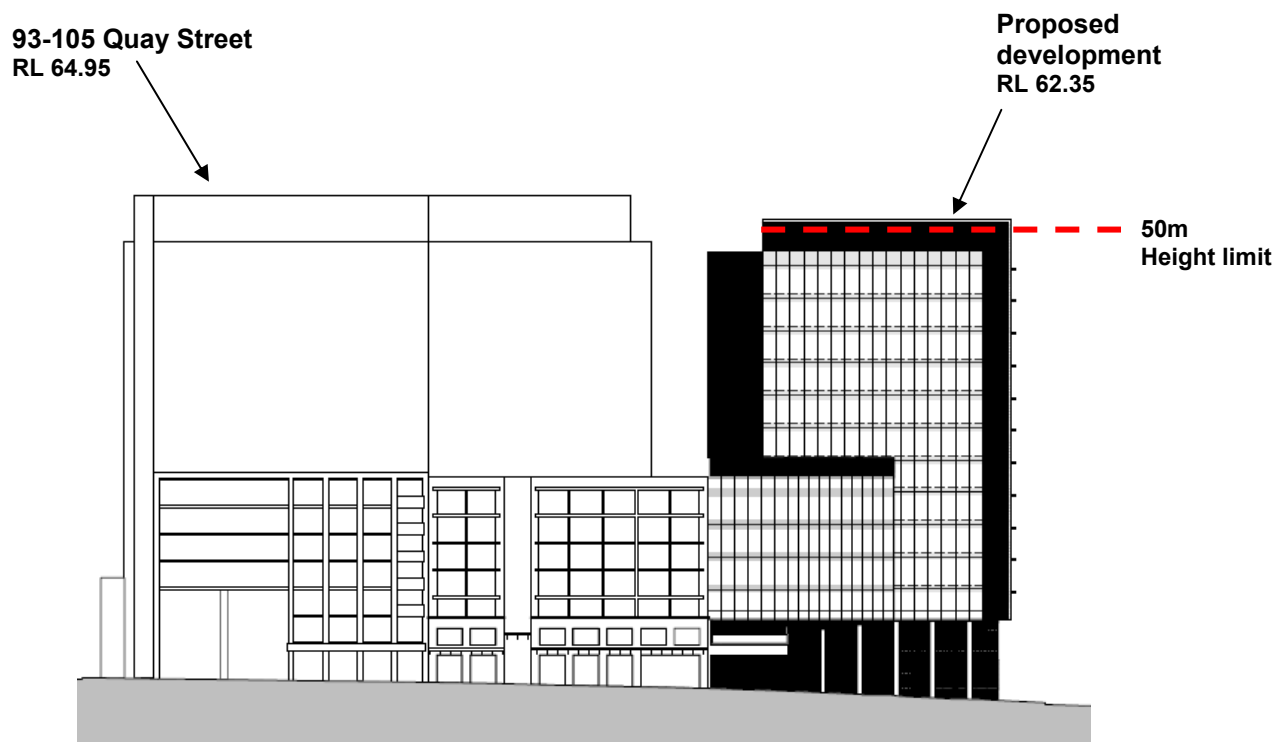


Figure 6: East Elevation (Quay Street) showing the proposed development and height relationship to adjacent building (93-105 Quay Street)

40. The proposed development is considered to satisfy the requirements of Council's Resolution of 19 April 2004 and will be consistent with the desired future character of the Haymarket Special Area.

Floor Space Ratio

41. The following table summarises the existing FSR; the previously approved FSR in comparison to the current proposal.

FSR	Existing	Approved	Proposed
Commercial building <i>(Above ground floor space area)</i>	8:1 (7044 m ²)	7.5:1 (6605m ²)	9.4:1 (8284m ²)
Commercial Car Park <i>(Below ground floor space area)</i>	2:1 (1761 m ²)	10.9:1 (9605m ²)	8.2:1 (7200m ²)
Total FSR	10:1 (8805 m ²)	18.4:1 (16,210m ²)	17.6:1 (15,484m ²)

42. The proposed 12 storey (plus plant level) commercial building exceeds the FSR control. A SEPP 1 Objection was submitted with the application to address the proposed non-compliance fundamentally, the difference between the permissible FSR and the FSR sought is 8879 sqm. The SEPP 1 is considered to be well founded. The proposal reduces the overall floor space area by 726m² from the previous approval, which is caused by a reduction in number of car spaces below ground level.
43. In addition, the increased floor space area above ground has been created by an additional level at the top of the building and a reduction in the floor to floor height of the commercial office building (3600mm to 3450mm), as well as an increase to the building footprint by infilling part of the rear courtyard and terraces at various levels.
44. The additional floor space above ground will not result in any significant view loss, loss of sunlight to adjoining properties, or reduced amenity to the public domain. It does not impact adversely on the heritage item, and is consistent with the surrounding built form.
45. The proposed commercial use will encourage high density employment activities and the proposed development continues to improve the public domain and streetscape by placing parking below ground and activating the highly visual street corner within Haymarket.
46. The proposal satisfies the requirements of Council's Resolution of 19 April 2004 and will not harm the existing and desired future character of the Haymarket Special Area or result in any unreasonable environmental impacts on neighbouring amenity.

Car Parking

47. The proposed tenant parking is in accordance with Clause 47 of the Central Sydney LEP 1996. The proposed tenant parking for 17 cars complies with the maximum provision of 1 space per 50m². The limited number of tenant spaces will encourage the use of nearby public transport.
48. The site has existing development approval (D/2005/473) for the relocation of the existing commercial car park below ground to provide 11 levels of basement parking for 214 cars. (The retention of existing spaces is also permitted under the SLEP 2005).
49. The current proposal involves 10 basement levels of parking for 179 cars. The reduction in number of car spaces is supported as due to the site's proximity to the CBD, Central Railway Station and bus services it represents a reasonable level of reduction.
50. A single vehicle entry point is proposed via Thomas Street for both public and tenant car parking. The driveway will replace the existing exit on Quay Street and will improve the ingress and egress arrangement to the car park.
51. The proposed relocation of the car park to below ground level and the erection of a commercial building will provide an active street frontage will improve pedestrian amenity along Quay Street.

52. In accordance with Central Sydney LEP 1996, the proposed commercial portion of the basement level car park will be for 'short stay public car parking' only to discourage use by commuters. Although the proposal seeks approval to retain the current hours for operation of the existing car park, a condition has been recommended which requires a 'short stay' price structure, and includes a restriction on public access to the car park between 5.30am and 9.30am Mondays to Fridays, and incorporates an increasing hourly rate between 9.30am and 6.00pm Mondays to Fridays.

Heritage/Urban Design

53. The site is located at the southern end of the Haymarket Special Area and located adjacent to a Schedule 1 Heritage Item. The heritage building is a two storey Federation Free Classical building (former Benevolent Society of NSW Hospital built as an asylum for destitute women and children) and provides an important example of institutional architecture in Sydney.
54. The proposed building has a frontage to Quay Street which has undergone a period of recent redevelopment. The existing car park structure does not make a significant contribution to the 'market' character of the area. The proposal is supported by Council's Heritage and Urban Design Specialists.
55. The proposed massing generally addresses the existing scale, setbacks and street wall heights of surrounding development. In addition, the development will contribute to the public domain by increasing the pavement width fronting Quay Street, and will not unreasonably restrict daylight access to the public realm.
56. The lower levels of the Quay and Thomas Street elevations will be partially clad in clay tiles and will respond to the masonry facade of the adjacent heritage building. The materials and finishes for the remaining levels include clay tiles, proportioned glazing panels and aluminium louvers. These materials are considered sympathetic to the surrounding buildings and the Haymarket Special Area.
57. A condition is also recommended that the final colour of the clay tiles are to be assessed on site to check their compatibility with the heritage brickwork and that the proposed glazing will be green and low energy with insulating properties.

Street wall height

58. The Central Sydney DCP 1996 requires a street wall height of 20 metres for buildings located within the Haymarket Special Area, or the nearest Heritage Item (which ever is the lesser). The site has two street frontages one is located adjacent to a 2 storey heritage item on Thomas Street which has a height of 9 metres to the underside of its eaves. The primary frontage is to Quay Street
59. With regard to Quay Street elevation, the adjoining building (93-105 Quay Street) has a street wall height of approximately 22 metres. The street wall height is supported due to its consistency with the established building line and compatibility with the adjoining building.

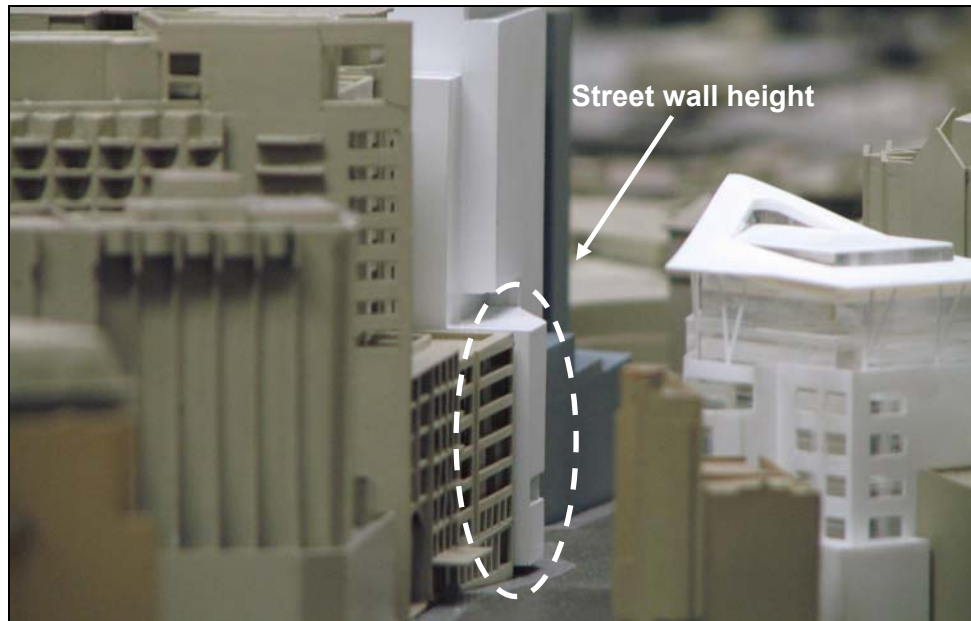


Figure 7: City model showing proposed street wall (Quay Street elevation) height in relation to adjoining development.

60. With regard to Thomas Street elevation, the proposal street wall height includes a 1.6 metre ground floor set back (recess) up to 9 metres in height. The building setback returns to the lot boundary at upper levels (refer to Figure 9). It is considered that this horizontal line that is created acknowledges the transition to the adjacent heritage item. The proposed recess is compatible with the height of the adjoining heritage item and will be clad in clay tiles at the lower two levels to respond to the masonry of the heritage item.

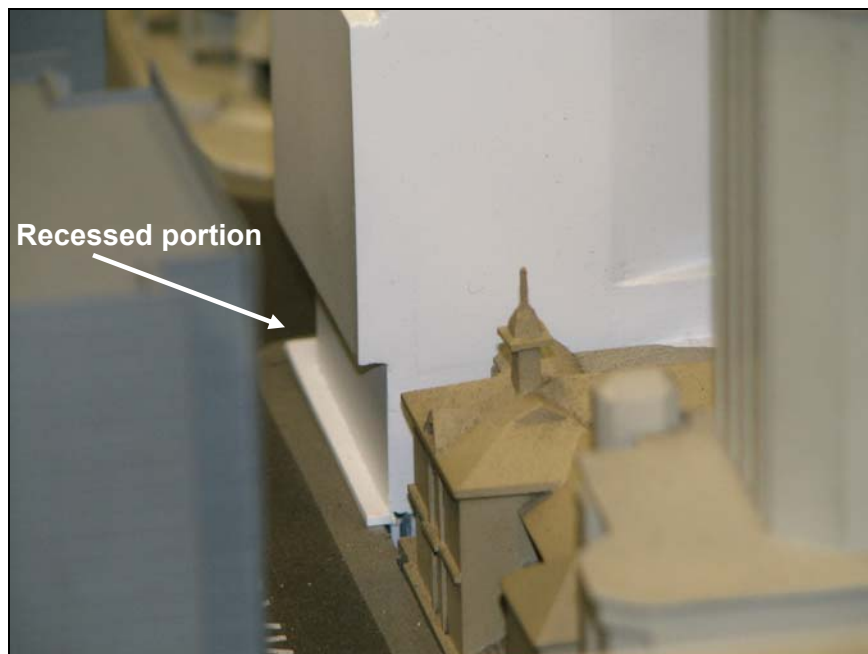


Figure 8: City model showing recessed facade of proposed Thomas Street elevation and relationship to adjacent heritage item to the west

65. The main consideration is the relationship to the residential development at 93-105 Quay Street. This building was developed on a mid block site and incorporates boundary setbacks for light and air. The residential units have varied building setbacks which are a minimum of 6 metres, increasing to 7.5 metres and 9.3 metres. These comply with the minimum separation distances of the SEPP 65 and Residential Flat Design Code. There is a significant impact on the sunlight received to the lower levels of the development in particular. However these impacts are caused primarily by the internal configuration of 93 – 105 Quay Street.
66. The proposed setbacks will not result in any significant additional loss of amenity to adjoining buildings and the proposed blank southern wall will ensure privacy will be maintained.

Views

67. The Central Sydney DCP 1996 stipulates that 'outlook' is considered to be short range prospect, such as building to building, while 'views' are more extensive and long range. Consistent with general planning principles, the DCP also states that there is no guarantee that views or outlooks from an existing development will be maintained.
68. The northern elevation of 93 – 105 Quay Street currently enjoys an outlook to the north and east viewed over the subject site at 81-91 Quay Street and the adjoining heritage building. The outlook includes the Pyrmont roof scape, the south west of the CBD and distant views of a panorama which includes the Darling Harbour precinct, Anzac Bridge and some water.
69. Fundamentally the outlook from the northern elevation of 93 – 105 Quay Street was achieved by "overlooking" an under developed site. The controls at the time of the approval of 93 – 105 Quay Street, and the present controls, allow a building up to a height of 50 metres. There has been no change to the planning framework in relation to height. The proposal is consistent with the bulk and scale of surrounding development. The site presently has approval for a building height with a maximum height of 50 metres. The current proposal seeks approval for a maximum height of 50.7 metres (RL 62.35).
70. The additional 0.7m will not result any significant loss of views from the penthouse residential apartments located above the approved building height. Both the present and the previously approved building envelope at 61-71 Quay Street will also obstruct the distant water views currently experienced by the north facing units of the adjoining property. The level of impact is considered reasonable in the context of the site.



Figure 10: Photographs showing panorama of existing views currently experienced at penthouse level of 93-105 Quay Street

71. The following view analysis submitted by the applicant illustrates the marginal difference in approved and proposed heights in relation to the adjoining building.

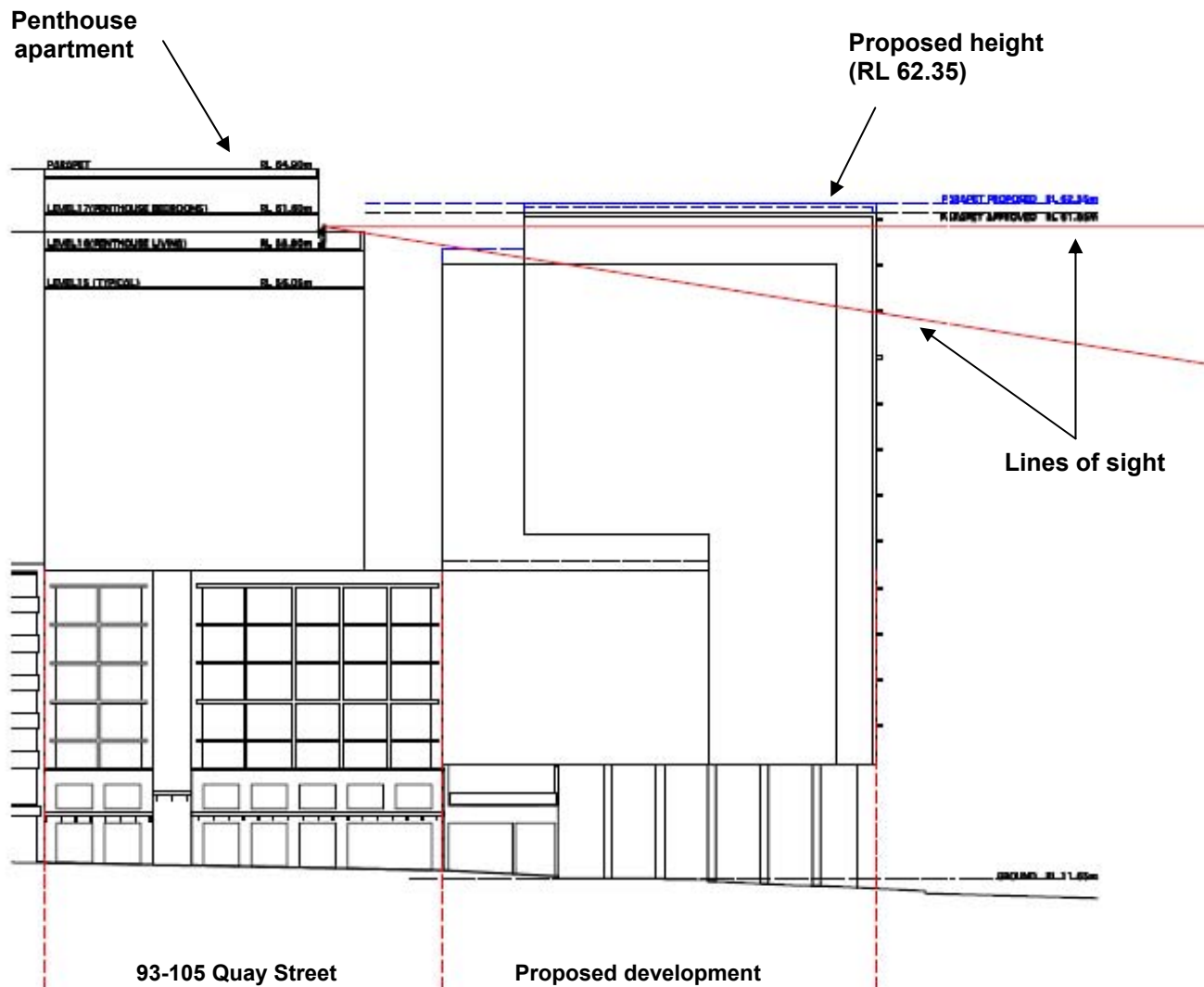


Figure 11: View analysis

Solar Access

72. The Central Sydney DCP outlines minimum standards for sun access and specifies that living rooms and private open space in dwelling units should receive a minimum of two hours per day on the equinox (March 21) measured on the main window of the rooms or at the front edge of the open space.
73. All apartments will receive some morning sun. The majority of apartments within the affected property have single aspect in a northerly direction and were designed to rely on sun and amenity borrowed from the subject site. Fundamentally the redevelopment of the site in a fully compliant envelope would create a level of impact. The extent of the present proposals impact has been the subject of studies from both 93 – 105 Quay Street and the applicant. For the reasons set out below the relationship is considered acceptable.

74. The applicant's shadow diagrams indicate that there will be a slight increase in overshadowing to the northern facing apartments at 93-105 Quay Street on the western side during the hours of 10.00am and 11.00am (approximately 3 additional units), and a marginal increase in shadowing to units located towards the eastern side between 12.00 midday and 3.00pm (approximately 8 additional units). The slight increase in shadow impacts is a result of the additional height and bulk to the western side of the proposed development.
75. More than 70% of the apartments at 93-105 Quay Street will receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm which complies with the requirements of the Central Sydney DCP and SEPP 65 – Design Quality of Residential Flat Development, as well as provisions for ecologically sustainable development. The units most affected lie at the lower levels and the impact can not reasonably be avoided entirely.
76. The proposed developments internal amenity is considered to be generally satisfactory. The proposal will be overshadowed by the recently approved development at 61 – 79 Quay Street, Haymarket.

Section 79C(1)(b) Other Impacts of the Development

BCA Matters

77. Council's building unit has no objection to the proposal subject to the imposition of standard conditions which are included in the recommendation section of this report.
78. The BCA Classification of the building is Class 5, 6 and 7.

Section 79C(1)(c) Suitability of the site for the development

79. The subject site is suited to the proposed development. The demolition of the commercial car park and its relocation underground achieves strategic aims of the City in relation to the removal of above ground car parking, with the proposed commercial building above ground, representing a site responsive design.

Section 79C(1)(e) Public Interest

80. The proposed development is not considered to cause adverse affects on the surrounding area and is in keeping with the public interest.

POLICY IMPLICATIONS

81. Not applicable to this report.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

82. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003. An appropriate condition has been included in the recommendation of this report.

PUBLIC CONSULTATION

Section 79C(1)(d)

EXTERNAL REFERRALS

83. Adjoining and nearby owners and occupiers were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications Development Control Plan 2005. The amended drawings were not renotified as the modifications were considered to result in a reduction in environmental impacts.

84. One submission was received. The grounds for objection are summarised as follows:

- (a) **The proposal is unacceptable with regard to the planning principles (on land with existing use rights) as outlined in Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71.**

Comment: The situation in Fodor involved alteration and expansion of a retirement village. The criteria set out in Fodor have been addressed.

- (b) **The SEPP 1 Objection is not well founded**

Comment: A SEPP 1 Objection was submitted with the original proposal in response to non-compliant height and FSR. The amended scheme resulted in a reduction in height which is comparable to the existing approval. In addition, the proposed FSR is less than the FSR approved for the site and a substantial portion of the non-compliant FSR is located below ground. The additional floor space above ground is not considered to result in a loss of amenity for the adjoining building.

- (c) **Non-compliance with FSR controls**

Comment: Although the proposal significantly exceeds the required FSR for the site, the total FSR is less than the existing approval. A substantial portion of the non-compliant floor space is located below ground, and the additional floor space above ground is caused by a decrease in floor to floor height, as well as the addition of one floor. The additional FSR (above ground) will not result in any significant loss of amenity to the adjoining buildings.

- (d) **The proposal does not satisfy the objectives of the City Centre zone**

Comment: As discussed, the proposed development is consistent with the objectives of the zone and the existing approval for the site.

- (e) **Overdevelopment of the site**

Comment: The proposed development is considered to achieve a contextual fit with the surrounding development and its built form is consistent with approved development. In addition, the proposed numbers of car spaces have been reduced from 214 to 179.

(f) Extent of glazing is not characteristic of the precinct

Comment: The lower levels of the façade on Quay and Thomas Streets will be clad in clay tiles which are considered sympathetic to the streetscape, and will reflect the masonry character of the adjoining heritage item. The elevations will comprise of glazed panels and aluminium grating which are considered acceptable for the commercial building.

(g) Adverse impact of development on adjoining heritage building

Comment: As discussed in the report, the proposed development includes a recess at lower levels up to a height of 9 metres to respond to the heritage item on the Thomas Street elevation. Clay tiles to the façade on Thomas Street are also proposed which are sympathetic to heritage item. The height levels for the site do result in the same sense of "enclosure" to the item. This is considered acceptable in heritage terms and in the in the urban context .

(h) The development does not address the requirements of the Haymarket Special Area

Comment: As discussed in the report, the proposed development provides a suitable use for the site, relocates the car park below ground, is sympathetic in design to surrounding buildings and provides public domain improvements. The proposal is considered to meet the objectives of the Haymarket Special Area.

(i) View loss and outlook from 93-105 Quay Street

Comment: As discussed in the report, the proposed development results in a slight increase in height to 700mm above the height level. There will be no significant additional view loss to the penthouse apartments of 93-105 Quay Street arising from this increment. This level of variation can be achieved under both the Central Sydney LEP 1996 and the Sydney LEP 2005 and is not excessive in its context.

Traffic

85. Council's Traffic Management Section raised no objections to the proposed development. The proposed retention of a public car park is supported due to its contribution towards reducing the demand for on-street parking spaces in the precinct.
86. The current proposal is also considered an improvement to the existing and approved development with regard to traffic impacts and pedestrian amenity. The proposal involves the reduction in public car spaces from 214 to 144 discouraging traffic generation, and includes the removal of the existing driveway on Quay Street, which will contribute to pedestrian amenity and create a direct pedestrian link between Central Railway and Darling Harbour.

INTERNAL REFERRALS

87. The application was referred Council's Specialist Surveyor, Specialist Health Surveyor, Heritage Architect, Senior Urban Designer, Living City Building Services Unit, Health Unit, City Projects, Properties Unit, Transport and Access Unit. No objection to the proposed development was raised, subject to the imposition of appropriate conditions.

88. Appropriate conditions have been included in the recommendation of this report to reflect these requirements.

RELEVANT LEGISLATION

89. The Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulations 2000.

CONCLUSION

90. The proposed removal of the existing commercial car park, its relocation underground as well as the construction of a 12 (plus plant level) storey new commercial building is consistent with the existing approval for the site and will provide a positive contribution to the City Centre Zone.
91. The proposed height and FSR above ground is considered compatible with the surrounding buildings, and will not result in loss of amenity to neighbouring residential buildings.
92. The design and materials of the 12 storey (plus plant level) commercial building responds to the surrounding built form and provides a positive relationship to the adjoining heritage item.
93. The proposal results in a reduction in 38 commercial car park spaces on the site.
94. Conditions are recommended to ensure that the public and tenant car parking is limited to 179 public car spaces (as proposed) with a short stay pricing structure to discourage commuter parking.
95. The ground level retail/café and expanded public domain area will activate the public space adjacent to the site and provide improved safety and pedestrian amenity in the area.
96. It is recommended that the development be approved subject to conditions.

GIOVANNI CIRILLO

Director City Planning and Regulatory Services

(Chris Corradi, Senior Planner)